Fair Trial Guide – Part 3 - Pre and Post Trial Rights

Executive Summary

In this study, we present a fair trial guide, in which we show the rights of the accused at the pre-trial stage, as well as his rights during the trial and also the methods of appealing and executing the verdict, by dividing this guide into two main parts.

In the first section, we address pre-trial rights, which include the right to liberty, the right of a detained person to have access to his or her information, the right to a lawyer before trial, the right to communicate with the outside world, the right to be brought promptly before a judge or other judicial official, the right to challenge the lawfulness of detention, the right of detainees to a fair trial within a reasonable period of time or release, the right to adequate time and facilities for the preparation of a defense, the right to a lawyer during investigation, the prohibition of coercion to confess, the right to remain silent, the right to the assistance of translators, the right to humane conditions during detention and not to be subjected to torture and other cruel treatment.

In the second section, we address rights during trial, including the right to be tried before a competent, independent and impartial court formed in accordance with the provisions of the law, the right to equality before the law and the courts, the right to publicly consider cases, the presumption of innocence of the accused, the principle of the legality of crimes and punishments, the prohibition of trying the accused for the crime twice, the right to be tried without undue delay, the right of the accused to defend himself in person or through a lawyer, the right to attend trials and appeals, the right to call and discuss witnesses, the right to use an interpreter and translation, the right to announce judgments, the right to know the reasons for the judgment, the legality of the punishment and the character of the punishment and its proportionality to the crime, the right to appeal judgments, the execution of judgments, the right to compensation for wrongfulness in the application of justice, and the rights to a fair trial during states of emergency.

Section One: Pre-Trial Rights

Chapter One: The Right to Liberty

1.1 Content of the Right to Liberty

1.1.1 Within the framework of Egyptian law

The right to personal liberty is a fundamental human right that must not be infringed upon. It is a right enshrined in all constitutional and legal systems and is affirmed in all international charters

and treaties. Its essence lies in the guarantee provided by the Egyptian Constitution, which stipulates that every individual has the right to personal liberty. No one may be arrested or detained except for reasons specified by law, without arbitrariness, and in accordance with legal procedures and conditions, carried out only by authorities or individuals authorized by law. Personal liberty is a natural right, safeguarded and inviolable. Except in cases of flagrante delicto (in the act of committing a crime), no one may be arrested, searched, detained, or have their freedom restricted in any manner without a justified judicial order deemed necessary for investigation [1].

The accused is innocent until proven guilty in a fair legal trial [2].

Principle of Rule of Law - Legal State

Article 94 of the Constitution states: "The rule of law is the basis of government in the State.

The State shall be subject to the law, and the independence, immunity, and impartiality of the judiciary shall be fundamental guarantees for the protection of rights and freedoms."

The principle of the rule of law stipulated in Article 94 of the Constitution is intended to apply the principles and elements of the rule of law to all citizens among them and not to subject the issue of the application and interpretation of the law to the personal jurisprudence of those who implement it, as keeping the discretionary power of the judicial officer in each case implies the existence of abuse of power, which is contrary to the legal principles of the state, because if the matter is left to the discretionary power of the judicial officer, the law is applied in a specific case and the obligation to apply it in other cases is removed, which leads to chaos in the application of the law as well as the absence of legal security, as it is the inherent characteristic of any law that aims to provide a sense of fairness of the applied procedures [3].

It is the legal state that determines for those who reside on its territory those fundamental rights and freedoms whose content is consistent with the controls that States have steadily adhered to in their societies, and its approach has settled on adhering to them in manifestations of their various behavior, so that it does not compromise the protection it provides to those who practice them from what is necessary to ensure their effectiveness.

It means the legal state is the state that, in the exercise of its powers - whatever its functions or objectives - adheres to legal rules that transcend it and are the officer of its actions and the goal of its actions. The principle of the state's submission to the law is integrated with the principle of legality to provide the primary and basic guarantees to protect the rights and freedoms of individuals, and it rejects them on its own aftermath that it exceeds them, so it does not break away from them. The content of the legal rule, which is considered a framework for the legal state that transcends and restricts it, is determined from the perspective of democratic concepts on which the system of government is based on what is stipulated in the provisions of the Constitution [4].

In this regard, the Supreme Constitutional Court ruled that: [The legal state is the one that abides in the exercise of its powers, whatever its functions or objectives, by legal rules that transcend it, and return it on its heels that it is overstepping it, so it does not disintegrate from it, as these powers, and whoever is responsible for them, are not considered a personal privilege for those who assume them, nor are they of their own making, but rather they were established

---

([1]) Article 54 of the amended Constitution of the Arab Republic of Egypt for the year 2014.
([2]) Article 96 of the amended Constitution of the Arab Republic of Egypt of 2014.
([3]) Article 94 of the amended Constitution of the Arab Republic of Egypt of 2014.
([4]) The Supreme Administrative Court in Appeal No. 5365 of 63 S issued at the session of 21 April 2018, Appeal No. 5786 of 63 S issued at the session of 21 April 2018, and the judgment of the Administrative Court No. 51292 of 62 S issued at the session of 27 January 2009, page No. 360.

by the will of the masses in their gatherings throughout the country, and set them with peremptory rules that may not be waived, and therefore these rules are a restriction on all their actions and actions, so they come to them only within the limits set by the Constitution][5] .

The principle of the submission of the state to the law has become one of the basic principles on which the legal state is based and a fundamental guarantee for the preservation of human rights and freedom.

In order to consolidate the principle of equality between citizens in rights, freedoms and duties, the Egyptian Constitution has adopted the approach of contemporary systems, taking the right of the individual and his security as a constitutional goal and an original principle on the basis of which the individual's relationship with the homeland is determined in a way that supports the bond of loyalty, belonging, a sense of security and equal opportunities among citizens [6].

The state's submission to the law is one of the basic principles on which the legal state is based, as this principle represents the preservation of and respect for the rights of individuals in terms of determination, grants and limits. If international legislation and systems have paid attention to the rights and freedoms of individuals, the Egyptian Constitution has dealt with these rights and freedoms precisely and organization in a way that preserves the citizen's full constitutional rights, while enabling the public body to preserve public order with its implications, namely public security and public tranquility, to carry out its policing and security work in order to achieve justice under a fundamental rule on which the Egyptian judicial system is based, which is based on the principle that the accused is innocent until proven guilty by a final judicial ruling [7].

The principle of the subordination of the state to the law in the light of democratic concepts is based on the fact that the legislation in force does not prejudice the rights and guarantees that are considered one of the pillars of the legal state, and the Constitution, as the supreme basic law, lays the rules and principles of the system of government on the basis of which the functions of public authorities and the limits of their activity are determined with the determination of public rights and freedoms and ways to protect them [8].

The Supreme Constitutional Court ruled that: [The Constitution, in its first article establishing the system of governance on the basis of citizenship and the rule of law, signifies that in the realm of citizens' rights and freedoms, the content of the legal rule— which prevails in a state governed by the rule of law and which it adheres to— is determined in light of the standards consistently upheld by democratic states within their societies. These standards have been steadily applied in various aspects of their conduct, as adhering to them is a fundamental

---

([5]) The judgment of the Supreme Constitutional Court in Case No. 12 of 39 S issued at the session of March 3, 2018, the date of publication of March 7, 2018, page No. 21, also ruled that: The legal state is the one that adheres in all aspects of its activity and whatever the nature of its authority with legal rules above it, and is itself an officer of its actions and behavior in its various forms, as the exercise of power is no longer a personal privilege for anyone, but it proceeds on behalf of the group and for its benefit, and because the legal state is the one in which every citizen has the primary guarantee to protect his rights and freedoms, In which the organization and exercise of authority is within a framework of legitimacy, which is a guarantee supported by the judiciary through its independence and immunity, so that the legal rule becomes the focus of each organization, the limit of each authority, and a deterrent against every aggression, and it is also decided in the judiciary of this court that the principle of the state's submission to the law, to the effect that its legislation does not prejudice the rights that recognition in democratic countries is a primary assumption for the establishment of the legal state, and a basic guarantee for the preservation of human rights and dignity, and includes the range of rights related to personal freedom] The ruling of the Supreme Constitutional Court in Case No. 53 of 31 S issued At the session of November 4, 2017, the date of publication is November 15, 2017, page No. 26.

([6]) Judgement of the Administrative Court in Case No. 22653 of 60 BC issued at the session of 23 December 2008, page No. 223.

([7]) The judgment of the Administrative Court in Case No. 43008 of 61 BC issued at the session of 23 December 2008, page No. 241.

([8]) Judgement of the Administrative Court in Case No. 26194 of 62 S issued on December 2, 2008, page No. 165.

premise affirming their subjection to the law. This adherence is achieved without undermining those rights, the recognition of which in democratic states— and according to their application standards— reflects their acknowledgment of the guarantees provided. It also entails limiting restrictions on these rights to the extent necessitated by necessity, without disrupting their essence, thereby ensuring their effectiveness and fulfilling their role in satisfying the interests associated with them.

Whereas the Constitution stipulates in Article (94) that the state is subject to the law and that the independence, immunity, and impartiality of the judiciary are fundamental guarantees for the protection of rights and freedoms, and also emphasizes these principles in Articles (184) and (186), it indicates that the legal state is the one that adheres in all aspects of its activity - regardless of the nature of its powers - to legal rules that transcend it and are in themselves a control of its actions and actions in their various forms, as the exercise of power is no longer a personal privilege for anyone, but it proceeds on behalf of the group and for its benefit, and because the legal state is the one in which every citizen has the primary guarantee to protect his rights and freedoms, and to organize and exercise power within a framework of legitimacy, a guarantee supported by the judiciary through its independence and immunity so that the legal base becomes the focus of each organization, and the unity of each authority, and a deterrent against every aggression

Whereas, rational criminal policy must be based on homogeneous elements, if it is based on conflicting elements, the result of this is the lack of link between the texts and their objectives, so that they do not lead to the achievement of the intended purpose because of the lack of logical link between them, in recognition that the origin in the legislative texts of the legal state is its mental link to its objectives, as any legislative regulation is not intended for itself, but is only a means to achieve those objectives, and therefore it must always be recalled whether the challenged text adheres to a logical framework for the department in which it operates, ensuring harmony between the purposes it aims at, or contradicting or exceeding its purposes and thus contrary to the principle of the state's submission to the law stipulated in Article (94) of the Constitution][9] .

([9]) Judgment of the Supreme Constitutional Court in Case No. 166 of 31 S, issued at the session of July 6, 2019, date of publication July 10, 2019, page No. 15

It also ruled that: [The legal state and what is stipulated in Article (94) of the Constitution of 2014 is the one that abides in the exercise of its powers, whatever its functions or purposes, by legal rules that transcend it, and responds to it on its heels that it is overstepping it, so it does not disintegrate from it, as these powers and whoever is responsible for them are not considered a personal privilege for those who assume them, nor are they of their own making, but rather they were established by the will of the masses in their gatherings throughout the country, and seized by jus cogens rules that may not be waived, and then these rules are a restriction on all their actions and actions, so that they come to them only within the limits set by the Constitution, and in a manner that takes care of the interests of their society] The ruling of the Supreme Constitutional Court in Case No. 185 of 32 Q issued at the session of May 4, 2019, the date of publication of May 12, 2019, page No. 3, and Case No. 166 of 37 Q issued at the session of February 2, 2019, the date of February 11, 2019, page 32,

It ruled that: [It is established in the jurisprudence of this court that the state's submission to the law is determined in the light of a democratic concept, to the effect that its legislation does not prejudice the rights that are recognized in democratic countries as a primary presumption for the establishment of the legal state, and as a basic guarantee for the preservation of human rights, dignity and integral personality, and includes a range of rights closely related to personal freedom guaranteed by the Constitution. [The judgment of the Supreme Constitutional Court in Case No. 22 of 38 S issued at the session of November 3, 2018, published on November 13, 2018, page No. 80,

It ruled that: [The legal state is the one that adheres in all aspects of its activity and whatever the nature of its authorities to legal rules that transcend it and are themselves a control of its actions and actions in their various forms, as the exercise of authority is no longer a personal privilege for anyone, but it acts on behalf of the group and for its benefit; and because the legal state is the one in which every citizen has the primary guarantee to protect his rights and freedoms, and to organize and exercise authority within a framework of legitimacy, which is a guarantee supported by the judiciary through its independence and immunity to become the legal base for each organization, uniting each authority, and a deterrent against each aggression] The ruling of the Supreme Constitutional Court in Case No. 102 of 36 s issued at the hearing of October 13, 2018, the publication date of October 22, 2018, page No. 23, and Case No. 13 of 37 s issued at the hearing of June 3, 2017, the

It ruled that: [The current Constitution stipulates in Article (94) that the state is subject to the law and that the independence, immunity, and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms. It also affirms these principles in Articles (184) and (186) thereof. It indicates that the legal state is the one that adheres in all aspects of its activity, regardless of the nature of its powers, to legal rules that transcend it and are in themselves a control of its actions and actions in their various forms. The exercise of power is no longer a personal privilege for anyone, but it proceeds on behalf of the group and in its interest, and because the legal state is the one in which every citizen has the primary guarantee to protect his rights and freedoms, and to organize and exercise power within a framework of legitimacy, a guarantee supported by the judiciary through its independence and immunity, so that the legal base becomes the focus of each organization, the unity of each authority, and a deterrent against every aggression] [10].

It also ruled that: [A rational legislative policy must be based on homogeneous elements, if it is based on incompatible elements that result in the lack of link between the texts and its objectives, so that it does not lead to the achievement of the intended purpose because of the lack of logical link between them, in recognition that the origin in the legislative texts - in the legal state - is its association with its objectives, as any legislative regulation is not intended for itself, but is only a means to achieve those objectives, and therefore it must always be evidenced whether the challenged text adheres to a logical framework for the circle in which it operates, ensuring harmony between the purposes it aims at, or is inconsistent with or exceeds its purposes, and thus contrary to the principle of the state's submission to the law stipulated in Article (94) of the Constitution][11] .

It also ruled: [The decision in the judiciary of this court is the keenness of the Constitution - in order to protect public freedoms - to ensure personal freedom for its contact with the individual entity since its existence, and to surround it with many guarantees to protect it, and the freedoms and sanctities that derive from it, and to raise it to the rank of constitutional rules, as it is not permissible for the ordinary legislator to violate those rules, and the guarantee included to preserve those freedoms, otherwise his work is contrary to constitutional legitimacy.

Whereas the text of Article (54) of the existing Constitution has celebrated personal freedom, raising it to the level of the rights inherent in the person of the citizen, which does not explicitly

---

publication date of June 13, 2017, page No. 35, and Case No. 234 of 36 s issued at the hearing of December 3, 2016, the publication date of December 15, 2016, page No. 36,

It also ruled that: [Whereas the legal state, as stipulated in Article (94) of the Constitution, is the one that, in the exercise of its powers, whatever its functions or objectives, adheres to legal rules that transcend it, and rejects it in its wake that it exceeds it, so that it does not break away from it, and the content of the legal rule, which is considered a framework for the legal state, transcends and restricts it, is determined from the perspective of the democratic concepts on which the system of government is based on what is stipulated in Articles (1), (4) and(5) of the Constitution, Whereas the principle is in the authority of the legislator in regulating the rights established by the Constitution and what has been done by this court that it is a discretionary authority, the essence of which is the trade-off that it makes between the various alternatives that are related to the subject matter of the regulation to choose the most appropriate to its content, and to achieve the purposes it seeks, and ensure it to meet the most important interests, and there is no restriction on the legislator's exercise of this authority except that the Constitution itself has imposed specific controls on its exercise that are considered a limitation that should be adhered to, and in the framework of this organization, the legislator does not adhere to following rigid forms that he does not deny, its templates are emptied in a deaf and irreplaceable form, but he may To differ between them, and to assess for each case what suits them, in the light of advanced concepts required by the situations in which the right is exercised, and in a manner that does not amount to wasting it] The judgment of the Supreme Constitutional Court in Case No. 18 of 37 S issued at the session of 1 March 2015, the date of publication 1 March 2015, and Case No. 15 of 37 S issued at the session of 1 March 2015, the date of publication 1 March 2015.

([10]) Case No. 13 of 37 S. Issued at the hearing of June 3, 2017, Date of publication June 13, 2017 Page No. 35.

([11]) Supreme Constitutional Court, Case No. 116 of 22 S issued at the 6th session of May 2017, publication date 15th of May 2017, page No. 3, Case No. 227 of 25 S issued at the 4th session of February 2017, publication date 15th of February 2017, page No. 3.

accept the text of the first paragraph of Article (92) of that Constitution as a disruption or derogation, and is inseparable from the human person, and does not authorize its departure from it, following the values of democratic societies, which adhere to the legal frameworks and controls of the state, making personal freedom an essential tributary of other rights and freedoms, shared by reason and cause, and shared by purpose and purpose, strict in protecting them, ordering to preserve them, preventing - according to the text of Article (99) of the Constitution - the statute of limitations for the crime of aggression against it, not to mention its violation, except for a criminal crime in flagrante delicto, or for the requirement of a reasoned judicial order necessitated by an investigation conducted by the competent judicial authority in circumstances other than flagrante delicto, which requires that the criminal text of the measures restricting freedom include a designation of these measures, the conditions of their application and their reasons, their scope, frameworks and controls governing them, while ensuring the constitutional rights of those who have taken any of these measures before them, especially informing them of the reasons for this, informing them in writing of their rights, and ensuring their right to litigation and defense in the frameworks specified by the Constitution, and ensuring that they are included in the text of Article (54)) from it, including the right to file a grievance before the judiciary against these procedures, and to decide on it within a week from the date of taking the action, which are guarantees that the constitution obliges the law to abide by, and that the text restricting freedom achieves them, otherwise it falls in violation of the constitution.

Whereas it is established in the jurisprudence of this court that the principle of the state's submission to the law - in accordance with the text of the second paragraph of Article (94) of the existing Constitution - is determined in the light of a democratic concept that its legislation does not prejudice the rights whose recognition in democratic countries is a primary assumption of the establishment of the legal state, and a basic guarantee for the preservation of human rights, dignity and integral personality, and under which the range of rights pertinent to personal freedom, in view of their components and characteristics, falls.

Whereas it is legally established that the application of precautionary measures, by judgment or judicial order, is only on those who have manifestations of criminal danger that threaten society, it is not entitled to interfere with social defense measures to confront individuals who have not committed a crime, or have not shown manifestations of criminal danger, to the effect that although allowing the imposition of the precautionary measure involves infringements on the freedom of the person, these measures, if signed, must be subject to the principle of constitutional legitimacy][12] .

The constitutional principle according to which the state is subject to the law - in the light of democratic concepts - is based on the fact that the legislation in force does not violate the rights and guarantees prescribed for the citizen and respects them as one of the primary assumptions of the establishment of the legal state, and that the constitution as the supreme basic law that established the rules and principles of the system of government on the basis of which the functions of public authorities and the limits of their activity are determined while ensuring and maintaining public rights and freedoms and ways to protect them, and that there is a constitutional obligation to treat the citizen who is imprisoned or whose freedom is restricted as a treatment that preserves human dignity, and that the criminal penalty and the procedures followed to implement it must be a barrier to entering into criminality and its perceptions and the need to prepare the guilty for a better life, which can only be achieved by taking into account his rights specified by the laws and regulations implementing them in order to achieve the satisfaction of some of his legitimate needs and rights, including his right and his family to see him during the period of imprisonment, which reflects positively on his behavior inside the prison

([12]) Supreme Constitutional Court, Case No. 49 of 28 S issued in the session of 1 April 2017, publication date 10 April 2017, page No. 12.

in preparation for a life of integrity outside the prison in which the goal of the penal system is achieved.

In terms of adhering to the principles of legitimacy in the field of criminalization and punishment and in the field of preserving freedoms, it is related to the legal principles of the state and the distinction between the state of law and the state of tyranny, but in view of the behavior of the state towards its citizens, through the punitive laws it issues based on its authority and the means and procedures it adopts to implement those laws, as the state may not resort to a similar lawlessness, because this would undermine its legitimacy[13].

The Supreme Constitutional Court ruled that the authorization to arrest, detain and search persons and places without a reasoned judicial warrant violates the personal freedoms of citizens, which represents a violation of the principle of the rule of law, which is the basis of governance in the state: [Article (34) of the Constitution stipulates that: "Personal freedom is a natural right" and it is inviolable. "Article (35) of the Constitution also stipulates that: "Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, prevented from movement or restricted in any way except by a reasoned judicial order necessitated by the investigation. "Accordingly, the provision in Clause (1) of Article (3) of the Presidential Decree No. 162 of 1958 provides for the authorization to arrest, arrest and search persons and places without a reasoned judicial warrant that has wasted the personal freedoms of citizens and violated the freedom of their homes, which represents a violation of the principle of the rule of law, which is the basis of governance in the state.

Whereas, it does not affect the above, to say that the emergency law deals with exceptional situations related to confronting dangerous vows that threaten national interests with what may affect the stability of the state or expose its security and safety to imminent risks, and that the state of emergency, given its duration and the nature of the risks associated with it, is sometimes not suitable for the measures taken by the state in normal situations, as the emergency law authorized by the Constitution may not be used as a pretext to waste, violate and release its provisions, as the emergency law - whatever its justifications - remains in its nature as a legislative act that must abide by all the provisions of the Constitution, foremost of which is safeguarding the rights and freedoms of citizens.

Whereas, whenever the foregoing, the provisions of Clause (1) of Article (3) of Decree-Law No. 162 of 1958 of authorizing the arrest, detention and search of persons and places without being bound by the provisions of the Code of Criminal Procedure, violate the provisions of Articles (34, 35, 39, 81) of the Constitution[14] .

1.1.1.2 The powers of law enforcement officers

1.1.1.2.1 During the Preliminary Investigation Phase

The Code of Criminal Procedure singled out in its provisions the means and methods by which police officers carry out their work in relation to the evidence-gathering stage. The legislator singled out this stage with many characteristics, the most important of which is that the means and methods taken by judicial officers in the field of maintaining the security of the citizen, and reaching the perpetrators of crimes are not mentioned exclusively, but that the Code of Criminal Procedure mentioned the most important and most frequent of them at work, and did not prohibit others, because the essence of the evidence-gathering process, which is the stage of "information-gathering", refuses to be limited, and every action that would obtain this information in order to achieve the purpose of the evidence is permissible for the judicial officer as long as within the legal framework and the purpose of all this is to access to confirmed information

---

([13]) See the judgment of the Administrative Court in Case No. 11415 of 54 BC issued at the session of December 29, 2009.
([14]) Supreme Constitutional Court, Case No. 17 of 15 S issued in the session of June 2, 2013, date of publication June 3, 2013.

about the reported crimes in order to preserve citizens' money and lives, but the Court of Cassation has expanded in this sense in order to reach the truth by saying that "the officer is not impressed to fabricate within these limits of the means of ingenuity that he did not intend to uncover the crime or clash with the morals of the group" [15].

It is not permissible for the judicial officer, while carrying out the task of searching for crimes and their perpetrators and collecting the evidence necessary for investigation and lawsuit against the requirements of Articles 21 and 29 of the Code of Criminal Procedure, to torture the accused to make him confess to a crime. If he tells himself to torture that accused to make him confess, whatever the motive, he is subject to the punishment stipulated in Article 126 of the Penal Code[16].

A- Stop and Questioning

Suspension is a law that is nothing more than stopping a person who has placed himself under suspicion in order to identify his personality, and it is conditional on his actions not involving physical exposure of the investigator, which could be a violation of his personal freedom or an attack on it[17].

It is a procedure carried out by the man of public authority in order to investigate crimes and detect their perpetrators and justified by suspicion justified by circumstances, which is permissible for the man of public authority if the person voluntarily puts himself in a position of suspicion and suspicion and this situation foretells a need that necessitates the intervention of the arrestee to investigate and reveal his truth [18].

Suspension is nothing more than the mere suspension of a person who has placed himself under suspicion in order to identify his personality, and it is conditional on his actions not including a physical exposure of the investigator that could be a violation of his personal freedom or an attack on it[19].

([15]) Judgement of the Administrative Court in Case No. 16831 of 60 BC issued at the session of 27 February 2007, page No. 514.

The Court of Cassation also ruled that: [Article 49 of Law No. 182 of 1960 regarding combating drugs and regulating their use and trafficking has conferred the status of judicial officers on the directors of the Drug Control Department, its divisions, branches and auxiliaries, including officers, constables, first assistants and second assistants, with regard to the crimes stipulated in this law. Article 21 of the Code of Criminal Procedure stipulates that "the judicial officer shall search for crimes and their perpetrators and collect the necessary evidence for investigation and lawsuit." Article 24 of this law obliges judicial officers and their subordinates to obtain all clarifications and conduct the necessary inspections to facilitate the investigation of the facts reported to them or of which they are aware in any way and to take all necessary precautionary means to preserve the evidence of the crime. Whereas, the judgment proved a statement of the fact of the case that the measures taken by the officers of the Drug Enforcement Administration were carried out in compliance with their duty to take the necessary precautions to discover the crime of bringing the drug and seizing the accused, which is at the heart of their competence as judicial officers. What the appellant attributes to the procedures they have carried out in the claim of nullity has no place] Appeal No. 1891 of 35 S issued at the hearing of February 14, 1966 and published in the first part of the Technical Office's letter No. 17, page No. 134, rule No. 24.

([16]) Appeal No. 36562 of 73 S issued at the session of February 17, 2004 and published in the Technical Office letter No. 55, page No. 164, rule No. 19, appeal No. 5732 of 63 S issued at the session of March 8, 1995 and published in the first part of the Technical Office letter No. 46, page No. 488, rule No. 75, appeal No. 1314 of 36 S issued at the session of November 28, 1966 and published in the third part of the Technical Office letter No. 17, page No. 1161, rule No. 219..

([17]) Article 362 of the Judicial Instructions of the Public Prosecution.

([18]) Appeal No. 2268 of 83 S issued at the session of June 10, 2014 (unpublished), Appeal No. 1314 of 60 S issued at the session of December 21, 1998 and published in the first part of the book of the Technical Office No. 49, page No. 1504, rule No. 211, Appeal No. 1625 of 48 S issued at the session of January 25, 1979 and published in the first part of the book of the Technical Office No. 30, page No. 159, rule No. 30, Appeal No. 1708 of 39 S issued at the session of January 12, 1970 and published in the first part of the book of the Technical Office No. 21, page No. 74, rule No. 18.

([19]) Appeal No. 37357 of 73 S issued at the session of April 18, 2010 (unpublished), Appeal No. 405 of 36 S issued at the session of May 16, 1966 and published in the second part of the Technical Office's letter No. 17 page No. 613 rule No. 110.

The decision on the establishment of the justification for the suspension or its failure is one of the matters that the trial judge decides without comment as long as his conclusion is justified [20].

Suspension is achieved by placing the accused himself at will and choosing the subject of suspicion and suspicion, which justifies the man of authority to suspend him to reveal the truth of his matter [21].

([20]) Appeal No. 13620 of 88 s issued at the session of January 2, 2021 (unpublished), Appeal No. 19728 of 87 s issued at the session of March 14, 2018 (unpublished), Appeal No. 2268 of 83 s issued at the session of June 10, 2014 (unpublished), Appeal No. 66 of 81 s issued at the session of September 8, 2011 (unpublished), Appeal No. 1314 of 60 s issued at the session of December 21, 1998 and published in the first part of the Technical Office Book No. 49, page No. 1504, rule No. 211, Appeal No. 5941 of 55 s issued at the session of February 2, 1986 and published in the first part of the Technical Office Book No. 37, page No. 223, rule No. 46.

([21]) The Court of Cassation ruled that: [... The act of a judicial officer signaling to the 'driver of a vehicle' to stop, and the driver's failure to comply—instead increasing his speed in an attempt to flee—while the officer is aware that they are in an area known for drug trafficking, constitutes a lawful stop that is justified.]" Appeal No. 19728 of Judicial Year 87, issued in the session of March 14, 2018 (unpublished).

It also ruled that: [It is established that the restrictions imposed on the right of judicial officers to conduct arrests and searches in relation to vehicles apply specifically to private vehicles on public roads, preventing their search or the arrest of their occupants except in the exceptional circumstances outlined by law, as long as they are in the possession of their owners. However, rental vehicles—which the appellant does not dispute he was riding in—may be stopped by judicial officers while they are traveling on public roads to verify compliance with the provisions of the Traffic Law.]" Appeal No. 33128 of Judicial Year 86, issued in the session of June 8, 2017 (unpublished); Appeal No. 66 of Judicial Year 81, issued in the session of September 8, 2011 (unpublished). See also: Appeal No. 26471 of Judicial Year 67, issued in the session of April 17, 2000, published in the Technical Office Book No. 51, page 420, Rule No. 78; Appeal No. 10748 of Judicial Year 67, issued in the session of May 4, 1999, published in Part One of the Technical Office Book No. 50, page 275, Rule No. 65; Appeal No. 29291 of Judicial Year 59, issued in the session of December 13, 1990, published in Part One of the Technical Office Book No. 41, page 1094, Rule No. 198.

It ruled that: [The appealed judgment addressed the plea of invalidity of the arrest and search due to the lack of justification for the stop and dismissed it, stating: 'As for the plea of invalidity of the arrest and search and the subsequent procedures, and the invalidity of the stop due to the lack of justification, the court is fully convinced by the testimony of the prosecution witness that while he was passing through the district, he saw the defendant and another person inside a vehicle. When the defendant, who was driving the vehicle, saw him, he attempted to flee, but he managed to stop it. When asked for his license, the defendant stated he did not have it and admitted to stealing the car and driving it in collaboration with his companion, so he arrested them. A search of the vehicle uncovered 13 tablets of the narcotic tramadol. His driving of the stolen vehicle without a license constituted evidence against him under Article 75/2, 3 of the amended Traffic Law, which is a crime punishable by imprisonment exceeding three months pursuant to Articles 34 and 36 of the Code of Criminal Procedure. Therefore, the stop was lawful because a judicial officer has the right to stop vehicles and individuals when the defendant places himself in a position of suspicion and doubt. Given that, and since the arrest occurred as a result of the defendant being in a state of flagrante delicto, there is no basis for the invalidity of the arrest and search.' The conclusion reached by the judgment is correct in law.]" Appeal No. 6445 of Judicial Year 82, issued in the session of February 5, 2013 (unpublished).

It ruled that: [The judgment correctly found that the appellant and the convicted individual had voluntarily and willingly placed themselves in a position of suspicion and doubt by attempting to hide something under the car pedal, in addition to the appellant, who was driving the car, not holding a driver's license, which justified the officer stopping him to investigate the truth and taking him to the police station without this being considered an arrest in the correct legal sense. Therefore, the appellant's objection in this regard is unfounded.]" Appeal No. 5321 of Judicial Year 70, issued in the session of October 16, 2007 (unpublished).

It ruled that: The judgment correctly found that the appellant and the driver of the car had voluntarily and willingly placed themselves in a position of suspicion and doubt by loading the car with rationed goods and speeding out of Alexandria city, despite the law prohibiting that, in addition to the driver not holding a private driving license or a vehicle registration. This justified the police assistant stopping them to investigate the truth and taking them to the police station without this being considered an arrest in the correct legal sense.

Given that the appealed judgment established that the appellant offered a bribe to the police assistant after the latter stopped him to avoid legal action against him due to committing traffic and rationing offenses, the state of flagrante delicto of the crime was established following this stop. Consequently, the arrest occurring as a result of this state is lawful and not contrary to the

law.]" Appeal No. 1398 of Judicial Year 57, issued in the session of June 7, 1987, published in Part Two of the Technical Office Book No. 38, page 745, Rule No. 133.

In another ruling, it stated: Articles 34 and 35 of the Code of Criminal Procedure, as amended by Law No. 37 of 1972 concerning the guarantee of citizens' freedoms, do not permit judicial officers to arrest a present defendant except in cases of flagrante delicto of felonies and misdemeanors punishable by imprisonment exceeding three months if there is sufficient evidence of his accusation. Article 46 of the same law authorizes the search of the defendant in cases where his arrest is legally permissible, regardless of the reason or purpose of the arrest. The basis for allowing a precautionary search is that it is a preventive measure that permits any member of the authority executing the arrest order to carry it out to prevent potential harm the defendant might inflict on himself or others involved in his arrest from anything he might have with him. Therefore, without a lawful basis for arrest and search, a judicial officer cannot conduct a search as a precautionary measure. Given that, and that justice is harmed more by the infringement on people's freedoms and their unlawful arrest than by the escape of a criminal from punishment.

Given that, and the facts of the case as established by the appealed judgment are that the officer stopped the appellant merely because he was nervous upon seeing him, which is not inconsistent with the normal course of events and does not justify the stop nor constitutes a state of flagrante delicto. What the officer did in such circumstances amounts to an arrest without legal basis, and it does not alter this conclusion what the judgment mentioned in response to the plea that the appellant was wanted in several cases, as long as the judgment did not disclose that there was an arrest warrant issued against him or that he was wanted for execution under a final enforceable judgment. Therefore, the officer's arrest and search of the appellant were invalid and lacked legal basis.]" Appeal No. 4662 of Judicial Year 80, issued in the session of November 19, 2011 (unpublished.(

In another ruling, it stated: “[The appealed judgment addressed the plea of invalidity of the stop due to the lack of justification and dismissed it, stating: 'As for the plea of invalidity of stopping the two defendants, it is unfounded, as it is established from the statements of the officer of the incident, Colonel ...., supervising the security services at the beginning of Al-Muizz Li-Din Allah Al-Fatimi Street in the Al-Ghouriya area, within the jurisdiction of Al-Darb Al-Ahmar police station, to secure the tourist groups frequenting that tourist site, and given the strict instructions from the security agencies to inspect individuals who frequent these tourist places and who excessively cover their features and disguise themselves in loose clothing. Since the two defendants were wearing wide women's clothing that concealed their features, and each was carrying a black leather bag in her hand that was bulging, the officer feared that the defendants or one of them might be carrying explosive materials concealed in their clothing or bags. Therefore, the officer stopped the two defendants to inspect them, and thus the stop was lawful according to the law, as the defendants had voluntarily placed themselves in a position of suspicion and doubt with their loose clothing and bulging bags. The officer wanted only to conduct investigative work by asking them their names and destinations and requesting each to present her identification, and nothing more, which makes the stop lawful.' The conclusion reached by the judgment is correct in law, as it is established that a stop is a procedure carried out by a public authority figure for the purpose of investigating crimes and uncovering their perpetrators, and it is justified by a suspicion warranted by the circumstances. It is permissible for a public authority figure if the person voluntarily and willingly places himself in a position of suspicion and doubt in a way that necessitates the intervention of the stopper to investigate and uncover the truth, pursuant to Article 24 of the Code of Criminal Procedure—as is the case in the present case. The assessment of the justification for the stop or its absence is a matter solely for the trial judge to decide without interference, as long as his inference is justifiable. Since the appealed judgment addressed the plea of invalidity of the stop, convinced by the circumstances and justifications for it as previously mentioned, it has correctly applied the law.]" Appeal No. 7737 of Judicial Year 80, issued in the session of April 6, 2011 (unpublished). This judgment is criticized as it considered that merely wearing loose women's clothing that conceals features and carrying a bulging black leather bag in her hand meant that the woman had voluntarily placed herself in a position of suspicion and doubt with her loose clothing and bulging bag.

The Court of Cassation also ruled that: “[The appealed judgment detailed the facts of the case, summarizing that while Major ... was examining drivers and apprehending those who use narcotics while driving under their influence, he stopped the vehicle driven by the defendant. Upon discussing with him, signs of being under the influence of drugs appeared on him. He asked him to undergo the necessary analysis, and he agreed. By conducting that analysis, it was proven that he had used the narcotic tramadol. After the judgment detailed the facts of the case in the aforementioned context and presented the substance of the evidence it relied upon in its ruling, it addressed the plea raised by the appellant of the invalidity of the arrest and the absence of justification for the stop and dismissed it by stating: 'During the officer's traffic campaign to determine whether drivers were under the influence of drugs, he stopped the defendant while he was driving the car. Upon discussing with him, signs of being under the influence of drugs appeared on him. He asked him to conduct a urine sample analysis, and he agreed. The analysis revealed that it was positive for the narcotic tramadol. Therefore, what the incident officer did was in accordance with the correct law, and the state of flagrante delicto existed, granting the judicial officer the right to stop him. Consequently, the plea of invalidity of the stop and arrest is not supported by fact or law.' Given that, while a judicial officer has the right to stop the appellant's car while it is traveling on public roads to verify compliance with the provisions of the Traffic Law, if the incident officer stopped the appellant while he was driving the car to ascertain whether he was using drugs or not, as stated in the judgment, then in this case, conditions must be met before taking this measure. The person must voluntarily and willingly

place himself in a position of suspicion and doubt, and this situation must indicate an image that necessitates the intervention of the stopper to uncover the truth. The appealed judgment concluded that the officer's stop of the appellant was lawful merely because—upon discussing with him—signs of being under the influence of drugs appeared on him, without specifying what these signs were. Given that, and since it is established that justice is not harmed by the escape of a criminal from punishment as much as it is harmed by the infringement on people's freedoms and their unlawful arrest, and the Constitution has guaranteed these freedoms as the most sacred natural rights of man, as stipulated in Article 54/1 thereof, that freedom is a natural right, inviolable and protected. Except in cases of flagrante delicto, no one may be arrested, searched, detained, or have their freedom restricted in any way except by a reasoned judicial order necessitated by investigation. The effect of this provision is that any restriction on personal freedom, as a natural human right, may only be carried out in cases of flagrante delicto as legally defined pursuant to Article 66 of the Traffic Law amended by Law No. 121 of 2008—which applies to the facts of the case—or by the issuance of a warrant from the competent authority. Article 66 of the Traffic Law No. 66 of 1973, as amended by Law No. 121 of 2008, stipulates that 'It is prohibited to drive any vehicle while under the influence of alcohol or narcotics, and judicial officers, upon flagrante delicto of violating the first paragraph of this article in one of the cases stipulated in Article 30 of the Code of Criminal Procedure, may order the examination of the condition of the driver of the vehicle by technical means determined by the Minister of Interior in agreement with the Minister of Health.' It is established that flagrante delicto is a description inherent to the crime itself, regardless of the person who committed it, and it is sufficient for its availability that the judicial officer verifies the occurrence of the crime by witnessing it himself or perceiving its occurrence by any of his senses—whether sight, hearing, or smell. Courts should be cautious not to approve arrests or searches conducted on the basis that the accused is in a state of flagrante delicto unless they verify that the officer who conducted it witnessed the crime or perceived its occurrence in a certain way that leaves no room for doubt or interpretation, and it is not sufficient to receive news of it through transmission from others, whether a witness or an accused who confesses, as long as he did not witness it or observe an effect of its effects that inherently indicates its occurrence. The assessment of the circumstances surrounding the crime at the time of its commission and the extent of their sufficiency to establish the state of flagrante delicto is entrusted to the trial court, provided that the reasons and considerations on which the court bases its assessment are valid to lead to the conclusion it reached. Given that, and the facts as stated in the appealed judgment, as previously mentioned, are that the incident officer arrested the appellant and took a urine sample from him for analysis merely on suspicion of drug use. The incident in this manner does not constitute one of the cases of flagrante delicto exclusively described in Article 30 of the Code of Criminal Procedure and does not, in the form of the case, amount to external manifestations that inherently indicate the existence of a crime in flagrante delicto that would permit the judicial officer to arrest and search the accused. This renders the procedures of stopping, arresting, and searching the appellant invalid, as they were not carried out based on lawful, correct procedures in accordance with the provisions of the law but were tainted by deviation in the use of authority and resulted from an arbitrary act tainted with invalidity. Therefore, they are disregarded along with the evidence resulting from them. What resulted from this procedure and the testimony of the one who conducted it are void because they are derived from it, and it is not valid to rely on the evidence obtained from it in conviction. The appealed judgment is thus flawed by an error in the application of the law that invalidates it and necessitates its annulment. Given that, and since the facts as established by the judgment contain no evidence other than that derived from the procedure of taking the sample and the testimony of the one who conducted it, the appellant must be acquitted pursuant to the first paragraph of Article 39 of the Law on Cases and Procedures of Appeal before the Court of Cassation promulgated by Law No. 57 of 1959, without the need to examine the rest of the grounds of the appeal.]" Appeal No. 14045 of Judicial Year 88, issued in the session of February 13, 2021 (unpublished).

The Court of Cassation also ruled that: [While the assessment of the circumstances surrounding the crime at the time of its commission and the extent of their sufficiency to establish the state of flagrante delicto is entrusted to the trial court, this is conditioned on the reasons and considerations on which the court bases its assessment being valid to lead to the conclusion it reached. Given that, and what the appealed judgment presented in its statement of the facts of the case, and what it derived from the officer's statements and its dismissal of the plea of invalidity of the arrest and search due to the absence of flagrante delicto—as previously mentioned—does not establish the state of flagrante delicto of a crime that would permit the incident officer to arrest the appellant. The mere attempt to flee upon seeing the police car does not justify arresting him due to the absence of external manifestations that inherently indicate the occurrence of a crime and establish the state of flagrante delicto that would permit the judicial officer to arrest and search. Receiving news of the crime from others by the judicial officer is insufficient to establish the state of flagrante delicto as long as he did not witness an effect of its effects that inherently indicates its occurrence. If the appealed judgment contradicted this view and concluded that this procedure was valid, it erred in the application and interpretation of the law, necessitating its annulment without the need to examine the rest of the grounds of the appeal. Given that, and since the invalidity of the arrest and search legally necessitates not relying in the conviction on any evidence derived from them, and therefore the testimony of the one who conducted this invalid procedure is disregarded. Since the case, as established by the appealed judgment, contains no evidence other than that, the appellant must be acquitted pursuant to the first paragraph of Article 39 of the Law on Cases and Procedures of Appeal before the Court of Cassation promulgated by Law No. 57 of 1959, and the confiscation of the seized narcotics pursuant to Article 42 of Law No. 182 of 1960, as amended.]" Appeal No. 16578 of Judicial Year 88, issued in the session of February 13, 2021 (unpublished).

B- Ordering Custody

First: Putting the Suspect in Custody

Article 40 of Law No. 94 of 2015 stipulates that: "When there is a danger from the dangers of the crime of terrorism and it is necessary to confront this danger, the judicial officer has the right to collect evidence about it, search for its perpetrators, and detain them for a period not exceeding twenty-four hours.

The judicial officer shall draw up a record of the procedures, and the detainee shall present the record to the Public Prosecution or the competent investigation authority, as the case may be.

The Public Prosecution or the competent investigating authority may, for the same necessity stipulated in the first paragraph of this article and before the expiry of the period stipulated therein, order the continuation of the reservation, for a period of fourteen days, and it shall not be renewed except once, and the order shall be issued on the grounds of at least a public defender or its equivalent

The period of custody shall be calculated within the period of pretrial detention, and the accused must be placed in one of the legally designated places

The grievance against the order to maintain the reservation shall be subject to the provisions prescribed in the first paragraph of Article (44) of this Law[22].

The first paragraph of Article 40 of the Anti-Terrorism Law granted the judicial officer the right to detain the perpetrator of the crime of terrorism for a period not exceeding twenty-four hours.

The reservation carries the meaning of arrest, as it is a restriction of a person's freedom and exposure to him by arresting and detaining him, even for a short period, in preparation for taking measures against him. In this regard, the Court of Cassation ruled that arresting a person means restricting his freedom and exposure to him by arresting and detaining him, even for a short period, in preparation for taking some measures against him. The law had prohibited the

---

It ruled that: "[The mere walking of the defendant on the side of the road at that hour and his attempt to flee upon seeing the officer does not inherently indicate that the officer has a certain perception of him carrying narcotics. Confronting him constitutes an explicit arrest that is unjustified.]" Appeal No. 37357 of Judicial Year 73, issued in the session of April 18, 2010 (unpublished).

Also: [Since the investigating officer stated that the defendant was walking on the public road at night, looking left and right between the shops, there is nothing in that to arouse suspicion about him or justify stopping him, as what he did is not inconsistent with the normal course of things. Therefore, stopping him and taking him to the police station is an invalid arrest without basis, and this invalidity extends to the search of the defendant and what resulted in finding the narcotic substance, because what is built on invalidity is invalid, and it is not valid to rely on the testimony of those who conducted the invalid arrest.]" Appeal No. 3100 of Judicial Year 57, issued in the session of December 23, 1987, published in Part Two of the Technical Office Book No. 38, page 1131, Rule No. 205.

It also ruled that: "[The judgment, in its account of the facts of the case, stated that the incident officer was the one who asked the first appellant to get out of the car and open its trunk, and the latter complied with that request, where the narcotics were seized. Then, the judgment, in its dismissal of the plea of invalidity of the stop, stated that the aforementioned appellant was the one who voluntarily and spontaneously opened the car's trunk. Taking both versions together indicates a discrepancy in the court's understanding of the elements of the incident and their instability in the court's mind to the extent that they become established facts, making it impossible to derive their components, whether related to the incident itself or the application of the law to it. This makes it impossible for the Court of Cassation to determine on what basis the court formed its conviction in the case and the soundness of the reasons by which it dismissed the appellant's defense, in addition to revealing that the incident was not clear to the court to the extent that ensures its error in assessing the responsibility of the aforementioned appellant, rendering the judgment contradictory in its statement of the incident, a contradiction that defects it and necessitates its annulment.]" Appeal No. 85875 of Judicial Year 76, issued in the session of July 16, 2007 (unpublished)...

([22]) Article 40 of Law No. 94 of 2015 regarding the issuance of the Counter-Terrorism Law, as amended by Law No. 11 of 2017.

arrest of any person except with his permission or with the permission of the competent investigating authority [23].

This is evidenced by the fact that the text of Article 40 itself decided to offer the detainee, accompanied by the minutes, to the Public Prosecution, as well as to deposit the detainee in the places designated by law, and to calculate the period of custody within the period of pretrial detention, which means that the concept of the reservation shown in these texts is to restrict the freedom and movement of the person in roaming, which means "arrest" in a more accurate language, in addition to the right of the Public Prosecution to extend the period of custody for a period not exceeding fourteen days.

The Egyptian Criminal Procedure Law allowed the arresting officer to arrest only for a period of 24 hours and in the case of flagrante delicto alone. As for the Anti-Terrorism Law, it granted the judicial arresting officer the right to detain the perpetrator of the crime for a period not exceeding twenty-four hours.

Second: Continuation of Custody

The third paragraph of Article 40 of the Anti-Terrorism Law stipulates: "The Public Prosecution or the competent investigating authority may, for the same necessity stipulated in the first paragraph of this article and before the expiry of the period stipulated in it, order the continuation of the reservation for a period of fourteen days, and it shall not be renewed except once, and the order shall be issued on the grounds of at least a public defender or its equivalent."

This means that the Public Prosecution or the competent investigating authority, due to the need to confront the threat of terrorism and before the expiry of the twenty-four-hour period granted to the judicial officer, may order the continuation of the seizure for a period of fourteen days, and it shall not be renewed except once, and the order shall be issued on the grounds of at least a public defender or its equivalent.

It is clear from this that the Public Prosecution or the competent investigating authority has the right to detain the accused for a period of twenty-eight days without presenting the matter to the judge.

Whereas the second paragraph of Article 36 of the Criminal Procedure Law stipulates that: "The Public Prosecution must interrogate him within twenty-four hours, and then order his arrest or release."

Article 40 of the Anti-Terrorism Law did not require the interrogation of the accused before issuing the order to continue to detain him for a period of fourteen days. It is permissible to issue the order to continue to detain the accused for the necessity required to confront the threat of terrorism for a period of fourteen days, which is renewed for one time, so that the legislator grants the Public Prosecution the right to detain the accused for up to twenty-eight days without questioning him.

Interrogation is an important investigation procedure that aims to determine the truth of the charge from the same accused, and to reach a confession from him that supports it or a defense from him that denies it. On this basis, it is a proof procedure of a dual nature, the first is that it is an investigation procedure, and the second is that it is considered a defense procedure.

Therefore, the Code of Criminal Procedure surrounds the interrogation of the accused with three types of guarantees: (the first) relates to the authority competent to interrogate the accused, (the

---

([23]) Appeal No. 30455 of 69 S, Session of 6 December 2007, Technical Office 58, Rule No. 146, page 779.

second) relates to enabling the accused to express his statements in complete freedom, and (the third) enables the accused to have the right of defense.

These guarantees all stem from the innocence of the accused, and this principle requires that the accused be treated as innocent until proven guilty, which can only be done by fully guaranteeing his personal freedom, and the interrogation may not be understood as a way to enable the accused to prove his innocence, as that innocence is a presumed asset, and it is not charged with the burden of proving it, but the interrogation allows him to view the evidence presented against him to refute it and confront its actual impact to his detriment, within the framework of his right to defense.

On the other hand, the accused has the right to remain silent and refuse to speak or answer the questions addressed to him. This principle has been confirmed by some constitutions, and it is stipulated in the third paragraph of Article 55 of the Egyptian Constitution: "... The accused has the right to remain silent. Any statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable. "Some legislations also oblige the investigator to notify the accused of his right to silence, for example, the Italian Code of Criminal Procedure (Article 78)[24].

Indian law has tended to increase the guarantee of this right, to the effect that the accused who declares his readiness to confess that his statement may be used against him during the trial must be warned, while also giving him a period of reflection of twenty-four hours [25].

As long as the silence of the accused and his failure to respond is the use of a right established by law derived from his freedom to make statements, the court may not deduce from the silence of the accused a presumption against him.

As for the legality of the interrogation in which the investigator exhausts the accused by prolonging the detailed discussion for several hours, it is likely that the prolonged interrogation exhausts the accused and affects his will, and there is no time standard for the length of the interrogation, but the lesson is that it affects his mental powers as a result of his exhaustion. Interrogation is supposed to be initiated before an accused who has the freedom of choice, which must provide all the guarantees that do not affect this freedom. If the investigator deliberately prolongs the interrogation in order to exhaust the accused and force him to confess in difficult psychological conditions, he deviates from his due impartiality, which affects his procedural capacity to initiate the investigation, and determine the impact of this prolongation is objective and subject to the discretion of the investigator under the supervision of the trial court[26].

Third: Calculating the period of custody within the period of pretrial detention

The fourth paragraph of Article 40 of the Anti-Terrorism Law stipulates that the period of detention shall be counted within the period of pretrial detention, and there is no evidence that the detention actually carries the meaning of arrest, as it is a restriction on the personal freedom of the accused.

([24]) Pespia. Rapport‹ op. cit‹ P. 14..

([25]) Trechrel. Reppat Général‹ collogue préparatoire sur la protection des droits de l'homme en procédure‹ pénale‹ Vienne 29 - 31‹ marrs 1978..

([26]) Article 224 of the Argentine Code of Criminal Procedure stipulates that if the interrogation takes a long time and the accused loses his clarity of mind or shows signs of exhaustion, the judge must close the investigation until the accused regains his calm.

Fourth: Placement of the accused in one of the legally designated places

The fourth paragraph of Article 40 stipulates that the accused shall be detained by being placed in one of the legally designated places. Law No. 396 of 1956 on the organization of community correction and rehabilitation centers states that the accused in custody shall be placed in a geographical correction center. Article 1 bis of the Law on the Organization of Community Correction and Rehabilitation Centers promulgated by Law No. 396 of 1956 and added by Law No. 57 of 1968 stipulates that: "Anyone who is detained, detained, detained or deprived of his liberty in any way shall be placed in one of the correction and rehabilitation centers set forth in the previous article, or one of the places specified by a decision of the Minister of Interior to which all the provisions contained in this law apply, provided that the right of entry stipulated in Article 85 shall be granted to the Attorney General or his deputy, whoever is a member of the Public Prosecution with the rank of at least a chief prosecutor."

Fifth: Grievance against the custody order

The fifth paragraph of Article 40 of the Anti-Terrorism Law stipulates that: "The provisions prescribed in the first paragraph of Article (44) of this Law shall be followed in the grievance against the order to maintain the reservation."

Article 44 of the Anti-Terrorism Law No. 94 of 2015 stipulates that: "The accused and others concerned may appeal, without fees, the order issued to remand him in custody or to extend this detention before the competent court.

The court shall decide on the appeal by a reasoned decision within three days from the date of its submission, after hearing the statements of the Public Prosecution or the competent investigation authority and the defense of the appellant. If this period lapses without dismissal, the arrested accused shall be released immediately.

It is clear from this that Article 44 of the Anti-Terrorism Law made it possible for the detainee or other concerned parties - and his lawyer or any of the relatives of the detainee of the concerned parties - to file a grievance against the order for the continuation of the reservation issued by the prosecution or its extension before the competent court.

The fifth paragraph of Article 40 differentiated between the detainee and the pre-trial detainee. The second paragraph of Article 45 obligated the court to decide on the appeal of the pre-trial detainee against the detention order or to extend this detention by a reasoned decision within three days from the date of its submission, after hearing the statements of the Public Prosecution or the competent investigation authority and the defense of the appellant.

The fifth paragraph of Article 44 of the Anti-Terrorism Law also requires the immediate release of the arrested accused if his appeal is not decided within the legally prescribed period of three days.

While the fifth paragraph of Article 40 referred to the grievance against the order of reservation to the first paragraph of Article 44 only, to the effect that the grievance of the person against whom the reservation is made must be adjudicated within the period of three days prescribed by law.

In order to clarify the differences between the preventive detention system and the custody system, it is clear from reading the Anti-Terrorism Law and the Criminal Procedure Law the following points:

Sixth: Distinguishing between preventive detention and custody

In Terms of the Type of Crime

For Pretrial Detention:

The accused must have committed:

A felony or a misdemeanor punishable by imprisonment exceeding three months (Article 134/1 of the Criminal Procedure Code).

A misdemeanor punishable by imprisonment, and the accused has no fixed or known residence in Egypt (Article 134/2 of the Criminal Procedure Code).

For Custody:

It is permissible to place the accused in custody when there is a necessity to confront a danger posed by a terrorist crime (Article 40 of the Anti-Terrorism Law).

In Terms of the Availability of Evidence

For Pretrial Detention:

The law requires sufficient evidence against the accused for the act attributed to them (Article 134 of the Criminal Procedure Code).

For Custody:

The law does not require the availability of evidence against the accused.

In Terms of Interrogation of the Accused

For Pretrial Detention:

The legislator obligated the investigator to interrogate the accused before issuing an order for their detention within 24 hours from the time the detention order is executed (Article 36/2 of the Criminal Procedure Code).

For Custody:

The legislator did not require the interrogation of the accused before issuing an order for custody or when renewing the custody order.

In Terms of Notification of Arrest

For Pretrial Detention:

The law obligated the authorities to inform the detainee of the reasons for their detention (Article 139/1 of the Criminal Procedure Code).

For Custody:

The law obligated the authorities to inform the person in custody of the reasons for their custody (Article 41 of the Anti-Terrorism Law).

In Terms of the Right to Contact and Seek Legal Counsel

For Pretrial Detention:

The detainee has the right to contact whomever they wish to inform of their situation, seek legal counsel, and be promptly informed of the charges against them (Article 139/1 of the Criminal Procedure Code).

For Custody:

The individual in custody has the right to contact whomever they wish to inform of their situation and seek legal counsel, but this is restricted if it interferes with the interests of the investigation (Article 41 of the Anti-Terrorism Law).

In Terms of Duration

For Pretrial Detention:

The order issued by the Public Prosecution for detention is valid for only four days.

For Custody:

The Public Prosecution or the competent investigative authority may extend custody for a period of 14 days, renewable only once (Article 40 of the Anti-Terrorism Law).

In Terms of Renewal of the Duration

For Pretrial Detention:

The order for renewing pretrial detention must be presented to the competent judge before the expiration of the four-day period granted to the Public Prosecution. The judge may refuse to extend detention, in which case the accused must be released immediately, or they may order an extension for periods not exceeding a total of 45 days, with each extension not exceeding 15 days (Articles 142 and 143 of the Criminal Procedure Code).

For Custody:

Custody may be renewed for one additional period by a justified order issued by a senior prosecutor or an equivalent authority (Article 40 of the Anti-Terrorism Law).

In Terms of the Required Content of the Order

For Pretrial Detention:

Each detention order must include the name, title, profession, and residence of the accused, the charges against them, the date of the order, the signature of the judge, and the official seal.

The order must also instruct the prison official to accept the accused, place them in custody, and reference the relevant legal provision applicable to the case (Article 127 of the Criminal Procedure Code).

For Custody:

The law does not require any specific formalities for custody orders, except that the order must be justified (Article 40 of the Anti-Terrorism Law).

In Terms of Appeal or Complaint

For Pretrial Detention:

An appeal is submitted to the Misdemeanor Appeals Court in the Consultation Chamber if the appealed order was issued by the investigating judge regarding pretrial detention or its extension. If the order was issued by that court, the appeal is directed to the Criminal Court in the Consultation Chamber. If the order was issued by the Criminal Court, the appeal is brought before the relevant circuit.

For other cases, the appeal is submitted to the Misdemeanor Appeals Court in the Consultation Chamber unless the appealed order pertains to a decision of no grounds for initiating criminal proceedings in a felony case or was issued by this court for the release of the accused. In these cases, the appeal is brought before the Criminal Court in the Consultation Chamber.

If the investigation was conducted by a judicial advisor, appeals against their orders are only permissible if they concern jurisdiction, decisions of no grounds for initiating criminal proceedings, pretrial detention, its extension, or temporary release. The appeal is submitted to the Criminal Court in the Consultation Chamber.

When the Consultation Chamber cancels a decision of no grounds for initiating criminal proceedings, it must return the case specifying the crime, the acts constituting it, and the applicable legal provisions for referral to the competent court.

In all cases, appeals regarding pretrial detention orders, their extension, or temporary release must be resolved within 48 hours from the date of submission. Otherwise, the accused must be released.

One or more circuits of the Primary Court or the Criminal Court are designated to hear appeals regarding pretrial detention or temporary release orders mentioned in this article. Decisions issued by the Consultation Chamber in all cases are final (Article 167 of the Criminal Procedure Code).

The accused and other interested parties may appeal, without fees, the order of pretrial detention or its extension before the competent court (Article 44 of the Anti-Terrorism Law).

From the above, it is clear that custody is a system similar to pretrial detention, allowing the Public Prosecution to restrict the accused's freedom for up to 28 days.

A notable distinction arises in terms of complaint procedures for custody orders and appeals for pretrial detention orders. While the maximum duration for pretrial detention orders issued by the Public Prosecution is four days, custody allows the accused to be detained for up to 28 days, with the possibility of being prevented from contacting their family or lawyer throughout this period, justified as being in the "interest of the investigation."

The extent to which it is permissible to seek the assistance of a lawyer during the evidentiary stage

Article 3 of the Advocacy Law stipulates that: “Without prejudice to the provisions of the laws regulating judicial bodies and the provisions of the Civil and Commercial Procedures Law, it is not permitted for non-lawyers to practice law, and it is considered a law practice:

Attending on behalf of the concerned parties before courts, arbitration tribunals, administrative bodies with judicial jurisdiction, criminal and administrative investigation bodies, and police departments and defending them in lawsuits filed by them or against them and conducting pleadings and judicial procedures related to this.

It is noteworthy from the wording of this article that the right to the presence of a lawyer is not limited to the evidence exercised by police officers who have the power of judicial control, but also includes the right to appear before other bodies that have this power.

However, according to the text of Article 333 of the Criminal Procedure Law, the right to plead the nullity of the procedures for inference shall be forfeited if the accused has a lawyer and the procedure takes place in his presence without objection.

1-1-1-2-2 In case of flagrante delicto

A- Determining what is meant by the case of flagrante delicto

First: Definition of flagrante delicto and its characteristics

Article 30 of the Code of Criminal Procedure stipulates that: “The crime shall be flagrante delicto when it is committed or shortly after it is committed.

The crime shall be deemed flagrante delicto if the victim follows the perpetrator, or the public follows him with shouting after its occurrence, or if the perpetrator is found soon after its occurrence carrying machines, weapons, luggage, papers, or other things from which it is inferred that he is the perpetrator or an accomplice, or if at this time there are traces or signs indicating this.

The case of flagrante delicto requires the judicial officer to verify that the crime has been witnessed by himself or that he is aware of it with a sense of his senses [27].

([27]) Appeal No. 2410 of Judicial Year 86, issued on March 24, 2018 (unpublished), Appeal No. 208 of Judicial Year 85, issued on April 6, 2017 (unpublished), Appeal No. 11681 of Judicial Year 86, issued on March 28, 2017 (unpublished), Appeal No. 26133 of Judicial Year 86, issued on February 28, 2017 (unpublished), Appeal No. 18565 of Judicial Year 84, issued on April 11, 2016, published in Technical Office Book No. 67, Page 433, Ruling No. 50, Appeal No. 5543 of Judicial Year 84, issued on February 27, 2016 (unpublished), Appeal No. 29498 of Judicial Year 84, issued on February 7, 2016 (unpublished), Appeal No. 7446 of Judicial Year 84, issued on December 6, 2014, published in Technical Office Book No. 65, Page 938, Ruling No. 124, Appeal No. 1345 of Judicial Year 82, issued on October 11, 2014, published in Technical Office Book No. 65, Page 652, Ruling No. 84, Appeal No. 3316 of Judicial Year 83, issued on March 6, 2014, published in Technical Office Book No. 65, Page 148, Ruling No. 13, Appeal No. 1877 of Judicial Year 82, issued on March 6, 2013 (unpublished), Appeal No. 2100 of Judicial Year 82, issued on January 2, 2013 (unpublished), Appeal No. 675 of Judicial Year 75, issued on October 21, 2012, published in Technical Office Book No. 63, Page 541, Ruling No. 93, Appeal No. 8077 of Judicial Year 81, issued on April 7, 2012 (unpublished), Appeal No. 3188 of Judicial Year 81, issued on November 27, 2011 (unpublished), Appeal No. 8517 of Judicial Year 79, issued on October 5, 2011 (unpublished), Appeal No. 11 of Judicial Year 81, issued on June 7, 2011 (unpublished), Appeal No. 4994 of Judicial Year 80, issued on April 19, 2011 (unpublished), Appeal No. 6595 of Judicial Year 79, issued on March 20, 2011 (unpublished), Appeal No. 4532 of Judicial Year 79, issued on March 17, 2011 (unpublished), Appeal No. 9069 of Judicial Year 79, issued on October 2, 2010 (unpublished), Appeal No. 19039 of Judicial Year 73, issued on February 17, 2010, published in Technical Office Book No. 61, Page 134, Ruling No. 19, Appeal No. 42026 of Judicial Year 72, issued on December 6, 2009 (unpublished), Appeal No. 18645 of Judicial Year 72, issued on November 8, 2009, published in Technical Office Book No. 60, Page 420, Ruling No. 57, Appeal No. 21669 of Judicial Year 77, issued on March 8, 2009 (unpublished), Appeal No. 36406 of Judicial Year 73, issued on November 4, 2008 (unpublished), Appeal No. 19083 of Judicial Year 76, issued on March 5, 2007 (unpublished), Appeal No. 51962 of Judicial Year 75, issued on June 3, 2006 (unpublished), Appeal No. 89956 of Judicial Year 75, issued on October 1, 2006, published in Technical Office Book No. 57, Page 798, Ruling No. 84, Appeal No. 20054 of Judicial Year 74, issued on May 7, 2006, published in Technical Office Book No. 57, Page 603, Ruling No. 64, Appeal No. 5843 of Judicial Year 66, issued on November 17, 2005, published in Technical Office Book No. 56, Page 594, Ruling No. 91, Appeal No. 63297 of Judicial Year 73, issued on May 3, 2005, published in Technical Office Book No. 56, Page 271, Ruling No. 41, Appeal No. 12655 of Judicial Year 69, issued on March 10, 2003, published in Technical Office Book No. 54, Page 402, Ruling No. 43, Appeal No. 8915 of Judicial Year 65, issued on November 19, 1997, published in Part 1 of Technical Office Book No. 48, Page 1293, Ruling No. 195, Appeal No. 9166 of Judicial Year 65, issued on July 6, 1997, published in Part 1 of Technical Office Book No. 48, Page 749, Ruling No. 114, Appeal No. 5858 of Judicial Year 65, issued on May 4, 1997, published in Part 1 of Technical Office Book No. 48, Page 493, Ruling No. 72, Appeal No. 89956 of Judicial Year 75, issued on October 1, 2006, published in Technical Office Book No. 57, Page 798, Ruling No. 84, Appeal No. 2605 of Judicial Year 62, issued on September 15, 1993, published in Part 1 of Technical Office Book No. 44, Page 703, Ruling No. 110, Appeal No. 46438 of Judicial Year 59, issued on October 21, 1990, published in Part 1 of Technical Office Book No. 41, Page 922, Ruling No. 161, Appeal No. 11226 of Judicial Year 59, issued on March 11, 1990, published in Part 1 of Technical Office Book No. 41, Page 519, Ruling No. 86, Appeal No. 15033 of Judicial Year 59, issued on January 3, 1990, published in Part 1 of Technical Office Book No. 41, Page 41, Ruling No. 4, Appeal No. 2806 of Judicial Year 57, issued on November 1, 1987, published in Part 2 of Technical Office Book No. 38, Page 917, Ruling No. 169, Appeal No. 2913 of Judicial Year 54, issued on April 3, 1985, published in Part 1 of Technical Office Book No. 36, Page 524, Ruling No. 88, Appeal No. 2905 of Judicial Year 53, issued on January 31, 1984, published in Part 1 of Technical Office Book No. 35, Page 95, Ruling No. 19, Appeal No. 2174 of Judicial Year 53, issued on November 10, 1983, published in Part 1 of Technical Office Book No. 34, Page 940, Ruling No. 187, Appeal No. 1622 of Judicial Year 53, issued on November 9, 1983, published in Part 1 of Technical Office Book No. 34, Page 934, Ruling No. 186, Appeal No. 826 of Judicial Year 53, issued on May 25, 1983, published in Part 1 of Technical Office Book No. 34, Page 687, Ruling No. 138, Appeal No. 2475 of Judicial Year 51, issued on February 4, 1982, published in Part 1 of Technical Office Book No. 33, Page 149, Ruling No. 30, Appeal No. 1445 of Judicial Year 49, issued on February 27, 1980, published in Part 1 of Technical Office Book No. 31, Page 301, Ruling No. 58, Appeal No. 657 of Judicial Year 43, issued on December 4, 1973, published in Part 3 of Technical Office Book No. 24, Page 1139, Ruling No. 234, Appeal No. 1841 of Judicial Year 39, issued on March 15, 1970, published in Part 1 of Technical Office Book No. 21, Page 355, Ruling No. 88, Appeal No. 994 of Judicial Year 36, issued on October 4, 1966, published in Part 3 of Technical Office Book No. 17, Page 911, Ruling No. 168, Appeal No. 433 of Judicial Year 34, issued on October 12, 1964, published in Part 3 of Technical Office Book No. 15, Page 592, Ruling No. 116.

This state requires that there be external manifestations that predict the occurrence of the crime. It is sufficient to achieve these external manifestations in any sense when this verification is in a certain and undoubted way [28].

Flagrante delicto is a condition inherent in the crime itself, not the person who committed it [29].

It is not necessary for flagrante delicto to see the perpetrator committing the crime, but it is sufficient for the witness to have attended the commission of the crime himself and realized its occurrence in any sense equal to the sense of sight, hearing or smell when this perception is in a certain way that cannot be doubted [30].

([28]) Appeal No. 23745 of 87 S issued at the session of November 25, 2018 (unpublished), Appeal No. 10004 of 85 S issued at the session of May 19, 2016 and published in the letter of the Technical Office No. 67 page No. 543 rule No. 61, Appeal No. 5216 of 85 S issued at the session of October 12, 2015 and published in the letter of the Technical Office No. 66 page No. 673 rule No. 99, Appeal No. 7455 of 81 S issued at the session of May 5, 2013 (unpublished), Appeal No. 6442 of 82 s issued at the 4th session of April 2013 and published in the Technical Office letter No. 64 page 458 rule No. 60, Appeal No. 1877 of 82 s issued at the 6th session of March 2013 (unpublished), Appeal No. 3283 of 81 s issued at the 4th session of November 2012 (unpublished), Appeal No. 12181 of 77 s issued at the 14th session of January 2012 (unpublished), Appeal No. 4033 of 81 s issued at the 1st session of January 2012 and published in the Technical Office letter No. 63 page 33 Rule No. 3, Appeal No. 66 of 81 S issued at the 8th session of September 2011 (unpublished), Appeal No. 8583 of 80 S issued at the 27th session of March 2011 (unpublished), Appeal No. 6759 of 73 S issued at the 20th session of January 2010 and published in the Technical Office Letter No. 61 Page No. 52 Rule No. 8, Appeal No. 34594 of 72 S issued at the 21st session of December 2009 (unpublished), Appeal No. 12734 of 69 S issued at the 5th session of March 2009 (unpublished), Appeal No. 36406 of 73 s issued at the session of November 4, 2008 (unpublished), Appeal No. 14617 of 71 s issued at the session of December 6, 2007 (unpublished), Appeal No. 20481 of 72 s issued at the session of November 5, 2007 and published in Technical Office Letter No. 58 Page 672 Rule No. 129, Appeal No. 9407 of 69 s issued at the session of October 8, 2007 and published in Technical Office Letter No. 58 Page 585 Rule No. 113, Appeal No. 9852 for the year 65 S issued at the hearing of October 21, 2004 (unpublished), Appeal No. 17435 for the year 70 S issued at the hearing of March 22, 2004 (unpublished), Appeal No. 26876 for the year 67 S issued at the hearing of April 3, 2000 (unpublished), Appeal No. 9166 for the year 65 S issued at the hearing of July 6, 1997 and published in the first part of the Technical Office's book No. 48 page No. 749 rule No. 114, Appeal No. 19739 of 61 s issued at the session of October 3, 1993 and published in the first part of the Technical Office letter No. 44 page 740 rule No. 115, Appeal No. 2806 of 57 s issued at the session of November 1, 1987 and published in the second part of the Technical Office letter No. 38 page 917 rule No. 169, Appeal No. 2174 of 53 s issued at the session of November 10, 1983 and published in the first part of the Technical Office letter No. 34 page 940 rule No. 187, Appeal No. 2475 of 51 s issued at the session of February 4, 1982 and published in the first part From Technical Office Letter No. 33 Page No. 149 Rule No. 30, Appeal No. 1445 of 49 S issued at the 27th session of February 1980 and published in Part I of Technical Office Letter No. 31 Page No. 301 Rule No. 58, Appeal No. 657 of 43 S issued at the 4th session of December 1973 and published in Part III of Technical Office Letter No. 24 Page No. 1139 Rule No. 234, Appeal No. 994 of 36 S issued At the session of October 4, 1966, published in the third part of the Technical Office letter No. 17, page No. 911, rule No. 168, appeal No. 433 of 34 s issued in the session of October 12, 1964, published in the third part of the Technical Office letter No. 15, page No. 592, rule No. 116, appeal No. 1753 of 31 s issued in the session of April 9, 1962, published in the second part of the Technical Office letter No. 13, page No. 322, rule No. 80, appeal No. 1747 of 29 s issued in the session of April 4, 1960, published in the second part of the Office letter Technical No. 11 Page No. 308 Rule No. 61, Appeal No. 683 of 29 BC issued at the session of 19 October 1959 and published in the third part of the Technical Office's letter No. 10 Page No. 793 Rule No. 169..

([29]) Appeal No. 5216 of 85 S issued at the 12th session of October 2015 and published in Technical Office Letter No. 66, page 673, rule No. 99, Appeal No. 5232 of 82 S issued at the 13th session of January 2013 (unpublished), Appeal No. 8583 of 80 S issued at the 27th session of March 2011 (unpublished), Appeal No. 31919 of 73 S issued at the 28th session of March 2010 (unpublished), Appeal No. 63297 of 73 S issued at the 3rd session of May 2005 and published in Technical Office Letter No. 56, page 271, rule No. 41, Appeal No. 9366 of 65 S issued at the 26th session of July 2004 (unpublished).

([30]) The Court of Cassation ruled that: [The officer, while passing through the department, smelled the narcotic from a tobacco roll that the appellant smoked, and the appellant acknowledged the reasons for the appeal that the statements of the incident officer in the inferences that one of the confiscation of secrecy informed him about the appellant, so he went to him and watched him smoke a roll of tobacco emitting the smell of cannabis, is one meaning in the indication that the appellant was in possession of a tobacco roll containing cannabis, which is the meaning in which his responsibility for the crime of obtaining the seized drug is achieved] Appeal No. 23745 of 87 s issued at the session of November 25, 2018 (unpublished).

The Court of Cassation also ruled that [the case of flagrante delicto is not available simply by trying to flee when seeing the police officers, and that the mere appearance of confusion and confusion, no matter how old they are, cannot be considered sufficient evidence of the existence of an accusation that justifies their arrest and search] Appeal No. 23705 of 84 S issued at the session of March 8, 2016 (unpublished)

It ruled that: [Flagrante delicto is a condition inherent in the crime itself and not a person who committed it, and the result of the incident mentioned in the judgment is that there is no evidence that the accused has been seen in a state of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law, which is not provided by the mere knowledge of the police officer who arrested him that he is engaged in trafficking in narcotic substances or trying to escape when he sees him, and that the mere appearance of confusion and confusion, no matter how great, cannot be considered sufficient evidence of the existence of an accusation that justifies his arrest and search. Whereas, what happened to the appellant is an explicit arrest that is not justified and has no basis in the law] Appeal No. 3298 of 56 S issued at the session of 21 October 1986 and published in the first part of the book of the Technical Office No. 37 page No. 788 rule No. 151.
It ruled that: [The case of flagrante delicto requires that the judicial officer verify that the crime has been witnessed by himself or that he is aware of it with a sense of his senses, and it is not indispensable to receive its news by transfer from a third party who is a witness or an accused person who acknowledges himself, and although the consent of the accused to the procedure that resulted in the seizure of the drug is scheduled to drop the restrictions set by the street to protect his personal freedom, it is correct to rely on the evidence derived from this procedure and invoke it before him However, the condition for this is that the defendant's consent is explicit, free and unequivocal after being aware of the nature, circumstances and purpose of this procedure, and the consequences that may result from it and the absence of a justification that entitles the person requesting it to the authority to conduct it without his consent, so that it is true to say that there is a specific place to which the consent is directed, so that it is productive of its effect, and it is then equal that the defendant's consent is proven in writing or the court determines his proof of the facts and circumstances of the case, and it is clear from the records of the contested judgment and the included vocabulary in order to achieve the face of the appeal - that the incident officer presented the appellant to the medical department to conduct the medical examination scheduled administratively - to obtain a license Professional leadership - without informing him of the nature of this procedure, its circumstances, its purpose and its effects, this procedure may have been carried out without the consent of the appellant - in its legal sense - and then this procedure may have been null and void, and the report of the medical team did not reveal the narcotic substance found in the sample taken from the appellant and whether it is one of the narcotic substances listed in the attached tables, in the amended Narcotic Drugs Law No. 182 of 60 or not, and it was clear from the included vocabulary that The officer of the incident testified in the investigations of the prosecution that by confronting the appellant with the result of the medical team denied his use of narcotic substances, the incident in this way is not considered one of the cases of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law and is not considered in the form of a lawsuit as an external manifestation that indicates the occurrence of the crime and thus allows the judicial officer to make the arrest of the appellant - and what the officer of the incident proved in the minutes of the arrest was that he presented the appellant to the Public Prosecution after his appearance before him and confronting him with the result of the medical team - but it is in fact and by way of mental necessity that includes his arrest - because of the restriction involved For his freedom before his presentation, and therefore the procedure of arresting the appellant is null and void - as well as its nullity because it is the result of a null procedure - and also nullifies the results of the forensic medical report that was based on the decision of the Public Prosecution without the consent of the appellant and in application of the rule of all that results from the nullity, it is null and void, and the requirement of nullity of arrest and the forensic medical report - legally - not to rely on any evidence derived from it and therefore does not count the testimony of the person who carried out the null and void procedure, and it was established from the codes of judgment and vocabulary - included that the only two evidences in the case are what resulted - the forensic medical report and the testimony of the person who carried out the arrest, the judgment was relied on these two null evidences in convicating the appellant is null and contrary to the law on the basis of the conviction on illegal evidence] Appeal No. 8077 of 81 s issued at the session of April 7, 2012 (unpublished).
It also ruled that: [The statement of the contested judgment in its statement of the incident of the lawsuit does not indicate that the crime of acquiring the drug that the appellant was convicted of was in a state of flagrante delicto, which is exclusively indicated in Article 30 of the Criminal Procedure Law, as the fact that the judicial officer received the news of the crime from others is not sufficient for the occurrence of the case of flagrante delicto as long as he did not witness any of its effects that foretells the occurrence of the crime before the arrest was made. This is in part what the judgment stated that the officer saw the appellant selling drugs, in addition to the fact that this phrase came in general, the judgment did not mention how the officer viewed the drug from inside the scrolls before the arrest of the appellant and with any of his senses, or indicate the external manifestations that were self-evident about the occurrence of the crime and the state of flagrantism that allowed him to arrest and search the appellant. [Appeal No. 8517 of 79 S issued on October 5, 2011 (unpublished)
It ruled that: [The evidence of the incident mentioned in the judgment does not indicate that the accused was seen in a state of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law, and it is not true to say that she was in a state of flagrante delicto at the time of her arrest, because the mere presence in the car of the former accused sentenced for the crime of acquiring the substance of narcotic cannabis does not in itself indicate that the officer is aware in a certain way of committing the crime of acquiring the substance of narcotic cannabis that she was convicted of. Therefore, what happened to the appellant is an explicit arrest that is not justified and has no basis in the law, because of the lack of external manifestations that predict the occurrence of the crime and the state of flagrante delicto that allows the judicial officer to arrest and search] Appeal No. 7290 of 79 of July 7, 2011 (unpublished)
It ruled that: [The incident does not indicate that the crime was seen in one of the cases of flagrante delicto described in the law exclusively in Article 30 of the Code of Criminal Procedure, which is not provided by the mere observation of the judicial seizure man of the scroll in the hands of the appellant after receiving it from the other convict, which did not indicate its

The occurrence of flagrante delicto does not negate the fact that the arresting officer moved to the scene of the accident sometime after its occurrence, as long as he took the initiative to move immediately after his knowledge and as long as he witnessed the effects of the crime[31].

Second: The Existence of the In Flagrante Delicto State

Examples of the Existence of In Flagrante Delicto

The Court of Cassation ruled that what was stated in the contested judgment, whether in response to the plea of nullity of the arrest or a statement of the incident of the case and its evidence, makes it clear that the competent judicial officer - the first witness - witnessed the crime in person at the time of its commission and that the second witness arrested the appellants at the time of its commission and their attempt to escape, which indicates that the

---

content before the arrest of the appellant and the dissolution of that scroll, and if the contested judgment violated this consideration and eliminated the validity of the arrest and search procedure based on the availability of the case of flagrante delicto, it may have erred in the application of the law and its interpretation] Appeal No. 11 of 81 BC issued at the session of 7 June 2011 (unpublished)

It ruled: [To the extent that the judgment proves in its codes a statement of the incident of the case and to the effect of what the officer who began its procedures testified that he did what he did in compliance with his duty to take the necessary precautions to detect the crime of acquiring a drug and seizing the accused in it, which falls within the core of his competence as a judicial officer, as when he learned from his confidential source that the appellant is acquiring narcotic substances on the street of a hospital...... In front of a company .. .. He went with the second witness and met with the confidential source who indicated to them the whereabouts of the accused. He realized with one of his senses the sense of sight a crime of flagrante delicto, which is to watch the accused carrying narcotic substances and circulating them with others. He was arrested and searched with forty-one paper rolls containing each drug of heroin. What he did is a legitimate procedure that is valid for the appellant to take his result when the court is assured of its occurrence. If the judgment was inferred that the case of flagrante delicto is the crime that allows the arrest of those who contributed to its commission and allows its search without permission from the prosecution, then what the judgment stated is evidence of the availability of the case of flagrante delicto and in response to the appellant's plea that this case is not available and that the arrest and search is null and void is sufficient and appropriate in response to the payment, and in accordance with the correct law] Appeal No. 46835 of 73 Q issued at the session of January 15, 2008 (unpublished).

It ruled that: [It is sufficient for the state of flagrante delicto to achieve the drug that the person who witnessed these manifestations has shown the nature of the material he saw, but it is sufficient for these external manifestations to be achieved by any sense of the senses, equal to that sense of smell or sense of sight, and what was stated in the judgment was an indication of the availability of the state of flagrante delicto and in response to what the appellants argued was not available and the invalidity of arrest and search is sufficient and reasonable and in accordance with the correct law. This is because the officer's observation of the appellants in the event of their use of hookah, which emits the smell of cannabis and smells that smell, which constitutes a crime in flagrante delicto that allows arrest] Appeal No. 89956 of 75 S issued at the session of October 1, 2006 and published in the Technical Office's letter No. 57 Page No. 798 Rule No. 84, Appeal No. 11111 of 64 S issued at the session of May 7, 1996 and published in the first part of the Technical Office's letter No. 47 Page No. 583 Rule No. 81

It also ruled that: [If the officer had realized the occurrence of the crime from seeing the contested person holding the walnut and then cutting off a piece of material he was holding and pressing it with the fingers of his hand and then putting it on the smoke of the walnut, the contested decision, if the evidence derived from the search was wasted on the grounds of its nullity because the case of flagrante delicto did not arise despite its existence, is legally justified, it has erred in the application of the law, which is defective and requires its reversal. [Appeal No. 1841 of 39 s issued at the hearing of March 15, 1970 and published in the first part of the book of the Technical Office No. 21 page No. 355 rule No. 88.

It also ruled that: [The case of flagrante delicto is available when the two members of the administrative control hear the conversation that took place between the accused and the reporting employee in the latter's residence, and they see the incident of handing over the bribe amount through the hole in the door of the reception room, as long as that case came through a project, which is to invite the two members of the control to enter his house and facilitate them to see the incident in order to control its disgust, in a way that does not contradict personal freedom or violate the sanctity of the residence. [Appeal No. 1580 of 39 S issued at the session of January 18, 1970 and published in the first part of the book of the Technical Office No. 21 page No. 94 rule No. 24..

([31]) Appeal No. 645 of 85 S issued at the hearing of 14 December 2015 and published in the Technical Office Book No. 66 Page 868 Rule No. 129, Appeal No. 3087 of 79 S issued at the hearing of 10 March 2010 (unpublished), Appeal No. 159 of 60 S issued at the hearing of 13 February 1991 and published in the first part of the Technical Office Book No. 42 Page No. 312 Rule No. 42, Appeal No. 87 of 43 S issued at the hearing of 25 March 1973 and published in the first part of the Technical Office Book No. 24 Page No. 373 Rule No. 80, Appeal No. 1296 of 30 S issued at the hearing of 14 November 1960 and published in the third part of the Technical Office Book No. 11 Page No. 782 Rule No. 150, Appeal No. 170 of 25 S issued at the hearing of 17 May 1955 and published in the third part of the Technical Office Book No. 6 Page No. 1003 Rule No. 300..

crime was witnessed in one of the cases of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law [32].

The Court of Cassation ruled that watching the arresting officer with an apparent weapon in his hand is considered in itself a flagrante delicto for the crime of carrying a weapon, which allows the judicial arresting officer to arrest and search him [33].

It ruled that since it was established from the records of the contested judgment - which the appellant did not dispute - that the investigating prosecutor and the member of the administrative control did not arrest the appellant and search him only after watching him as soon as he provided the bribe amount to the first witness, which is considered a crime in flagrante delicto that allows his arrest and search without permission from[34] the prosecution.

The Court of Cassation ruled that the accused abandoned the bag containing the narcotic substance on his own - that is, voluntarily and voluntarily - after watching the officer arrange the case of flagrante delicto with the crime that allows arrest and search [35].

([32]) Appeal No. 2100 of 82 S issued on January 2, 2013 (unpublished).

([33]) Appeal No. 13163 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 4033 of 81 S issued at the session of January 1, 2012 and published in the letter of the Technical Office No. 63 page No. 33 rule No. 3.

The Court of Cassation ruled that: [It is established from the records of the contested judgment - which was not disputed by the appellant - that the seizure of the automatic weapon and the ammunition contained in it was after the officer watched him sitting in front of his house holding it in his hand, and as soon as he was surprised, he fled with neighboring crops, leaving him and his arrest, the seized ammunition was found inside him, which is considered a crime in a state of flagrante delicto that allows the officer to arrest and search without permission from the Public Prosecution in this regard, it is useless to what the appellant raises - by imposing his health - in connection with the invalidity of the permission of the Public Prosecution and the subsequent procedures for his building on non-serious investigations] Appeal No. 13269 of 88Q issued at the session of January 2, 2021 (unpublished)

It ruled that: [If the judgment was arranged on the permissible considerations that he mentioned from the leave - the arrest of the appellant by the judicial officer is correct in the law, based on the availability of the case of flagrante delicto for the felony of acquiring weapons, when he moved immediately after being informed of the felony of the project in the murder, where the appellant saw on the roof of his house a bribe that may not be authorized, the case of flagrante delicto on the accusation of the appellant was available, allowing the judicial officer to issue an arrest warrant and then the obituary to the judgment in this regard is not valid] Appeal No. 21039 of 61 s issued at the session of 18 October 1993 and published in the first part of the Technical Office's book No. 44 page No. 828 rule No. 128

It also ruled that: [Since the witness of the appellant officer with an apparent weapon in his hand is considered by himself to be wearing a weapon that allows the judicial officer to arrest and search him] Appeal No. 20129 of 60 S issued at the hearing of 14 April 1992 and published in the first part of the book of the Technical Office No. 43 page No. 406 rule No. 60..

([34]) Appeal No. 49438 of 72 S issued at the session of 19 November 2006 and published in the letter of the Technical Office No. 57 page No. 875 rule No. 97.

It also ruled that: [When it is established from the records of the contested judgment that the two officers did not arrest the appellant and search him only after they saw him seeing an eye if the amount of the bribe was taken from the stakeholder, the crime is in a state of flagrante delicto, which entitles the two officers to arrest and search him without permission from the prosecution, and therefore there is no point in what the appellant raises regarding the invalidity of the prosecution's permission to search for his issuance of a future crime] Appeal No. 199 of 40 BC issued at the session of 16 March 1970 and published in the first part of the Technical Office's letter No. 21 page 398 rule No. 98..

([35]) Appeal No. 12506 of 80 S issued at the session of 18 October 2011 (unpublished), Appeal No. 42801 of 72 S issued at the session of 5 November 2009 (unpublished), Appeal No. 42391 of 72 S issued at the session of 4 November 2009 (unpublished), Appeal No. 15447 of 72 S issued at the session of 15 October 2009 (unpublished), Appeal No. 12734 of 69 S issued at the session of 5 March 2009 (unpublished), Appeal No. 61168 of 74 S issued at the hearing of October 5, 2008 (unpublished), Appeal No. 6461 of 70 S issued at the hearing of March 12, 2008 (unpublished), Appeal No. 11713 of 69 S issued at the hearing of October 18, 2007 (unpublished), Appeal No. 13528 of 65 S issued at the hearing of June 1, 2004 and published in the book of the Technical Office No. 55, page No. 543, rule No. 76, Appeal No. 26109 of 69 S issued at the hearing of February 20, 2002 and published in the book of the Technical Office No. 53, page No. 307, rule No. 55, appeal No. 30164 of 59 S issued at the session of 20 May 1997 and published in the first part of the Technical Office letter No. 48 page No. 610 rule No. 91, Appeal No. 1792 of 61 S issued at the session of 15 November 1992 and published in the first part of the Technical Office letter No. 43 page No. 1031 rule No. 158.

The Court of Cassation ruled that: [As the origin is that the men of public authority in their areas of competence have access to public shops open to the public to monitor the implementation of laws and regulations, which is an administrative procedure restricted to the purpose of the above statement and does not go beyond it to exposure to the freedom of persons or the

The abandonment on which the state of flagrante delicto is based shall be done by free will, voluntarily and by choice. If the result of an illegal action, the evidence derived from it shall be null and void[36].

It ruled that the officer of the incident saw the defendants sitting next to the road eating alcohol, and when they saw him, they threw them on the ground at the time of the curfew, in violation of the decision of the Prime Minister, so he went to them and searched them and found the seizures. This provides a case of flagrante delicto as it is known by the law, in addition to their presence during the curfew decision, the arrest of the defendants and the case is also correct [37].

However, the search of the accused because he is present with the person authorized to search him without the permission of the Public Prosecution issued to search him or search him who may be present with the person authorized to search him upon implementation and without the occurrence of a case of flagrante delicto as it is legally known or the availability of a situation that allows his arrest and thus search, shall be null and void as well as what resulted from it in application of the rule of all that results from the falsehood is null and the result of that

---

exploration of closed things that are not apparent unless the officer is aware of his sense and before exposure to them, but what is in them, which makes possession or acquisition of them a crime that allows inspection, so this inspection in this case is based on the case of flagrante delicto and not on the right to visit public shops and supervise the implementation of laws and regulations.

Whereas, the appellant abandoned the narcotic substance and threw it on the ground without taking any action from the detective officer whose entry into the cafe was legitimate, it is considered that it was done voluntarily and by choice, which constitutes a case of a crime in flagrante delicto that allows search and arrest. Appeal No. 2806 of 57 BC issued at the session of November 1, 1987 and published in the second part of the book of the Technical Office No. 38 page No. 917 rule No. 169.

It ruled that: [Since the judgment proved that the appellant was the one who threw the bag and the scroll when he saw the men of the force and before taking any action with him, he abandoned them voluntarily and voluntarily. If the officer picked them up after that and opened them and found in them an anesthetic, the crime of obtaining it is in a state of dress that justifies the arrest and search of the appellant without permission from the Public Prosecution. Hence, there is no point in what he raises about the invalidity of the permission of the prosecution to search him for lack of seriousness of investigations and not causing it] Appeal No. 87 of 46 S issued at the session of April 19, 1976 and published in the first part of the Technical Office's letter No. 27 page No. 453 rule No. 98..

([36]) Appeal No. 67683 of 76 S issued on October 26, 2008 (unpublished).

([37]) Appeal No. 3322 of 85 S issued at the session of January 2, 2016 and published in the letter of the Technical Office No. 67, page No. 23, rule No. 2, Appeal No. 7446 of 84 S issued at the session of December 6, 2014 and published in the letter of the Technical Office No. 65, page No. 938, rule No. 124.

It ruled that: [The contested judgment, after stating a copy of the incident, the defense of the second appellant, who pleaded nullity of the arrest and search, responded by saying: " Since it is about the initial plea of the lawyer of the second defendant that his arrest and search are null and void due to the absence of the state of flagrante delicto and the lack of permission from the Public Prosecution, it is responded to what is legally established that flagrante delicto is a condition inherent in the crime itself, and it is sufficient for its availability that its witness has attended its commission himself and realized its occurrence with any of his senses, and that the establishment of the state of flagrante delicto permits the arrest of the perpetrator and allows his search without the permission of the Public Prosecution. Whereas, it was established from the statements of the two officers who witnessed the incident that they sat in a shop .... In a place close to the secret source council that enables them to watch what is going on, where the first accused, who is authorized to seize and search him, accepted the secret source and made sure that there is Egyptian cash with the price of the dollars that he had agreed to buy from him, and a short conversation took place between them, after which the first accused left the shop and returned after about five minutes with the second accused, and a conversation took place between them and the secret source, after which the second accused brought out a scroll of The white paper from inside the sweater that he wears and has broken it. The two officers found out that it contained a quantity of counterfeit US dollars agreed to be sold to the confidential source. The first witness seized the defendant as well as the first defendant and the counterfeit dollars. The second defendant, by what he did, created the two officers regarding the crimes of acquiring counterfeit paper currency to promote it and proceeded to promote it by presenting it to a confidential source to buy it in flagrante delicto, allowing him to be arrested and allowed to be searched without permission from the Public Prosecution, which takes away from this arrest and that search the nullity that was received by the defense of the second defendant. The arrest and search order for him has come in the right seriousness, agreement and judgment The law", which is a sufficient and reasonable response in response to the plea and is per the correctness of the law] Appeal No. 5858 of 65 S issued at the session of May 4, 1997, and published in the first part of the Technical Office's letter No. 48 page No. 493 rule No. 72.

inspection and a certificate from him shall be null and void because it is arranged on him and it is not valid to rely on the evidence derived from it in the conviction[38].

However, if the person present with the person authorized to search him tries to infringe on the judicial officer with an apparent weapon, this makes the last crime flagrante delicto, which allows the officer who witnessed the incident to arrest that accused without permission from the Public Prosecution and to be searched. If the search results in the seizure of a crime such as the seizure of narcotic substances, then the seizure has been made for a flagrante delicto crime, and the second appellant raises the invalidity of the arrest and the fabrication of a case of apparent legal defense of invalidity, not the court if it turns away from responding to him, in addition to the fact that the officer sees the accused with a weapon, makes him in a state of flagrante possession of the weapon, even if it is found after that he is not punished for possession[39].

It ruled that if the court is satisfied with what the officer testified, that he smelled the burning of the drug, and saw the appellants exchanging a burning tobacco roll, which smells the same, enough for the availability of external manifestations that predict the crime of acquiring cannabis, then the conclusion of the judgment that the state of flagrante delicto that justifies arrest and search is correct in law [40].

It ruled that watching the arresting officer - the accused - drop an apparent white weapon is itself considered a flagrante delicto for the crime of acquiring the weapon, which allows the judicial arresting officer to arrest and search him [41].

If the officer has witnessed the appellant crossing the railway tracks from a place not designated for pedestrian crossing, the case of flagrante delicto has been achieved by crossing the railway lines in places other than those designated for this purpose and criminalized by Articles 14 and

---

([38]) Appeal No. 6442 of 82 S issued at the 4th session of April 2013 and published in the Technical Office letter No. 64, page No. 458, rule No. 60, Appeal No. 3225 of 81 S issued at the 20th session of November 2012 and published in the Technical Office letter No. 63, page No. 742, rule No. 132, Appeal No. 4532 of 79 S issued at the 17th session of March 2011 (unpublished), Appeal No. 20054 of 74 S issued at the 7th session of May 2006 and published in the Office letter Technical No. 57 Page No. 603 Rule No. 64, Appeal No. 26585 of 68 s issued at the session of March 5, 2002 and published in the Technical Office's letter No. 53 Page No. 366 Rule No. 65, Appeal No. 23765 of 67 s issued at the session of January 17, 2000 (unpublished), Appeal No. 2605 of 62 s issued at the session of September 15, 1993 and published in the first part of the Technical Office's letter No. 44 Page No. 703 Rule No. 110, Appeal No. 15033 of 59 s issued at the session of January 3, 1990 Published in the first part of Technical Office Letter No. 41 Page No. 41 Rule No. 4, Appeal No. 4117 of 56 S issued on December 11, 1986 and published in the first part of Technical Office Letter No. 37 Page No. 1039 Rule No. 198.

([39]) Appeal No. 68624 of 75 BC issued at the session of May 20, 2009 (unpublished).

([40]) Appeal No. 5216 of 85 S issued on October 12, 2015, and published in the Technical Office's letter No. 66, page No. 673, rule No. 99.

It also ruled that: [It is established from the records of the contested judgment that the officer did not arrest the appellants and search them only when he verified their connection to the crime, as he saw them inside the car as soon as the smell of the drug was emitted from it and found the remnants of a cigarette that emits the same smell, and in a way that indicates that the purpose of the babysitting is to participate in the abuse, which is a reasonable extraction approved by the trial court and considered sufficient to justify the arrest and search, this is correct. There is no rebuke to the verdict as it relies on the evidence derived from those proceedings for conviction. The obituary against the judgment in this regard is not valid, and all that the appellants, especially the second appellant, raise about the lack of flagrante delicto and the lack of responsibility of the second appellant for the remnants of (cigarette) seized in the car and what the latter said about the lack of justification for preventive inspection and non-disclosure of the drug seized with it, all this resolves into an objective controversy that may not be raised before the Court of Cassation] Appeal No. 9407 of 69 S issued at the 8th session of October 2007 and published in the Technical Office's letter No. 58 page No. 585 Rule No. 113.

([41]) Appeal No. 6759 of 73 S issued at the session of January 20, 2010, and published in the book of the Technical Office No. 61, page No. 52, rule No. 8.

It ruled that: [.. The verdict has proven that the arresting officer saw the appellant carrying a white weapon "deer horn knife" in an apparent case, which is itself considered a flagrant crime of carrying a weapon that allows the judicial arresting officer to arrest and search him] Appeal No. 18704 of 68 S issued at the session of April 5, 2007 and published in the letter of the Technical Office No. 58, page No. 352, rule No. 67.

20 of Law 277 of 1959 regarding the railway travel system as amended by Law No. 13 of 1999, which is punishable by imprisonment for a period not exceeding six months and a fine not exceeding twenty pounds or one of these two penalties, which allows the judicial officer to arrest the appellant. Whereas, the Law of Procedure has generally stipulated in Article 46 thereof that in cases where it is permissible to arrest the accused, the judicial officer may search him, considering that whenever the arrest is valid, the search conducted by the person authorized to conduct it on the arrested person is valid, regardless of the reason for or purpose of the arrest, in the general form in which the text is contained, the procedures for arresting and searching the appellant, which were initiated by the judicial officer - afterwards - shall be characterized by legitimacy[42].

The Court of Cassation also ruled that when the judicial officer informed him of the secret source that the accused was offering a quantity of the narcotic plant for sale on the public road, he verified his investigations of the validity of this information and assigned that source to pretend to buy the drug and saw the accused presenting the source with a paper scroll that showed inside the banjo plant and then he seized and searched it with him on four scrolls containing the same narcotic. What the officer came up with in this way is not considered a creation of the crime nor an incitement to its corruption as long as the will of the perpetrator remained free and non-existent, and it does not change that the officer received the news of the

---

([42]) Appeal No. 29598 of 77 S issued at the 7th session of April 2014 and published in the book of the Technical Office No. 65 Page No. 247 rule No. 25.

It ruled that: [... Article 12, paragraph 2, of Law No. 66 of 1973 promulgating the Traffic Law, stipulates that the vehicle license must always be present in it and allows police and traffic officers to request its submission at any time. Article 41 of the same law also requires the licensee to drive a vehicle carrying the license while driving and presenting it to the police and traffic officers whenever they request it. Considering the foregoing, the officer may choose the appropriate circumstance to complete it in a fruitful manner and at a time he deems appropriate. This is because the legislator obligated every vehicle owner and every driver to have the vehicle license in it always and that the driver holds his driving license while driving and to present them to the police or traffic whenever they request it. The text in this regard was clear and unambiguous, in general without allocation, free without restriction, and the officer's order to the appellant to stop his car while driving it on the public road is no more than a physical exposure that does not violate his personal freedom and does not in any way constitute an attack on this freedom, as the officer did not mean it It is obvious in the Court of Cassation that the legitimate procedure does not generate within its limits a nullity, and it was decided that the assessment of the availability of flagrante delicto or non-availability is a purely objective matter that is initially entrusted to the judicial officer, provided that his assessment is subject to the control of the investigating authority under the supervision of the trial court according to the facts presented to it without penalty, as long as the result it reached is consistent with the premises and facts it established in its judgment. Whereas the contested judgment has concluded, in sound logic and reasonable inference and in accordance with the rule of law, the legality of what the judicial officer did towards the car in which the appellant was riding, as previously stated, and that the state of flagrante delicto arose from the identification of the external manifestations of the crime, which foretells its occurrence according to what the judgment concluded for the image of the incident indicating the indisputable fact that the appellant has its fixed origin in the papers because the officer smells the drug emanating from the inside of the car as soon as its glass is opened by its commander and he watches the drug above the dashboard of the car, including the state of flagrante delicto that allows the arresting officer Judicial arrest and search of the appellant, if the court ends up refusing to pay the nullity of the arrest and search, it will have correctly applied the law] Appeal No. 5303 of 74 S issued at the session of October 17, 2012 and published in the letter of the Technical Office No. 63 page No. 516 rule No. 88.

It also ruled: [Since the crime of throwing dirt inside the railway yards of the respondent falls under the text of Articles 10/ H, 20 of Decree-Law No. 277 of 1959, which linked the penalty of imprisonment for a period not exceeding six months and a fine not exceeding twenty pounds or one of these two penalties, it was justified for the judicial officer to arrest the accused Whereas the Code of Procedure has generally stipulated in Article 46 that in cases where it is permissible to arrest the accused, the judicial officer may search him, considering that whenever the arrest is valid, the search that the person authorized to conduct on the detained person is correct, regardless of the reason for and purpose of the arrest, for the general form in which the text is contained. On the other hand, the court records attest that the search, in this case, was necessary, as it is one of the means of prevention and precaution that must be provided to protect against the evil of the arrested person if he spoke to him to regain his freedom by assaulting the weapon he may have on the arrested person. If the judgment is with what he has proven that The defendant committed a crime of throwing dirt inside the yards of the subway station, which allows his arrest in the law [Appeal No. 23182 of 73 S issued at the session of March 11, 2010, and published in the book of the Technical Office No. 61 page No. 256 rule No. 31, Appeal No. 46660 of 72 S issued at the session of December 3, 2009, and published in the book of the Technical Office No. 60 page No. 525 rule No. 68..

crime from the secret source as long as he witnessed an incident that he pretended to buy the drug and was under his eyes, and if that, the accused voluntarily found himself in a case of flagrante, which makes the officer's seizure and search a correct and productive effect[43].

It ruled that the contested judgment had deduced - in sound logic - what the arresting man doubted and thought about the first appellant who denied carrying the licenses of the seized car and that he did not know the name of its owner in full and showed signs of severe confusion, which the officer doubted that the car was stolen, these signs allow the appellant to stop and prevent him from walking to investigate and reveal the truth of this situation, and that the state of flagrante delicto arose from the identification of the external manifestations of the crime, which foretells its occurrence for the officer to see the drug in the suitcase of the car after he asked the appellant to open it, so he got out of the car and opened it with his consent, which allows the officer to arrest him after being caught committing a felony of transporting narcotic substances in flagrante, and that the judgment, if he refused to pay the nullity of the arrest and search, was accompanied with the right[44].

It also ruled that the public place by chance, such as cemeteries, is originally a private place limited to certain individuals or sects, but it acquires the status of a public place at a time when there are several members of the public by chance or agreement. Otherwise, it takes the rule of private places, which is what is available in flagrante delicto when it is possible to see who it because of the lack of precaution of the perpetrator is inside. If the perpetrator neglects to take sufficient precaution, such as if he has left his window open - as in the case of the incident - as the incident officer saw from that window the appellants fragmenting the drug[45].

It ruled that: [Article 34 of the Criminal Procedure Law has allowed the judicial officer to arrest the accused in cases of flagrante delicto in general and misdemeanors punishable by imprisonment for a period of more than three months, and if the crime of walking in the reverse direction is a misdemeanor, the law has linked it to the penalty of imprisonment and a fine of no less than one thousand pounds and no more than three thousand pounds or one of these two penalties, in accordance with the text of Article 76 bis/ 1 of Law No. 66 of 1973, as amended by Law No. 121 of 2008, and then the judicial officer may arrest him][46] .

Examples of the absence of flagrante delicto

It is established that the state of flagrante delicto requires the judicial officer to ascertain the occurrence of the crime by personally witnessing it or perceiving it through one of their senses. Although assessing the circumstances surrounding the crime at the time of its commission, and whether they are sufficient to establish the state of flagrante delicto, is entrusted to the trial court, this is conditional upon the reasons and considerations upon which the court bases its assessment being valid and capable of leading to the conclusion reached.

The statements in the contested judgment, in its account of the facts of the case and its summary of the officer's testimony, fail to indicate that the narcotics were identified prior to the apprehension of the appellants. On the contrary, as evidenced by the officer's testimony in the Public Prosecution's investigation—according to the case file—it is established that the officer first apprehended the second and third appellants and then searched the bag they attempted to hide under the bed, where he found the narcotic plant.

([43]) Appeal No. 33743 of 73 BC issued at the 12th session of April 2010 and published in the book of the Technical Office No. 61 page No. 321 rule No. 42.

([44]) Appeal No. 9893 of 78 S issued at the session of November 5, 2009, and published in the book of the Technical Office No. 60 page No. 404 rule No. 56.

([45]) Appeal No. 20481 of 72 S issued at the session of November 5, 2007, and published in the letter of the Technical Office No. 58 page No. 672 rule No. 129.

([46]) Appeal No. 13620 of 88 S issued on January 2, 2021 (unpublished).

The mere attempt by the second and third appellants to hide a bag under the bed in the residence subject to the search warrant does not justify their arrest, as it does not constitute the external indications that, on their own, suggest the occurrence of a crime and establish the state of flagrante delicto that would permit the judicial officer to conduct an arrest and search.

Based on the foregoing, the arrest of the second and third appellants without a judicial warrant occurred outside the scope of flagrante delicto and without sufficient evidence to accuse them of the crime. By concluding otherwise, deeming the procedure valid, and rejecting the plea of invalidity of the arrest, the contested judgment erred in applying the law. This error prevented the court from considering other evidence that may exist in the case, necessitating its annulment and remand for reconsideration [47].

The Court of Cassation also ruled that the statement made by the judgment in the course of its statement of the incident of the case and in its response to the plea of nullity of the arrest and search that what the judicial officer raised from the arrest of the accused merely because the first witness of evidence-informed him of the offer of the accused - the appellant - a counterfeit financial paper and his rejection of it without indicating the nature of this paper and the failure of the judicial officer to view it before the arrest and search of the appellant is a false arrest and search because they are not in a state of flagrante delicto and without permission from the Public Prosecution [48].

It also ruled that the contested judgment had proven in the course of collecting the incident of the lawsuit and the result of the statements of the officer of the incident that it proved the truth of the seized weapon and that it was a sound pistol before conducting its inspection of the appellant, which resulted in the seizure of three bullets from what was used on the firearms, and there is nothing in the papers indicating that they were in an apparent position of the appellant's clothes that the officer sees so that he can be searched based on the state of flagrante delicto, which results in the nullity of the inspection, even if it is preventive, and if the contested judgment violated this consideration, he may have erred in the application of the law and its interpretation in a way that necessitates its reversal[49].

The Court of Cassation ruled that it is clear from what the contested judgment obtained in its statement of the case that the appellant did not put himself in doubt and did not make him suspicious of the police officers and not just confused or walking with a suitcase and hesitating to ride in a car, which allows the officer of the incident to stop him, and therefore the arrest of the officer of the incident is no more than an unsupported arbitral measure of the circumstances of the case and becomes based on no basis in the law and is an attack on personal freedom and involves abuse of power. Therefore, this procedure and what is based on it has been null and void, and the fact of the lawsuit as obtained by the contested judgment in its codes - which was mentioned above - does not indicate that the crime of acquiring the narcotic plant that the appellant was convicted of was in a state of flagrante delicto stipulated exclusively in Article 30 of the Criminal Procedure Law, as the officer of the incident did not see the crime or one of its effects before the appellant was arrested and arrested, and therefore what happened to him is a false arrest that is not justified by what was stated in the contested judgment in the context of His response to the plea that the appellant accepted the inspection of the bag, and that this was done with his consent, as that consent - assuming its occurrence - was later for a false arrest and a caller who occurred in cases other than flagrante delicto and without permission from the

---

([47]) Appeal No. 20054 of 74 S issued at the 7th session of May 2006 and published in the book of the Technical Office No. 57 page No. 603 rule No. 64.
([48]) Appeal No. 18565 of 84 S issued at the session of April 11, 2016 and published in the book of the Technical Office No. 67 page No. 433 rule No. 50.
([49]) Appeal No. 14778 of 84 S issued at the 4th session of December 2014 and published in the book of the Technical Office No. 65 page No. 910 rule No. 119.

Public Prosecution - as mentioned above - in order to obtain evidence that could not have been obtained by the person who carried it out without that arrest, and therefore that consent was not explicit, free and free of what is tainted by the will of its owner and is not relied upon in the procedures based on it[50].

The Court of Cassation also ruled that since the contested judgment was between the fact of the lawsuit to extract from the statements of the officer ... that on the day of... While conducting a traffic campaign, the first defendant witnessed... He rides a motorcycle against the direction and behind him the second accused... They are in a state of imbalance, so he seized them and wrote a memorandum to that effect and sent them to the police station, which sent them to a hospital ... to take a urine sample from them, and then they were presented to the Public Prosecution. It was proven from the report of the Toxicology and Narcotics Department at the Chemical Laboratory of the Directorate of Health Affairs in ... that the two urine samples of the defendants contained opium... The image of the incident, as obtained by the contested judgment in its aforementioned blogs, does not indicate that the crime of acquiring the drug in which the appellant was convicted was in a state of flagrante delicto, which is exclusively set out in Article 30 of the Criminal Procedure Law, as the contested judgment mentioned the advanced context and concluded that there are signs of imbalance on the appellant when he watched the case of flagrante delicto with the crime of drug abuse, which allows the judicial officer to arrest him is not correct in the law because of the multiple possibilities causing illness or otherwise, but this court has ruled that it is not in the mere manifestations of confusion and confusion of the person, no matter how much it provides sufficient evidence to accuse him of the flagrant crime and then allows his arrest and search. Also, Article 66 of Law 66 of 1973 promulgating the Traffic Law, which was taken by the judgment based on its judiciary, specified the procedures to be followed in the event of suspicion of driving a vehicle under the influence of alcohol or drugs for the driver of the vehicle only and not for other passengers. Whereas, it was evident from the papers that the appellant was a passenger behind the driver of the motorcycle, then the text of Article 66 of the Traffic Law No. 66 of 1973, as amended, does not apply to him, and his arrest has occurred in a state other than flagrante delicto, and what happened to him is a false arrest that collapses with any evidence derived from it[51].

It ruled that since what was stated in the contested judgment, whether in response to the plea of nullity of the arrest or in its statement of the incident of the lawsuit, there is no evidence that the crime was witnessed in a case of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law, and this is not just a part of what resulted from the police investigations, and the appellant's placement of an amount of money in front of the "kiosk custodian" does not indicate in itself, that he offered a bribe as long as the officer did not listen to the conversation that took place between them, and it turns out that the reason for providing the money before holding the appellant is illegal, and there is no justification for his arrest because of the lack of external manifestations that predict the occurrence of the crime and the state of flagrante delicacy that allows the judicial officer to arrest and search[52].

The case of flagrante delicto also requires that the judicial officer verify that the crime has been witnessed by himself or is aware of one of his senses, and it is not indispensable for him to

---

([50]) Appeal No. 19749 of 70 S issued at the session of November 17, 2007 and published in the Technical Office's letter No. 58 page No. 736 rule No. 138.
([51]) Appeal No. 48070 of 74 BC issued at the session of March 4, 2007 and published in the letter of the Technical Office No. 58 page No. 220 rule No. 44.
([52]) Appeal No. 8915 of 65 S issued at the session of 19 November 1997 and published in the first part of the book of the Technical Office No. 48 page No. 1293 rule No. 195.

receive its news through narration or transfer of witnesses, as long as that case has ended by erasing the traces of the crime and the evidence indicating it [53].

It also ruled that the fall of the scroll is an accident by the appellant if he runs away when he sees the officer of the incident is not considered a renunciation of his possession, but nevertheless remains in his legal possession, and if the officer did not identify the content of the scroll before it was broken, the incident in this way is not considered a case of flagrante delicto set forth exclusively in Article 30 of the Code of Criminal Procedure and is not considered in the form of the lawsuit one of the external manifestations that itself foretells the occurrence of the crime and thus allows the judicial officer to conduct the search [54].

([53]) Appeal No. 951 for the year 33 S issued at the session of December 30, 1963 and published in the third part of the book of the Technical Office No. 14 page No. 1011 rule No. 184.

The Court of Cassation also ruled that: [It is established that personal freedom is a natural right and is inviolable. Except in cases of flagrante delicto, no one may be arrested, searched, detained, restricted in any way, or prevented from moving except by an order necessitated by the necessity of investigation. Maintaining the security of society. This order is issued by the competent judge or the Public Prosecution in accordance with the provisions of the law. Flagellation is the condition of the crime itself and not the person of the perpetrator. Because of its availability, the street required the judicial officer to verify that the crime was witnessed by himself or was aware of it in one of his senses. It is not indispensable for him to receive its news through the narrative or the transfer of witnesses, as long as that condition ended with the erasure of the traces of the crime and the evidence that indicates it and the availability or non-availability of the case of flagrante delicto is one of the objective issues that the trial court decides to assess. Since the prosecution witness has confirmed the achievement of the accused of the narcotic substance after his secret source attempted to purchase in the above manner and seized it after the availability of the case of flagrante delicto, which he is aware of with his sense of sight. The prosecution witness shall have the right to be arrested and searched for that search, which resulted in the seizure of the rest of the anesthetic substance. Since the seizure occurred correctly, the court shall take all evidence resulting from the subsequent search, and what the defense raises in this regard shall be improper and shall be rejected. "

Whereas, Articles 34 and 35 of the Code of Criminal Procedure, amended by Law No. 37 of 1972 on the Guarantee of Citizens' Freedoms, authorized the judicial officer in cases of flagrante delicto punishable by imprisonment for a period of more than three months to arrest the accused present, who has sufficient evidence of his accusation. If he was not present, the officer may issue an order to arrest and bring him, as authorized by Article 46 of the same law, to search the accused in cases where it is legally permissible to arrest him. It was legally established that flagrante delicto is associated with the crime itself and not the person who committed it, which allows the officer who witnessed its occurrence to arrest anyone who has evidence of his contribution to it and to conduct his search without permission from the Public Prosecution. Although the assessment of the circumstances surrounding the crime at the time of its commission and its adequacy for the occurrence of the case of flagrante delicto is entrusted to the trial court, but this is conditional on the fact that the reasons and considerations on which the court based its assessment are valid because they lead to the result it reached. Whereas, justice does not harm the impunity of a criminal as much as it is harmed by the banners on the freedoms of people and their unjust arrest, and the Constitution guarantees these freedoms as the most sacred of the natural rights of man by stipulating in Article 54 that "Personal freedom is a natural right and is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned or restricted in any way except by a reasoned judicial order necessitated by the investigation . .. " Whereas this was the case, and the image of the incident - as obtained by the contested judgment in its previous blogs - does not indicate that the crime of acquiring the essence of the narcotic cannabis that the appellant was convicted of was in one of the cases of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law, as the fact that the judicial officer received the news of the crime from others is not sufficient for the occurrence of the case of flagrante delicto as long as he did not witness a self-fulfilling effect before making the arrest, as it is clear from the blogs of the contested judgment that the judicial officer did not see the sale and purchase process between the confidential source and the appellant and was not under his sight, and what the judgment stated in its blogs does not indicate itself about the officer's awareness in a certain way of committing this crime, which does not provide the case of flagrante delicto. Since this is so, the arrest of the appellant has occurred in a state other than flagrante delicto, and therefore what he has pleaded against him is a false arrest. If the contested judgment violates this consideration and the validity of this procedure has been eliminated, it is wrongly defective in the application of the law to require its cassation. The invalidity of the arrest was legally required not to rely on the conviction of any evidence derived from it, and therefore the testimony of the person who carried out this false action is not considered. Since the lawsuit, as obtained by the contested judgment, has no other evidence, the appellant must be acquitted pursuant to the first paragraph of Article 39 of the Law on Cases and Procedures of Appeal before the Court of Cassation promulgated by Law No. 57 of 1959 and the confiscation of the seized narcotic and bladed weapons pursuant to Article 42 of Law No. 182 of 1960, as amended. Article 30 of Law 394 of 1954, as amended] Appeal No. 14043 of 88 S issued at the session of February 13, 2021 (unpublished).

([54]) Appeal No. 53096 of 74 S issued at the session of 19 November 2012 and published in the letter of the Technical Office No. 63 page No. 730 rule No. 130..

It ruled that the mere presence of the individual with the person authorized to search him and take up a bag of him can be considered sufficient evidence of the existence of an accusation that justifies his arrest and search, and that although the assessment of the circumstances that accompany and surround the crime at the time of its commission and the assessment of its adequacy for the occurrence of flagrante delicto is entrusted to the discretion of the trial court without comment, but this is conditional on the reasons and considerations on which the court based this assessment valid to lead to the result it reached. For what it was, The result of the incident mentioned in the judgment on the advanced context was that the second appellant was seen in one of the cases of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law and that the officer of the incident had realized that case in a certain way that could not bear the complaint and it is not true to say that the second appellant was in a state of flagrante delicto even if he was in the company of the first appellant who was authorized to search him and who was not yet in possession or in possession of the drug. The mere fact that the officer watched the second appellant provide money to the first appellant who was authorized to search him and received from him a bag after that. Then the officer opened it and watched a green plant from inside three rolls with a beige sticky and they were inside a closed bag that the second appellant received from the first and then the officer opened it to see it does not mean that he realized the narcotic substance in a visible condition before his arrest. The abandonment of the bag was not optional for him and then the officer was not in front of a flagrant crime, and his arrest of the second appellant is neither justified nor justified. in law[55].

Previously, a member of the force accompanying the judicial officer knew that the accused was being watched under a judicial ruling, escaped from surveillance, and had a report of this, and while heading towards him, he was searched for him in the event of his attempt to escape and carried out a preventive search in preparation for taking him to the office of the department. He found with his trousers and body a firearm and a cartridge. Then, he searched him and found with him the substance of narcotic heroin. Without the judgment invoking in its codes whether the arresting officer who carried out the search procedures has verified that the crime that the appellant was accused of committing was witnessed by himself or perceiving it with a sense of his senses or watching a trace of its effects that foretells its occurrence and that the crime is one of the misdemeanors in which the accused may be arrested and then searched accordingly or that there is a judicial order from the competent judicial authority to search the accused as required by the need to investigate and preserve the security of society. The judgment was based in its conviction - among other things - on the evidence derived from the seizure of the drug said to have been obtained by the appellant - that the statement is minor in response to the appellant's defense of the fact of filming the case. of what invalidates it [56].

It also ruled that the mere observation of the judicial officer of the accused (the appellant) holding a carton in his hand and showing signs of suspicion and suspicion is not sufficient to establish the state of flagrante delicto as long as he did not witness one of its effects that

---

([55]) Appeal No. 6442 of 82 S issued at the 4th session of April 2013 and published in the book of the Technical Office No. 64 page No. 458 rule No. 60.

([56]) Appeal No. 6595 of 79 S issued at the session of March 20, 2011 (unpublished).

It also ruled that: [The performance of the incident mentioned in the judgment does not indicate that the accused has been seen in a state of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law, which is not provided by the mere knowledge of the officer who committed the crimes of bullying and trafficking in narcotic substances or tried to escape when he saw him, and that the mere appearance of confusion and confusion, no matter how great, cannot be considered sufficient evidence of the existence of an accusation that justifies his arrest and search. The appellant's removal of what he hides in his clothes from an an anesthetic when ordered by the officer is a type of search that cannot be described as being with the consent of the appellant, but it was forced to do so by the fear factor of his forced search. If the contested judgment violates this consideration and the validity of this measure was eliminated, it is wrong in the application of the law and its interpretation, which requires its reversal.] Appeal No. 32442 of 73 Q issued at the session of March 7, 2010 (unpublaced), Appeal No. 32412 of 73 Qas issued at the hearing of March 7, 2010(unpublaced).

foretells its occurrence before the arrest was made, and what the judgment stated - according to the above context - was that the appellant was present inside a subway station.... As an establishment of vital importance, it has been implicitly accepted by the judicial officer - in order to be cautious and cautious - to search him administratively simply for holding a carton in his hand and showing signs of suspicion and suspicion, which is not true in the law, because it is established in the judiciary of this court that it is not from the mere manifestations of confusion and confusion, no matter how much it provides sufficient evidence to accuse him of the flagrante delicto crime and then allows his arrest and search. Whereas, the arrest of the appellant occurred in a state other than flagrante delicto, and therefore what happened to him is a false arrest, and if the contested judgment violated this consideration and the validity of this procedure was ruled, it is wrongly flawed in the application of the law in a manner that requires its reversal. Whereas, it was evident from the judgment records that the judicial officer did not find out what was contained in the carton that the appellant was holding in his hand until after his arrest and search, and the invalidity of the arrest and search was required not to rely in the conviction on any evidence derived from them, and therefore the testimony of the person who carried out this invalid procedure is not considered [57].

The mere attempt of the accused to escape after watching the police car does not meet the state of flagrante delicto that allows the judicial arrest officer to arrest the accused. The Court of Cassation ruled that: [Although the assessment of the circumstances that clothed and surrounded the crime at the time of its commission, and the extent of its sufficiency for the occurrence of flagrante delicto is entrusted to the trial court, but this is conditional on the reasons and considerations on which the court bases its assessment to be valid to lead to the result it reached, and what was stated by the contested judgment in the course of its statement of the incident of the case, What he obtained from the statements of the officer and his dismissal of the nullity of the arrest and search because of the absence of the state of flagrante delicto - in the advanced context - does not provide for the establishment of the state of flagrante delicto of a crime that allows the arrest of the appellant, as the mere attempt to escape after watching the police car, there is no justification for his arrest because of the absence of external manifestations that are self-evident about the occurrence of the crime and the state of flagrante delicto that allows the judicial officer to arrest and search, and the judicial officer received the news of the crime from others is not enough for the state of flagrante delicto as long as he did not witness a self-evident trace of its effects, and he violated the judgment This consideration has been challenged and the validity of this procedure has been concluded, as it has erred in the application of the law and its interpretation in a way that requires its cassation without the need to examine the rest of the aspects of the appeal][58] .

B- Powers Granted to Judicial Officers in Cases of Flagrante Delicto

First: Visiting the Scene of the Incident and Documenting the Situation

Judicial officers are required to undertake the following actions:

Immediate Visit to the Scene of the Incident: Judicial officers must immediately proceed to the crime scene and notify the Public Prosecution without delay. Upon being informed of a flagrante delicto felony, the Public Prosecution must immediately visit the crime scene. The legislature's intent behind this procedure is to organize operations and preserve evidence to ensure its strength in proving the case. The legislature has not stipulated nullity for delays in

---

([57]) Appeal No. 11501 for the year 83 S issued in the session of February 2, 2014 and published in the letter of the Technical Office No. 65 page No. 42 rule No. 4..

([58]) Appeal No. 16578 of 88 S issued in the session of February 13, 2021.

reporting, as this procedure is merely for guidance and organization and does not nullify the process in case of noncompliance[59].

Inspecting and Preserving Physical Evidence: Judicial officers are obligated to examine the physical evidence of the crime, preserve it, and document the state of locations, individuals, and anything that may aid in uncovering the truth[60].

Article 31 of the Code of Criminal Procedure stipulates that: "In the event of flagrante delicto, the judicial officer shall immediately move to the place of the incident, inspect and preserve the material effects of the crime, prove the status of places and persons, and all that is useful in revealing the truth, and hear the statements of those who were present, or those from whom clarifications can be obtained regarding the incident and its perpetrator.

He must immediately notify the Public Prosecution of his transfer, and the Public Prosecution must, as soon as it is notified of a flagrante delicto, immediately move to the place of the incident. "

The failure of the Public Prosecution and before it the Judicial Control Officer to conduct an inspection of the place of the incident cannot be a reason for appealing against the verdict because it is nothing more than a defect for the investigation that took place in the pre-trial stage, and the accused or his defender has no objection to the court for its failure to conduct an investigation that it did not request and did not see the need to conduct after it was reassured of the validity of the incident from the evidence presented to it [61].

Second: Collecting Explanations

Article 31 of the Criminal Procedure Law stipulates that: "In the event of flagrante delicto, the judicial officer must immediately move to the place of the incident, and hear the statements of those who were present, or from whom clarifications can be obtained regarding the incident and its perpetrator."

Article 32 also stipulates that: "The judicial officer may, upon his transfer in the event of flagrante delicto, prevent those present from leaving the scene of the incident or staying away from it until the record is drawn up, and he may immediately summon those from whom clarifications can be obtained regarding the incident."

([59]) Appeal No. 11670 of 87 S issued at the hearing of October 13, 2019 (unpublished), Appeal No. 17495 of 86 S issued at the hearing of April 8, 2018 (unpublished).

([60]) Appeal No. 29358 of 86 S issued at the session of January 14, 2017 (unpublished), and see: Appeal No. 1421 of 55 S issued at the session of May 30, 1985 and published in the first part of the Technical Office's letter No. 36 page No. 736 rule No. 129.

([61]) Appeal No. 14047 of 86 S issued at the 22nd session of July 2018 (unpublished).

The Court of Cassation also ruled that: [... What the First Appellant raises from the obituary regarding the omission of the Public Prosecution from the duty imposed on it by Article 31 of the Code of Criminal Procedure and the failure to carry out an inspection of the place of the incident and make a sketch of it and the failure to seize the tools of the crime and seize it is only a defect of the investigation that took place in the stage preceding the court, which cannot be a reason to appeal the judgment] Appeal No. 2005 of 78 s issued at the session of January 5, 2017 (unpublished), and see also: Appeal No. 4537 of 57 s issued at the session of January 14, 1988 and published in the first part of the Technical Office's book No. 39 page No. 164 rule No. 19.

It also ruled that: [... It is proven from the minutes of the court session on ...... That the defenders of the appellants were limited in their pleading to the obituary of the Public Prosecution not to conduct an inspection of the place of the incident, and the difference of seizures in the minutes of the seizure from the investigations of the prosecution, and none of them asked the trial court to correct this deficiency, nor did he raise anything about the failure to ask the residents of the place of the demonstration, or the members of the force accompanying the officer of the incident, and then it is not permissible for them - afterwards - to raise this for the first time before the Court of Cassation, as it is only a defect of the procedures preceding the trial, which cannot be a reason for appealing the judgment, and the obituary on the judgment in this regard is unacceptable] Appeal No. 26166 of 84 Q issued at the session of April 8, 2015 (unpubliterated)..

Article 33 of the Criminal Procedure Law stipulates that: "If one of the attendees violates the order of the judicial officers in accordance with the previous article, or if one of those who invited them refuses to attend, this shall be mentioned in the record and the violator shall be sentenced to a fine not exceeding thirty pounds, and the judgment shall be issued by the District Court based on the record drawn up by the judicial officer."

The judicial enforcement officer may, in case of flagrante delicto, take the following measures:

Hearing the statements of those who were present, or from whom clarifications can be obtained regarding the incident and its perpetrator.

The judicial officer may, upon his transfer in case of flagrante delicto, prevent those present from leaving the scene of the incident or staying away from it until the record is drawn up.

Third: Issuing a No-Movement Order

It is similar to stopping or preparing a copy of it, and the Court of Cassation has defined it as the order not to move issued by the officer to those present in the place he enters legally is a procedure intended for the regime to settle in this place until the task for which he came is completed [62].

Article 32 of the Code of Criminal Procedure allows the judicial officer to issue such an order in cases of flagrante delicto, even for non-accused persons. It stipulates that: "The judicial officer may, upon his transfer in case of flagrante delicto, prevent those present from leaving the scene of the incident or staying away from it until the record is drawn up."

If one of the attendees violates the order not to move, the judicial officer shall mention this in his record and the violator shall be sentenced to a fine not exceeding thirty pounds, and the judgment shall be issued by the District Court based on the record drawn up by the judicial officer (Article 33 of the Criminal Procedure Law).

Fourth: Summoning Witnesses

The judicial officer may immediately summon whoever can obtain clarifications regarding the incident, and he may not use force to force those present not to move away from the location of the incident, or to summon whoever he deems possible to obtain such clarifications, and all that results from violating his order is the commission of a violation punishable by a fine not exceeding thirty pounds, and the judgment shall be issued by the District Court based on the record drawn up by the judicial officer [63].

The Court of Cassation ruled that summoning the judicial officers of the accused because he was charged with a felony of murder associated with a felony of robbery at night with carrying a weapon is nothing more than asking him to attend to ask him about the accusation he made within the scope of what is required by the collection of evidence and does not imply that this summons is carried out by one of the men of the public authority as long as it does not include a material exposure to the plaintiff that could be an infringement or restriction of his personal freedom, which may then be confused by conducting the prohibited arrest of the judicial officer if the crime is not in a state of flagrante delicto, and if the court was satisfied within the limits of its discretion that summoning the appellant was not accompanied by coercion detracts from his freedom, its refusal to plead nullity of arrest and to ask the appellant about the record of

---

([62]) Appeal No. 119 of 47 s issued at the session of May 15, 1977 and published in the first part of the Technical Office letter No. 28 page No. 591 rule No. 125, Appeal No. 1955 of 30 s issued at the session of February 6, 1961 and published in the first part of the Technical Office letter No. 12 page No. 170 rule No. 26..

([63]) Articles 32 and 33 of the Criminal Procedure Code.

collecting the evidence and the investigation of the Public Prosecution and what resulted in his acknowledgment of committing the crime is valid, which does not preclude the error of law[64].

Fifth: Seizure and Subpoena

Article 35 of the Criminal Procedure Law stipulates that: "If the accused is not present in the cases described in the previous article, the judicial officer may issue an order to seize and bring him, and this shall be mentioned in the record.

Or in cases other than those specified in the previous article, if there is sufficient evidence that a person has been accused of committing a felony or misdemeanor of theft, fraud, or severe assault and resistance to the men of public authority by force and violence, the judicial officer may take the appropriate precautionary measures and immediately request the Public Prosecution to issue an arrest warrant against him.

In all cases, the orders of seizure, habeas corpus and precautionary measures shall be executed by one of the bailiffs or by the men of the public authority. "

It is clear from the text of Article 35 of the Criminal Procedure Law that if the accused is not present in cases of flagrante delicto or misdemeanors punishable by imprisonment for a period of more than three months, the judicial officer may issue an order to arrest and bring him, and this shall be mentioned in the record.

In addition, in cases other than cases of flagrante delicto that are punishable by imprisonment for a period exceeding three months, the judicial officer may take appropriate precautionary measures and immediately request the Public Prosecution to issue an arrest warrant against any person who has sufficient evidence to charge him with a felony or misdemeanor of theft, fraud, severe assault, and resistance to the men of public authority by force and violence. In all cases, the orders of arrest, habeas corpus, and precautionary measures shall be executed by one of the bailiffs or by the men of public authority.

However, this order must be executed within six months from the date of its issuance, unless approved by the judicial seizure officer for another period, as the second paragraph of Article 139 of the Criminal Procedure Law stipulates that: "Seizure and habeas corpus orders and detention orders may not be executed after the lapse of six months from the date of their issuance unless approved by the investigating judge for another period." As this provision is mentioned with regard to seizure and habeas corpus orders issued by the investigating judge, it applies a fortiori to the judicial seizure officer.

The reservation means placing the person at the disposal of the judicial officer until the matter of requesting his arrest is decided by the Public Prosecution.

In this regard, Article 35 of the Code of Criminal Procedure stipulates that: "If the accused is not present in the cases indicated in the previous article, the judicial officer may issue an order to seize and bring him, and this shall be mentioned in the record.

Or in cases other than those indicated in the previous article, if there is sufficient evidence that a person has been accused of committing a felony or a misdemeanor of theft, fraud, or severe assault and resistance to the men of public authority by force and violence, the judicial officer may take appropriate precautionary measures, and immediately request the Public Prosecution to issue an arrest warrant against him

In all cases, the orders of seizure, habeas corpus and precautionary measures shall be executed by one of the bailiffs or by the men of the public authority[65].

([64]) Appeal No. 2819 of 57 S issued on January 7, 1988 and published in the first part of the book of the Technical Office No. 39 page No. 90 rule No. 8.

The Constitution stipulates that no one may be arrested, searched, his freedom restricted in any way, or prevented from moving except by order of the competent judge or the Public Prosecution [66].

The Constitution also restricted the power of the judicial police to arrest and search and required the determination of the period of pretrial detention and its causes, and the cases of entitlement to compensation that the state is obligated to pay for pretrial detention, or for the implementation of a sentence for which a final judgment was issued to annul the judgment executed under it, and thus it is not permissible to issue a pretrial detention order at all without time limit [67].

Article 34 of the Code of Criminal Procedure allows the judicial officer to order the arrest of the accused present in felonies in general without requiring that the crime be in flagrante delicto and allows this arrest in cases of flagrante delicto, whatever the punishment prescribed for it, as well as if the crime is a misdemeanor punishable by imprisonment, or the accused is under police surveillance, or he has been issued a warning as a vagrant or a suspect, or he does not have a fixed and known place of residence in Egypt, and finally in some specific misdemeanors stipulated in it.

Whereas Article 35 of criminal procedures law allows the judicial officer to order the arrest and bringing of the accused if the accused is not present, in the cases indicated in Article 34, which is the case of flagrante delicto or misdemeanors punishable by imprisonment for a period exceeding three months, to order the arrest of the present accused, for whom there is sufficient evidence to charge him.

If the text of Article 35 of the Criminal Procedure Law is to limit the crimes in which the judicial police officer may take the appropriate precautionary measures, which is to accuse a person of committing a felony or a misdemeanor of theft, fraud, or severe assault and to resist the men of public authority by force and violence, the first paragraph of Article 40 of the Anti-Terrorism Law added to these crimes the case of the existence of a danger from the dangers of the crime of terrorism, and limited the period of detention of the perpetrator of that crime to not more than twenty-four hours, stipulating that: "The judicial police officer, when there is a danger from the dangers of the crime of terrorism and the need to confront this danger, has the right to collect evidence about it, search for its perpetrators, and detain them for a period not exceeding twenty-four hours."

Precautionary measures are preventive actions undertaken by a judicial officer in cases where there is reasonable suspicion that a person should be arrested, pending the issuance of an order from the Public Prosecution. Such measures do not constitute an arrest and, therefore, are not subject to the legal provisions governing arrests. Furthermore, these measures do not grant the judicial officer the authority to search the individual, except for a preventive search to remove weapons or other potentially dangerous items they may possess.

According to Article 35 of the Code of Criminal Procedure, outside cases of flagrante delicto, if sufficient evidence exists to charge a person with committing a felony or a misdemeanor such as theft, fraud, severe assault, or resisting public authority with force and violence, the judicial officer may take appropriate precautionary measures and immediately request the Public Prosecution to issue an arrest warrant. Precautionary measures must be executed by a bailiff or law enforcement personnel.

It is clear from this that, outside cases of flagrante delicto, the application of precautionary measures by a bailiff or law enforcement personnel requires sufficient evidence that the

---

([65]) Article 35 of Law No. 150 of 1950 - on the issuance of the Code of Criminal Procedure.
([66]) The first paragraph of Article 54 of the Constitution.
([67]) Paragraph 5 of Article 54 of the Constitution..

individual has committed a felony or a misdemeanor such as theft, fraud, severe assault, or resisting public authority with force and violence.

A judicial officer has the authority to arrest a present suspect if sufficient evidence indicates their involvement, without requiring an order from the investigative authority. The assessment of such evidence and its adequacy is initially at the discretion of the judicial officer, but this discretion is subject to review by investigative authorities and the competent court[68].

The Court of Cassation also ruled that it is not in the mere manifestations of confusion and confusion of the person, no matter how old they are, that provides sufficient evidence of his accusation of the flagrante delicto crime and then allows his arrest and search, and therefore the arrest and search that occurred on the appellant without a judicial order has occurred in a state other than flagrante delicto, and without sufficient evidence of his accusation of the crime, and therefore what happened to him is an explicit arrest that is not justified and has no basis in law [69].

The Court of Cassation also ruled that the judicial police officer shall not, with regard to Article 66 of the Traffic Law, be subjected to the personal freedom of the driver of the vehicle, or order the examination of his condition by technical means except in the event of flagrante delicto, considering that flagrante delicto is a condition inherent in the crime and not the person of the perpetrator, and that the judicial police officer must be aware, in one of his senses, of the occurrence of the crime in a manner that is intolerable of doubt or interpretation. The judicial police officer did not realize, in any of his senses, that the appellant's condition of driving the vehicle was under the influence of an anesthetic, so he is not in front of a crime in flagrante delicto, and the first witness's testimony does not count as the appellant has voluntarily complied to take the sample; as the legally approved consent must be free and obtained from him before taking the sample, and after knowing the circumstances of taking the sample and after there is no justification authorizing the appellant to take it. Whereas the invalidity of the arrest and the taking of the sample is legally required not to rely in the conviction on any evidence derived from them, and therefore the testimony of the person who carried out this invalid procedure is not considered [70].

The Court of Cassation ruled that it is legally established that the availability of the case of flagrante delicto is subject to the discretion of the trial court. It is legally sufficient to say that in the case of flagrante delicto exists that there are external manifestations that predict the occurrence of the crime. Therefore, it is not required in the case of flagrante delicto that the person who witnessed these manifestations has found out what the material he witnessed and was arrested for the truth of its matter. The identification of its truth is only based on the investigations conducted in the case, and if there are external manifestations that predict the commission of a specific crime by a person, this requires the custodians to contact him to clarify a case, which is required by the nature of their functions and requirements. The occurrence of the case of flagrante delicto with the crime of drug acquisition allows the arresting officers who witnessed it to arrest without an order from the prosecution all those who have evidence of his

---

([68]) Appeal No. 78 of 25 s issued at the session of April 4, 1955 and published in the third part of the technical office book No. 6 page No. 735 rule No. 239, Appeal No. 84 of 23 s issued at the session of March 30, 1953 and published in the second part of the technical office book No. 4 page No. 672 rule No. 243.

([69]) Appeal No. 30689 of 71 s issued at the session of 13 October 2008 and published in the letter of the Technical Office No. 59 page No. 420 rule No. 77, Appeal No. 4371 of 70 s issued at the session of 9 March 2008 (unpublished).

([70]) Appeal No. 19177 of 86 S issued at the session of September 5, 2018; The facts of this case were that during the initiation of Captain/.. ... The officer in the Traffic Department.. ... His duties in the company of the chemist/.. ... To monitor the application of the provisions of the Traffic Law, and during the examination of driving licenses for the car.. ... My angel … It was found that the driver of the car does not have a driver's license, and in case of imbalance and poor concentration, he voluntarily responded to provide a urine sample, and the head of the analysis committee decided to accompany the sample positive for cannabis, and in the face of the accused, he admitted to using cannabis.

contribution to it, whether he is a principal or a partner, to inspect it, and the judicial officer under the judicial authority authorized by Articles 34/1, 46 of the Criminal Procedure Law to arrest the present accused who has sufficient evidence to be charged with the felony of drug acquisition, and to search him without the need for an order from the investigation authority It is also established in the correctness of the law that flagrante delicto is a condition that accompanies the crime itself and not its perpetrator, and that the establishment of the state of flagrante delicto allows the arrest of all those who contributed to its commission and allows its search, and that it is established that the state of flagrante delicto requires that the judicial officer verify that the crime has been watched by himself or is aware of it with one of his senses, and it does not dispense with that receiving its news through transportation from others, whether a witness or an accused person acknowledging himself, as long as he did not witness it or witness one of its effects that predicts its occurrence [71].

It ruled that it is sufficient for the state of flagrante delicto to have external manifestations that predict the occurrence of the crime, and it is not required in flagrante delicto to achieve the drug that those who witnessed these manifestations have shown what the material they saw, but it is enough to achieve these external manifestations with any sense of the senses, equal to that sense of smell or sense of sight [72].

It also ruled that the sight of the incident officer of the accused fleeing the ambush by turning back as soon as he saw them opposite to the direction of the road, he stopped him and the accused did not present any licenses, so he searched his person and the car. He found under the front seat a large piece of the substance of the narcotic hashish. This does not show that the judicial officer showed the essence of the narcotic, which he decided that the appellant was a guardian of him or that he realized it with any of his senses, in a way that does not indicate the availability of sufficient evidence or external manifestations that predict the occurrence of the crime and the state of flagrante delicto that allows the judicial officer to arrest and search. Whereas the arrest of the appellant has occurred in a state other than flagrante delicto and without sufficient evidence of the validity of his accusation [73].

It also ruled that the statement of the judgment - the appellant - in the course of his statement of the incident of the case and in his response to the plea of nullity of arrest and search that what the judicial officer raised from the arrest of the accused for merely informing the first witness of the evidence to him of the offer of the accused - the appellant - a counterfeit financial paper and his rejection of it without indicating the nature of this paper and the failure of the judicial officer to view it before the arrest and search of the appellant is a false arrest and search because they are not in a state of flagrante delicto and without permission from the Public Prosecution, and the contested judgment violated this consideration and justified the judicial officer to arrest and

---

([71]) Appeal No. 2410 of 86 S issued on March 24, 2018 (unpublished).

([72]) Appeal No. 32528 of 84 S issued at the 9th session of February 2017 (unpublished).

The Court of Cassation ruled that: [Whereas the court was satisfied with the testimony of the First Lieutenant............ That he smelled the cannabis drug emanating from a hookah that was held by one of the defendants convicted in absentia and the appellant was babysitting them enough for the availability of external manifestations that predict the occurrence of the crime of acquiring narcotic substances] Appeal No. 9166 of 65 S issued at the hearing of July 6, 1997 and published in the first part of the Technical Office's book No. 48 page No. 749 rule No. 114.

It also ruled that: [Whereas it is established from the records of the contested judgment that the appellant did not dispute that the officer presented .... He did not arrest the appellant until after he saw him seeing the eye as soon as he took the amount of the bribe from the second witness and planted it in his pocket, which is considered a crime in a state of flagrante delicto that allows the officer to arrest and search him without permission from the Public Prosecution in this regard, there is no point in what the appellant raises by imposing his health in connection with the invalidity of a permit from the Public Prosecution to arrest and search him for lack of seriousness of investigations] Appeal No. 3708 of 65 BC issued at the session of 25 May 1997 and published in the first part of the Technical Office's book No. 48 page No. 642 rule No. 96..

([73]) Appeal No. 26133 of 86 S issued at the session of February 28, 2017 (unpublished), Appeal No. 44777 of 76 S issued at the session of November 25, 2010 and published in the book of the Technical Office No. 61 page No. 651 rule No. 84.

search the appellant and rely on the evidence derived from the statements of the two officers, it is wrongly flawed in the application of the law in a way that requires its reversal[74].

It also ruled that the mere observation of the judicial officer of the accused (the appellant) holding a carton in his hand and showing signs of suspicion and suspicion is not sufficient to establish the state of flagrante delicto as long as he did not witness one of its effects that foretells its occurrence before the arrest was made, and what the judgment stated - according to the above context - was that the appellant was present inside a subway station.... As an establishment of vital importance, it has been implicitly accepted by the judicial officer - in order to be cautious and cautious - to search him administratively simply for holding a carton in his hand and showing signs of suspicion and suspicion, which is not true in the law, because it is established in the judiciary of this court that it is not from the mere manifestations of confusion and confusion, no matter how much it provides sufficient evidence to accuse him of the flagrante delicto crime and then allows his arrest and search. Whereas, the arrest of the appellant has occurred in a state other than flagrante delicto, and therefore what happened to him is a false arrest, and if the contested judgment violated this consideration and the validity of this procedure was ruled, it is wrongly flawed in the application of the law in a way that requires its reversal[75].

It ruled that while the assessment of the circumstances surrounding the crime at the time of its commission and its adequacy for the occurrence of flagrante delicto is up to the trial court, this is conditional on the reasons and considerations on which the court bases its assessment being valid to lead to its conclusion. The image of the incident - as obtained by the contested judgment in its aforementioned blogs - did not indicate that the crime of acquiring the drug that the appellant was convicted of was in one of the cases of flagrante delicto described exclusively in Article 30 of the Code of Criminal Procedure. On the other hand, it is not true in the law what the contested judgment stated as evidence of sufficient evidence of the existence of an accusation that justifies the arrest and search of the appellant that the manifestations of confusion have occurred as soon as he saw the officer stop the car he was riding in to examine its licenses, because it is decided in the judiciary of this court that it is not in the mere manifestations of confusion and confusion of the person, no matter how much it provides sufficient evidence that he is accused of the flagrant crime and then allows his arrest and search. Also, what the judgment quoted from the officer that the appellant voluntarily opened the carton containing the drug does not achieve the meaning of consent to the inspection, as what the officer described as voluntarily is in fact the obedience of the appellant to his order to open the carton and does not achieve the meaning of consent considered in the law. Whereas, the arrest and search that occurred on the appellant without a judicial order has occurred in a state other than flagrante delicto and without sufficient evidence to charge him with the crime, and therefore what occurred against him is an explicit arrest that is not justified and has no basis in law. If the contested judgment violated this consideration and what he stated was a justification for dismissing the plea of nullity of the arrest and search procedures is not in accordance with the law and does not lead to what he arranged, it is wrongly defective in the application of the law[76].

It ruled that any restriction on personal freedom as a natural human right, equal to the restriction of arrest, search, detention, prohibition of movement or otherwise, may be made only in cases

---

([74]) Appeal No. 18565 of 84 S issued at the session of April 11, 2016 and published in the book of the Technical Office No. 67 page No. 433 rule No. 50.

([75]) Appeal No. 11501 for the year 83 S issued in the session of February 2, 2014 and published in the letter of the Technical Office No. 65 page No. 42 rule No. 4.

([76]) Appeal No. 21782 of 74 S issued at the hearing of 16 October 2012 and published in the letter of the Technical Office No. 63 page No. 511 rule No. 87..

of flagrante delicto as defined by law, or with the permission of the competent judicial authorities, and the Constitution is the supreme positive law, which has precedence over the legislation below it, which must be subject to its provisions, and if it contradicts These and other provisions of the Constitution must be complied with and wasted, equal to the fact that the conflict was prior or subsequent to the implementation of the Constitution. Articles 34 and 35 of the Code of Criminal Procedure, as amended by Law No. 37 of 1972, allowed the judicial police officer in cases of flagrante delicto punishable by imprisonment for a period of more than three months to arrest the accused present who has sufficient evidence to charge him with the crime. If he is not present, the judicial police officer may issue a warrant to arrest him and bring him. Article 46 of the same law allows the search of the accused in cases where he may be legally arrested. If the person may be arrested, he may be searched, and if he is not allowed to be arrested, he shall not be searched and the results of the false arrest and search shall be null and void, and it is established in the judiciary of this court that the state of flagrante delicto requires that the judicial officer verify that the crime has been witnessed by himself or that he is aware of it with one of his senses, and it is not indispensable to receive its news through narration or transmission from others, whether a witness or an accused person who confesses to himself, as long as he has not witnessed it or witnessed a self-evident trace of its effects. While the assessment of the circumstances surrounding the crime at the time of its commission or after its commission, and the assessment of its adequacy for the occurrence of flagrante delicto, is entrusted to the discretion of the trial court without comment, but this is conditional on the fact that the reasons and considerations on which the court based this assessment, are valid to lead to the result it reached when it was, and it was clear from what the judgment stated in the foregoing narrative that the second witness of evidence initiated the search of the appellants' car after he suspected the validity of its metal plate numbers, so he found a mobile phone under the spare tire of the car, and it was not clear what it contained. A drug only after it was dispersed to him, and therefore he was not in front of a crime in flagrante delicto, and therefore he was not entitled to subject the appellants to arrest or search or search the car they were traveling in without justification, but that he did, his action is illegal and involves deviation of authority, because although the judicial officer has the right to verify that cars on public roads do not violate the provisions of the Traffic Law, and in initiating this procedure, he performs the administrative role authorized by the law, except This is conditional on taking into account the controls of legitimacy prescribed for administrative work. He must target the public interest, have a basis in the law, abide by the limits necessary to achieve the purpose of the legislator by granting him this authority, and abide by the constitutional and legal rules in its exercise. Otherwise, his work is described as illegitimate and deviant by the authorities. In addition, the judgment did not invoke the link between what the first prosecution witness said when he saw the appellants parked on the side of the road late at night and did not provide him with proof of their identity and license of the car, and the inspection conducted by the second prosecution witness, and he did not indicate either Whether the foregoing facts constitute a crime of misdemeanors in which the appellants may be arrested and then searched and their car searched accordingly or not, and what is supported by the judgment in the scope of the plea of nullity of the arrest and search procedures is that the appellants admitted in the record of the seizure and the investigation of the Public Prosecution of their possession of the seized narcotic substances, is not valid in response to the payment, because that acknowledgment is a new element in the lawsuit subsequent to the proceedings motivated by its nullity, it is not correct to take evidence of its validity when that was, the arrest and search of the appellants and their car - without obtaining a judicial order - is according to the image of the incident that the contested judgment obtained in its blogs in a state other than flagrant misdemption of the crime that they were convicted of or the availability of sufficient evidence to charge them, and without clarifying whether the appellants had committed a misdemeanor, which allowed the arrest and search, and what the judgment stated was justification of the nullity of the arrest and search procedures

as well as its deficiency does not comply with the law and does not lead to it, but it is wrong in the application of the law[77].

The Court of Cassation also ruled that the mere fact that the appellant is from the family of the defendants wanted for arrest in a felony of murder and confused by what the men of the force and his conduct saw when the officer called him - assuming the validity of what the witnesses say in this regard - that it is permissible for the officer to arrest him, it is not considered sufficient evidence to charge him with a felony that justifies his arrest and search, and therefore the judgment, by ruling the validity of the arrest and search, has erred in the application of the law in a way that must be reversed[78].

It also ruled that watching the accused in the middle of the night carrying something and as soon as he saw the police car slowing down until he was locked back running, and that he took off his shoes to make it easier for him to run, sufficient evidence was available to justify his arrest in accordance with the law [79].

Handing over the accused to the nearest men of public authority without the need for an arrest warrant

Article 37 of the Code of Criminal Procedure stipulates that: "Whoever witnesses the perpetrator in flagrante delicto or a misdemeanor in which it is legally permissible to detain him on remand may hand him over to the nearest men of public authority without the need for an arrest warrant."

Article 38 of the Code of Criminal Procedure also stipulates that: "In the case of flagrante delicto, in which imprisonment may be imposed, the men of the public authority may bring the accused and hand him over to the nearest judicial officer.

They may also do so in other flagrante delicto crimes if the identity of the accused cannot be known.

It is clear from this that Articles 37 and 38 of the Criminal Procedure Law allow non-judicial officers of individual people or men of the public authority to hand over and bring the accused to the nearest officer for judicial control in felonies or misdemeanors in which preventive detention or imprisonment is permissible, as the case may be, whenever the felony or misdemeanor is in a state of dress. This authority requires - in the foregoing context - that individual people or men of the public authority have custody of the accused or the body of the crime that he witnessed with him or what contains this body, considering that such action is necessary and necessary to carry out the procedure established by law, in order to hand him over to the judicial officer[80].

([77]) Appeal No. 18645 of 72 S issued at the session of November 8, 2009 and published in the book of the Technical Office No. 60 page No. 420 rule No. 57.

([78]) Appeal No. 1763 of 28 S issued on January 27, 1959 and published in the first part of the Technical Office's letter No. 10, page No. 112, rule No. 25.

([79]) Appeal No. 1347 of 28 BC issued at the session of December 29, 1959 and published in the third part of the book of the Technical Office No. 9 page No. 1122 rule No. 272.

([80]) Appeal No. 4745 of 88 s issued at the 4th session of November 2018 (unpublished), Appeal No. 29358 of 86 s issued at the 14th session of January 2017 (unpublished), Appeal No. 20351 of 85 s issued at the 7th session of December 2016 and published in the Technical Office letter No. 67, page No. 872, rule No. 107, Appeal No. 2470 of 85 s issued at the 9th session of March 2016 and published in the Technical Office letter No. 67, page No. 302, rule No. 38, Appeal No. 645 of 85 s issued at the 14th session of December 2015 and published in the Technical Office letter No. 66, page No. 868, rule No. 129, Appeal No. 31660 of 84 s issued at the 10th session of November 2015 and published in the Technical Office letter No. 66, page No. 745, rule No. 114, Appeal No. 31330 of 83 s issued at the 5th session of May 2015 (unpublished), Appeal No. 27735 of 72 s issued at the 8th session of December 2003 and published in the Technical Office book No. 54, page No. 1184, rule No. 167.

It ruled that: [Articles 37 and 38 of the Criminal Procedure Law allow a person other than the judicial police officer, whether a member of the public or a member of the public authority, to hand over and bring the accused to the nearest judicial police officer in felonies or misdemeanors in which pre-trial detention or imprisonment is permissible, as the case may be, when the

It is established that the jurisdiction of judicial officers is limited to the bodies in which they perform their functions in accordance with Article 23 of the Code of Criminal Procedure. If the officer falls outside his jurisdiction, he does not lose the authority of his job, but at least he is considered to be one of the men of public authority referred to by the street in Article 38 of the Code of Criminal Procedure. All that the law gives in accordance with Article 38 of the Code of Criminal Procedure to men of public authority in flagrante delicto, in which it is permissible to

---

felony or misdemeanor is in a state of dress. This authority requires - in the foregoing context - that individual people or men have the public authority to seize the accused and the body of the crime he witnessed with him or what contains this body. Considering that such action is necessary and necessary to carry out that authority in the manner prescribed by the law in order to hand it over to the judicial officer, and if that is so, and what the first witness did with the help of the parents as individuals of the people, from the seizure of the appellant and the other convict and the counterfeit securities, until the judicial officer came and informed him of what happened from them, the law is no more than a mere material exposure required by their duty to seize the accused and the body of the crime, after they witnessed the felony of attempting to promote counterfeit currency in a state of weariness revealed by the examination of a witness The first proof of this paper, which was paid for circulation by the appellant and the other convict, and it was sufficient for the case of flagrante delicto that there were external manifestations that foresee the occurrence of the crime, and it was established from the codes of the judgment that it ended up with this case, based on what he mentioned in this regard - as mentioned above - of justifiable elements that the appellant does not mind that they have their own piece of paper, and the assessment of the circumstances that clothed the crime and surrounded it at the time of its commission or after its commission and the assessment of its adequacy for the occurrence of the case of flagrante delicto is entrusted to the trial court without comment as long as the reasons and considerations on which this report was based are valid to lead to the result it reached, and the contested judgment had ended correctly - as mentioned above - to refuse to plead nullity of arrest and search, the obiteration of the judgment in this regard is irrelevant] Appeal No. 12519 of 87 Q issued at the session of October 8, 2019 (unpubliterated)

It ruled that: [Articles 37 and 38 of the Code of Criminal Procedure allow non-judicial officers of individual people or men of the public authority to hand over and bring the accused to the nearest judicial officer for judicial control in felonies or misdemeanors in which preventive detention or imprisonment is permissible, as the case may be, whenever the felony or misdemeanor is in a state of dress. This authority requires - in the foregoing context - that individual people or men of the public authority have the custody of the accused and the body of the crime that he saw with him or what contains this body, considering that such action is necessary and necessary to carry out the procedure based on the law, in order to hand him over to the judicial officer. Whereas, and what he did was the first and second witnesses of evidence that they had seen the defendants in possession of a firearm, a stick and a stone thrower, so they seized them and handed them over to the judicial officer, this is only - in the correctness of the law - a mere material exposure required by their duty to detain the defendants after they witnessed the crime in flagrante delicto] Appeal No. 43399 of 85 s issued at the session of January 23, 2018 (unpublished).

On the other hand, the Court of Cassation ruled that: [It is clear from the records of the contested judgment that a person came to the secret policeman holding the contested against him by saying that he stole it two days ago. The secret policeman took the contested against him - after taking his card - to the police station, and this was proven by the judgment, but it states that the secret policeman has already arrested the contested against him, as the arrest of the human being means restricting his freedom and exposure to him by arresting and detaining him, even for a short period in preparation for taking some measures against him. The law had prohibited the arrest of any human being except with his permission or with the permission of the competent investigating authority, and it was not permissible for such a police officer - who is not a judicial officer - to initiate this procedure, and all that the law authorized him - as a man of public authority - to bring the perpetrator - in the flagrant crimes - by applying the provisions of Articles 37, 38 of the Criminal Procedure Law and handing him over to the nearest officer of the judicial police officer and not to make a arrest in a manner similar to what he did in the incident of the lawsuit. [Appeal No. 30455 of 69 S issued on December 6, 2007 and published in the letter of the Technical Office No. 58 page No. 779 rule No. 146.

It ruled that: [Arresting a person means restricting his freedom and subjecting him to arrest and detention, even for a short period, in preparation for taking some measures against him. Searching a person means searching and excavating his body and clothes with the intention of finding the thing to be seized. The law prohibits the arrest or search of any person except with his permission or with the permission of the competent investigating authority. It is not permissible for a policeman - who is not a judicial police officer - to initiate either of these two procedures, and all that the law authorizes him, as a man of the public authority, to bring the perpetrator in flagrante delicto crimes - in application of the provisions of articles 37 and 38 of the Criminal Procedure Law - and hand him over to the nearest judicial police officer, and he is not entitled to conduct a arrest or search. Since the constant in the judgment indicates that the appellant was arrested only because the police officer suspected him of doing so, his arrest and search were invalid. [Appeal No. 405 of 36 S issued at the hearing of May 16, 1966 and published in the second part of the Technical Office's letter No. 17 page No. 613 rule No. 110..

sentence to imprisonment, is to bring the accused and hand him over to the nearest judicial officer without giving them the right to arrest or search him [81].

However, this procedure does not allow the men of the public authority or individual people to search the accused. If the law has prohibited the arrest or search of any person except with his permission or with the permission of the competent investigation authority, it is established that articles 37 and 38 of the Criminal Procedure Law allow non-commissioned officers from individual people or from the men of the public authority to hand over and bring the accused to the nearest commissioner for judicial arrest in felonies and misdemeanors in which it is permissible to detain or detain, as the case may be, when the felony or misdemeanor is in flagrante delicto. It is a procedure equivalent to detaining the accused for what was seen with him in order to hand him over to the judicial officer - that is, mere physical exposure to what is required by his duty to detain the accused and the body of the crime on the basis of the theory of procedural necessity. Non-commissioned officer may make an arrest or search as he did in the incident of the case. Whereas, the conclusion of the judgment - as mentioned above - to consider the validity of an individual inspection of the security of the headquarters of the Council of State - which are not judicial officers - of the appellant implies an error in the application of the law; because this inspection is null and void [82].

Sixth: Search and Confiscation of Items Related to the Crime

1- General Provisions on Search

Search is an investigative procedure aimed at confiscating evidence related to the crime under investigation and any material useful in uncovering the truth, to establish the occurrence of the crime or link it to the suspect. It may be conducted on the person of the suspect and their residence, and it may extend to other individuals and their residences under the conditions and regulations specified by law[83].

2- Cases Permitting Search

A judicial officer may search the suspect in cases where the law allows for their arrest [84].

Whenever it is permissible to arrest the accused, the judicial officer may search him[85].

([81]) Appeal No. 2069 of 83 S issued at the session of January 6, 2014 and published in the letter of the Technical Office No. 65, page No. 23, rule No. 1, Appeal No. 10335 of 80 S issued at the session of January 1, 2011 (unpublished), Appeal No. 59283 of 73 S issued at the session of February 21, 2010 and published in the letter of the Technical Office No. 61, page No. 155, rule No. 23.

([82]) Appeal No. 20351 of 85 S issued at the 7th session of December 2016 and published in the letter of the Technical Office No. 67, page No. 872, rule No. 107, Appeal No. 44270 of 85 S issued at the 22nd session of October 2016 and published in the letter of the Technical Office No. 67, page No. 735, rule No. 94.

([83]) Article 311 of the Judicial Instructions of the Public Prosecution, refer to the above mentioned regarding the inspection in the first part of this manual, and we will mention in this part of the manual only the conditions of the inspection and the conditions of the search warrant as they are the competence of the investigators.

([84]) Paragraph 1 of Article 46 of the Criminal Procedure Law..

([85]) Appeal No. 13620 of 88 s issued at the session of January 2, 2021 (unpublished), Appeal No. 4324 of 88 s issued at the session of November 14, 2019 (unpublished), Appeal No. 2460 of 77 s issued at the session of December 10, 2015 and published in the Technical Office letter No. 66 page No. 848 rule No. 125, Appeal No. 15915 of 84 s issued at the session of January 12, 2015 and published in the Technical Office letter No. 66 page No. 144 rule No. 11, Appeal No. 18645 of 72 S issued at the session of November 8, 2009 and published in the Technical Office letter No. 60, page No. 420, rule No. 57, Appeal No. 16210 of 68 S issued at the session of January 3, 2008 and published in the Technical Office letter No. 59, page No. 33, rule No. 3, Appeal No. 9898 of 67 S issued at the session of November 16, 2005 and published in the Technical Office letter No. 56, page No. 568, rule No. 89, Appeal No. 995 of 62 S issued at the session of December 5, 2001 and published in the Office letter Technical No. 52 Page No. 952 Rule No. 183, Appeal No. 22557 of 61 S issued at the session of November 9, 1993 and published in the first part of the Technical Office's letter No. 44 Page No. 969 Rule No. 150, Appeal No. 19691 of 60 S issued at the session of March 19, 1992 and published in the first part of the Technical Office's letter No. 43 Page No. 310 Rule No. 42, Appeal No. 46438 of 59 S issued at the session of October 21, 1990 Published in the first part of Technical Office

Whenever an arrest of the suspect is lawful, the judicial officer is authorized to conduct a search. Consequently, if the arrest is lawful, the search conducted by the authorized officer is also lawful, regardless of the reason or purpose of the arrest. However, if the arrest is not permitted, neither is the search, and any findings resulting from an unlawful arrest or search are invalid[86].

Since flagrante delicto pertains to the crime itself and not the person committing it, it allows the judicial officer who witnesses the occurrence to arrest the suspect if sufficient evidence exists of their involvement and to search them without prior authorization from the Public Prosecution [87].

Preventive search is conducted to strip the arrested person of any weapons or tools they might use to resist arrest [88].

The legal basis for preventive search is its precautionary nature, which permits any law enforcement officer executing the search order to carry it out to prevent potential harm the suspect might inflict upon themselves or others. However, in the absence of legal grounds for arrest, the judicial officer is not authorized to perform a search as an investigative or precautionary measure [89].

Preventive search is an administrative and precautionary measure, distinct from judicial search. It does not require prior evidence or authorization from the investigative authority, nor does it

---

Letter No. 41 Page No. 922 Rule No. 161, Appeal No. 15033 of 59 S issued at the session of January 3, 1990 and published in the first part of Technical Office Letter No. 41 Page No. 41 Rule No. 4, Appeal No. 4064 of 56 S issued at the session of November 13, 1986 and published in the first part of Technical Office Letter No. 37 Page No. 878 Rule No. 169, Appeal No. 3385 of 56 S issued at the session of October 15, 1986 and published in the first part of Technical Office Letter No. 37 Page No. 769 Rule No. 147, Appeal No. 2992 of 54 S issued at the session of February 5, 1985 and published in the first part of the Technical Office's book No. 36 Page No. 209 Rule No. 33, Appeal No. 954 of 47 S issued at the session of January 23, 1978 and published in the first part of the Technical Office's book No. 29 Page No. 83 Rule No. 15, Appeal No. 865 of 45 S issued at the session of June 8, 1975 and published in the first part of the Technical Office's book No. 26 Page No. 500 Rule No. 117, Appeal No. 1819 of 37 S issued at the session of December 11, 1967 and published in the third part of the Technical Office's book No. 18 Page No. 1242 Rule No. 263.

([86]) Appeal No. 5979 of 88 S issued at the session of November 21, 2018 (unpublished), Appeal No. 11530 of 86 S issued at the session of October 27, 2018 (unpublished), Appeal No. 17646 of 88 S issued at the session of July 22, 2019 (unpublished), Appeal No. 2410 of 86 S issued at the session of March 24, 2018 (unpublished), Appeal No. 208 of 85 S issued at the session of April 6, 2017 (unpublished), Appeal No. 5883 of 86 S issued at the 22nd session of December 2016 and published in Technical Office Letter No. 67 Page 922 Rule No. 115, Appeal No. 37197 of 85 S issued at the 1st session of June 2016 (unpublished), Appeal No. 18565 of 84 S issued at the 11th session of April 2016 and published in Technical Office Letter No. 67 Page No. 433 Rule No. 50, Appeal No. 645 of 85 S issued at the 14th session of December 2015 and published in Technical Office Letter No. 66 Page No. 868 Rule No. 129, Appeal No. 14935 of 83 S Issued at the hearing of 7 April 2014 (unpublished), Appeal No. 9405 of 80 S issued at the hearing of 27 July 2011 (unpublished), Appeal No. 11 of 81 S issued at the hearing of 7 June 2011 (unpublished), Appeal No. 8522 of 80 S issued at the hearing of 7 May 2011 and published in the book of the Technical Office No. 62 page No. 211 rule No. 36, Appeal No. 4994 of 80 S issued at the hearing of 19 April 2011 (unpublished), Appeal No. 6595 of 79 S issued at the 20 March 2011 session (unpublished), Appeal No. 9069 of 79 S issued at the 2 October 2010 session (unpublished), Appeal No. 61169 of 74 S issued at the 5 October 2008 session (unpublished), Appeal No. 19083 of 76 S issued at the 5 March 2007 session (unpublished), Appeal No. 51962 of 75 S issued at the 3 June 2006 session (unpublished), Appeal No. 995 of 62 S issued at the 5 December 2001 session and published in the Technical Office letter No. 52 Page No. 952 Rule No. 183, Appeal No. 23765 of 67 s issued at the hearing of January 17, 2000 (unpublished), Appeal No. 46438 of 59 s issued at the hearing of October 21, 1990 and published in Part I of Technical Office Letter No. 41 Page 922 Rule No. 161, Appeal No. 11971 of 59 s issued at the hearing of April 19, 1990 and published in Part I of Technical Office Letter No. 41 Page 640 Rule No. 110, Appeal No. 15033 of 59 s issued at the hearing of January 3, 1990 and published in Part I of Technical Office Letter No. 41 Page 41 Rule No. 4, Appeal No. 3385 of 56 s issued at the hearing of October 15, 1986 and published in Part I of Technical Office Letter No. 37 Page 769 Rule No. 147..

([87]) Appeal No. 5979 of 88 S issued on 21 November 2018 (unpublished).

([88]) Article 350 of the Judicial Instructions of the Public Prosecution.

([89]) Appeal No. 46823 of 85 S issued at the 9th session of December 2017 (unpublished), Appeal No. 6198 of 84 S issued at the 15th session of April 2017 (unpublished), Appeal No. 14778 of 84 S issued at the 4th session of December 2014 and published in the Technical Office's letter No. 65, page No. 910, rule No. 119, Appeal No. 4860 of 80 S issued at the 21st session of March 2011 (unpublished), Appeal No. 6205 of 79 S issued at the 17th session of March 2011 (unpublished), Appeal No. 37357 of 73 S issued at the 18th session of April 2010 (unpublished).

necessitate the judicial officer's capacity to conduct it. If this search yields evidence revealing a crime punishable under general law, such evidence may be admitted as a legitimate result of a lawful action, obtained without any violation[90].

It has been established that a person's consent to travel by air implies prior acceptance of the security protocols established by airports for the protection of aircraft and passengers from terrorism and international hijacking. If such protocols require the search of persons and luggage before boarding, the traveler's presence and search are based on their implied consent. In this context, the search is an administrative and precautionary measure, not to be conflated with judicial search. It does not require prior evidence or authorization from the investigative authority. If this search uncovers evidence of a crime punishable under general law, such evidence may be admitted as a legitimate result of a lawful action without any procedural violation[91].

A suspect's acceptance of air travel implies prior consent to the preventive security measures mandated by airports, which include searches aimed at protecting aircraft and passengers from terrorism and hijacking. Any crimes uncovered during such searches are thus lawfully admissible[92].

Officers at correctional facilities have the right to search any individual suspected of possessing prohibited items within the facility, whether the person is an inmate, staff member, or visitor. Correctional officers are authorized to search anyone suspected of carrying prohibited items within the facility [93].

The Court of Cassation ruled that: «If the appellant does not dispute being held in custody within the prison pending pretrial detention, they are subject to the prison's regulations and system. Article 41 of Law No. 396 of 1956 on the regulation of prisons states that: 'The prison officer has the right to search any person suspected of possessing prohibited items within the prison, whether they are inmates, staff, or others.' Based on this provision, the search of the appellant was a lawful exercise of authority granted by law, based solely on suspicion or doubt about their possession of prohibited items, which the ruling correctly inferred. Therefore, the appellant's challenge is without merit» [94].

The Court of Cassation also ruled that the text of Article 41 of the Prisons Regulation Law, which allows the search of any person suspected of possessing prohibited items inside the prison, does not differentiate between prisoners and others inside the prison [95].

([90]) Appeal No. 3867 of 78 S issued at the hearing of 14 April 2016 (unpublished), Appeal No. 4662 of 80 S issued at the hearing of 19 November 2011 (unpublished).

([91]) Appeal No. 49769 of 85 S issued at the 28th session of February 2017 (unpublished), Appeal No. 13703 of 84 S issued at the 6th session of May 2015 and published in the book of the Technical Office No. 66 page No. 437 rule No. 61.

([92]) Article 351 bis of the Judicial Instructions of the Public Prosecution.

([93]) Article 41 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 5 of 1972, and Article 349 of the Judicial Instructions of the Public Prosecution.

([94]) Appeal No. 20827 of 75S issued at the hearing of November 14, 2012, published in a technical office letter 63 page 696, rule No. 123.

([95]) It ruled that: [Since Article 41 of Decree-Law No. 396 of 1956 on the organization of prisons stipulates that "the prison officer has the right to search any person suspected of possessing prohibited objects inside the prison, whether prisoners, prison workers or others," and the appellant was uncontested that she was caught while inside the prison if she visited her brother, which allowed the prison officer who suspected her order to assign the second witness to search her in accordance with the aforementioned text, which does not differentiate between prisoners and others inside the prison, the outcome of the judgment of refusing to pay the invalidity of arrest and search is consistent and correct law and prevents the appellant in this regard is invalid] Appeal No. 10781 of 80 BC, issued at the 12th session of January 2011, published in a technical office letter No. 62, page 22, rule No. 5, and see also: Appeal No. 286 of 60BC, issued at the 14th session of March 1991, published in a technical office book Part I, page 510, rule No. 74.

The visitor may be prevented from visiting if he refuses to inspect, provided that this is recorded in the prison accident record [96].

The search of visitors to prisoners is an administrative precautionary measure and is not considered an investigative action aimed at obtaining evidence. Therefore, conducting such a search does not require sufficient evidence or prior authorization from the investigative authority, nor is it necessary for the person conducting the search to possess the capacity of a judicial officer. Furthermore, the consent of the visitor being searched is not required, nor is any positive act on the part of the person being searched; mere non-objection to the search, which constitutes a passive act, suffices.

In this regard, the Court of Cassation ruled that: "The law grants the prison officer the right to search anyone suspected of possessing prohibited items inside the prison, whether they are prisoners, prison staff, or others. This does not require the conditions for arrest and search regulated by the Code of Criminal Procedure to be fulfilled. It is sufficient for the prison officer to suspect that one of the individuals specified in the provision possesses prohibited items inside the prison for them to have the right to search.

The suspicion referred to in this context is a mental state within the officer's mind that reasonably suggests the likelihood of possession of prohibited items inside the prison, and the assessment of such suspicion is left to the discretion of the person conducting the search under the supervision of the trial court.

In light of this, and based on the circumstances as established by the contested judgment and reflected in the case documents, it appears that the search conducted by the witness of the incident on the respondent was aimed at uncovering the prohibited items the officer had learned the respondent was possessing within the prison section. Such a search does not violate the law, as it is one of the duties dictated by the nature of the officer's work to determine the nature of the prohibited items in the respondent's possession to prevent their use for self-harm or harm to others, which the prison regulations prohibit possessing.

In this context, the search is not considered a judicial search in the sense intended by the legislator as an investigative action aimed at obtaining evidence, which only the investigative authority can carry out or authorize in advance. Rather, it is an administrative precautionary measure that should not be confused with judicial search. Conducting such a search does not require sufficient evidence or prior authorization from the investigative authority, nor does it require the capacity of a judicial officer on the part of those conducting it. If such a search yields evidence revealing a crime punishable under general law, it is permissible to use this evidence, as it is the product of a lawful procedure, and no violation was committed in obtaining it."[97].

It also ruled that: «It is decided that the inspection of visitors to prisons in accordance with the text of Article 41 of Decree-Law No. 396 of 1956 is a precautionary administrative measure that should not be confused with the judicial inspection and does not require sufficient evidence or previous permission from the investigating authority and does not require the status of judicial control. If this inspection results in evidence that reveals a crime punishable under the common law, then this evidence can be cited as the fruit of a legitimate procedure in itself and has not

---

([96]) Article 38 of the bylaws of geographical reform centers, and Article 28 of the bylaws of military prisons.

([97]) Appeal No. 50968 of 85 issued at the session of February 24, 2018, and see also: Appeal No. 9977 of 78 S issued at the session of December 10, 2015, published in the book of the Technical Office 66 page 853 Rule No. 126, Appeal No. 3066 of 32S, issued at the session of February 4, 1963, and published in the book of the Technical Office 14 Part I, page 88, rule No. 19.

committed any violation in order to obtain it, what the appellant raises about the solitude of the second witness to search despite the fact that she is not a judicial officer is not valid"[98].

The Court of Cassation ruled that: «Since Article 41 of Decree-Law No. 396 of 1956 regarding the organization of prisons stipulates that: « The prison officer has the right to search any person suspected of possessing prohibited things inside the prison, whether he is a prisoner, prison worker or others ».. In the light of this provision, it is stated that the inspection of the appellant was a use of the right authorized by law for mere suspicion or suspicion of the appellant's possession of prohibited things, which the judgment did not err in extracting. It was decided that the availability or non-availability of the case of flagrante delicto is one of the substantive issues that the trial court is independent of without penalty as long as it has established its judiciary on justifiable reasons. What the judgment stated was evidence of the availability of the case of flagrante delicto in response to the appellant's plea that this case is not available and that the arrest and search are null and void is sufficient and justifiable in responding to the plea and in accordance with the correct law. What the appellant raises in this regard is resolved into an objective controversy that may not be raised before the Court of Cassation[99].

Suspicion means that it is a state of mind by the same officer, with which it is correct in the mind to say that there is a suspicion of possession of prohibited things inside the prison, and the assessment of the availability of that state is entrusted to the inspector under the supervision of the trial court. In this regard, the Court of Cassation ruled that: "The street granted prison officers the right to search those suspected of possessing prohibited things inside the prison, whether they are prisoners, prison workers, or others. This did not require the availability of arrest and search restrictions organized by the Criminal Procedure Code, but it is sufficient for the prison officer to suspect that one of the mentioned in the text possesses prohibited things inside the prison until it is proven that he has the right to search it. Whereas, the intended suspicion in this regard was a state of mind carried out by the same officer, it is correct in the mind to say that the suspicion of possession of prohibited things inside the prison and the estimate of this is entrusted to the searcher under the supervision of the trial court, and the contested judgment had proven that the search of the appellant took place inside the prison after the availability of signs that raised suspicion in the lieutenant colonel... The head of the investigation unit of the penal institution invited him to believe that the appellant, who is not imprisoned or prison staff, while entering to visit an inmate in the penal institution, heads directly to the visit area in an attempt to meet with those in charge of the guard so that she is not subject to inspection, so the corporal... assigned to search females to inspect them under the supervision of the aforementioned officer and based on his assignment to do so, the conclusion of the contested judgment of refusing to pay the nullity of the arrest and search shall be consistent and correct with the law, and the contention of the appellant in this regard shall be invalid [100].

The purpose of the inspection is to prevent the leakage of any contraband into prisons in implementation of the provisions of the laws regulating prisons. This purpose can only be verified by thorough self-inspection of the person subjected to the inspection and in the manner

---

([98]) Appeal No. 10781 of 80 S, issued at the session of January 12, 2011, published in the letter of the Technical Office No. 62, page 22, rule No. 5.

([99]) Appeal No. 43252 of 76 issued at the session of 5 June 2007, published in Technical Office Letter No. 56, page 440, rule No. 88, see also: Appeal No. 23129 of 59S, issued at the session of 5 March 1990, published in Technical Office Letter No. 41, Part I, page 473, rule No. 79.

([100]) Appeal No. 32698 of 86S issued at the hearing of December 1, 2018 (unpublished), Appeal No. 11259 of 86 S issued at the hearing of March 28, 2017 (unpublished), Appeal No. 29534 of 76S issued at the hearing of July 30, 2007, published in Technical Office Letter No. 58, page 489, rule No. 99, see also: Appeal No. 11347 of 60 S issued at the hearing of December 11, 1991, published in Technical Office Letter No. 42, Part II, page 1328, rule No. 183.

that the person conducting it believes that it achieves its intended purpose. The Court of Cassation ruled: «It is decided that there is no place for what the appellant raises that the inspection in his case is intended to be limited to just feeling the clothes from the outside only. This is an allocation of the meaning of the inspection - stipulated in Article 41 of Decree-Law No. 396 of 1956 regarding the organization of prisons - without provision and does not conform to the basis of its authorization, which is to verify that no contraband has leaked into prisons in implementation of the provisions of the laws regulating prisons, which can only be verified by careful self-inspecting of the person subjected to the inspection and how the person conducting it believes that it achieves its intended purpose»[101].

Shall be punished by imprisonment for a period of no less than one month and a fine of no less than one thousand pounds and no more than five thousand pounds or one of these two penalties, without prejudice to any more severe penalty, every person who enters or attempts to enter the reform center or one of the camps of the reform centers in any way whatsoever, contrary to the laws and regulations governing the reform centers [102].

The admission of visitors to the prison, within the framework of international conventions, depends on their consent to be searched. The visitor may withdraw his consent at any time after having previously approved it. The prison administration may prevent the visitor from entering if he refuses to be searched.

Visitor search procedures are prohibited to be humiliating, and body cavity searches, or child searches, should be avoided [103].

The Nelson Mandela Rules required that searches be conducted in a manner respectful of the inherent human dignity and privacy of the searched person, taking into account proportionality, legality and necessity [104].

The Nelson Mandela Rules also prohibited the use of intrusive search procedures, including strip searches and body cavity searches, except in cases of extreme necessity, when necessary in a place of privacy, carried out by health care professionals or, at a minimum, by personnel appropriately trained by medical professionals in accordance with hygiene, health and safety standards, and of the same sex as the person being searched.

The prison administration must keep records in which searches are restricted, especially nude searches, body cavity searches, and cell searches, and the reasons for the search, the identity of the searchers, and any results of the search are also recorded [105].

It is clear from the above that the Egyptian legislator, as well as international conventions, is subject to the entry of visitors to rehabilitation centers for the visit with their consent to be inspected. However, the Egyptian legislator did not require the visitor's consent to the inspection explicitly or the issuance of a positive act from him by agreeing to the inspection, but only his non-objection to the inspection. The Egyptian legislator also did not require the judicial control of the person conducting the inspection.

The Nelson Mandela Rules prohibit resorting to invasive search procedures, including strip searches and body cavity searches, except in cases of absolute necessity. When such a search becomes necessary, it must be conducted in a private setting by healthcare professionals or, at

---

([101]) Appeal No. 43252 of 76 S, issued at the session of June 5, 2007, and published in the letter of the Technical Office No. 58 page 440, rule No. 88.

([102]) Article 92 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015.

([103]) Rule No. 60 of the Nelson Mandela Rules.

([104]) Rule No. 50 of the Nelson Mandela Rules.

([105]) Rules Nos. 51, 52 of the Nelson Mandela Rules.

the very least, by staff who have received appropriate training from medical specialists, in accordance with hygiene, health, and safety standards. Furthermore, the individuals conducting the search must be of the same gender as the person being searched. The Nelson Mandela Rules also require prison administrations to maintain records documenting the search procedures, including the reasons for conducting the search, the identities of those performing it, and any findings resulting from the search.

Customs officers, who are granted judicial police authority under the law while performing their duties, have the right to search premises, individuals, and means of transport within the customs area or within the customs control zone if there are reasonable suspicions regarding goods, luggage, or possible smuggling involving those present in such areas. This authority is exercised without being subject to the constraints on arrest and search outlined in the Code of Criminal Procedure.

Suspicion arises when a mental state exists that reasonably indicates the likelihood of smuggling.

The Customs Law No. 66 of 1963 limited the right to conduct this special type of inspection to customs officials, and then the rest of the judicial officers in their arrest and inspection within the customs department remain subject to the general provisions prescribed in this regard in the Constitution and the Code of Criminal Procedure [106].

It is noted that within the Customs Department, if the Customs Law promulgated by Law No. 66 of 1963 stipulates in its article 26 that: "The customs officer has the right to inspect the places, goods and means of transport within the Customs Department and in the places and warehouses subject to the supervision of the Customs Department, and the Customs may take the measures it deems necessary to prevent smuggling within the Customs Department", it has been disclosed that the purpose of the inspection conducted by the Customs Department in accordance with the provisions of this article It is to prevent smuggling within the customs department and that it is a special inspection that does not comply with the restrictions of arrest and inspection regulated by the provisions of the Code of Criminal Procedure and the requirements of Article 41 of the Constitution to obtain a judicial order in the absence of flagrante delicto. The legislator did not require the capacity of a judicial officer in the customs officer who conducts the inspection. Therefore, the legislator limited the right to conduct the search - within the customs department - to customs officers alone without authorizing it to be carried out for those who assist them from the men of other authorities, as stipulated in Article 29 of the same law that: "Customs officers and those who assist them from the men of other authorities have the right to chase smuggled goods and they have the right to follow up This is when they leave the scope of customs control. They also have the right to inspect and inspect convoys passing through the desert when suspected of violating the provisions of the law. In these cases, they have the right to seize persons, goods, and means of transport and take them to the nearest customs branch. Whereas, the Customs Law has been devoid of a provision authorizing judicial officers other than customs officials to search within the customs department in the event of flagrante delicto and under the conditions stipulated in Article 46 of the Criminal Procedure Law except by a judicial order, and it was established that the person who searched the appellant and his car were officers other than customs officials without obtaining a judicial order and without a case of flagrante delicto, what happened to the appellant is an explicit arrest that is not justified and has no basis in law[107].

([106]) Article 347 of the Judicial Instructions of the Public Prosecution.

([107]) Appeal No. 12457 of 72 S issued at the session of 19 April 2009 and published in the letter of the Technical Office No. 60 page No. 223 rule No. 29, Appeal No. 15766 of 76 S issued at the session of 12 February 2007 and published in the letter of the Technical Office No. 58 page No. 151 rule No. 31

The representatives of the Ports and Lighthouses Authority (Central Administration for Maritime Inspection) and the experts regarding the implementation of the provisions of the Ship Safety Law promulgated by Law No. 232 of 1989 may have the right to enter any ship or marine unit in Egyptian territorial waters or any ship or Egyptian marine unit abroad to carry out inspections that fall within the limits of their competence, and they have the right to view all papers and documents related to the ship or marine unit [108].

The legislator mandates the search of every inmate upon their admission to a correctional and rehabilitation center. Any prohibited items, money, or valuables found in their possession are to be confiscated and either stored for return upon their release or handed over to a designated person of their choice, should they so wish. The money, clothing, and other items taken from the inmate at the time of admission must be recorded in the Inmate Belongings and Trusts Register with sufficient detail.

If the inmate has financial obligations to the government under the sentence issued against them, these obligations are to be fulfilled using any money found in their possession. Should the available funds be insufficient, and the inmate fails to meet these obligations after being notified, valuables may be sold by the public prosecution to fulfill the government's claims from the sale proceeds. However, the sale must cease once a sufficient amount is collected to cover the inmate's obligations.

If the funds obtained from the inmate, combined with the proceeds from the sale, are less than the financial obligations owed to the government, a minimum amount of one pound must be retained for the inmate and recorded as a credit in their trust account, with the remainder allocated to the government's account.

Should any funds remain after fulfilling these obligations, the remaining amount is credited to the inmate's trust account for their expenses as needed unless the inmate requests that it be handed over to a designated person or their legal guardian[109].

The judicial officer may search the person before placing him in the correctional center, in preparation for presenting him to the investigation authority, as a means of prevention and precaution against the evil of the arrested person, if he gives himself a request to escape, he may assault others with what he possesses of a weapon or the like [110].

The inspection conducted by the guard of the correctional center to him in search of what contraband he knew that it reached him while he was in court, which is a precautionary administrative measure that should not be mixed with judicial inspection and does not require sufficient evidence or previous permission from the investigating authority and does not require the status of judicial control in those who conduct it and the resulting evidence is considered a legitimate procedure that can be cited[111].

The Court of Cassation also ruled that: [Whereas, the contested judgment was submitted to plead the nullity of the arrest and search for the absence of flagrante delicto, and it responded

---

The Court of Cassation also ruled that the establishment of the electronic portal in the customs hall is subject to the inspection stipulated in the Constitution and the Criminal Procedure Law, not to the administrative inspection of the customs authorities, and that the manifestations of confusion and confusion, no matter how much they are reported, do not provide a case of flagrante delicto and do not allow arrest and search without a judicial order. Appeal No. 30689 for the year 71 S issued at the hearing of October 13, 2008 and published in the Technical Office's letter No. 59 page No. 420 rule No. 77.

([108]) Article 348 bis of the Judicial Instructions of the Public Prosecution.

([109]) Article 9 of the Law Regulating Correction and Community Rehabilitation Centers, Article 5 of Presidential Decree No. 82 of 1984, Articles 5, 6, 8, 9 of the Internal Regulations of Geographical Reform Centers, Articles 5, 6, 7 of the Internal Regulations of Military Prisons, and Article 1045 of the written, financial and administrative instructions of the Public Prosecution.

([110]) Article 351 of the Judicial Instructions of the Public Prosecution.

([111]) Article 353 of the Judicial Instructions of the Public Prosecution.

by saying: "Since it is about pleading the nullity of the arrest and search for the absence of a state of flagrante delicto, since the incident was as described by the court, the search conducted by the incident officer for the accused and he was imprisoned pending Case No. 920 of 2016 Misdemeanor of the passage of the second section of Hurghada was a search for contents or weapons for fear of being used to harm himself or others before being presented to the Public Prosecution, it is nothing more than an inspection in the sense that the street intended to be considered an act of investigation aimed at obtaining evidence from the conviction and is owned only by the investigating authority or with its permission, but it is a precautionary administrative measure and should not be mixed with judicial inspection.... What the Secretary of Police conducted for the accused is a correct inspection. If it results in the seizure of the seized drug, it is the result of a legitimate procedure and the payment is misplaced and the court pays attention to it. "This is what the judgment stated is sufficient in response to the payment The inspection is null and void and coincides with the correctness of the law, as the inspection in the privacy of this lawsuit is necessary in order to uncover the contraband that may be in his possession for fear of being used to harm himself or others, and which the prison regulations prohibit it from being carried out. As such, it is an inspection in the sense that the street intended to be considered an act of investigation aimed at obtaining evidence that is only possessed by the investigating authority or with its prior permission, but it is a precautionary administrative measure that should not be mixed with the judicial inspection and does not require sufficient evidence or prior permission from the investigating authority, and the judicial seizure of those who carry it out is not necessary. If this inspection results in evidence that reveals a crime punishable under public law, it is correct to cite this evidence as it is the fruit of a legitimate procedure in itself and no violation was committed in order to obtain it. The appellant in this regard is not valid"[112] .

On the other hand, the Nelson Mandela Rules required that the laws and regulations governing the procedures for inspecting prisoners and cells be consistent with the obligations imposed by international law and with international standards and norms.

The search shall be conducted in a manner respectful of the inherent human dignity and privacy of the person being searched, taking into account proportionality, legality and necessity [113].

It is prohibited to use a search to harass, intimidate, or unnecessarily intrude on a prisoner's privacy.

The Nelson Mandela Rules also prohibited the use of intrusive search procedures, including searches of the naked body and body cavities, except in cases of extreme necessity, provided that such search is carried out - when necessary - in a place of privacy, and that it is carried out by health care professionals or, as a minimum, by appropriately trained medical personnel in accordance with hygiene, health and safety standards, provided that they are of the same sex as the prisoner subject to the search.

Prison administrations should be encouraged to develop and use appropriate alternatives to that type of inspection.

The prison administration must keep records in which searches are restricted, especially nude searches, body cavity searches, and cell searches, and the reasons for the search, the identity of the searchers, and any results of the search are also recorded [114].

The Bangkok Rules required that effective measures be taken to ensure that the dignity of female prisoners is protected and respected during body searches and that it is conducted only

---

([112]) Appeal No. 13623 of 88 S issued on January 2, 2021 (unpublished).
([113]) Rule No. 50 of the Nelson Mandela Rules.
([114]) Rules Nos. 51, 52, 53 of the Nelson Mandela Rules.

by female staff who have received appropriate training in the use of appropriate inspection methods in accordance with established procedures, provided that alternative screening methods are developed, such as the use of scanning devices to replace strip searches and invasive body searches, in order to avoid harmful psychological and potential physical effects of body searches [115].

Prison staff who inspect children, whether accompanying or visiting their imprisoned mothers, must also be competent, professional, courteous, respectful and respectful of their dignity [116].

If the prison regulations do not allow an inmate to keep money, valuables, clothing, or other belongings, these items are to be securely stored upon the inmate's admission. An inventory of these belongings must be prepared, signed by the inmate, and securely kept. The prison doctor must determine the appropriateness of any drugs or medications the inmate possesses upon entering the prison and decide on their usage.

The prison administration is responsible for ensuring the inmate’s belongings are preserved in good condition. Upon the inmate's release, all their belongings must be returned, except for any money spent during their incarceration, items sent outside the prison, or clothing deemed necessary to destroy for health reasons. The inmate must sign a receipt confirming the return of their money and belongings.

The same rules apply to money or items sent to the inmate from outside the prison[117].

For juveniles, each juvenile should have the right to possession of their personal belongings and to have adequate facilities for the safekeeping of such belongings. The personal belongings of the juvenile that he wishes not to keep, or that are confiscated from him, shall be kept in secure possession, and a list shall be prepared for them to be signed by the juvenile, and the necessary procedures shall be taken to keep them in good condition.

Provided that all such materials and money shall be returned to the juvenile upon his release, less the money that he has been authorized to spend and the property that he has been authorized to send outside the institution.

If the juvenile receives or is found in possession of any medicines, it is left to the medical officer to decide on their use [118].

What the ambulance man does is to search the pockets of the absent person before transferring him to the hospital to collect what is in them, identify him, and limit him. This procedure is not contrary to the law as it is one of the duties imposed on ambulance men by the circumstances in which they perform their services and would not be an attack on the freedom of the patient or the injured person whom they are assisting, so it is not considered an inspection in the sense that the street intended to be considered an act of investigation[119].

The inspection of factory workers upon their exit is considered as an administrative inspection and the evidence of crimes found during it is available in the case of flagrante delicto and the flagrante delicto is based on legitimate work [120].

([115]) Rules Nos. 19, 20 of the Bangkok Rules.
([116]) Rule No. 21 of the Bangkok Rules.
([117]) Rule No. 43 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule No. 67 of the Nelson Mandela Rules.
([118]) Rule No. 35 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
([119]) Article 354 of the Judicial Instructions of the Public Prosecution.
([120]) Article 355 of the Judicial Instructions of the Public Prosecution.

3- Conditions to be met at the place of inspection

The search is required to respond to a specific or identifiable place, and for this purpose, it is not required to mention the name of the person or owner of the dwelling authorized to be searched, but it is sufficient just to be identifiable by the circumstances surrounding the search order.

In this regard, the Court of Cassation ruled that the order issued by the Public Prosecution to search a specific person and whoever may be present with him or in his place or residence at the time of the search without indicating his name and surname - on the assessment of his participation with him in the crime or his connection with the incident for which the search warrant was issued - is valid in law and the inspection carried out in implementation of it is not in violation of the law, and that there is nothing wrong with the permission not to be present when it is carried out by any of those who were told in the investigation report of their contribution to the crime and their contact with it [121].

The Court of Cassation ruled that as long as the permission issued by the investigating authority to search a house on the basis that it may have something related to a crime that occurred, this particular house has been appointed in it regardless of the person of the accused and the fact of his name, and that the fact of the name of the accused does not matter to the validity of the action taken against him, because the identification of this fact is, according to the original, only by the owner of the name itself, and therefore the error in the name does not invalidate the action when the person against whom it was taken is the same as intended [122].

Also, mentioning the name of the person to be searched other than his real name in the search warrant does not invalidate the search, as long as the judgment has indicated in its considerations that the person who was searched is the same one who was intended without the owner of the name who mentioned an error in the warrant[123].

It also ruled that the issuance of a search warrant in the name of a person known for him in the environment in which he works does not affect his health[124].

And that the failure to mention the name of the person authorized to search him in the order issued to search him is not based on its invalidity if it is proven that the person who was searched is in fact the person intended by the search order [125].

([121]) Appeal No. 941 of 36 S issued at the session of 20 June 1966 and published in the second part of the book of the Technical Office No. 17 page No. 852 rule No. 161

It ruled that: [The failure to provide an accurate statement of the name of the person in the order issued to search him is not based on its nullity if it is proven that the person who was searched is in fact the person intended by the search order] Appeal No. 979 of 24 BC issued at the session of October 5, 1954 and published in the first part of the book of the Technical Office No. 6 page No. 35 rule No. 14.

([122]) Appeal No. 1141 of 15 S issued at the hearing of June 14, 1945 and published in the letter of the Technical Office No. 6P, Part No. 1, Page No. 737, Rule No. 605.

([123]) Appeal No. 468 of 17 S issued in the session of February 10, 1947 and published in the letter of the Technical Office No. 7 P Part No. 1 Page No. 289 Rule No. 295

The Court of Cassation ruled that: [It is decided that the error in the name of the person to be searched does not invalidate the search as long as the person who was searched is in fact the person who is the subject of the search warrant and what is meant by it]Appeal No. 4077 of 57 Q issued at the session of March 17, 1988 and published in the first part of the Technical Office's letter No. 39 page No. 435 rule No. 63

It ruled that: [When the plea of nullity of the search is based on the fact that it is related to a person other than the name of the accused, and the court had been subjected to what the accused raises in this regard and decided that the person who was searched is in fact the person intended by the search warrant, if it rejected this plea, it did not make a mistake] Appeal No. 236 of 24 BC issued at the hearing of 12 April 1954 and published in Part III of the Technical Office's book No. 5 page No. 509 rule No. 172.

([124]) Appeal No. 1827 of 20 S issued at the session of April 16, 1951 and published in the third part of the book of the Technical Office No. 2 page No. 974 rule No. 357.

It also does not affect the validity of the search warrant without indicating the age of the person authorized to search it as long as he is the person concerned with the warrant [126].

The Court of Cassation ruled that the issuance of a search warrant to the judicial officer to search the person of the accused, his residence or the annexes of his residence, the meaning of the word "or" is permissibility, to the effect that the permission in fact of his order and goal was issued to the judicial officer to search the person, residence and annexes of the accused's residence, according to the practice of work, and with the recognition of the issuance of permission to search the person of the accused, his residence or the annexes of his residence, the indication of the case is that the intended meaning of the word "or" is permissibility - for its arrival before what is permissible to collect - which interrupts the release of scarring and the permissibility of searching the person, residence and annexes of the accused's residence together, and then the search conducted by the officer of the incident was within the scope of the search warrant and signed correctly[127].

Whenever a search warrant is issued without specifying a specific dwelling for the accused, it includes every dwelling for him, regardless of its multiplicity [128].

The issuance of permission to search a person and his residence does not justify the search of his wife unless there is a case of flagrante delicto against her or there is sufficient evidence to charge her [129].

The principle is that personal freedom is a natural right, and it is inviolable and inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, or restricted in any way except by a reasoned judicial order required by the investigation [130].

Moreover, there are additional rules and standards to which the inspection process must be subjected, if the person's body is searched, which may require stripping the person of his clothes to search him, searching the cavities of his body, or obtaining fingerprints, a blood sample or DNA for analysis, all of which affect the dignity and privacy of the person. Thus, the body search must be carried out in a professional and impartial manner, with the knowledge of a person of the same sex, and in all cases, the search must be carried out under the supervision of a senior official or a judicial authority.

([125]) Appeal No. 6604 of 84 S issued at the session of March 17, 2016 and published in the letter of the Technical Office No. 67, page No. 380, rule No. 43

The Court of Cassation ruled that: [the error in the name, but the omission to mention it altogether, does not invalidate the procedure when the judgment proves that the person searched is the same as the search warrant] Appeal No. 2358 of 55 BC issued at the session of January 16, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 94 rule No. 21

It also ruled that: [The omission of the name of the person in the order issued to search him is sufficient to designate his dwelling, which is not invalid when it is proven to the court that the person who was searched and searched his dwelling is the same as the search warrant. If the trial court has concluded in a sound reasoned logic that the dwelling of the appellant is the same as the dwelling intended in the search warrant, which was described in the order as the dwelling adjacent to the dwelling of the other accused occupied by some members of his family, which means that the search warrant was focused on the appellant as one of his relatives and that the investigations indicated that she shares possession of narcotic jewels with him, then there is no need to obtain permission from the judge to search her dwelling. [Appeal No. 2340 of 30 S issued at the session of February 13, 1961 and published in the first part of the book of the Technical Office No. 12 page No. 209 rule No. 34.

([126]) Appeal No. 22180 of 75 S issued at the session of November 8, 2012 and published in the letter of the Technical Office No. 63, page No. 635, rule No. 114.

([127]) Appeal No. 3166 of 70 S issued in the session of February 3, 2008 and published in the book of the Technical Office No. 59 page No. 95 rule No. 16.

([128]) Appeal No. 11814 for the year 62 S issued at the hearing of May 15, 1994 and published in the first part of the book of the Technical Office No. 45 page No. 668 rule No. 102.

([129]) Appeal No. 1262 of 36 S issued at the session of November 29, 1966 and published in the third part of the book of the Technical Office No. 17 page No. 1173 rule No. 221.

([130]) Article 54 of the Constitution..

A person as a searchable place means everything related to his physical entity, the clothes he wears, the luggage and movable things he carries, or what he uses as his own property, shop or private car [131].

It should be noted here that the presence of a person in detention or imprisonment does not imply the violation of the full right to privacy, but rather the restriction of that right to the extent necessary to maintain security, order and safety in places of detention, whether in police stations or in prisons and other penal institutions.

This means - in light of the other provisions of the Constitution regulating public rights and freedoms and their guarantees - that arrest warrants, searches, detention, prohibition of movement or travel, or restrictions on their freedom in any other way - are criminal procedures that affect personal freedom - which may only be regulated by a law issued by the legislative authority and not by any other authority based on a mandate or by a subordinate instrument [132].

With the intention of searching the person means searching and excavating his body and clothes with the intention of finding the thing to be seized [133].

The search of the accused requires limiting his personal freedom to the extent necessary to implement it without extending to impairing the integrity of the body or other rights inherent in his personality. If the accused hides the thing in the place of nakedness from him, it is not permissible to violate it, but in this case it is permissible to resort to a doctor to remove this thing as an expert who provides his experience in adjusting the evidence in a way that the ordinary person cannot do[134].

The dwelling is every private place where a person resides permanently or temporarily and goes to his dependencies such as the garden, the poultry barn, and the warehouse. It extends to private places where a person resides, even for a specific period of the day, such as the doctor's office and the lawyer's office. The sanctity of private places does not apply to farms and fields not connected to dwellings [135].

According to the Egyptian Code of Criminal Procedure, “Persons, residences, postal correspondence, wired and wireless conversations, and personal conversations are inviolable

The sanctity of the dwelling includes every place fenced or surrounded by any barrier whenever it is used or prepared for shelter or for the preservation of things, and the sanctity of correspondence prevents access to it during transportation or transmission from one person to another, whether by mail or telephone

It is not permitted to search persons, enter residences, view postal correspondence, or record wired, wireless, or personal conversations, as well as seize objects except by order of the Public Prosecution during the investigation, and of the judge during the[136] trial.

International standards require that the motivation for the inspection process is the existence of objective and verifiable facts, and it does not depend solely on the "sensory sense" of the law enforcement officials. It also requires that those responsible for the inspection be held

---

([131]) Article 312 of the Judicial Instructions of the Public Prosecution.

([132]) Appeal No. 2361 of 55 S issued at the hearing of November 15, 1988 and published in the second part of the book of the Technical Office No. 39 page No. 1159 rule No. 194.

([133]) Appeal No. 44270 of 85 S issued at the 22nd session of October 2016 and published in the Technical Office's letter No. 67, page No. 735, rule No. 94, Appeal No. 405 of 36 S issued at the 16th session of May 1966 and published in the second part of the Technical Office's letter No. 17, page No. 613, rule No. 110.

([134]) Article 339 of the Judicial Instructions of the Public Prosecution.

([135]) Article 313 of the Judicial Instructions of the Public Prosecution.

([136]) Articles 131 and 132 of the Criminal Procedure Code, as well as articles 133 to 164, which establish the general legal framework for inspection.

accountable for its legality and for any damage or damage resulting from it. Moreover, there is a duty to maintain the confidentiality of the information they may obtain during their inspection. Needless to say, search and seizure procedures must be subject to the principles governing the tasks and powers of the police in general, which are legality: always in accordance with the law, necessity: necessary and necessary so that the legal purpose can only be achieved through it and after exhausting other means, and proportionality: to be resorted to to the extent necessary, only, to implement the law without arbitrariness or abuse and accountability: always subject to monitoring and punishment to prevent violation of the law and infringement of the rights of individuals and punish those responsible for violations.

The search is required to respond to a legally permissible place, and accordingly it is not permissible to search embassies, the homes of ambassadors, and the diplomatic corps, as it is prohibited according to the rules of public international law.

It is not permissible to search the defender of the accused or the consultant expert to seize the papers and documents handed over by the accused to him to perform the task entrusted to him, nor the correspondence exchanged between them regarding the litigation [137].

Everyone has the right to the inviolability of his private life, and everyone has certain things that he has surrounded with secrecy, and out of respect for this, the Constitution guarantees all people the inviolability of private life, as well as the inviolability of their homes as a repository of their secrets, which may not be entered, searched, monitored or intercepted except by a reasoned judicial order, and in the cases and in the manner prescribed by law [138].

The Court of Cassation ruled that: [The inviolability of the dwelling derives from the inviolability of the private life of its owner, the meaning of the dwelling is determined in the light of the link of the dwelling to the private life of its owner, as it is every place where a person resides permanently or temporarily as long as he is in the possession of its owner, even for a period of time, and it is linked to it and makes it a warehouse for his secret, and he can prevent others from entering it except with his permission, and the police officer or public authority may not enter it except in the cases specified in the law and in the manner stipulated in it. It was one of the established principles that the entry of houses in other than these cases is prohibited, which in itself leads to the invalidity of the search. The law set limits and conditions for conducting house searches that are valid only by verifying them and making the search include two pillars, the first of which is entering the dwelling and the second is searching or searching for things that are useful in revealing the truth, and that the guarantees specified by the legislator apply to the two pillars together to one degree, as the search of private places is based on a series of successive actions in its course and begins with the entry of the judicial officer in the haunted place to be entered and searched, and the street is required in these successive actions from its beginning to the end He ordered her to abide by the restrictions that the street made a condition for the validity of the inspection, and then if the judicial officer who entered the residence of nurses and paramedics is not authorized by the investigation authority or is not licensed by the street to enter it in the cases specified in the text, his entry shall be invalid and all the seizures and searches that have occurred in this entry shall be invalid[139].

The Court of Cassation also ruled that: [The incompleteness of the construction of the dwelling or the failure to install doors or windows for it does not suggest that it is a private place as long as it is in the possession of its owner who resides in it even for some time and is linked to it and

---

([137]) Article 96 of the Criminal Procedure Law.

([138]) Articles 57 and 58 of the 2014 Constitution.

([139]) Appeal No. 1341 of 75 S issued at the 20th session of October 2012 and published in the Technical Office's letter No. 63, page No. 536, rule No. 92, Appeal No. 10105 of 64 S issued at the 21st session of April 1996 and published in the first part of the Technical Office's letter No. 47, page No. 544, rule No. 76.

makes it a warehouse for his secret and can prevent others from entering it except with his permission, it is not considered an abandoned place that others are allowed to enter without his permission, and it is not permissible for the men of the public authority to enter it except in the cases indicated in the law][140] .

It ruled that: [The sanctity of the store derives from its contact with the person of its owner or his residence, so as long as there is an order from the Public Prosecution to search one or both of them, it necessarily includes what is related to it and the store as well, and therefore the nullity of the search of the store by not explicitly stipulating it in the order is not supported by the law][141] .

The inspection of the judicial officer of the place authorized for inspection shall be in the presence of the accused or his representative whenever possible, otherwise it must be in the presence of two witnesses who are as far as possible from his adult relatives or from those living with him in the house or from neighbors, and this shall be recorded in the minutes [142].

The legitimacy of the subject of the inspection was also recognized in all international human rights instruments. Article 9 of the American Declaration of the Rights and Duties of Man stipulates that: "Everyone has the right to the sanctity of his home."

The Declaration of Human Rights of the Cooperation Council for the Arab States of the Gulf stipulates in its article 16 that: "Private life is inviolable for every human being, and it is not permissible to infringe upon its inviolability, the affairs of his family, his residence, his correspondence, or his communications, and he has the right to request its protection."

Article 17 of the Arab Charter on Human Rights stipulates that: "Private life is inviolable. Violating it is a crime. This private life includes the privacy of the family, the inviolability of the home, the confidentiality of correspondence and other means of private communication."

Article 18 of the Cairo Declaration on Human Rights in Islam stipulates that:

"(a) Everyone has the right to live in security for himself, his religion, his family, his honor and his wealth.

A person has the right to independence in the affairs of his private life in his home, family, money and communications, and it is not permissible to spy on him, censor him or harm his reputation and avoid protecting him from any arbitrary interference

(c) The dwelling is inviolable in all cases and it is not permitted to enter it without the permission of its family or illegally. It is not permitted to demolish it, confiscate it, or displace its family from it. "

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states: “1 Everyone has the right to respect for his private and family life and for the inviolability of his home and correspondence.

No interference may be made by public authority in the exercise of this right, except to the extent that the law provides for such interference, and in which the latter constitutes a necessary measure in a democratic society, for national security, public safety, the economic well-being of the country, the defense of the order, the prevention of penal offenses, the protection of health or morals, or the protection of the rights and freedoms of others. ”

([140]) Appeal No. 674 of 56 S issued at the session of June 4, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 640 rule No. 121.

([141]) Appeal No. 1538 of 44 S issued at the 22nd session of December 1974 and published in the first part of the technical office book No. 25 page No. 876 rule No. 190, Appeal No. 1302 of 47 S issued at the 26th session of February 1978 and published in the first part of the technical office book No. 29 page No. 185 rule No. 32.

([142]) Article 341 of the Judicial Instructions of the Public Prosecution.

4- Controls for issuing an inspection permit

The law did not require a specific form for the inspection permit and did not require stipulating the scope of its implementation in the spatial jurisdiction of its source. All that the law requires in this regard is that the permit be clear and specific regarding the appointment of the persons and places to be inspected and that its source be spatially competent to issue it and that it be written in its handwriting and signed by its signature[143].

His validity shall not be affected by his absence from indicating the status of the person authorized to search him, his industry, or his place of residence, as long as the person who was actually searched is the person intended by the search warrant [144].

Nor does his error in indicating the name, age, profession or place of residence of the person authorized to search him as long as he is the person authorized to search him [145].

The law does not require special phrases in which the search warrant is formulated, but it is sufficient that the judicial officer has learned from his investigations and inferences that a crime has occurred and that there are strong indications and signs against those who request permission to search him and search his home, and therefore he does not invalidate the permission because the crime is not specified in it [146].

It is sufficient in the crimes assigned to the accused that they already exist and the evidence of their attribution is available to him at the time of issuing a permit to seize and search, and the stipulation of the permission to conduct the search and seizure in the event of a violation of the law does not make the permission dependent on a condition, nor to seize a future crime [147].

The plea of invalidity of the Public Prosecution's permission to arrest and search is one of the legal defenses mixed with reality that may not be raised for the first time before the Court of Cassation unless it has been pleaded before the trial court or its records have its elements. The plea of seizure and search before the issuance of the permission is a substantive defense sufficient to respond to the court's reassurance that the seizure and search occurred on the basis of the permission, taking from it the reasonable evidence it has stated [148].

The law did not require the mention of spatial jurisdiction coupled with the name of the prosecutor who issued the permission to search [149].

([143]) Appeal No. 12220 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 60643 of 59 S issued at the session of January 21, 1991 and published in the first part of the Technical Office's letter No. 42 page No. 140 rule No. 16.

([144]) Appeal No. 8426 of 87 S issued at the session of November 4, 2017 (unpublished), Appeal No. 22305 of 83 S issued at the session of October 12, 2014 and published in the book of the Technical Office No. 65 page No. 656 rule No. 85, Appeal No. 412 of 50 S issued at the session of June 9, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 742 rule No. 143.

([145]) Appeal No. 8047 of 88 S issued at the 14th session of November 2019 (unpublished), Appeal No. 1877 of 59 S issued at the 19th session of October 1989 and published in the first part of the Technical Office's book No. 40 page No. 792 rule No. 132.

([146]) Appeal No. 41816 of 85 S issued at the 2nd session of May 2017 (unpublished).

([147]) Appeal No. 1285 of 50 S issued at the session of November 24, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 1029 rule No. 199.

([148]) Appeal No. 5556 of 86 S issued at the hearing of April 8, 2018 (unpublished), Appeal No. 46241 of 85 S issued at the hearing of December 24, 2017 (unpublished), Appeal No. 42162 of 85 S issued at the hearing of November 25, 2017 (unpublished), Appeal No. 41128 of 85 S issued at the hearing of March 28, 2017 (unpublished), Appeal No. 20950 of 86 S issued at the hearing of December 27, 2016 (unpublished), Appeal No. 20454 of 84 S issued at the hearing of December 3, 2016 (unpublished).

([149]) Appeal No. 8033 of 81 s issued at the session of July 17, 2012 and published in the Technical Office letter No. 63 page 364 rule No. 59, Appeal No. 2534 of 59 s issued at the session of February 6, 1990 and published in the first part of the Technical Office letter No. 41 page 275 rule No. 48, Appeal No. 3887 of 58 s issued at the session of November 13, 1988 and published in the first part of the Technical Office letter No. 39 page 1052 rule No. 159, Appeal No. 2766 of 56 s issued at the session of October 15, 1986 and published in the first part of the Technical Office letter No. 37 page 760 rule No. 146.

The capacity of the source of the permission is not one of the essential data for the validity of the inspection permission [150].

It also does not affect the validity of the wrong search warrant in mentioning the place of work of the person authorized to search, as long as he is the person concerned with the warrant [151].

It is sufficient for the validity of the search warrant to mention the source of the search warrant in his capacity attached to his name in it, and it is not necessary to mention his spatial competence, and the lesson in this is the reality of reality, and the law did not draw a special form for his signature on it, as long as he is actually signed by the one who issued it, and it follows that his signature with an illegible signature does not invalidate it [152].

And that the signature on the page of the last search warrant - which is considered - dispenses with the signature of the rest of its pages if they are multiple, as the law did not require this[153].

The validity of the inspection permit shall not be affected by its omission to prove the hour of its issuance as long as it is proven that the inspection took place after the issuance of the permit and before its expiry [154].

The officer's resort to the prosecutor in his place - at his home - to obtain a search warrant is left to his absolute discretion and there is no violation of the law, and therefore there is nothing in it to call into question the integrity of his procedures [155].

The Constitution or the law did not stipulate a certain amount of reasoning or a specific form on which the search warrant must be issued. The law also did not prescribe a special form of reasoning and does not require that the search warrant be formulated in special phrases [156].

It is required for the validity of the inspection conducted by the Public Prosecution or its authorization to be conducted for the person of the accused or in his residence that the judicial officer has learned from his investigations and inferences that a specific crime "felony or misdemeanor " has been committed by a specific person and that there are sufficient evidence,

---

([150]) Appeal No. 3773 of 58 S issued at the session of November 23, 1988 and published in the first part of the book of the Technical Office No. 39 page No. 1103 rule No. 167.

([151]) Appeal No. 32605 for the year 72 S issued in the session of December 3, 2009 and published in the book of the Technical Office No. 60 page No. 518 rule No. 67.

([152]) Appeal No. 8668 of 71 S issued at the 10th session of December 2007 and published in the Technical Office letter No. 58, page No. 784, rule No. 147, Appeal No. 10015 of 63 S issued at the 19th session of January 1995 and published in the first part of the Technical Office letter No. 46, page No. 211, rule No. 30, Appeal No. 13180 of 63 S issued at the 14th session of May 1995 and published in the first part of the Technical Office letter No. 46, page No. 849, rule No. 128

The Court of Cassation ruled that: [The lesson in the search warrant data is what is contained in its original without the printed copy of the case. It is not valid to challenge the permission not to mention the name of the prosecution to which the source of the permission belongs, because there is nothing in the law that requires mentioning the spatial jurisdiction coupled with the name of the deputy prosecutor who is the source of the permission to search. Since the obituary in fact is based on the mere form of the signature in itself and because it resembles the mark of the closure of speech, it does not defect the permission as long as it is actually signed by the one who issued it] Appeal No. 1888 of 34 S issued at the session of May 11, 1965 and published in the second part of the book of the Technical Office No. 16 page No. 452 rule No. 91.

([153]) Appeal No. 85053 of 76 S issued at the session of 20 December 2010 and published in the letter of the Technical Office No. 61 page No. 709 rule No. 93, Appeal No. 274 of 60 S issued at the session of 1 April 1991 and published in the first part of the letter of the Technical Office No. 42 page No. 569 rule No. 82.

([154]) Appeal No. 19724 of 61 s issued at the session of 20 September 1994 and published in the first part of the technical office book No. 45 page No. 776 rule No. 121, Appeal No. 4461 of 57 s issued at the session of 20 March 1988 and published in the first part of the technical office book No. 39 page No. 458 rule No. 65.

([155]) Appeal No. 51172 for the year 72 S issued at the session of December 20, 2009 and published in the book of the Technical Office No. 60 page No. 572 rule No. 74.

([156]) Appeal No. 11803 of 82 S issued at the 2nd session of April 2013 and published in the Technical Office letter No. 64, page No. 447, rule No. 59, Appeal No. 336 of 45 S issued at the 27th session of April 1975 and published in the first part of the Technical Office letter No. 26, page No. 355, rule No. 82, Appeal No. 200 of 45 S issued at the 24th session of March 1975 and published in the first part of the Technical Office letter No. 26, page No. 258, rule No. 60.

sufficient emirates, and acceptable suspicions against this person to justify the investigation's exposure to his freedom or the inviolability of his residence in order to reveal the amount of his connection with the crime. The officer doesn't need to undertake the investigations himself or to have previous knowledge of the same person, but he may seek the assistance of his assistants from the public authority guides.

The inspection procedure does not have to be preceded by an investigation conducted by the investigating authority[157].

It is sufficient to consider the search warrant as a reason to prove the search warrant on the same record containing the results of the investigations [158].

It is assumed that the search will not proceed unless a felony or misdemeanor has occurred, and there is sufficient evidence to attribute it to a specific person sufficient to accuse him of committing it. Therefore, the evidentiary procedures on which the search is based are required to be legitimate, and if it is not, the search is void [159].

In the crime under investigation, it is required to be a felony or a misdemeanor, as the law does not allow inspection regarding violations, and the lesson in describing the charge is what is being investigated without resulting in its end. If it becomes clear after the investigation that the incident is a violation, this does not result in the invalidity of the inspection that was carried out correctly [160].

The validity of issuing a search warrant must be preceded by serious investigations, with the likelihood of the crime being attributed to the person authorized to search it [161].

([157]) Article 316 of the Judicial Instructions of the Public Prosecution.

([158]) Appeal No. 811 of 45 s issued at the 26th session of May 1975 and published in the first part of the Technical Office letter No. 26 page No. 458 rule No. 107, Appeal No. 336 of 45 s issued at the 27th session of April 1975 and published in the first part of the Technical Office letter No. 26 page No. 355 rule No. 82.

([159]) The Court of Cassation ruled that: [All that is required for the validity of the search carried out by the Public Prosecution or authorized to be carried out in the residence of the accused is that the judicial officer has learned from his investigations and inferences that a specific crime or misdemeanor has been committed by a specific person and that there are sufficient evidence, signs and acceptable suspicions against this person to the extent that the investigation is justified by the inviolability of his residence guaranteed by the Constitution and the men of authority are prohibited from entering it except in the cases stipulated by law] Appeal No. 5769 of 60 BC issued at the session of March 11, 1999 and published in the first part of the Technical Office's letter No. 50 page No. 159 Rule No. 37.

([160]) Appeal No. 24137 of 64 S issued at the session of 3 December 1996 and published in the first part of the technical office book No. 47 page No. 1263 rule No. 184, Appeal No. 823 of 59 S issued at the session of 12 November 1989 and published in the first part of the technical office book No. 40 page No. 922 rule No. 153, Appeal No. 4444 of 56 S issued at the session of 11 December 1986 and published in the first part of the technical office book No. 37 page No. 1059 rule No. 200.

([161]) The Court of Cassation ruled that: [It is scheduled to assess the seriousness of the investigations and their sufficiency to issue the search warrant, although it is entrusted to the investigating authority that issued it under the supervision of the trial court. However, if the accused has pleaded the nullity of this procedure, the court must present this substantive plea and respond to it with justifiable reasons for acceptance or rejection. Whereas, the contested judgment refused to pay the nullity of the search warrant because of the lack of seriousness of the investigations to say that the first appellant seized the car of the sixth defendant if it received the amount of the bribe and the eighth defendant's acknowledgment of handing over the amount of the bribe to the sixth appellant to deliver it to the fourth and fifth appellants is evidence of the seriousness of the police investigations, which is not valid in response to this payment, because the first appellant seized the amount of the bribe and the eighth defendant acknowledged handing over the amount of the bribe to the sixth appellant Rather, they are two new elements in the lawsuit that are subsequent to the police investigations and to the issuance of the search warrant. It is not appropriate to take them as evidence of the seriousness of the investigations preceding them, because the condition for the validity of the issuance of the warrant is that it is preceded by serious investigations, with which the ratio of the crime to the search warrant is likely, which required the court, in order for its response to the defense to be correct, to express its opinion on the elements of the investigations preceding the warrant without other elements subsequent to it and to say its word on its sufficiency or insufficiency to justify the issuance of the warrant by the investigation authority. However, if it did not do so, its judgment is flawed by the deficiency and corruption in the reasoning] Appeal No. 2032 of the year 81 S issued in the session of February 6, 2012 and published in the letter of the Technical Office No. 63, page No. 170, rule No. 22

Whereas Articles 44 of the Constitution and 91 of the Criminal Procedure Law amended by Law No. 37 of 1972 require the cause of the order to enter or search the dwelling, even if they did not require a certain amount of reasoning or a specific image that must be the search warrant, but the members of the prosecution must be concerned with editing that order, dropping his right of reasoning and evaluating it on comprehensive reasons for the incident evidenced by the papers, evidencing the evidence in it, the nature of the crime and its legal adaptation, clarifying the availability of the crime or crimes justified to search the homes legally, and in general taking note of the sight and insight and every place that would reveal the conviction of the commander and reassurance of the existence of the crime and the seriousness of the accusation therein[162].

The assessment of the seriousness of the investigations and their adequacy to issue the search warrant is one of the substantive issues in which the matter is entrusted to the investigating authority under the supervision of the trial court, and the trial court exercises its control over the seriousness of the reasonable suspicions that these inferences indicate that are sufficient to weight the occurrence of the crime and attribute it to the accused [163].

It ruled that: [If the result of what the judgment proved was that the Public Prosecution's order to search the appellant's residence was based on its assessment of the statements of the first defendant and the information he gave in the investigation and was not based on the investigations submitted to it by the judicial officer, and therefore the plea of nullity of the search order on the pretext of building it on non-serious investigations is contained in an irreplaceable and unproductive lawsuit, and the contested judgment is not defective that it was dismissed from it.], Appeal No. 2571 of 60 S issued at the session of February 8, 1999 and published in the first part of the Technical Office's letter No. 115, rule No. 23, Appeal No. 1764 of 48 S issued at the session of February 18, 1979 and published in the first part of the Technical Office's book No. 30, page No. 279, rule No. 56.

([162]) Article 320 of the Judicial Instructions of the Public Prosecution.

([163]) Appeal No. 10349 of the year 88 Judicial, issued in the session of February 6, 2021 (unpublished), Appeal No. 12222 of the year 88 Judicial, issued in the session of January 2, 2021 (unpublished), Appeal No. 12220 of the year 88 Judicial, issued in the session of January 2, 2021 (unpublished), Appeal No. 9735 of the year 86 Judicial, issued in the session of October 12, 2016, and published in the Technical Office Book No. 67, page No. 686, Rule No. 88, Appeal No. 17575 of the year 83 Judicial, issued in the session of April 5, 2014 (unpublished), Appeal No. 7979 of the year 82 Judicial, issued in the session of October 13, 2013, and published in the Technical Office Book No. 64, page No. 835, Rule No. 124, Appeal No. 11753 of the year 82 Judicial, issued in the session of May 14, 2013, and published in the Technical Office Book No. 64, page No. 622, Rule No. 87, Appeal No. 81514 of the year 76 Judicial, issued in the session of January 20, 2013, and published in the Technical Office Book No. 64, page No. 143, Rule No. 15, Appeal No. 5172 of the year 82 Judicial, issued in the session of January 6, 2013, and published in the Technical Office Book No. 64, page No. 45, Rule No. 5, Appeal No. 4364 of the year 82 Judicial, issued in the session of December 23, 2012, and published in the Technical Office Book No. 63, page No. 864, Rule No. 157, Appeal No. 64838 of the year 75 Judicial, issued in the session of November 25, 2012, and published in the Technical Office Book No. 63, page No. 784, Rule No. 141, Appeal No. 3225 of the year 81 Judicial, issued in the session of November 20, 2012, and published in the Technical Office Book No. 63, page No. 742, Rule No. 132, Appeal No. 22180 of the year 75 Judicial, issued in the session of November 8, 2012, and published in the Technical Office Book No. 63, page No. 635, Rule No. 114, Appeal No. 67204 of the year 74 Judicial, issued in the session of November 5, 2012, and published in the Technical Office Book No. 63, page No. 607, Rule No. 109, Appeal No. 2798 of the year 81 Judicial, issued in the session of October 8, 2012, and published in the Technical Office Book No. 63, page No. 457, Rule No. 77, Appeal No. 26849 of the year 75 Judicial, issued in the session of July 17, 2012, and published in the Technical Office Book No. 63, page No. 356, Rule No. 58, Appeal No. 8033 of the year 81 Judicial, issued in the session of July 17, 2012, and published in the Technical Office Book No. 63, page No. 364, Rule No. 59, Appeal No. 1653 of the year 78 Judicial, issued in the session of July 5, 2012, and published in the Technical Office Book No. 63, page No. 351, Rule No. 57, Appeal No. 232 of the year 81 Judicial, issued in the session of February 7, 2012, and published in the Technical Office Book No. 63, page No. 186, Rule No. 24, Appeal No. 3746 of the year 80 Judicial, issued in the session of January 2, 2012, and published in the Technical Office Book No. 63, page No. 41, Rule No. 4, Appeal No. 760 of the year 81 Judicial, issued in the session of November 3, 2011, and published in the Technical Office Book No. 62, page No. 356, Rule No. 60, Appeal No. 5264 of the year 80 Judicial, issued in the session of September 18, 2011, and published in the Technical Office Book No. 62, page No. 232, Rule No. 41, Appeal No. 76 of the year 80 Judicial, issued in the session of July 28, 2011 (unpublished), Appeal No. 3955 of the year 80 Judicial, issued in the session of March 6, 2011, and published in the Technical Office Book No. 62, page No. 142, Rule No. 22, Appeal No. 85053 of the year 76 Judicial, issued in the session of December 20, 2010, and published in the Technical Office Book No. 61, page No. 709, Rule No. 93, Appeal No. 11083 of the year 79 Judicial, issued in the session of December 2, 2010 (unpublished), Appeal No. 33146 of the year 73 Judicial, issued in the session of March 4, 2010, and published in the Technical Office Book No. 61, page No. 197, Rule No. 26, Appeal No. 55384 of the year 73 Judicial, issued in the session of February 15, 2010, and published in the Technical Office Book No. 61, page No. 129, Rule No. 18, Appeal No. 51172 of the year 72 Judicial, issued

in the session of December 20, 2009, and published in the Technical Office Book No. 60, page No. 572, Rule No. 74, Appeal No. 32605 of the year 72 Judicial, issued in the session of December 3, 2009, and published in the Technical Office Book No. 60, page No. 518, Rule No. 67, Appeal No. 23336 of the year 77 Judicial, issued in the session of April 9, 2009, and published in the Technical Office Book No. 60, page No. 211, Rule No. 27, Appeal No. 38814 of the year 74 Judicial, issued in the session of March 18, 2009, and published in the Technical Office Book No. 60, page No. 158, Rule No. 21, Appeal No. 17367 of the year 77 Judicial, issued in the session of March 17, 2009, and published in the Technical Office Book No. 60, page No. 147, Rule No. 20, Appeal No. 20475 of the year 71 Judicial, issued in the session of November 3, 2008, and published in the Technical Office Book No. 59, page No. 457, Rule No. 85, Appeal No. 48513 of the year 73 Judicial, issued in the session of September 7, 2008 (unpublished), Appeal No. 34430 of the year 71 Judicial, issued in the session of March 23, 2008, and published in the Technical Office Book No. 59, page No. 226, Rule No. 37, Appeal No. 70653 of the year 76 Judicial, issued in the session of March 23, 2008, and published in the Technical Office Book No. 59, page No. 234, Rule No. 38, Appeal No. 10892 of the year 72 Judicial, issued in the session of November 18, 2007, and published in the Technical Office Book No. 58, page No. 755, Rule No. 141, Appeal No. 593 of the year 70 Judicial, issued in the session of October 21, 2007, and published in the Technical Office Book No. 58, page No. 655, Rule No. 126, Appeal No. 3099 of the year 70 Judicial, issued in the session of October 16, 2007, and published in the Technical Office Book No. 58, page No. 620, Rule No. 118, Appeal No. 22263 of the year 69 Judicial, issued in the session of October 10, 2007, and published in the Technical Office Book No. 58, page No. 600, Rule No. 115, Appeal No. 9314 of the year 70 Judicial, issued in the session of September 13, 2007, and published in the Technical Office Book No. 58, page No. 501, Rule No. 101, Appeal No. 52653 of the year 76 Judicial, issued in the session of February 20, 2007 (unpublished).Appeal No. 6450 of the year 70 Judicial, issued in the session of December 17, 2006, and published in the Technical Office Book No. 57, page No. 971, Rule No. 115, Appeal No. 3535 of the year 70 Judicial, issued in the session of December 7, 2006, and published in the Technical Office Book No. 57, page No. 951, Rule No. 111, Appeal No. 16505 of the year 67 Judicial, issued in the session of November 22, 2006 (unpublished), Appeal No. 8267 of the year 71 Judicial, issued in the session of November 16, 2005, and published in the Technical Office Book No. 56, page No. 578, Rule No. 90, Appeal No. 19775 of the year 74 Judicial, issued in the session of April 4, 2005, and published in the Technical Office Book No. 56, page No. 245, Rule No. 36, Appeal No. 19455 of the year 74 Judicial, issued in the session of January 3, 2005, and published in the Technical Office Book No. 56, page No. 41, Rule No. 3, Appeal No. 14550 of the year 69 Judicial, issued in the session of May 15, 2004, and published in the Technical Office Book No. 55, page No. 503, Rule No. 70, Appeal No. 11023 of the year 73 Judicial, issued in the session of April 17, 2004, and published in the Technical Office Book No. 55, page No. 410, Rule No. 55, Appeal No. 38328 of the year 73 Judicial, issued in the session of April 1, 2004, and published in the Technical Office Book No. 55, page No. 287, Rule No. 42, Appeal No. 18812 of the year 64 Judicial, issued in the session of December 1, 2003, and published in the Technical Office Book No. 54, page No. 1123, Rule No. 153, Appeal No. 4184 of the year 73 Judicial, issued in the session of September 29, 2003, and published in the Technical Office Book No. 54, page No. 884, Rule No. 120, Appeal No. 13264 of the year 69 Judicial, issued in the session of March 24, 2003, and published in the Technical Office Book No. 54, page No. 499, Rule No. 57, Appeal No. 23631 of the year 69 Judicial, issued in the session of March 6, 2003, and published in the Technical Office Book No. 54, page No. 393, Rule No. 41, Appeal No. 42490 of the year 72 Judicial, issued in the session of March 5, 2003, and published in the Technical Office Book No. 54, page No. 333, Rule No. 35, Appeal No. 1027 of the year 64 Judicial, issued in the session of March 2, 2003, and published in the Technical Office Book No. 54, page No. 325, Rule No. 34, Appeal No. 26585 of the year 68 Judicial, issued in the session of March 5, 2002, and published in the Technical Office Book No. 53, page No. 366, Rule No. 65, Appeal No. 29735 of the year 68 Judicial, issued in the session of May 8, 2001, and published in the Technical Office Book No. 52, page No. 483, Rule No. 85, Appeal No. 16359 of the year 68 Judicial, issued in the session of February 4, 2001, and published in the Technical Office Book No. 52, page No. 198, Rule No. 34, Appeal No. 21459 of the year 67 Judicial, issued in the session of November 9, 1999, and published in Part 1 of the Technical Office Book No. 50, page No. 559, Rule No. 126, Appeal No. 13425 of the year 67 Judicial, issued in the session of June 7, 1999, and published in Part 1 of the Technical Office Book No. 50, page No. 384, Rule No. 90, Appeal No. 11286 of the year 67 Judicial, issued in the session of May 10, 1999, and published in Part 1 of the Technical Office Book No. 50, page No. 290, Rule No. 68, Appeal No. 14870 of the year 66 Judicial, issued in the session of November 17, 1998, and published in Part 1 of the Technical Office Book No. 49, page No. 1306, Rule No. 186, Appeal No. 12539 of the year 65 Judicial, issued in the session of December 8, 1997, and published in Part 1 of the Technical Office Book No. 48, page No. 1376, Rule No. 210, Appeal No. 11075 of the year 65 Judicial, issued in the session of September 2, 1997, and published in Part 1 of the Technical Office Book No. 48, page No. 842, Rule No. 128, Appeal No. 10967 of the year 65 Judicial, issued in the session of July 31, 1997, and published in Part 1 of the Technical Office Book No. 48, page No. 825, Rule No. 126, Appeal No. 28209 of the year 64 Judicial, issued in the session of January 12, 1997, and published in Part 1 of the Technical Office Book No. 48, page No. 79, Rule No. 12, Appeal No. 26297 of the year 64 Judicial, issued in the session of December 22, 1996, and published in Part 1 of the Technical Office Book No. 47, page No. 1392, Rule No. 200, Appeal No. 24137 of the year 64 Judicial, issued in the session of December 3, 1996, and published in Part 1 of the Technical Office Book No. 47, page No. 1263, Rule No. 184, Appeal No. 10105 of the year 64 Judicial, issued in the session of April 21, 1996, and published in Part 1 of the Technical Office Book No. 47, page No. 544, Rule No. 76, Appeal No. 3039 of the year 63 Judicial, issued in the session of February 9, 1995, and published in Part 1 of the Technical Office Book No. 46, page No. 336, Rule No. 49, Appeal No. 10015 of the year 63 Judicial, issued in the session of January 19, 1995, and published in Part 1 of the Technical Office Book No. 46, page No. 211, Rule No. 30, Appeal No. 9434 of the year 63 Judicial, issued in the session of December 8, 1994, and published in Part 1 of the Technical Office Book No. 45, page No. 1108, Rule No. 175,

Appeal No. 3784 of the year 62 Judicial, issued in the session of February 6, 1994, and published in Part 1 of the Technical Office Book No. 45, page No. 209, Rule No. 32, Appeal No. 3006 of the year 62 Judicial, issued in the session of January 23, 1994, and published in Part 1 of the Technical Office Book No. 45, page No. 137, Rule No. 21, Appeal No. 19739 of the year 61 Judicial, issued in the session of October 3, 1993, and published in Part 1 of the Technical Office Book No. 44, page No. 740, Rule No. 115, Appeal No. 21756 of the year 60 Judicial, issued in the session of June 2, 1992, and published in Part 1 of the Technical Office Book No. 43, page No. 584, Rule No. 86, Appeal No. 9242 of the year 60 Judicial, issued in the session of November 10, 1991, and published in Part 2 of the Technical Office Book No. 42, page No. 1204, Rule No. 165, Appeal No. 9076 of the year 60 Judicial, issued in the session of November 7, 1991, and published in Part 2 of the Technical Office Book No. 42, page No. 1177, Rule No. 162, Appeal No. 61340 of the year 59 Judicial, issued in the session of February 4, 1991, and published in Part 1 of the Technical Office Book No. 42, page No. 223, Rule No. 31, Appeal No. 28967 of the year 59 Judicial, issued in the session of October 3, 1990, and published in Part 1 of the Technical Office Book No. 41, page No. 863, Rule No. 150, Appeal No. 4399 of the year 59 Judicial, issued in the session of November 16, 1989, and published in Part 1 of the Technical Office Book No. 40, page No. 988, Rule No. 160, Appeal No. 823 of the year 59 Judicial, issued in the session of November 12, 1989, and published in Part 1 of the Technical Office Book No. 40, page No. 922, Rule No. 153, Appeal No. 1877 of the year 59 Judicial, issued in the session of October 19, 1989, and published in Part 1 of the Technical Office Book No. 40, page No. 792, Rule No. 132, Appeal No. 5791 of the year 58 Judicial, issued in the session of January 11, 1989, and published in Part 1 of the Technical Office Book No. 40, page No. 56, Rule No. 6, Appeal No. 3557 of the year 57 Judicial, issued in the session of November 11, 1987, and published in Part 2 of the Technical Office Book No. 38, page No. 943, Rule No. 173, Appeal No. 225 of the year 57 Judicial, issued in the session of April 21, 1987, and published in Part 1 of the Technical Office Book No. 38, page No. 626, Rule No. 106, Appeal No. 5900 of the year 56 Judicial, issued in the session of February 11, 1987, and published in Part 1 of the Technical Office Book No. 38, page No. 246, Rule No. 37, Appeal No. 671 of the year 56 Judicial, issued in the session of June 4, 1986, and published in Part 1 of the Technical Office Book No. 37, page No. 630, Rule No. 120, Appeal No. 1339 of the year 55 Judicial, issued in the session of May 27, 1985, and published in Part 1 of the Technical Office Book No. 36, page No. 716, Rule No. 126, Appeal No. 7217 of the year 54 Judicial, issued in the session of March 17, 1985, and published in Part 1 of the Technical Office Book No. 36, page No. 409, Rule No. 70, Appeal No. 1011 of the year 54 Judicial, issued in the session of November 26, 1984, and published in Part 1 of the Technical Office Book No. 35, page No. 829, Rule No. 187, Appeal No. 1433 of the year 51 Judicial, issued in the session of October 20, 1981, and published in Part 1 of the Technical Office Book No. 32, page No. 728, Rule No. 128, Appeal No. 438 of the year 48 Judicial, issued in the session of October 29, 1978, and published in Part 1 of the Technical Office Book No. 29, page No. 738, Rule No. 148, Appeal No. 685 of the year 47 Judicial, issued in the session of November 27, 1977, and published in Part 1 of the Technical Office Book No. 28, page No. 987, Rule No. 202, Appeal No. 656 of the year 47 Judicial, issued in the session of November 7, 1977, and published in Part 1 of the Technical Office Book No. 28, page No. 930, Rule No. 193, Appeal No. 49 of the year 46 Judicial, issued in the session of October 3, 1976, and published in Part 1 of the Technical Office Book No. 27, page No. 681, Rule No. 153, Appeal No. 1106 of the year 45 Judicial, issued in the session of November 16, 1975, and published in Part 1 of the Technical Office Book No. 26, page No. 688, Rule No. 151, Appeal No. 811 of the year 45 Judicial, issued in the session of May 26, 1975, and published in Part 1 of the Technical Office Book No. 26, page No. 458, Rule No. 107, Appeal No. 200 of the year 45 Judicial, issued in the session of March 24, 1975, and published in Part 1 of the Technical Office Book No. 26, page No. 258, Rule No. 60.The Court of Cassation ruled that: [The assessment of the seriousness of the investigations and their sufficiency to justify the search order is one of the issues on which the judge is independent without comment. Whereas the foregoing is so, and the contested judgment has invalidated the search warrant based on the lack of seriousness of the investigations, when it was found that the name contained therein is the name of the father of the appellee, who was a drug dealer and died to the mercy of God, and that what happened can not be considered just a material error in determining the name because the beneficiary of what the officer recorded in the record of the seizure that it became clear after the seizure that the accused is called ...... The investigations on the basis of which the warrant was issued were not serious enough to allow the issuance of the warrant. The accused is known to the officer by his real name and was previously arrested in a similar case. What the judgment concluded was not merely the error in the name of the person concerned with the search, but rather the lack of investigation, which invalidates the order and wastes the evidence that revealed its implementation, which is a reasonable conclusion that the trial court has, and therefore the appellant's prohibition in this regard is misplaced. [Appeal No. 118 of 45 S issued on March 23, 1975 and published in the first part of the Technical Office's letter No. 26, page No. 252, rule No. 58

The Court of Cassation also ruled that: [Whereas the contested judgment has acquitted the appellee and the validity of the defense of the nullity of the inspection, saying in the reasoning of its ruling that "the contents of the minutes of the request for permission to search did not contain evidence and signs that convince the court of the seriousness of the inferences on which the search warrant was based or its sufficiency to justify its issuance, and what was decided by the issuer of the permission to investigate that the investigations carried out by himself confirmed that the accused is trading in Maxtone Forte substance and that the addicts are frequenting it to use it at the time that he did not mention anything about it in his minutes, sufficing to release the substance that he claimed that the accused is trading in, namely narcotic substances without a license or identification and the difference between trading in narcotic substances and giving the injection of dexa vitamin is clear and, even if the officer's allegations about his investigations are true to prove it in his record, which calls into question the validity of these investigations and deprives them of seriousness. It is not inconceivable that the investigating authority, which has the right to issue the search warrant, has decided the seriousness of these investigations, as this is subject to the control of the trial

The Public Prosecution may, after investigations submitted by the police, order the search of a specific person and whoever may happen to be with him at the time of the search on the basis of the suspicion that he participated with him in the crime for which the search was authorized, without the need for the person authorized to search with him to be named in his name or to be in a state of flagrante delicto before the execution of the permission and the occurrence of the search [164].

There is nothing to prevent the trial court, with its discretionary power, from seeing that the investigator has diligently collected one of the defendants, and did not find this for another defendant, and to conclude accordingly the validity of the permission - issued on the basis of those investigations - to search one of the defendants, and its invalidity for the other defendant without this being considered a contradiction in causation or corruption in inference [165].

The plea of the lack of seriousness of the investigations is an objective plea, which must be expressed in an explicit statement that includes the statement of its purpose, and it may not be raised for the first time before the Court of Cassation [166].

If he pleads before the trial court the nullity of the search due to the lack of seriousness of the investigations, it is obligated to respond to that plea in a[167] reasonable manner.

---

court as it is the supervisor of the grounds that the investigating authority deems justified to issue the search warrant, and therefore the search warrant issued to build on these investigations is null and void and the resulting procedures. As this meant that the court invalidated the search warrant based on the lack of seriousness of the investigations because it found that the officer who issued it had found out in his investigation of the accused would have known the truth of his activity and that he was giving the drug addicts who frequented him the injection of "Dixa Vet Insurance". He was ignorant and devoid of his record of reference to him because of his lack of investigation, which invalidates the order that he issued and wastes the evidence that revealed its implementation. The matter was not invalidated simply because the type of drug was not specified in the investigation record, which is a reasonable conclusion owned by the trial court, because it is decided that the assessment of the seriousness of the investigations and their adequacy to justify the search order is from the subject that his judge is independent. [Appeal No. 640 of 47 s issued at the session of November 6, 1977 and published in the first part of the book of the Technical Office No. 28 page No. 914 rule No. 190.

([164]) Article 321 of the Judicial Instructions of the Public Prosecution.

([165]) Appeal No. 42442 of 85 S issued at the 25th session of November 2017 (unpublished).

([166]) Appeal No. 6615 of 84 s issued at the session of June 3, 2015 and published in Technical Office Book No. 66, page No. 500, rule No. 69, Appeal No. 7527 of 79 s issued at the session of March 7, 2015 and published in Technical Office Book No. 66, page No. 274, rule No. 37, Appeal No. 11753 of 82 s issued at the session of May 14, 2013 and published in Technical Office Book No. 64, page No. 622, rule No. 87, Appeal No. 58902 of 75 s issued at the session of April 13, 2013 and published in Technical Office Book No. 64, page No. 491, rule No. 65, Appeal No. 11803 of 82 s issued at the session of April 2, 2013 and published in Technical Office Book No. 64, page No. 447, rule No. 59, Appeal No. 29277 of 72 s issued at the session of December 14, 2009 (unpublished)

The Court of Cassation ruled that: [The objection to the investigations is not serious because it is an office is a statement sent on its release that does not lead to an explicit defense of the nullity of the search warrant, which must be expressed in an explicit statement that includes the statement of its intended purpose], Appeal No. 6604 of 84 S issued at the session of March 17, 2016 and published in the letter of the Technical Office No. 67, page No. 380, rule No. 43

The Court of Cassation also ruled that: [Whereas it is clear from the records of the trial sessions that the appellant did not pay the nullity of the search warrant, and the nullity of the search warrant was one of the legal arguments mixed with reality that may not be raised for the first time before the Court of Cassation, unless the records of the judgment bear its elements because it requires an investigation that is excluded from the function of the Court of Cassation, and it is inconceivable that the defendant of the appellant has shown in his pleading that "the lawsuit was not investigated" as this sent statement does not indicate the nullity of the permission because of the seriousness of the investigations that must be made in an explicit statement that includes the intended statement] Appeal No. 1412 of 70Q issued at the hearing of October 11, 2007 and published in the Technical Office's letter No. 614, rule No. 117, Appeal No. 17413 of 64Q issued at the hearing of September 26, 1996 and published in the first part of the Technical Office's book No. 47, page No. 892, rule No. 128

It ruled that: [Whereas the appellant argued that the investigation report on which the search warrant was based did not refer to the fact that one of the secret guides purchased a drug from her requires an objective investigation, and the appellant did not adhere to this before the trial court, and therefore it is not acceptable for her to raise this for the first time before the Court of Cassation], Appeal No. 10015 of 63 BC issued at the session of January 19, 1995 and published in the first part of the Technical Office's letter No. 46, page No. 211, rule No. 30.

([167]) See: Appeal No. 28252 of 72 S issued at the session of 19 November 2009, Appeal No. 837 of 79 S issued at the session of 29 September 2009, Appeal No. 17615 of 75 S issued at the session of 3 March 2009, Appeal No. 17615 of 75 S issued at the session of 3 March 2009, Appeal No. 28305 of 73 S issued at the session of 20 April 2008, Appeal No. 16413 of 73 S issued at the session of 3 March 2005 (unpublished) The Arab Republic of Egypt Unpublished judgments of the Court of Cassation Criminal Misdemeanors of Cassation Criminal Chambers, Appeal No. 19626 of 65 S issued at the session of January 5, 2005, Appeal No. 20416 of 85 S issued at the session of October 19, 2016 and published in the letter of the Technical Office No. 67 page No. 727 Rule No. 92, Appeal No. 3029 of 85 S issued at the session of January 5, 2016 and published in the letter of the Technical Office No. 67 page No. 39 Rule No. 4, Appeal No. 3123 of 85 S issued at the session of October 3, 2015 and published By Technical Office Letter No. 66 Page 636 Rule No. 93, Appeal No. 1996 of 79 s issued at the session of November 21, 2010 and published in Technical Office Letter No. 61 Page 630 Rule No. 80, Appeal No. 24137 of 64 s issued at the session of December 3, 1996 and published in Part I of Technical Office Letter No. 47 Page 1263 Rule No. 184, Appeal No. 4444 of 56 s issued at the session of December 11, 1986 and published in Part I of Technical Office Letter No. 37 Page 1059 Rule No. 200, Appeal No. 7077 of 55 s issued at the session of March 13, 1986 and published in Part I of Technical Office Letter No. 408 Rule No. 84, Appeal No. 7079 of 55 s issued at the session of March 13, 1986 and published in Part I of Technical Office Letter No. 37 Page 412 Rule No. 85.

The Court of Cassation ruled that: [Whereas the principle in the law is that the search warrant is an investigation procedure that can only be issued to seize a crime of "felony or misdemeanor" that has already occurred and is likely to be attributed to a specific accused, and that there is sufficient evidence to address the inviolability of his home or personal freedom, and it was decided to assess the seriousness of the investigations and their adequacy to justify the issuance of the search warrant, even if it was entrusted to the investigating authority that issued it under the supervision of the trial court, but if the accused has argued the invalidity of this procedure, the court must present this fundamental defense and say its word in it with sufficient and justifiable reasons. Whereas the judgment was satisfied in responding to the plea of nullity of the search warrant by saying: "The lawsuit papers are devoid of any evidence that the secret guide officer was accompanied during the search," which is a deficient phrase with which it is not possible to determine the justifications for the ruling in this regard. The court did not express its opinion on the elements of the investigations prior to the search warrant, or its word is less sufficient to justify the issuance of the warrant by the investigating authority. In view of the foregoing, the judgment is flawed by the shortcomings and corruption in the reasoning] Appeal No. 1733 of 48 S issued at the session of February 12, 1979 and published in the first part of the Technical Office's letter No. 30 page No. 265 rule No. 52

The Court of Cassation also ruled that: [Although the assessment of the seriousness of the investigations and their sufficiency to justify the issuance of the search warrant is entrusted to the investigating authority, which issued it under the supervision of the trial court, but if the accused has argued that this procedure is invalid, the court must present this substantive defense and say its word in it with justifiable reasons. Whereas it is clear from the minutes of the trial hearings that the defendant of the appellant paid the nullity of the inspection permit for the lack of seriousness of the investigations on which it was based, evidenced by the fact that it was devoid of a statement of his place of residence and the work he practiced, even though he is a timber dealer and carries out his activity in a licensed place and has a tax card, and the judgment stated this plea within the substantive defense of the appellant and replied to all of him in saying, "As the court was satisfied with the statements of the witnesses of the incident and took them supported by the result of the technical report, it submits the plea and defense it considers as an attempt to avoid accusation on its own behalf for fear of punishment", which is completely deficient and unable to determine the justifications of the ruling in this regard, as the court did not express its opinion on the elements of the inquiries prior to the search warranting and referral. [Appeal No. 1660 of 47 S issued on April 3, 1978 and published in the first part of the Technical Office's letter No. 29, page No. 350, rule No. 66

The Court of Cassation also ruled that: [... The contested judgment has refused to plead the nullity of the search warrant because of the lack of seriousness of the investigations to say that the seizure of the body of the crime - the forged documents - in the possession of the appellant is evidence of the seriousness of the police investigations, which is not valid in response to this plea. This is because the seizure of forged documents is a new element in the lawsuit that is subsequent to the police investigations and the issuance of the search warrant. Rather, it is what is meant by conducting the search, so it is not appropriate to take it as evidence of the seriousness of the previous investigations. Because the condition for the validity of the issuance of the permission is that it is preceded by serious investigations, with which the ratio of the crime to the person authorized to inspect it is likely, which required the court - in order for its response to the payment to be correct, to express its opinion on the elements of the investigations prior to the permission - without other elements subsequent to it - and to say its word in its sufficiency or insufficient to justify the issuance of the permission from the investigating authority. As for it did not do so, its ruling is flawed by the shortcomings and corruption in the reasoning] Appeal No. 10572 of 65 BC issued at the session of July 13, 1997 and published in the first part of the Technical Office's letter No. 48 page No. 776 rule No. 119

The Court of Cassation ruled that there is no capacity for anyone other than the person against whom the invalid procedure was imposed to plead its invalidity, even if he benefits from it: [Since the investigations and the search permit for the non-appellant, he has no capacity to plead the lack of seriousness of the investigations on which this permission was based, because it is decided that there is no capacity for anyone other than the person against whom the procedure was imposed to plead its invalidity, even if he benefits from it because the interest in the payment is achieved subsequent to the existence of the capacity in it] [Appeal No. 19739 - of the year 61 - date of the session 3/10/1993 - Technical Office 44 Part No. 1 - Page No. 740 - Rule No. 115] - [Reject]

The Court of Cassation shall be limited to ensuring the validity of the reasoning of the judgment of the trial court, and its authority shall be to overturn the judgment if it does not respond to the plea of nullity of the search due to the lack of seriousness of the investigations, or if the response of the trial court to the plea of nullity of the search is absurd and unreasonable [168].

It also ruled that: [The judgment has relied in refusing to plead the invalidity of the Public Prosecution's permission to inspect and register on the mere statement that the seizure is evidence of the seriousness of the investigations, it is limited because what it stated in this regard is only a new element in the case subsequent to the investigations and the issuance of the permission, but it is the very intention of the inspection or registration procedure that the judgment should not be taken as evidence of the seriousness of the investigations preceding it, because the condition for the validity of the issuance of the permission to be preceded by serious investigations is likely to be the ratio of the crime to the authorized to inspect it or record its conversations, which required the court to express its opinion on the elements of the investigations preceding the permission and not the other elements subsequent to it and to say its word in its sufficiency to justify the issuance of the permission from the investigation authority, but it did not do so, its judgment is above its deficiency in causation of corruption in in inference] Appeal No. 3557 of 57 issued in the hearing of November 11, 1987 and published in Part II of the Technical Office Book No. 38, page 943, rule No. 173.

([168]) See: Appeal No. 918 of 78 s issued at the session of December 21, 2010 and published in the letter of the Technical Office No. 61 page No. 724 rule No. 96, Appeal No. 916 of 78 s issued at the session of May 7, 2009, Appeal No. 8668 of 71 s issued at the session of December 10, 2007 and published in the letter of the Technical Office No. 58 page No. 784 rule No. 147, Appeal No. 4769 of 70 s issued at the session of October 16, 2005 (unpublished)

The Court of Cassation ruled that: [It is decided in the Court of Cassation that the assessment of the seriousness of the investigations and their sufficiency to justify the issuance of the search warrant, although it is entrusted to the investigating authority that issued it under the supervision of the trial court, but if the accused has argued the nullity of this procedure, the court must present this substantive plea and say its word in it with justifiable reasons, and if this is so, and the contested judgment did not offer at all to push the appellant to nullify the search warrant for the lack of seriousness of the investigations on which he based it, despite the fact that he based his conviction on the evidence derived from the implementation of this permit, it is defective and requires its cassation and return without the need to discuss the rest of the aspects of the appeal]. Appeal No. 924 of 82 S issued on October 1, 2012 and published in the letter of the Technical Office No. 63 page No. 412 rule No. 70

It also ruled: [The law requires that for a search warrant to be valid, there must be a specific crime, whether a felony or a misdemeanor, and that its commission must be attributed to a specific person based on a serious report or on other elements sufficient to justify the search for the inviolability of the residence of the accused or his personal freedom. The assessment of all this is entrusted to the Public Prosecution under the supervision and supervision of the courts. If the court finds that the permission in the search was issued in circumstances in which it may be issued, it may take the evidence derived from it, otherwise, it may subtract it. The assessment of the adequacy of the facts to justify the inspection is an objective matter that may not be raised for the first time before the Court of Cassation unless the facts mentioned in the same judgment indicate the lack of justification for the inspection. If the accused disputes the adequacy of the facts to justify the search, he must submit this to the trial court. If he has been silent, and the court for its part has seen, by approving the prosecution's action, that these evidence justify the search warrant, he may not dispute this with the Court of Cassation. [Appeal No. 1562 of 11 S issued at the hearing of June 9, 1941 and published in the first part of the set of rules No. 5, page No. 540, rule No. 274

It also ruled that: [It is not acceptable for the accused to raise for the first time before the Court of Cassation the nullity of the search that occurred on his house by saying that the permission issued by the Public Prosecution to search has exhausted its effectiveness by searching him once, and thus the search that was conducted after that has occurred without permission. This is because this defense requires an objective investigation, and because the contested judgment is not valid. [Appeal No. 1160 of 19 S issued at the hearing of November 15, 1949 and published in the first part of the Technical Office's letter No. 1, page No. 66, rule No. 24

It ruled that: [It is decided to assess the seriousness of the investigations and their sufficiency to justify the issuance of the search warrant, even if it is entrusted to the investigating authority that issued it under the supervision of the trial court. However, if the accused has argued that this procedure is invalid, the court must present this essential defense and respond to it by accepting or rejecting it with justifiable reasons. Whereas the contested judgment relied on refusing to pay the nullity of the search warrant because of the seriousness of the investigations to say that the seizure of the drug in the possession of the appellant is evidence of the seriousness of the police investigations, which is not valid in response to this defense, as the seizure of the drug is a new element in the lawsuit subsequent to the police investigations and the issuance of the search warrant, but it is intended to conduct the search, it is not valid to take it as evidence of the seriousness of the investigations preceding it, because the condition of the validity of the issuance of the permit is preceded by serious investigations that are likely to be the ratio of the crime to the person authorized to search it, which required the court, in order to determine its response to the payment, to express its opinion on the elements of the investigations preceding the warrant without other elements subsequent to it and to say its word in sufficiency or inadequacy to justify the issuance of the permission from the investigating authority, but it did not do so, its judgment is defective and corrupt in the inference] Appeal No. 942 of the year 38 issued at the hearing of June 17, 1968, published in Part II of the Technical Office Book No. 19, page 713, rule No. 144

The search must be for a crime that has already occurred. It is not permissible to carry out the search to seize a future crime, even if the investigations indicate that it will inevitably occur [169].

It ruled that: [It is decided that the assessment of the seriousness of the investigations and their sufficiency to justify the search order is from the subject matter in which the judge is independent without a comment, and since the contested judgment has invalidated the search warrant based on the lack of seriousness of the investigations, it was found that the officer who issued it if he had found in his investigation the intended accused to know the truth of his name and knew the truth of the trade practiced by him in particular and the accused is known by his real name registered in his file at the Drug Enforcement Office and was previously seized in a similar case, the conclusion of the judgment was not based solely on the error in the name of the intended inspection, but rather was due to the lack of investigation, which invalidates the order and wastes the evidence revealed by its implementation] Appeal No. 639 of 48 Q issued at the hearing of November 26, 1978 and published in the first part of the Technical Office's book No. 29 page 830 rule No. 170

It also ruled: [The contested judgment has responded to the appellant's argument of the invalidity of the prosecution's permission to arrest and search for its issuance based on non-serious investigations by saying ".. Whereas the court is satisfied with the investigations conducted because they are frank and clear and contain sufficient data and information to issue permission and truthfully conducted by the accused regarding the possession of drugs and is convinced that they were actually conducted with the knowledge of the major .... It is not necessary to follow the time between the date of writing the investigation report and the date of issuing the permission, especially since the law did not specify a specific destination and there was no penalty for the length of the time period between them, even if the court considers this to be a material error, and therefore the permission was based on serious investigations and the defendant's plea in that regard is not on a sound basis. " Whereas, it is decided that the assessment of the seriousness of the investigations and their sufficiency to justify the issuance of the search warrant, although it is entrusted to the investigating authority that issued it under the supervision of the trial court, but if the accused has pleaded the invalidity of this procedure, the court must present this substantive plea and say its word in it with justifiable reasons, and since the contested judgment has been sufficient to respond to the appellant's plea with the phrase that passed through the statement, which is a general statement that does not face the evidence of payment and is not able to determine the integrity of the elements of the investigations prior to the search warrant, indicating that they focused on the authorized searcher and his connection with the drug, and the court has based its conviction on the evidence derived from the implementation of this warrant, the judgment is flawed by default and corruption Inference, which requires its reversal and return without the need to examine the rest of the aspects of the appeal]. Appeal No. 145 of 79 issued on November 10, 2010 (unpublished)

It ruled that: [It is decided to assess the seriousness and sufficiency of the investigations - to justify the issuance of the search warrant, even if it is entrusted to the investigating authority that issued it under the supervision of the trial court. However, if the accused has argued that this procedure is null and void, the court must present this fundamental plea and respond to it by accepting or rejecting it with justifiable reasons, and since the contested judgment has only responded to the appellant's plea with a minor phrase that does not enable it to find the justifications for the ruling in this regard, If the court did not express its opinion on the elements of the investigations preceding the search warrant, especially the weighting of the ratio of the drug to the appellant, although it based its conviction on the evidence derived from the implementation of this warrant, the judgment is flawed by the deficiency in the reasoning that invalidates it, and it does not change that the judgment states in the entire statement of the incident that the appellant scores the drug, as long as in the course of his response to the payment he did not rely on what he received, confirming its sufficiency to determine the person authorized to search and his relationship to the drug, since the foregoing, it must be overturned The contested judgment and the return, without the need to discuss the rest of the aspects of the appeal]. Appeal No. 4992 of 78 issued at the 29th session of September 2009 (unpublished).

([169]) Appeal No. 12630 of 80 S issued at the hearing of June 6, 2011 (unpublished), Appeal No. 28305 of 73 S issued at the hearing of April 20, 2008 (unpublished), Appeal No. 3126 of 66 S issued at the hearing of March 20, 2005 (unpublished), Appeal No. 30639 of 72 S issued at the hearing of April 23, 2003 and published in the book of the Technical Office No. 54, page No. 583, rule No. 74, Appeal No. 2358 of 54 s issued at the session of January 24, 1985 and published in the first part of the Technical Office letter No. 36 page 117 rule No. 16, Appeal No. 1215 of 49 s issued at the session of December 20, 1979 and published in the first part of the Technical Office letter No. 30 page 962 rule No. 206, Appeal No. 305 of 44 s issued at the session of March 17, 1974 and published in the first part of the Technical Office letter No. 25 page 292 rule No. 64, Appeal No. 643 of 44 s issued at the session of June 23, 1974 and published in the first part of Technical Office Letter No. 25 Page No. 621 Rule No. 133, Appeal No. 1538 of 44 S issued at the 22nd session of December 1974 and published in Part I of Technical Office Letter No. 25 Page No. 876 Rule No. 190, Appeal No. 1476 of 36 S issued at the 7th session of February 1967 and published in Part I of Technical Office Letter No. 18 Page No. 174 Rule No. 34, Appeal No. 1232 of 37 S issued at the 16th session of October 1967 and published in Part III of Technical Office Letter No. 18 Page No. 965 Rule No. 195, Appeal No. 2 of 36 S issued at the hearing of March 1, 1966 and published in the first part of the Technical Office Letter No. 17 Page No. 221 Rule No. 42Appeal No. 12630 of 80 S issued at the hearing of June 6, 2011 (unpublished), Appeal No. 28305 of 73 S issued at the hearing of April 20, 2008 (unpublished), Appeal No. 3126 of 66 S issued at the hearing of March 20, 2005 (unpublished), Appeal No. 30639 of the year 72 S issued in the session of April 23, 2003 and published in the Technical Office letter No. 54 page No. 583 rule No. 74, Appeal No. 2358 of the year 54 S issued in the session of January 24, 1985 and published in the first part of the Technical Office letter No. 36 page No. 117 rule No. 16, Appeal No. 1215 of the year 49 S issued in the session of December 20, 1979 and published in the first part of the Technical Office letter No. 30 page No. 962

The law does not necessarily require that the judicial officer has spent a long time in these investigations, or that he personally monitors the persons investigated or has previous knowledge of them, but rather that he may use his investigations, research, or the means of excavation with his assistants from the public authority, secret informants, and those who inform him of the crimes that have already occurred, as long as he is personally convinced of the validity of what they have conveyed to him and the truth of the information he has received [170].

---

rule No. 206, Appeal No. 305 of 44 S issued at the session of March 17, 1974 and published in the first part of the Technical Office letter No. 25 page 292 rule No. 64, Appeal No. 643 of 44 S issued at the session of June 23, 1974 and published in the first part of the Technical Office letter No. 25 page 621 rule No. 133, Appeal No. 1538 of 44 S issued at the session of December 22, 1974 and published in the first part of the Technical Office letter No. 25 page 876 rule No. 190, Appeal No. 1476 of 36 S issued at the session of 7 From February 1967 and published in the first part of the Technical Office book No. 18 Page 174 Rule No. 34, Appeal No. 1232 of 37 s issued in the session of 16 October 1967 and published in the third part of the Technical Office book No. 18 Page 965 Rule No. 195, Appeal No. 2 of 36 s issued in the session of 1 March 1966 and published in the first part of the Technical Office book No. 17 Page 221 Rule No. 42 in the first part of the Technical Office book No. 17 Page 221 Rule No. 42, Appeal No. 1476 of 36 s issued in the session of 7 February 1967 and published in the first part of the Technical Office book No. 18 Page 174 Rule No. 34, Appeal No. 1232 of 37 s issued in the session of 16 October 1967 and published in the third part of the Technical Office book No. 18 Page 965 Rule No. 195

The Court of Cassation ruled that: [Permission to search is an investigation procedure that is legally valid to be issued only to seize a crime " felony or misdemeanor " that has already occurred and is attributed to the person authorized to search it, and therefore it is not valid to issue it to seize a future crime even if serious investigations and evidence indicate that it will actually occur. If the impugned judgment proves that there was no crime committed by the appellant when the Public Prosecution issued its search warrant, but the warrant was issued based on the officer's decision that the accused and his colleague will transport a quantity of the drug out of the city, then the judgment, if the appellant condemns without being presented to indicate whether his and his colleague's investigation of the drug was prior to the issuance of the search warrant or not, is tainted by deficiency and error in the application of the law]. Appeal No. 3156 for the year 31 S issued in the session of January 1, 1962 and published in the first part of the technical office letter No. 13 page No. 20 rule No. 5.

([170]) Appeal No. 12230 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 12222 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 8047 of 88 S issued at the session of November 14, 2019 (unpublished), Appeal No. 42151 of 85 S issued at the session of November 25, 2017, Appeal No. 14158 of 69 S issued at the session of March 10, 2003, Appeal No. 7527 of 79 S issued at the 7th session of March 2015 and published in Technical Office Letter No. 66 Page 274 Rule No. 37, Appeal No. 16871 of 83 S issued at the 6th session of April 2014 and published in Technical Office Letter No. 65 Page 240 Rule No. 24, Appeal No. 20535 of 83 S issued at the 2nd session of April 2014 and published in Technical Office Letter No. 65 Page 207 Rule No. 21, Appeal No. 11545 of 82 S issued at the 3rd session of November 2013 and published in Technical Office Letter No. 64 Page 880 Rule No. 135, Appeal No. 264 of 78 s issued at the session of October 5, 2013 and published in the Technical Office letter No. 64 page No. 801 rule No. 119, Appeal No. 5826 of 82 s issued at the session of May 4, 2013 and published in the Technical Office letter No. 64 page No. 561 rule No. 80, Appeal No. 68482 of 76 s issued at the session of January 16, 2013 and published in the Technical Office letter No. 64 page No. 138 rule No. 14, Appeal No. 15382 of 77 S issued at the session of May 3, 2010 and published in the Technical Office letter No. 61, page No. 352, rule No. 47, Appeal No. 19775 of 74 S issued at the session of April 4, 2005 and published in the Technical Office letter No. 56, page No. 245, rule No. 36, Appeal No. 5822 of 61 S issued at the session of December 24, 1992 and published in the first part of the Technical Office letter No. 43, page No. 1222, rule No. 190, Appeal No. 256 of 61 S issued at the session of October 8, 1992 and published in the first part of the letter Technical Office No. 43 Page 804 Rule No. 123, Appeal No. 45761 of 59 S issued at the hearing of November 7, 1990 and published in Part I of Technical Office Letter No. 41 Page No. 998 Rule No. 177, Appeal No. 5831 of 56 S issued at the hearing of March 5, 1987 and published in Part I of Technical Office Letter No. 38 Page 387 Rule No. 60, Appeal No. 412 of 50 S issued at the hearing of June 9, 1980 and published in Part I of Technical Office Letter No. 31 Page 742 Rule No. 143, Appeal No. 1190 of 46 S issued at the hearing of April 3, 1977 and published in Part I of Technical Office Letter No. 28 Page 436 Rule No. 90

It ruled that: [The short period of the investigation and the absence of the investigation report of the statements made by the appellants on the grounds of their appeal and the lack of seizure of weapons and ammunition in the possession of the defendants contrary to what was written in the investigation report and the absence of a record between the first defendant and the fifth witness does not in itself cut short the lack of seriousness of the investigation] Appeal No. 22305 of 83 S issued at the session of 12 October 2014 and published in the book of the Technical Office No. 65 page No. 656 Rule No. 85, Appeal No. 3075 of 83 S issued at the session of 7 April 2014 and published in the book of the Technical Office No. 65 page No. 262 Rule No. 27

It also ruled that: [The contested judgment concluded with the validity of the plea of nullity of the search warrant and its consequences and acquitted the respondent based on what it stated. "Whereas it was established in the investigation report on which the permission was issued that the head of the Sherbin Center Investigation Unit carried out the investigations and continuous monitoring of the accused until it was confirmed that he possessed the drug and traded in it, while he himself proved in the investigation report that he was accompanied by a secret police force to implement the permission and behind a

The failure to indicate the name of the accused, his surname, his age, his place of residence, his industry, or the charges against him specified in the record of collecting evidence does not in itself give rise to the seriousness of the investigations it contains, and the failure to mention the antecedents of the accused or those dealing with him does not in itself break the lack of seriousness of the investigations as long as the court is satisfied that this person who was searched is in fact the very person intended by the search warrant [171].

---

street cafe in front of the General Hospital from the eastern side, he found a person sitting alone. When he asked his name, it became clear to him that he was the person who obtained the permission of the prosecution to seize and search him. He repeated this and confirmed it in his statements in the investigation of the prosecution. He added that the investigations conducted by the source were confidential and that he did not know the person of the accused, which refutes what he said in the investigation report on which the permission was issued based on the fact that the investigations conducted by him and his continuous monitoring of the accused confirmed the possession of the drug. These investigations are just a report he received from a secret guide or someone that the accused is in possession of a drug intended for trafficking, which there is no way to issue The search warrant for the lack of serious investigations and then the plea of nullity of the permission to arrest and search the accused has been based on a valid basis of fact and law. The warrant and what followed and resulted in it is null and void, and if this means that the court nullified the search warrant based on the lack of seriousness of the investigations because it found that the officer proved in the investigation report that he was the one who carried out the investigations and continuous monitoring of the respondent and did not invalidate the permit simply because the officer did not carry out the investigations and monitoring himself, which is a reasonable conclusion that the trial court has. Whereas it is established that the seriousness of the investigations and their sufficiency to justify the search order is one of the issues on which the judge is independent without comment, and therefore the appeal is on the basis of [Appeal No. 1415 of 49 BC issued at the session of January 16, 1980 and published in the first part of the Technical Office's letter No. 31 page No. 85 rule No. 17.

([171]) Appeal No. 12222 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 25295 of 83 S issued at the session of June 7, 2014, Appeal No. 12293 of 83 S issued at the session of June 1, 2014, Appeal No. 7369 of 83 S issued at the session of December 4, 2013 and published in the book of the Technical Office No. 64 page No. 1020 rule No. 151, Appeal No. 5826 of 82 S issued at the session of May 4, 2013 2013 and published in Technical Office Letter No. 64 Page No. 561 Rule No. 80, Appeal No. 6010 of 81 S issued at the session of January 12, 2012 and published in Technical Office Letter No. 63 Page No. 68 Rule No. 8, Appeal No. 13166 of 80 S issued at the session of October 18, 2011, Appeal No. 1387 of 73 S issued at the session of January 11, 2010 and published in Technical Office Letter No. 61 Page No. 26 Rule No. 3, Appeal No. 28926 of 71 S issued at the session of April 5, 2009, Appeal No. 17757 of 77 S issued at the hearing of March 19, 2009, Appeal No. 20657 of 73 S issued at the hearing of December 14, 2008, Appeal No. 29838 of 72 S issued at the hearing of September 7, 2008, Appeal No. 1103 of 78 S issued at the hearing of June 2, 2009 and published in the Technical Office letter No. 60, page No. 262, rule No. 36, Appeal No. 30497 of 75 S issued at the hearing of November 5, 2008 and published in the Technical Office letter No. 59, page No. 472, rule No. 87, Appeal No. 12652 of 69 S issued at the session of 18 October 2007, Appeal No. 17098 of 68 S issued at the session of 17 April 2007 and published in the letter of the Technical Office No. 58 page No. 362 Rule No. 69, Appeal No. 9082 of 68 S issued at the session of 20 March 2007 and published in the letter of the Technical Office No. 58 page No. 260 Rule No. 53, Appeal No. 21505 of 71 S issued at the session of 19 October 2005 and published in the letter of the Technical Office No. 56 page No. 506 Rule No. 76, Appeal No. 21505 of 71 S issued at the session of October 19, 2005 and published in the letter of the Technical Office No. 56 page No. 506 rule No. 76, Appeal No. 38371 of 73 S issued at the session of October 20, 2004 and published in the letter of the Technical Office No. 55 page No. 691 rule No. 104, Appeal No. 30864 of 69 S issued at the session of July 26, 2003 and published in the letter of the Technical Office No. 54 page No. 806 rule No. 108, Appeal No. 3506 of 72 s issued at the session of July 3, 2003 and published in the Technical Office letter No. 54, page No. 752, rule No. 100, Appeal No. 890 of 65 s issued at the session of February 12, 1997 and published in the first part of the Technical Office letter No. 48, page No. 164, rule No. 24, Appeal No. 16635 of 62 s issued at the session of July 5, 1994 and published in the first part of the Technical Office letter No. 45, page No. 760, rule No. 119, Appeal No. 12751 of 62 s issued at the session of June 2, 1994 Published in the first part of Technical Office Letter No. 45 Page No. 688 Rule No. 105, Appeal No. 4995 of 62 S issued in the session of February 13, 1994 and published in the first part of Technical Office Letter No. 45 Page No. 243 Rule No. 36

The Court of Cassation ruled that: [... What the appellant raises is that the investigations did not indicate that he was acquiring or possessing a narcotic substance, but rather that he was trafficking in it, and that the officer of the incident testified that after he had obtained the permission of the Public Prosecution to arrest and search him, his confidential source contacted him and told him that the appellant would hand over a quantity of narcotic substances to one of his clients the next day. Rather, he justified what the prosecutor, the source of the permission, and then the contested judgment concluded that the crime had already occurred because the trafficking in narcotic substances and the delivery of the drug on a later day required that the accused be in possession or already in possession of the drug before the delivery was made or agreed upon. Therefore, the interpretation taken by the trial court of what was stated in the investigation report that the appellant was trafficking in narcotic substances and concluded that the officer's investigations indicated that the appellant was in possession and possession of narcotic substances at the time of the issuance of the inspection permit is consistent with what this phrase carries and does not appear to mean. Whereas, it was clear from the blogs of the judgment that the crime that the appellant condemned had

The error in indicating the name of the person to be searched or his profession by imposing his occurrence does not in itself give rise to the seriousness of the investigations contained in the inference report as long as it is intended to investigate [172].

---

occurred when the Public Prosecution issued its permission to arrest and search, and what the judgment stated was reasonable, and does not contradict it, in a way that resolves everything that the appellant raises from the issue of deficiency and contradiction in causation and error in attribution to an objective controversy in the subject court's assessment of the evidence in the case, which may not be confiscated by the Court of Cassation.] Appeal No. 27661 of 72 S issued at the 22nd session of December 2003 (unpublished). The Court of Cassation ruled that: Since the court had invalidated the search warrant based on the lack of seriousness of the investigations, it found that the officer who issued it had found out in his investigation of the first accused to reach the address and residence of the accused. Ignorant and devoid of his record of referring to his work and determining his age, this discloses a deficiency in the investigation that invalidates the order he issued and wastes the evidence revealed by its implementation, which is a reasonable conclusion owned by the trial court. Appeal No. 2360 of 54 S issued at the 9th session of April 1985 and published in the first part of the Technical Office's book No. 36 page No. 555 rule No. 95

It ruled that: [Whereas the contested judgment acquitted the contested defendant, saying in the reasoning for his judgment what it reads: "Whereas it is established from reading the investigation report on which the prosecution's permission to search the defendant was issued that it contained only the name of the defendant and that from the area of Gheit al-Anab of the Karmouz department without specifying the place of residence of the defendant in this area, his work or age, and ignorance of these matters clearly indicates the lack of seriousness of the investigations and their inadequacy to justify the issuance of the search warrant, and therefore the defense of the invalidity of the prosecution's permission to search is in place, and this foretells the invalidity of the search and the exclusion of the evidence derived from it, as well as a certificate from it and all that resulted from it, even if it was a confession issued in its wake to the arrestees." Whereas the court invalidated the search warrant based on the lack of seriousness of the investigations because it found that the officer who issued it, had he diligently investigated the accused, would have reached the address and residence of the accused, ignorant and devoid of his record of referring to his work and determining his age, due to his lack of investigation, which invalidates the order he issued and wastes the evidence revealed by its implementation, which is a drafting conclusion owned by the trial court, and the assessment of the seriousness of the investigations and their adequacy to justify the search order was from the subject matter in which his judge is independent without comment. In view of the foregoing, the appeal shall be without grounds for rejection] Appeal No. 720 of 47 s issued at the session of December 4, 1977 and published in the first part of the Technical Office's letter No. 28 page No. 1008 rule No. 206.

([172]) Appeal No. 12230 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 41801 of 85 S issued at the session of May 30, 2016 and published in the Technical Office's letter No. 67 page No. 570 Rule No. 65, Appeal No. 3072 of 83 S issued at the session of February 11, 2014, Appeal No. 5400 of 81 S issued at the session of January 21, 2012 and published in the Technical Office's letter No. 63 page No. 109 Rule No. 13, Appeal No. 11793 of 76 S issued at the session of January 21, 2010, Appeal No. 20025 of 77 S issued at the session of March 8, 2009, Appeal No. 37251 of 74 S issued at the session of September 7, 2008, Appeal No. 3998 of 69 S issued at the session of November 15, 2003 and published in the Technical Office Letter No. 54 Page No. 1086 Rule No. 147, Appeal No. 10105 of 64 S issued at the session of April 21, 1996 and published in the first part of the Technical Office Letter No. 47 Page No. 544 Rule No. 76, Appeal No. 372 of 60 S issued at the session of April 11, 1991 and published in the first part of the Technical Office book No. 42 page No. 653 rule No. 95, Appeal No. 45761 of 59 S issued at the session of November 7, 1990 and published in the first part of the Technical Office book No. 41 page No. 998 rule No. 177, Appeal No. 2357 of 53 S issued at the session of January 30, 1986 and published in the first part of the Technical Office book No. 37 page No. 173 rule No. 36, Appeal No. 869 of 46 S issued at the session of December 26, 1976 and published in the first part of the Technical Office book No. 27 page No. 978 rule No. 220, Appeal No. 1103 of 45 S issued at the session of October 26, 1975 and published in the first part of the Technical Office book No. 26 page No. 627 rule No. 140

The Court of Cassation ruled that: It is scheduled that the assessment of the seriousness of the investigations and their sufficiency to justify the search order is from the subject matter in which its judge is independent without comment. The contested judgment invalidated the search warrant based on the lack of seriousness of the investigations, as it was found that the officer who issued it, if he had found in his investigation of the intended accused, knew that he had converted to the Islamic religion and changed his name. Therefore, the basis of the judgment was not just the error in the name of the intended search, but rather it was due to the failure to investigate, which invalidates the order and wastes the evidence revealed by its implementation, which is a reasonable conclusion that the trial court has, and therefore the appellant's claimant is misplaced.], Appeal No. 27140 of 67 S issued in the session of February 26, 2007 and published in the letter of the Technical Office No. 58 page No. 163 rule No. 34

It also ruled that: [It is decided that the assessment of the seriousness of the investigations and their sufficiency to justify the search order is from the subject matter on which the judge is independent without comment, and the contested judgment invalidated the search warrant based on the lack of seriousness of the investigations, as it was found that the officer who issued it had found in his investigation of the intended accused to determine the work of the accused and the address of his residence sufficiently to negate ignorance by mentioning the street in which he resides and the number of the residence. The basis of the judgment was not just the error in the name of the intended search, but rather it was due to the shortcoming in the investigation, which invalidates the order and wastes the evidence revealed by its implementation, which is a reasonable

The failure to specify the place where the drug is stored in the residence of the person authorized to inspect it, the failure to indicate the social and health status of the accused, the statement of his precedents in the record of the evidence, or the pursuit of the procedures does not in itself give rise to the seriousness of the investigations contained therein as long as he is the person intended for the permission and the permission was implemented within the period specified therein[173].

5- Execution of the search warrant

The inspection procedures must be initiated upon arrival at the scene of the accident, provided that the members of the prosecution themselves conduct it whenever the circumstances so require, and they may assign one of the judicial officers to carry it out, taking into account the importance of the inspection required in selecting the person to whom it is assigned.

It is not permissible in any case to delegate anyone other than the judicial officers to conduct the search [174].

The Public Prosecution and the investigating judge shall have the right to search the person of the accused or his residence whenever the conditions stipulated in the law are met.

The investigating judge may search a person other than the accused or his home when it becomes clear that there are strong indications that he is hiding things useful in revealing the truth [175].

The Public Prosecution shall not be bound in the search it authorizes by what is stated in the request for permission. It may authorize the search of a person and his dwelling, without the request of the authorized police officer to search the dwelling [176].

The assignment for inspection must be issued in writing by the competent prosecutor spatially, and it must be issued to one of the competent judicial officers spatially and qualitatively, and it is

---

conclusion possessed by the trial court, and therefore the appellant in this regard is misplaced.], Appeal No. 20276 of 66 Q issued in the session of 1 January 2006 and published in the Technical Office's book No. 57, page 27, rule No. 1

The Court of Cassation ruled that: [It is scheduled that the assessment of the seriousness of the investigations and their sufficiency to justify the search order is from the subject on which its judge is independent, and since the court invalidated the search order based on the lack of seriousness of the investigations, it was found that the officer who issued it, had he found in his investigation of the intended accused, would have known the truth of her name and the work she practiced. Ignorant and devoid of his record of reference to her age and place of residence in particular, this discloses a deficiency in the investigation that invalidates the order that he issued and wastes the evidence revealed by its implementation, and did not invalidate the order simply because of the error in the name of the person authorized to search it, which is a conclusion owned by the trial court and therefore the appellant's prohibition in this regard is misplaced, since the foregoing, the appeal is on a basis that must be rejected on the merits] Appeal No. 28531 of 64 BC issued at the session of March 21, 2004 and published in the letter of the Technical Office No. 55 page No. 266 rule No. 37

It ruled that: [It is decided that the assessment of the seriousness of the investigations and their sufficiency to justify the search order is from the subject matter in which his judge is independent without comment, and since the contested judgment invalidated the search warrant based on the lack of seriousness of the investigations, it was found that the officer who issued it if he had found in his investigation the intended accused to know the truth of his name and knew the truth of the trade he practiced in particular and the accused is known by his real name registered in his file at the Drug Enforcement Office and was previously seized in a similar case, the conclusion of the judgment was not based solely on the error in the name of the intended inspection, but rather was due to the lack of investigation, which invalidates the order and wastes the evidence revealed by its implementation, which is a reasonable conclusion owned by the trial court and therefore the appellant's appeal is misplaced] Appeal No. 639 of 48 Q issued at the hearing of 26 November 1978 and published in the first part of Technical Office Book No. 29, page No. 830, rule No. 170.

([173]) Appeal No. 28576 of 72 S issued at the 2nd session of July 2006, Appeal No. 37227 of 73 S issued at the 16th session of December 2004 and published in the Technical Office's letter No. 55, page No. 824, rule No. 124, Appeal No. 1702 of 66 S issued at the 5th session of January 1998 and published in the first part of the Technical Office's letter No. 49, page No. 50, rule No. 5.

([174]) Article 315 of the Judicial Instructions of the Public Prosecution.

([175]) Article 317 of the Judicial Instructions of the Public Prosecution.

([176]) Article 318 of the Judicial Instructions of the Public Prosecution.

not required that the officer be appointed by name, and the authorized officer may be authorized to delegate other competent officers to implement the authorization, and writing is not required in the assignment order issued by the original representative because whoever conducts the inspection in this case conducts it in the name of the public prosecution ordering it, not in the name of his delegate, and the assignment order must include the name of the person who issued it, his job, the date and hour of its issuance, and the name or names of those concerned with the inspection, and it must specify a reasonable period, which can be renewed upon its expiry without execution, and the order shall be appended with the signature of the person who issued it[177].

The assignment of the inspection does not allow the judicial officer to carry it out only once, as the assignment order ends with the implementation of the required inspection. If there is something that justifies the re-inspection, a new order must be issued and in this case no new investigations are necessary, and the referral to the previous investigations is correct and legally productive [178].

It is also not permissible for anyone other than the appointed judicial officer in the search warrant to carry it out, even if the authorized officer has assigned him to do so, as long as this assignment has been made without permission [179].

If the assignment does not specify the name of the officer authorized to search, any competent judicial officer may execute it [180].

The subordinate judge shall give the search order to the Public Prosecution, in order to carry it out by itself or by the judicial officers delegated by it. The judge may not give this order directly to the officer at his request [181].

The prosecution may assign any of the judicial officers to execute the search warrant issued by the magistrate, and this assignment is not required to be reasoned [182].

If the investigation requires the inspection of a warship located in the port of Alexandria, the head of the Maritime Department "Deputy Rulings Department" must be notified before starting the inspection to assign an officer to attend during its conduct.

However, if the ship to be inspected is in any other Egyptian port, the notification shall be to the oldest naval commander in the port or to the commander of the aforementioned ship if there is no naval command in the port [183].

Prosecutions must refer to the Attorney General of the Public Prosecution or its head, in each case in which a search of the residences of financiers is requested to seize books or papers related to a tax crime [184].

If one of the employees of the General Authority for Railways is accused of seizing or embezzling things from the property of this authority and this is in an area where the office of a judicial officer of the authority is located and the investigation requires a search of the house of the accused, the member of the prosecution must delegate the competent judicial officer to conduct this search, unless the circumstances of the case require a search to the contrary, such

---

([177]) Article 319 of the Judicial Instructions of the Public Prosecution.
([178]) Article 322 of the Judicial Instructions of the Public Prosecution.
([179]) Article 323 of the Judicial Instructions of the Public Prosecution.
([180]) Article 324 of the Judicial Instructions of the Public Prosecution.
([181]) Article 332 of the Judicial Instructions of the Public Prosecution.
([182]) Article 333 of the Judicial Instructions of the Public Prosecution.
([183]) Article 334 of the Judicial Instructions of the Public Prosecution.
([184]) Article 335 of the Judicial Instructions of the Public Prosecution.

as if the entity in which the search is required does not have a judicial officer's office, and then the police officers may be assigned to conduct that search [185].

In cases where it is permissible to arrest the accused, the bailiff may search him and the car he drives [186].

Whenever an order is issued by the Public Prosecution to search a person, the judicial officer delegated to conduct it may execute it wherever he finds it, as long as the place where the search took place is within the jurisdiction of the person who issued the order and who executed it [187].

If the search warrant is issued correctly or in cases where it is legally permissible to search, the police officer has the right to choose the appropriate time and place to conduct it within the limits of the warrant and the law [188].

The judicial officer assigned to implement the permission of the Public Prosecution to search may choose the appropriate circumstance to conduct it in a fruitful manner at the time he deems appropriate, as long as this is done within the period specified by the permission, and when the inspection carried out by the judicial officers is legally authorized, the method of conducting it is left to the opinion of the person carrying it[189].

And that the defense of the invalidity of the search of the residence of the first accused for its occurrence by deception and deception that the second witness assumed the status of a doctor in order to be able to enter the residence, it is due to the fact that it is decided that the judicial officers, if authorized by the Public Prosecution to conduct a search, take what they see as sufficient to achieve its purpose without committing to it in a specific way as long as they do not go out in their procedures to the law, and they have the choice of the appropriate circumstance to conduct it in a fruitful manner, and therefore there is no implication on the judicial officer assigned to search - in this case - in what he did to implement the permission as long as he saw it as a fruitful means to enter the residence of the first accused authorized to search it[190].

([185]) Article 336 of the Judicial Instructions of the Public Prosecution.

([186]) Appeal No. 49902 of 85 S issued at the session of February 28, 2017 (unpublished).

([187]) Appeal No. 1048 of 44 S issued at the session of 29 November 1979 and published in the first part of the book of the Technical Office No. 30 page No. 845 rule No. 182, Appeal No. 2091 of 48 S issued at the session of 19 April 1979 and published in the first part of the book of the Technical Office No. 30 page No. 490 rule No. 103..

([188]) Appeal No. 12222 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 17 of 49 S issued at the session of April 29, 1979 and published in the first part of the book of the Technical Office No. 30 page No. 511 rule No. 108.

It ruled that: [Whereas it is established from the records of the judgment and from the included vocabulary that the Prosecution's permission issued on the basis of the investigation report dated 20/7/1973 to inspect the Appellee to seize the narcotic substances he obtains upon his arrival in Alexandria returning from Cairo by train, which departs at two and a third in the evening, was issued at four o'clock in the evening on 20/7/1973, provided that it is done once and within twenty-four hours from the date of its issuance, so the officer authorized to conduct the inspection seized the Appellee Upon his arrival at Sidi Gaber station, he was searched by the subsequent train, which arrived at it at 9:15 pm on the same day, that is, within the time period specified by the permission, and it was decided that the judicial officer assigned to implement the prosecution's permission to search would choose the appropriate circumstance to conduct it in a fruitful manner and at the time he deems appropriate, as long as this is done within the period specified by the permission - as in the case - the contested judgment ended in the nullity of the search and the subsequent procedures based on the fact that it was done after exhausting the scope of the prosecution's permission to search, it violated the reality, which led him to an error in the application of the law Hence it has to be overturned. Since this error has prevented the court from considering the merits of the case and assessing its evidence, it must be with the cassation referral] Appeal No. 1881 of 48 BC issued at the session of March 18, 1979 and published in the first part of the book of the Technical Office No. 30 page No. 351 rule No. 72.

([189]) Appeal No. 12230 of 88 S issued at the session of January 2, 2021 (unpublished), Appeal No. 5556 of 86 S issued at the session of April 8, 2018 (unpublished).

([190]) Appeal No. 30639 of 72 S issued at the session of 23 April 2003 and published in the letter of the Technical Office No. 54 page No. 583 rule No. 74.

It is permissible to conduct the search at any time, day and night, as the Egyptian legislation did not restrict the search procedure to a certain time. It is also permissible to search the accused who is authorized to search it in any place where it is found, as long as that place is within the jurisdiction of the inspector and the source of the permission [191].

However, the court must verify the status of the judicial officer authorized to inspect and the extent of his spatial competence when conducting the inspection [192].

The law does not require the investigator to accompany a writer during the inspection [193].

The law prohibits the arrest or search of any person except with his permission or with the permission of the competent investigating authority. It is not permissible for individuals other than judicial officers to engage in any of these two procedures, and all that the law authorizes them to bring the perpetrator in flagrante delicto crimes - in application of the provisions of articles 37 and 38 of the Code of Criminal Procedure - and hand him over to the nearest judicial officer and they are not entitled to make a arrest or search [194].

The right of search is limited to the judicial officer and not to other individuals or members of the public authority. The judicial officer may not search the accused on his own except in cases of flagrante delicto or misdemeanors that are punishable by imprisonment for a period exceeding three months, provided that there is sufficient evidence to charge him with the flagrante delicto[195].

The court must verify the capacity of the judicial officer authorized to inspect and the extent of his spatial competence when conducting the inspection [196].

([191]) Article 344 of the Judicial Instructions of the Public Prosecution.

([192]) The Court of Cassation ruled that: [The lesson in spatial jurisdiction is the fact of reality, and if its appearance was lax until the time of trial, as it was, and it was proven from reviewing the included vocabulary that the search warrant was issued on January 31, 1973 by the prosecutor of the Abu Tij Center in the head of the captain .... - "To conduct it without reference to his capacity or spatial competence - although it was mentioned in the record of the investigation that he works as head of the Investigation Unit of Sedfa Center, and it was clear from the statements of the Abu Tig Center Investigation Officer in the investigations of the prosecution - and what was revealed - after that - the letter of the Assiut Security Directorate - that the said captain was working - at the time of the search warrant - as head of the Abu Tig Center Investigation Unit - which the search took place in his department, which required the court to conduct an investigation in this regard before it concluded that the warrant was null and void - but it did not do so and sent the statement that the officer authorized to conduct the search was not competent to what came with the search warrant despite the absence of what supports it, its ruling is flawed] Appeal No. 186 of the year 46 Q issued in the hearing of May 17, 1976 and published in the first part of the Technical Office book No. 27, page 491, rule No. 109..

([193]) Appeal No. 612 of 31 S issued at the session of October 23, 1961 and published in the third part of the book of the Technical Office No. 12 page No. 841 rule No. 165.

([194]) Appeal No. 44270 of 85 S issued at the 22nd session of October 2016 and published in the letter of the Technical Office No. 67, page No. 735, rule No. 94.

([195]) The Court of Cassation ruled that: [The text of Article 46 of the Criminal Procedure Law is clear that "in cases where it is legally permissible to arrest the accused, the judicial officer may search him." This provision is reserved to the judicial officer only for the right of search, which confirms that this text came after the text of Articles 37 and 38 of the Code of Criminal Procedure related to the right of individuals and public officials who are not judicial officers to bring the accused in flagrante delicto and hand him over, and it came without deciding the right to search the accused for individuals or public officials who do so without judicial officers, and that Article 46 of the Code of Criminal Procedure is derived from Article 242 of the Italian Investigation Law, which does not allow individuals when handing over the flagrante delicto to search him, and that handing over the accused after being brought by a public authority officer who is not a judicial officer is not a legal arrest as mentioned above. Whereas the foregoing, and the popular committees have not yet been subjected to the appellant to arrest, search or search the car, if they do, their action is null and void, and as it invalidates the arrest and search, it invalidates the evidence derived from them, and since the papers have no evidence other than the false arrest, and therefore the appealed judgment must be overturned and the appellant acquitted of what was attributed to him] Appeal No. 380 of 82 S issued at the session of 22 September 2012 and published in the Technical Office's letter No. 63, page No. 396, rule No. 66.

See Article 337 of the Judicial Instructions of the Public Prosecution.

([196]) Appeal No. 380 of 82 S issued on September 22, 2012 and published in the Technical Office's letter No. 63, page No. 396, rule No. 66.

The Court of Cassation also ruled that the issuance of a search warrant to one of the arresting officers or to those who assist or delegate him results in the validity of the search conducted by whomever alone, as long as the source of the permission did not intend for one in particular to implement it, and it is not necessary to write the assignment order issued by the original delegate to other judicial arresting officers [197].

The power of judicial officers to search and confiscate is one of the serious powers that, when exercised, must be carefully balanced between their duty to implement the law and maintain order, and their duty to protect society and respect human rights, including their right to privacy. The right to privacy means that every person has a special area in which he enjoys protection from any external interference by others, including official authorities. Therefore, this right may not be violated except in the cases specified by law and in accordance with procedures.

Search is an investigation procedure that aims to seize the evidence of the crime under investigation and all that is useful in revealing the truth in order to prove the commission of the crime or its attribution to the accused. It focuses on the person of the accused and the place where he resides, and it may extend to persons other than the accused and their residences under the conditions and circumstances specified in the law [198].

The human right to private life is one of the fundamental rights protected under international law. Article 12 of the Universal Declaration of Human Rights states: "No one shall be subjected to arbitrary interference with his private life, family, home or correspondence, or to campaigns against his honor and reputation. Everyone has the right to the protection of the law against such interference or campaigns."

This right is affirmed and emphasized in the International Covenant on Civil and Political Rights, article 17 of which states: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation; 2. Everyone has the right to the protection of the law against such interference or attacks.”

Accordingly, the intervention of the police and other security services in the private life of individuals must be governed by law, and this requires that search or confiscation procedures be carried out in accordance with the law, otherwise they become null and void. Everything that is based on nullity is null and void, and cannot be built upon or taken into account legally.

It is an essential element of the validity of the search or seizure that it be ordered by a competent judicial authority, that the person concerned be notified of the search warrant and its reasons, that this be done in the presence of witnesses and that all seized objects be recorded in an official record.

Every person has the right to the inviolability of his private life, and every person has certain things surrounded by secrecy, and out of respect for this, the Constitution guarantees to all people the inviolability of private life, as well as the inviolability of their homes as a repository of their secrets. They may not be entered, searched, monitored, or intercepted except by a reasoned judicial order, and in the cases and in the manner prescribed by law.

However, a person may lift this confidentiality with his free consent, and in this case the inspection loses its truth on which it is based, which is to reveal the truth in the field of confidentiality, and in this case it becomes just an ordinary inspection that is not subject to the guarantees established by law.

([197]) Appeal No. 345 of 86 S issued at the 8th session of October 2016 and published in the book of the Technical Office No. 67, page No. 673, rule No. 85.

([198]) Article 311 of the Judicial Instructions of the Public Prosecution.

It is required for the validity of the consent to be explicit and unequivocal, free from coercion or any defect in the consent. The person who issued the consent must be distinctive, free to choose, not fraudulent or fraudulent, and obtained before the inspection and with knowledge of its circumstances. It must not be established in writing issued by the person who was searched, but it is sufficient for the court to identify his proof of the facts and circumstances of the case [199].

The issuance of consent to search is not required by a positive act from the person who gets searched, but it is sufficient in that negative act not to oppose the search [200].

If the matter relates to the search of a house or place, the consent must be issued by the owner of the house or place or whoever is deemed to possess it at the time of his absence. It is not valid to issue a search warrant from the wife as long as her husband is not absent from the house because it is issued by those who do not own it [201].

A person may be searched with his consent, and the place may be searched with the consent of his possessor or his representative, and the parent who resides with his father in his permanent capacity shall be deemed to be in possession of the place in which they reside [202].

([199]) Appeal No. 5883 of 86 S issued at the 22nd session of December 2016 and published in the letter of the Technical Office No. 67, page No. 922, rule No. 115, Appeal No. 9893 of 78 S issued at the 5th session of November 2009 and published in the letter of the Technical Office No. 60, page No. 404, rule No. 56, Appeal No. 17379 of 69 S issued at the 3rd session of November 2007 and published in the letter of the Technical Office No. 58, page No. 665, rule No. 128, Appeal No. 29049 of 63 s issued at the session of 14 November 1995 and published in the first part of the Technical Office letter No. 46 page 1180 rule No. 178, Appeal No. 2750 of 53 s issued at the session of 3 April 1984 and published in the first part of the Technical Office letter No. 35 page 378 rule No. 82, Appeal No. 2384 of 49 s issued at the session of 21 April 1980 and published in the first part of the Technical Office letter No. 31 page No. 534 rule No. 102, Appeal No. 225 of 36 s issued at the session of 20 June 1980 1966 and published in the second part of Technical Office Letter No. 17 Page 827 Rule No. 156, Appeal No. 3066 of 32 S issued in the session of February 4, 1963 and published in the first part of Technical Office Letter No. 14 Page 88 Rule No. 19, Appeal No. 435 of 20 S issued in the session of June 14, 1950 and published in the first part of Technical Office Letter No. 1 Page 791 Rule No. 251, Appeal No. 137 of 16 S issued in the session of January 21, 1946 and published in Technical Office Letter No. 7 P No. 1 Page 55 Rule No. 60, Appeal No. 2237 of 12 S issued in the session of December 28, 1942 and published in Technical Office Letter No. 6 P No. 1 Page 70 Rule No. 49, Appeal No. 1895 of 7 S issued in the session of October 25, 1937 and published in Technical Office Letter No. 4 P No. 1 Page 88 Rule No. 103.

The Court of Cassation ruled that: [If the contested judgment concluded in a reasonable inference that the search of the second appellant's house was carried out only after her approval, an approval included in the declaration she signed with her thumbprint and seal print and signed by her secondary school student son, who knows reading and writing well and therefore knew the content of what he signed, and it was clear from the minutes of the trial session that neither of the appellants or their defender raised anything about the signature of the declaration as a result of coercion, the controversy in the validity of the appellant's declaration and her consent to the search is not acceptable] Appeal No. 1124 of 42 s issued at the hearing of 3 December 1972 and published in Part III of the Technical Office's book No. 23 page No. 1317 rule No. 296

The Court of Cassation also ruled that: [The false inspection is not correct to say that it occurred with the consent attributed to the son of the appellant as long as the judgment did not prove that this son has consented correctly issued with knowledge that those who searched had no status in it] Appeal No. 1101 of 21 BC issued at the session of December 25, 1951 and published in the first part of the book of the Technical Office No. 3 page No. 338 rule No. 130

It also ruled that: [The consent of the owner of the house to the entry of the policeman to search his house must be free before entry and after knowledge of the conditions of the search and that whoever wants to conduct it does not have it legally. [Appeal No. 892 of 9 S issued on 17 April 1939 and published in the letter of the Technical Office No. 4 P. Part No. 1 Page No. 530 Rule No. 377.

([200]) Appeal No. 9977 of 78 S issued at the 10th session of December 2015 and published in the letter of the Technical Office No. 66, page No. 853, rule No. 126.

([201]) Appeal No. 19039 for the year 73 S issued in the session of February 17, 2010 and published in the book of the Technical Office No. 61, page No. 134, rule No. 19.

The Court of Cassation also ruled: [The wife, while cohabiting with her husband and possessing the house in his absence, has the capacity to describe the fact that the house is her home, which entitles her to pay the nullity of the search, which harms her from its occurrence without her consent, and harms its result, as long as the husband has not consented to the search before it occurs]. Appeal No. 1117 of 24 S issued at the 22nd session of November 1954 and published in the first part of the Technical Office's letter No. 6, page No. 201, rule No. 67.

([202]) Article 345 of the Judicial Instructions of the Public Prosecution.

The store also has an inviolability derived from its contact with the person of its owner or his residence, and that this inviolability and the care surrounding it by the street require that his entry be with the permission of the prosecution unless the crime is flagrante delicto or the person concerned has consented to being subjected to his inviolability with proper consent, and that the consent to the search must be issued by the owner of the place or who is considered to have possession of him at the time of his absence, and if the assessment of the availability of the possession capacity of the person who issued the consent to search the place is one of the subject by which his judge is independent without a follower as long as his judiciary is based on what he justifies[203].

The order issued by the officer to the accused to open what he carries does not achieve the meaning of consent considered in the law, because in fact it is a compliance by the accused with the order of the officer [204].

If the accused was holding in his hand something that the officer did not identify, and did not hand it over to the officer until after he requested it from him, which is an unlawful request, characterized by illegality and deviation of authority, and this extradition cannot be described as being of will, voluntariness and choice, but rather pushed by the illegal action taken by the officer, this extradition is not valid, and the evidence derived from it is invalid[205].

And to go to uncover everything that obscures confidentiality so that the whole matter is within the reach of those in charge of the inspection, so that their task is to inform, not to inspect.

Consent must deal with allowing the seizure of things that are useful in revealing the truth, otherwise the consent is corrupt. However, if the consent is limited to mere perusal only, the judicial officer may, on his own initiative, seize what is considered a crime, based on the case of flagrante delicto.

The Lawyers Law required the inspection of the headquarters of the Bar Association, its subordinate syndicate and its subcommittees or the placing of seals on them to be with the knowledge of a member of the Public Prosecution. Therefore, it is not permissible for judicial officers to inspect the headquarters of the Bar Association, and the inspection must be carried out in the presence of the President of the Bar Association, the President of the Bar Association or its representative [206].

The Law on the Establishment of the Journalists Syndicate also prohibited inspecting the headquarters of the Journalists Syndicate and its subordinate syndicates or placing seals on them except with the knowledge of a member of the Public Prosecution and in the presence of

---

([203]) The Court of Cassation ruled that: [... The court, within the limits of its discretion, was satisfied that the brother of the appellee who is assigned to monitor the store for a temporary period in addition to his responsibility for his neighboring store is not considered a possessor, and the mere capacity of the brothers did not provide actual possession or judgment to the brother of the possessor and did not give him authority over his brother's store, and did not authorize him to authorize his entry to others, because the duty of control assigned to him is required to preserve the rights of his brother, the first of which is to preserve the inviolability of his store derived from the inviolability of his person, and if he violates this or authorizes others to enter, the permission shall have been issued by those who do not own it when it was so, the contested judgment, as it ended in the invalidity of the inspection of the appellee's store due to the lack of consent to its inspection by the person concerned, and as a result of his innocence and the rejection of the civil lawsuit, is not contrary to the law...]. Appeal No. 1302 of 47 S issued on February 26, 1978 and published in the first part of the Technical Office's letter No. 29, page No. 185, rule No. 32.

([204]) Appeal No. 21782 of 74 BC issued at the session of 16 October 2012 and published in the letter of the Technical Office No. 63 page No. 511 rule No. 87.

([205]) Appeal No. 4089 of 72 S issued at the session of October 5, 2009 and published in the book of the Technical Office No. 60 page No. 335 rule No. 45.

([206]) Article 224 of Law No. 17 of 1983 regarding the issuance of the Advocacy Law.

the President of the Journalists Syndicate, the President of the subordinate syndicate, or their representative [207].

The Political Parties Law also prohibits the search of any of the party's headquarters in case of flagrante delicto except in the presence of one of the heads of the Public Prosecution. Otherwise, the search shall be considered null[208] and void.

Judicial officers, as administrative officers, may enter public shops to verify the implementation of their laws and regulations. Judicial officers may inspect shops without prior notice, and they may enter these shops and view all papers. The violations resulting from the inspection shall be recorded in a report prepared for that [209].

The origin is that the men of public authority in their areas of competence enter public shops open to the public to monitor the implementation of laws and regulations - an administrative procedure restricted to the purpose of the above statement and does not go beyond it to exposure to the freedom of persons or the exploration of closed things that are not apparent unless the officer is aware of his sense and before exposure to them, but what is in them, which makes it permissible to possess or obtain inspection, so the inspection in this case is based on the case of flagrante delicto and not on the right to access public shops and supervise the implementation of laws and regulations[210].

The lesson in public places is not the names that are given to them, but the reality of their matter [211].

If the accused makes his dwelling a place open to the public, which people enter for gambling and drinking, this makes his home a public place that the public cheats without distinction. If an arrestee enters it without the permission of the Public Prosecution, his entry is justified by the decision that a man of public authority in his jurisdiction has access to public shops or open to

---

([207]) Article 70 of Law No. 76 of 1970 regarding the establishment of the Journalists Syndicate.

([208]) Article 14 of Law No. 40 of 1977 on the System of Political Parties, as amended by Law No. 144 of 1980.

([209]) Article 28 of Law No. 154 of 2019 regarding the issuance of the Public Shops Law, and Article 24 of Prime Minister Decision No. 590 of 2020 regarding the issuance of the executive regulations of the Public Shops Law.

([210]) Appeal No. 18720 of 62 S issued at the 8th session of October 2001 (unpublished), Appeal No. 13648 of 4 S issued at the 27th session of March 2014 and published in the Technical Office's letter No. 65, page No. 177, rule No. 19, Appeal No. 30812 of 67 S issued at the 18th session of April 2007 and published in the Technical Office's letter No. 58, page No. 376, rule No. 72, Appeal No. 23077 of 66 S issued at the 12th session of March 2007 2006 and published in Technical Office Letter No. 57 Page No. 391 Rule No. 43, Appeal No. 11111 of 64 S issued at the 7th session of May 1996 and published in Part I of Technical Office Letter No. 47 Page No. 583 Rule No. 81, Appeal No. 21378 of 59 S issued at the 26th session of October 1993 and published in Part I of Technical Office Letter No. 44 Page No. 876 Rule No. 137, Appeal No. 3778 of 57 S issued at the 7th session of February 1989 and published in Part I of Technical Office Letter No. 40 Page No. 193 Rule No. 33, Appeal No. 2806 of 57 S issued at the session of November 1, 1987 and published in the second part of the Technical Office letter No. 38 page No. 917 rule No. 169, Appeal No. 5517 of 55 S issued at the session of February 2, 1986 and published in the first part of the Technical Office letter No. 37 page No. 217 rule No. 45, Appeal No. 119 of 47 S issued at the session of May 15, 1977 and published in the first part of the Technical Office letter No. 28 page No. 591 Rule No. 125, Appeal No. 1814 of 45 s issued at the session of February 16, 1976 and published in the first part of the Technical Office letter No. 27 page No. 225 rule No. 45, Appeal No. 1239 of 35 s issued at the session of December 28, 1965 and published in the third part of the Technical Office letter No. 16 page No. 974 rule No. 185, Appeal No. 1312 of 22 s issued at the session of July 9, 1953 and published in the third part of the Technical Office letter No. 4 page No. 1151 rule No. 386.

([211]) Appeal No. 13648 of 4Q issued at the 27th session of March 2014 and published in the Technical Office's letter No. 65, page No. 177, rule No. 19, Appeal No. 1814 of 45Q issued at the 16th session of February 1976 and published in the first part of the Technical Office's letter No. 27, page No. 225, rule No. 45

The Court of Cassation ruled that: [If the judgment was deduced from what the officer proved in his record and from the statements of the appellants in the police and prosecution investigations, that the place of seizure is a place open to the public prepared by the convict to make tea and serve it to customers, and that it is considered a public place, then the conclusion of the judgment in this regard is an understanding of the reality in the case, which falls within the jurisdiction of the trial court, and the Court of Cassation has nothing to do with it]. Appeal No. 386 of 43 BC issued at the 27th session of May 1973 and published in the second part of the Technical Office's letter No. 24, page No. 649, rule No. 133.

the public to monitor the implementation of the law and regulations, and he may accordingly control the crimes he witnesses in flagrante delicto [212].

Whereas the principle was that the judicial officer had access to public shops open to the public to monitor the implementation of laws and regulations, provided that this is done at the times when those shops usually operate, and the reason for the license is that the shops at the time they are open to the public cannot be closed to the officer charged with monitoring the implementation of laws purely because he is such and not from individual people, but in times when the public is not allowed to enter them, those shops take the ruling of the dwelling, it does not address in terms of place what used to be a dwelling and includes in terms of time only the working times without the times when they are closed, nor in terms of purpose except to the extent that they can verify the implementation of those laws and regulations without exposure to other things and places that are outside this scope[213].

Article 58 of the Constitution stipulates that: "Homes are inviolable, and except in cases of danger or distress, they may not be entered, searched, monitored or tapped except by a reasoned judicial order, specifying the place, timing and purpose, all in the cases indicated in the law, and in the manner stipulated by it, and those in homes must be warned when entering or searching them, and informed of the order issued in this regard."[214].

It is not permissible for the men of the authority to enter any haunted place except in the cases specified in the law, or in the case of seeking assistance from within, or in the case of fire, drowning, or the like[215].

The meaning of the dwelling is determined in the light of its connection with the private life of its owner, as it is every place where a person resides permanently or temporarily and goes to its subordinates. It also extends to the private places in which he resides as long as he is in the possession of its owner, even for a period of time, and is linked to it and makes it a warehouse for his secret, and he can prevent others from entering it except with his permission. The police officer or public authority may not enter it except in the cases specified in the law and in the manner stipulated in it [216].

However, if the place is open to the public and permitted to enter it for each Tariq without discrimination, his example deviates from the prohibition stipulated in Article 45 of the Code of Criminal Procedure in that he may not enter it except with the permission of the judiciary, and if

---

([212]) Appeal No. 2045 of 49 S issued on March 1, 1981 and published in the first part of the book of the Technical Office No. 32 page No. 190 rule No. 30.

([213]) In that, the Court of Cassation ruled that: [... It is established from the records of the contested judgment that the appellants defended the plea against the invalidity of the arrest and search because of the absence of flagrante delicto by stating that "the hour of entering the cafe is 1 o'clock. 50 r It is closed, so it is not permissible for the officer to enter it because it takes the ruling of the dwelling. " If it is established from the contested judgment that the incident of the lawsuit occurred by saying "that in the event of the passage of the first lieutenant....... Assistant Detective Center .... The second witness in the district of the center and their visits to the defendant's cafe...... See the defendants .... Sitting inside and the last defendant holding a hookah, he found on the table in front of them three stones, each of which was above the psychedelic banjo plant. The first defendant was holding a paper roll with the banjo plant and placed it on the stone.. .. " It required the court - in order to achieve the defense of the appellants - to verify the time of the incident and whether the cafe was open to the public or closed and how my officer entered the incident to verify the validity or invalidity of the payment in terms of both fact and law, but it did not do so, its ruling is flawed by deficiencies... [Appeal No. 7088 of 69 s issued at the session of March 23, 2003 and published in the Technical Office letter No. 54 page 482 rule No. 53, and see: Appeal No. 1605 of 59 s issued at the session of January 31, 1991 and published in the first part of the Technical Office letter No. 42 page 213 rule No. 29, Appeal No. 1793 of 39 s issued at the session of February 9, 1970 and published in the first part of the Technical Office letter No. 21 page 260 rule No. 64.

([214]) Article 58 of the 2014 Constitution.

([215]) Article 45 of Law No. 150 of 1950 regarding the issuance of the Code of Criminal Procedure.

([216]) Appeal No. 9487 of 87 S issued at the session of 19 October 2019 (unpublished).

someone enters it, his entry is justified, and he may accordingly control the crimes he witnesses in it[217].

The Supreme Constitutional Court ruled that: [The Constitution has been keen - for the sake of public freedoms - to ensure personal freedom to communicate with the individual since his existence. Article 41 of the Constitution affirmed that "personal freedom is a natural right and is inviolable." Article 44 of the Constitution also stipulates that "homes are inviolable." The first paragraph of Article 45 of the Constitution stipulates that "the private life of citizens is inviolable and protected by law." However, In deciding this constitutional protection, the Constitution not only included this in general terms, as did previous constitutions, which decided to ensure personal freedom and the right to security, non-arrest or detention, the inviolability of homes and the inadmissibility of entering or monitoring them (Articles 8 of the Constitution of 1923, 41 of the Constitution of 1956, and 23 of the Constitution of 1964), leaving the ordinary legislator with full authority without restrictions in regulating these freedoms, but the 1971 Constitution came with basic rules that establish many guarantees to protect personal freedom and the freedoms and sanctities it entails and raise it to the level of constitutional rules - including Articles 41 to 45 of it - where the ordinary legislator may not violate those The rules and the guarantees they contain to safeguard those freedoms, otherwise his action is contrary to constitutional legitimacy.

Whereas the constitutional legislator - in order to reconcile the right of the individual to personal freedom and the inviolability of his home and private life and the right of society to punish the perpetrator and collect evidence of the crime and attribute it to him - has authorized the search of the person or the dwelling as a measure of investigation after subjecting him to certain guarantees that may not be wasted, leaving the ordinary legislator to determine the crimes in which it is permissible to search and the procedures by which it is carried out. Therefore, the first paragraph of Article 41 of the Constitution stipulates that "Personal freedom is a natural right and is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, subjected to any restriction of his freedom or prevented from movement except by an order necessitated by the necessity of investigation and the maintenance of the security of society. This order is issued by the competent judge or the Public Prosecution, in accordance with the provisions of the law." Article 44 of the Constitution stipulates that "Dwellings are inviolable and may not be entered or searched except by a reasoned by judicial order in accordance with the provisions of the law." This latter text, even if he has distinguished between entering dwellings and searched them in one guarantee when it represents a violation of the inviolability of the dwellings that have been touched by the Constitution.

Whereas it appears from the interview between Articles 41 and 44 of the aforementioned Constitution that the Constitutional Legislator has differentiated in ruling between the search of persons and the search of dwellings with regard to the need for the search to be carried out in both cases by a judicial order from those who have the authority to investigate or from the competent judge as a basic guarantee for the search to take place under the prior supervision of the judiciary, Article 41 of the Constitution exempts from this guarantee the case of flagrante delicto for the arrest and search of a person, as well as not requiring it to cause the warrant of the competent judge or the Public Prosecution to be searched, while Article 44 of the Constitution did not exclude the case of flagrante delicto from the need for a reasoned judicial order from those who have the authority to investigate or from the competent judge to search the dwelling, whether it was carried out by the same warrantor or authorized by the judicial officer to conduct it. The text of Article 44 of the Constitution referred to above is a general one that has never been answered to what it allocates or restricts, to the effect that this

---

([217]) Appeal No. 32528 of 84 S issued at the 9th session of February 2017 (unpublished).

constitutional provision requires in all cases of house searches the issuance of the reasoned judicial order in order in order to preserve the inviolability of the dwelling, which stems from the personal freedom that relates to the individual's entity, private life and the dwelling to which he is housed. It is the subject of its secret and tranquility, and therefore the Constitution - in the circumstances in which it was issued - was keen to confirm that the sanctity of the dwelling was not violated, whether by entering or searching it, unless a reasoned judicial order was issued without excepting the case of flagrante delicto, which - according to Article 41 of the Constitution - only allows the arrest and search of a person wherever he is found. This confirms that the draft of the Committee of Freedoms formed by the People's Assembly at the time of preparing the Constitution guaranteed the text of Article 44 to exclude the case of flagrante delicto from its ruling. However, this exception was omitted in the final draft of this article and the Constitution was issued, including the current text of Article 44, in order to preserve the sanctity of dwellings on the basis of the foregoing.

Whereas the foregoing, and the text of Article 44 of the Constitution is clear, the meaning of the foregoing is that the case of flagrante delicto is not excluded from the two guarantees that he mentioned - that is, the issuance of a judicial order and that the matter is reasoned - it is not permissible to say that except for the case of flagrante delicto from the provision of these two guarantees by analogy to remove it from the guarantee of the issuance of the judicial order in the case of the search or arrest of a person, because the exception is not measured, nor is it measurable when the existence of the constitutional text is clear and does not mean This is changed by the inability of Article 44 of the Constitution, after the inclusion of these two aforementioned guarantees, to do so "in accordance with the provisions of the law" because this phrase does not mean authorizing the ordinary legislator to remove the case of flagrante delicto from the subjection of the two guarantees stipulated in the aforementioned Article 44 of the Constitution, and to say otherwise is a waste of these guarantees and to suspend their work on the will of the ordinary legislator, which is not benefited by the text of Article 44 of the Constitution. Rather, the phrase "in accordance with the provisions of the law" refers to referral to ordinary law in determining the crimes in which a search order may be issued and explain how it is issued and why it is otherwise. Procedures by which this inspection is carried out][218] .

Entering the house for other than a search is not considered an inspection, but it is just a material work necessitated by the state of necessity. As for the search, it is the search for the elements of truth in the secret warehouse in it, which is an investigation procedure, and entering the houses, although it is prohibited for the men of the public authority in cases other than those indicated by the law, and other than the case of internal assistance and cases of drowning and fire. However, these cases are not mentioned exclusively in Article 45 of the Code of Criminal Procedure, but the text added to them similar cases that are based on the state of necessity and would track the accused with the intention of executing the arrest warrant[219].

([218]) The judgment of the Supreme Constitutional Court in Case No. 5 of 4S issued at the session of June 2, 1984 and published on June 14, 1984 in the first part of the Technical Office's letter No. 3, page 67, rule No. 12

The articles referred to in the body of the provision are Articles 41 and 44 of the 1971 Constitution, corresponding to Articles 54 and 58 of the 2014 Constitution.

([219]) Appeal No. 71261 of 76 S issued at the 3 rd session of May 2007 (unpublished), Appeal No. 71261 of 76 S issued at the 3 rd session of May 2007 (unpublished), Appeal No. 35143 of 69 S issued at the 2 nd session of October 2007 and published in Technical Office Letter No. 58 Page 557 Rule No. 108, Appeal No. 35143 of 69 S issued at the 2 nd session of October 2007 and published in Technical Office Letter No. 58 Page 557 Rule No. 108, Appeal No. 2107 of 51 s issued at the session of March 9, 1982 and published in the first part of the Technical Office letter No. 33 page No. 305 rule No. 63, Appeal No. 1289 of 37 s issued at the session of October 30, 1967 and published in the third part of the Technical Office letter No. 18 page No. 1047 rule No. 214, Appeal No. 1703 of 33 s issued at the session of February 3, 1964 and published in the first part of the Technical Office letter No. 15 page No. 105 rule No. 22, Appeal No. 2013 of 32 s issued At the session of December 17, 1962, published in the third part of the Technical Office's letter No. 13, page No. 853, rule No. 205, Appeal No. 1791 of 28 S issued

The presence of the accused in a coma in his home alone so that he cannot ask for help and the men of public authority show that is one of the cases of necessity that allows the men of public authority to enter the house [220].

The receipt of notifications from the neighbors of the accused to the officer of the incident that he is holding the victim in his residence and by moving he saw the victim naked from his clothes and the accused is holding a knife and smells of alcohol, so he was arrested, this case is one of the cases dealt with by the legislator in Article 45 of the Code of Criminal Procedure[221].

---

in the session of March 31, 1959 and published in the first part of the Technical Office's letter No. 10, page No. 391, rule No. 87.

(220) Appeal No. 64011 of 76 S issued in the session of May 2, 2007 and published in the letter of the Technical Office No. 58 page No. 386 rule No. 75.

(221) Appeal No. 10566 of 77 S issued on January 10, 2011 (unpublished)

The Court of Cassation ruled that: [Whereas the contested judgment was between the fact of the lawsuit in saying: "Following a distress that occurred from one of the residential apartments in the city of.. ... The secret policeman answered/ ...... So he went to its source and the apartment turned to the source of distress open the door and went towards it, so he met with one of the women, who is called/ .... The wife of the defendant of the customary contract, who resides with him in the same dwelling, summoned him to her husband and allowed him to enter the apartment with the intention of raising the infringement on her, and told him that a marital dispute between her and her husband for her desire to leave the city, but he refused, so he infringed on her, and added that the accused is using narcotic substances and pointed to a glass jar with a rolled cigarette in it, so he opened the jar and found inside it the seeds of the cannabis plant and a paper roll with two pieces of the essence of cannabis, and the accused admitted to possessing the drug with the intention of consumption, and when the undercover policeman addressed the head of the detective unit, he asked his wife/ ...... She wanted to guide about other narcotic substances inside the defendant's residence, so he moved with her after taking a declaration of consent to the inspection to where she guided a plastic bag behind the kitchen refrigerator, which showed that it contained a roll inside the cannabis plant, and in the face of the defendant, he admitted to possessing the drug with the intention of using it as well, and the chemical laboratory report proved that the seized substance is the essence of the cannabis, and inside the cigarette are parts of the cannabis plant and a quantity of cannabis plant seeds, and inside the two rolls is the cannabis plant "then The judgment stated the evidence of guilt derived from the statements of the prosecution witnesses to the same meaning that it embraced for the image of the incident in the advanced context, and then presented the plea of the appellant to invalidate the arrest and search for lack of permission from the Public Prosecution and responded by saying: "As for the plea of invalidity of arrest and search for lack of a prosecution permit, it was argued that the law gave the police the right to enter homes and public places not for the purpose of searching, but for considerations related to public security and ensuring the application of regulations and laws governing public places. The legislator was keen to provide for this with regard to homes, Article 45 of the Code of Criminal Procedure stipulates that It is not permissible for the men of the authority to enter any haunted place except in the cases indicated in the law or in the case of requesting assistance from inside or in the case of fire, drowning or the like. In the cases indicated in the law, it means cases of entry for the purpose of inspection for an investigation procedure, but other cases, which are requesting assistance or help, or the case of fire and cases of necessity in general. Entering the house is not considered an investigation procedure and is not considered an inspection in the legal sense. It follows that it is not permissible for the police officer if In one of these cases, he entered the house to conduct a search. However, if he came across a crime in flagrante delicto, and this was an accident, he may seize it, resulting in all the effects of the case of flagrante delicto. Also, if there is a case during his stay at home that allows arrest and personal search, he may do so based on the law and not based on the right of search to enter the house, as entry does not entitle him to this right, and since the above was the case, and the entry of the men of the public authority in this incident to the residence of the accused was to request Rescue and distress from the victim who shares this dwelling in the first stage of seizure is a valid satisfaction free of coercion or a defect of consent, and it occurred before entering the house for inspection in the second stage of seizure, and then the protection surrounded by the street is the inspection of houses from which they fall when their entry is after the explicit, free and unequivocal consent of their owners obtained from them before entering, and it goes without saying that it is decided that the wife or girlfriend of the owner of the dwelling, if she gives consent to the inspection, is null and void, because she is considered an agent for the owner of the dwelling. " Whereas, Article 44 of the Constitution stipulates that "Homes are inviolable and may not be entered or searched except by a reasoned judicial order in accordance with the provisions of the law", which is an absolute general provision that has not been answered by what it allocates or restricts, to the effect that this constitutional provision requires in all cases of house searches the issuance of the reasoned judicial order, in order to preserve the inviolability of the dwelling, which stems from personal freedom that relates to the individual's entity, private life, and dwelling that is the subject of his secret and tranquility. Therefore, the Constitution was keen to confirm the prohibition of violating the inviolability of the dwelling, whether by entering or searching it, unless a reasoned judicial order was issued without excepting the state of flagrante delictum, which, according to Article 41 of the Constitution, only permits the arrest and search of a person wherever it is found. This confirms that the draft of the Committee of Freedoms formed by the People's Assembly at the time of the preparation of the Constitution, the text of Article 44 guarantees the exception of the state of flagrante delictment in its

The necessity of the Public Prosecution's permission to inspect places is limited to the case of inspection of housing and the subsequent accessories because the law only wanted to protect the dwelling. The extraction of narcotic substances from seawater without permission is not dusty, and the judgment - afterwards - is not flawed by its refusal to respond to the plea of narcotic seizure nullity, as it is a legal plea of apparent nullity[222].

Also, inspecting farms without permission is not dust if they are not connected to dwellings [223].

The entry of the officer as a private person with a secret guide into the residence of the accused upon his permission and the arrest of the officer remotely due to the presence of a case of flagrante delicto is also correct [224].

---

provision, except that this exception was dropped in the final draft of this article and the current Constitution, including the text of Article 44. Whereas, the text of Article 44 of the Constitution clearly indicates that the case of flagrante delicto is not excluded in the two guarantees mentioned in any judicial order and that it is reasoned, it is not justified to say except for the case of flagrante delicto in the provision of these two guarantees by analogy to remove them from their judgment in the event of a search or arrest of a person, because the exception is not measured on it, and the measurement is prohibited to explicitly state the text of Article 44 above and its significance is clear. The phrase "in accordance with the provisions of the law", which appeared at the end of that article after mentioning the two guarantees referred to, does not change this phrase does not mean authorizing the ordinary street to release the case of flagrante delicto from their restriction and saying otherwise leads to the loss of two guarantees placed by the constitutional street and the suspension of its work on the will of the legal street, which is not benefited by the text of Article 44 of the Constitution. Rather, the phrase "in accordance with the provisions of the law" refers to referral to the ordinary law in determining the crimes in which the order to search of housing may be issued and explain how it is issued and the reason for other procedures by which this inspection is carried out. Whereas, Article 44 of the Constitution stipulates that the inviolability of the dwelling and the prohibition to enter or search it shall be established except by a reasoned judicial order in accordance with the provisions of the law, which shall be self-executing. Whereas, the entry of the first prosecution witness to the appellant's residence came at the request of the second prosecution witness to assist her in accordance with the provisions of Article 45 of the Criminal Procedure Law, but what the judgment stated in the foregoing does not provide the state of flagrante delicto that allows him to search the residence, because that situation requires watching the crime while it is in this situation or with little external manifestations that predict its occurrence, it requires that the judicial officer verify that the crime has been witnessed by himself or with a sense of his senses, and it is not indispensable to receive its news through narration or transfer from others, whether a witness or an accused person acknowledges himself as long as he has not witnessed it or witnessed a self-ful effect of its occurrence. Whereas, the search of the undercover policeman/ .... The appellant's residence shall be null and void as well as all that resulted from it in application of the rule of all that follows from the nullity, and the result of that inspection and the testimony of its conduct shall be null and void because it is a consequence of it and it is not valid to rely on the evidence derived from it in the conviction and the judgment has relied in its judgment to convict the appellant from what was relied on in the evidence derived from that inspection, which may not be relied upon as evidence in the lawsuit, and the contested judgment shall be wrongly defective in the application of the law that nullifies it and requires its revocation, and the other evidence contained in the judgment shall not be precluded, as the evidence in the criminal materials is supportive and complements each other so that if one of them is dropped or excluded, it is not possible to identify the amount of the impact of the invalid evidence in the opinion reached by the court, and in addition to the foregoing, the judgment does not support the seizure of (cannabis plant) by the knowledge of the major/ ... Upon searching the house of the appellant with the permission of Mrs./ ...... Considering that she is the wife of the appellant, as evidenced by the contested judgment, as it is established that if the matter relates to the search of a house or place, consent must be issued by the owner of the house or place or who is considered to be in possession of it at the time of his absence, and it is established from the contested judgment that the appellant was not absent from the house, the permission of his wife shall be issued by those who do not own it. Whereas, the court also relied in its judiciary on the conviction of the appellant on the results of the search of his house with the knowledge of Major/ .. ... Based on the validity of the inspection because he obtained the consent of his wife residing with him in the same house, she is mistaken in the application of the law. Whereas the foregoing, the contested judgment is defective in what invalidates it and requires its cassation and return for this reason as well] Appeal No. 19039 of the year 73 S issued at the session of February 17, 2010 and published in the book of the Technical Office No. 61 page No. 134 rule No. 19.

([222]) Appeal No. 54 of 60 S issued at the session of January 15, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 67 rule No. 12.

([223]) Appeal No. 2819 of 59 S issued at the session of October 16, 1989 and published in the first part of the technical office book No. 40 page No. 769 rule No. 128, Appeal No. 1347 of 55 S issued at the session of June 2, 1985 and published in the first part of the technical office book No. 36 page No. 742 rule No. 130, Appeal No. 57 of 38 S issued at the session of April 8, 1968 and published in the second part of the technical office book No. 19 page No. 398 rule No. 75.

([224]) Appeal No. 768 of 48 S issued on October 26, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 727 rule No. 146.

Pleading the invalidity of the house search because of the lack of permission from the Public Prosecution to do so, it is not permissible to invoke it without the owner of the house [225].

The search must be carried out by a female assigned by the judicial officer if the accused is a female [226].

The legislator's intention is to require the female to be searched by a female when the inspection is one of the physical places that the judicial officer may not see and view is to preserve the nakedness of the woman who scratches her modesty if she touches it, and the female must be searched by a female when the female is actually searched in the physical places that are considered among the nakedness that the person who executes the permission may see and view them because of the accidental scratching of the female's modesty [227].

If the seizures made by the judicial police officer in the hands of the accused do not involve harming or reviewing the woman's insults, there is no invalidity of the search he conducted because it was not conducted with the knowledge of a female [228].

The law does not require the search warrant officer to accompany a female when he moves to search a female, whether the search is without a warrant in cases where it is permissible to do so or in the event that a warrant is issued by the competent judicial authority addressed to the person who executes the warrant [229].

The law did not require writing when delegating the female for inspection, even if it required her to take the oath before performing the task assigned to her, unless it was feared that her testimony could not be heard later under oath [230].

This is limited to verbal scarring, so the hospital director assigns one of the nurses to search the accused at the request of the seizure officer, correct [231].

The detection of the drug in a sensitive place on the body of the appellant by the hospital doctor does not affect the safety of the procedures, as he carried out this procedure as an expert and what he did was only an exposure to the accused to the extent required by the process of medical intervention necessary to remove the drug from the place of hiding in her body[232].

([225]) Appeal No. 1289 of 37 S issued at the session of October 30, 1967 and published in the third part of the book of the Technical Office No. 18 page No. 1047 rule No. 214.

([226]) The second paragraph of Article 46 of the Criminal Procedure Law..

([227]) Appeal No. 760 of 81 S issued at the session of 3 November 2011 and published in the Technical Office's letter No. 62, page No. 356, rule No. 60, Appeal No. 19840 of 65 S issued at the session of 19 October 1997 and published in the first part of the Technical Office's letter No. 48, page No. 1123, rule No. 169.

([228]) Appeal No. 42442 of 85 S issued at the 25th session of November 2017 (unpublished), Appeal No. 4152 of 59 S issued at the 23rd session of November 1989 and published in Part I of Technical Office Book No. 40 Page No. 1061 Rule No. 170, Appeal No. 6304 of 52 S issued at the 22nd session of February 1983 and published in Part I of Technical Office Book No. 34 Page No. 257 Rule No. 49, Appeal No. 1341 of 49 S issued at the 6th session of January 1980 and published in Part I of Technical Office Book No. 31 Page No. 58 Rule No. 11, Appeal No. 1068 of 45 S issued at the 19th session of October 1975 and published in Part I of Technical Office Book No. 26 Page No. 596 Rule No. 134

See the first paragraph of Article 342 of the Judicial Instructions of the Public Prosecution, which stipulates that: "If the subject of the search is a female, the search must be carried out by a female assigned by the judicial police officer. The search may be carried out by the police officer if he does not reach the physical positions of the woman who may not see her. If the police officer picks up the thing from among the fingers of the accused or holds her hand and opens it forcibly to take what is inside, the search is correct... "..

([229]) Appeal No. 760 of 81 S issued at the session of 3 November 2011 and published in the letter of the Technical Office No. 62 page No. 356 rule No. 60..

([230]) Article 342 of the Judicial Instructions of the Public Prosecution.

([231]) Appeal No. 143 of 49 S issued at the session of May 17, 1979 and published in the first part of the book of the Technical Office No. 30 page No. 588 rule No. 125.

([232]) Appeal No. 1471 of 45 S issued on January 4, 1976 and published in the first part of the Technical Office's letter No. 27 page No. 9 rule No. 1.

The search must take place in the presence of the accused or his representative whenever possible, otherwise it must be in the presence of two witnesses, and these witnesses shall, as far as possible, be from his adult relatives or from those living with him in the house or from neighbors, and this shall be recorded in the minutes [233].

The obligation of the presence of the accused or his representative and the presence of two witnesses in the event of his absence for inspection is limited to the inspection carried out by the judicial police officer in the cases permitted by law for them. As for the inspection carried out on the basis of a mandate from the investigating authority, it is not required for the presence of any of the accused or his representative or the presence of witnesses. It is permissible for the judicial police officer to search the house of the accused by a mandate from the investigating authority in his absence and without the presence of two witnesses [234].

The principle is that the search is limited to the person authorized to search it or found in flagrante delicto and against whom there is sufficient evidence to commit a crime.

The principle is that the search of the place is focused on it and its movables only, and does not extend to the persons present in it, because the freedom of the person is separate from the inviolability of his home, but the law allowed an exception in Article 49 of the Code of Criminal Procedure to search the person present in the place, whether accused or not, if there is strong

---

([233]) Article 51 of Law No. 150 of 1950 regarding the issuance of the Code of Criminal Procedure, and see: Appeal No. 966 of 29 S issued at the session of November 9, 1959 and published in Part III of the Technical Office's letter No. 10 page 857 Rule No. 183, Appeal No. 508 of 27 S issued at the session of October 7, 1957 and published in Part III of the Technical Office's letter No. 8 page 743 Rule No. 199, Appeal No. 1093 of 26 S issued at the session of December 3, 1956 and published in the third part of the Technical Office book No. 7 Page 1228 Rule No. 340, Appeal No. 824 of 25 S issued at the session of December 26, 1955 and published in the fourth part of the Technical Office book No. 6 Page 1527 Rule No. 449, Appeal No. 787 of 25 S issued at the session of December 12, 1955 and published in the fourth part of the Technical Office book No. 6 Page 1460 Rule No. 431, Appeal No. 1201 of 24 S issued at the session of April 26, 1955 and published in the third part of Technical Office Letter No. 6 Page No. 886 Rule No. 265, Appeal No. 618 of 23rd S issued at the session of May 18, 1953 and published in the third part of the Technical Office Letter No. 4 Page No. 837 Rule No. 305.

([234]) Appeal No. 12293 of 83 S issued at the 1st session of June 2014 (unpublished), Appeal No. 2153 of 80 S issued at the 4th session of May 2011 (unpublished), Appeal No. 2153 of 80 S issued at the 4th session of May 2011 (unpublished)

The Court of Cassation ruled that: [The field of application of Article 51 of the Criminal Procedure Law, on which the judgment was based in saying that this search is invalid, is when judicial officers enter homes in flagrante delicto, in accordance with Article 47 of the same law, which was ruled unconstitutional. Thus, the provision of Article 51 of the Criminal Procedure Law has become irrelevant. As for the search carried out by the judicial officer based on their mandate from the investigation authority, the provisions of Articles 92, 199, and 200 of the Criminal Procedure Law, which require that the search take place in the presence of the accused or his representative, if possible, apply to him. Whereas the foregoing, and it was established from the records of the judgment that the inspection that resulted in the seizure of the narcotic substance in the house of the first appellee, was carried out by the judicial officer based on his mandate from the Public Prosecution for this purpose, it is subject to the provision of Article 92 of the Code of Criminal Procedure and not Article 51 of it, as this last article was applicable in circumstances other than the assignment, the nullity of the judgment of this inspection has been aside from the correct application of the law, which would have authorized the annulment of the contested judgment] Appeal No. 14397 of 69 S issued at the session of November 12, 2007 and published in the Technical Office letter No. 58, page No. 687, rule No. 131, Appeal No. 4226 of 69 S issued at the session of January 6, 2003 and published in the Technical Office letter No. 54, page No. 80, rule No. 5, Appeal No. 5769 of 60 S issued at the session of March 11, 1999 and published in the first part of the Technical Office letter No. 50, page No. 159, rule No. 37, Appeal No. 19615 of 62 S issued at the session of September 26, 1999 1994 and published in Part I of Technical Office Letter No. 45 Page 795 Rule No. 124, Appeal No. 806 of 59 S issued at the hearing of 13 April 1989 and published in Part I of Technical Office Letter No. 40 Page 514 Rule No. 82, Appeal No. 230 of 57 S issued at the hearing of 22 April 1987 and published in Part I of Technical Office Letter No. 38 Page 632 Rule No. 107, Appeal No. 542 of 42 s issued at the session of 19 June 1972 and published in the second part of the Technical Office letter No. 23 page 936 rule No. 209, Appeal No. 194 of 34 s issued at the session of 18 May 1964 and published in the second part of the Technical Office letter No. 15 page 401 rule No. 78, Appeal No. 1994 of 32 s issued at the session of 10 December 1962 and published in the third part of the Technical Office letter No. 13 page 830 rule No. 200, Appeal No. 1308 of 30 s issued at the session of 15 November 1960 and published in the part The third book of the Technical Office No. 11 Page No. 796 Rule No. 153.

evidence that he is hiding something useful in revealing the truth, and this right is exceptional, it must not be expanded[235].

The Code of Criminal Procedure allows the judicial officer to search whoever is in the house of the accused if, during the search of the accused's house, strong evidence is made against the accused or a person present in it that he is hiding with him something useful in revealing the truth [236].

In this regard, the Court of Cassation ruled that: [It is established that it is sufficient to say that the case of flagrante delicto obtained the drug that there are external manifestations that predict the occurrence of the crime in themselves, and it is not required that the person who witnessed these manifestations has found out what is the possession of the bag containing the seized drug among the three appellants and seized them, these circumstances are considered a strong presumption that the appellants with them are useful in revealing the truth, which allows the judicial officer to search them pursuant to Article 49 of the Code of Criminal Procedure, and the performance of the foregoing indicates in itself, on the other hand, regardless of whether the search warrant includes the appellants or not, that sufficient evidence exists to charge them with the crime of obtaining a drug, which justifies the record of judicial arrest and search of the seized bag with them in accordance with the provisions of Articles 34/1, 46 of the Code of Criminal Procedure, and therefore the seizure of the drug with them is free from invalidity][237] .

([235]) Appeal No. 438 of 27 S issued at the session of June 19, 1957 and published in the second part of the book of the Technical Office No. 8 page No. 681 rule No. 184.

([236]) Article 49 of the Criminal Procedure Law.

([237]) Appeal No. 3225 of 81 S issued at the session of November 20, 2012 and published in the letter of the Technical Office No. 63 page No. 742 rule No. 132

The Court of Cassation also ruled that: [Since the judgment was invoked in the statement of the case and in its response to the appellant's plea that the arrest and search procedures are null and void, there is a case of flagrante delicto of the crime of drug possession against her, as revealed by the two officers watching her in the hall of her husband's residence, where permission was issued to search him for drugs and the two officers saw her at the time taking out a box from her pocket and trying to get rid of it by throwing it on the ground. It does not affect the availability of this case, what the appellant raises that the two officers did not see what was inside the box and its contents before arresting and searching it, because it is decided that it is enough to say that the case of flagrante delicto achieved the drug that there are external manifestations that predict the occurrence of the crime in themselves, and it is not required that those who witnessed these manifestations have shown what the material they saw. On the other hand, since the judgment proved that the two officers authorized to search had found the appellant in her husband's residence authorized to search him, and as soon as she saw them, she took the box out of her pocket, and tried to get rid of it by throwing it on the ground, so the officer seized her right hand with the box containing the drug, these circumstances are considered a strong presumption that the appellant is hiding with her something useful in revealing the truth, which allows the judicial officer to search her pursuant to Article 49 of the Code of Criminal Procedure. The performance of the foregoing also indicates in itself, on the other hand, regardless of whether the search warrant includes the appellant or not, that there is sufficient evidence that she is accused of the crime of obtaining a drug, which justifies the record of her arrest and the search of the seized box in her hand in accordance with the provisions of Articles 34 (1) and 46 of the Code of Criminal Procedure. Therefore, the seizure of the box containing the drug in the hands of the appellant shall be free from invalidity] Appeal No. 1068 of 45 BC issued at the session of October 19, 1975 and published in the first part of the Technical Office's letter No. 26 page No. 596 rule No. 134

It ruled that: [When it was clear from the review of the papers that the court ordered to be included in the investigation of the appeal that the investigation report included that the second appellee uses juveniles in the distribution of drugs, and that the officer authorized to search decided to investigate the prosecution that he found the first appellee in the house of the one authorized to search him (the second appellee) and that he searched her for what he noticed of the bulge of her pocket and the emergence of some of the cellophane papers used to wrap drugs from this pocket, these circumstances are considered a strong presumption that the first appellee was hiding with her something useful in uncovering the truth, which allows the judicial officer to search her pursuant to Article 49 of the Code of Criminal Procedure, and therefore the seizure of drug rolls in her pocket is free from invalidity. Since the contested decision has violated this consideration, it has erred in the law, and this error has prevented it from examining the extent to which the second respondent is related to the drugs that were seized with the first respondent while she was at his home, which must be overturned and referred] Appeal No. 1908 of 39 S issued at the session of March 29, 1970 and published in the first part of the book of the Technical Office No. 21 page No. 478 rule No. 115

It ruled that: [When the accused was present in the house of the person authorized to search him upon the entry of the judicial police officer, when she saw him, she got up and took a hub that she was putting under her knee and carried it under her

The Court of Cassation also ruled that: [When the permission to search is limited to the other accused and his residence, it was not permissible for the judicial officer authorized to conduct it to search the appellee unless there is a case of flagrante delicto in accordance with Article 30 of the Criminal Procedure Law or there is sufficient evidence to charge him with the felony of acquiring the seized drug with the other accused in accordance with Articles 34/1 and 46/1 of the aforementioned law, or there is strong evidence that he is hiding with him something useful in uncovering the truth in accordance with Article 49 of the same law] [238].

Despite this, there have been many rulings of the Court of Cassation that authorizing the judicial officer the right to search a person if there is strong evidence against him during the search of the house of the accused that he is hiding with him something useful in detecting the crime without a judicial order issued by those who have the authority to issue it or that a state of flagrante delicto is in violation of the provision of Article 41 of the 1971 Constitution, which is implicitly copied with the force of the Constitution itself since the date of entry into force of its provisions published in the Official Gazette in issue No. 36 bis A on 12/9/1971 without waiting for a minimum law to be issued and it is not permissible to rely on it in the arrest and search procedure since that date, it ruled that: [According to the text of Article 49 of the Code of Criminal Procedure, the judicial officer has the right to search a person if there is strong evidence against him during the search of the house of the accused that he hides with him something useful in detecting the crime without a judicial order issued by those who have the authority to issue it or that a state of flagrante delicto is in violation of the provision of Article 41 of the Constitution, which states: "Personal freedom is a natural right, which is It is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, have their freedom restricted in any way, or be prevented from moving except by an order necessitated by the need to investigate and maintain the security of society. This order shall be issued by the competent judge or the Public Prosecution in accordance with the provisions of the law. "Article 49 of the Code of Criminal Procedure is implicitly copied with the force of the Constitution itself since the date of entry into force of its provisions published in the Official Gazette No. 36 bis A on 12/9/1971 without waiting for a lower law to be issued, and it is not permissible to rely on it in the arrest and search procedure since that date, in accordance with the general rules in the arrangement of laws and the court's obligation to apply the legislation of His Highness and the forefront, which is the Constitution, if its text is workable in itself, and to waste other provisions that are conflicting with it or contrary to it, as they are considered copied with the force of the Constitution][239] .

---

armpit, and when she knew him, she retreated and then threw it away and picked it up. These manifestations that appeared from the accused in front of the officer are considered a strong presumption that the accused was hiding with her something useful in revealing the truth. Therefore, the seizure of the navel, including the drug, shall be valid in accordance with Article 49 of the Criminal Procedure Law [Appeal No. 884 of 26 S issued at the session of November 5, 1956 and published in Part III of the Technical Office Letter No. 7 Page No. 1126 Rule No. 310

It ruled that: [If a warrant is issued in the search of an accused and then when it is executed, the accused officer and his wife are found sitting on a couch, and then he notes that the wife is holding her hand on something and he opens her hand and finds a piece of opium in it, then the marital bond between this wife and her husband against whom the warrant is issued does not prevent it from being applied to her as she is present with him at the time of the search.] Appeal No. 89 of 22 BC issued at the session of February 25, 1952 and published in the second part of the book of the Technical Office No. 3, page 728, rule No. 272.

([238]) Appeal No. 1287 of 46 S issued at the session of March 28, 1977 and published in the first part of the book of the Technical Office No. 28 page No. 416 rule No. 87.

([239]) Appeal No. 20054 of 74 S issued at the 7th session of May 2006 and published in the letter of the Technical Office No. 57, page No. 603, rule No. 64, Appeal No. 12655 of 69 S issued at the 10th session of March 2003 and published in the letter of the Technical Office No. 54, page No. 402, rule No. 43

The Court of Cassation also ruled that: [It is established in the jurisdiction of this court that the case of flagrante delicto requires the judicial officer to verify that the crime was witnessed by himself or perceived with a sense of his senses. The incident was as stated in the contested judgment. There is no evidence that the crime was seen in one of the cases of flagrante

However, the Court of Cassation, in a recent ruling, held that unless the Supreme Constitutional Court has issued a judgment regarding the constitutionality of Article 49 of the Code of Criminal Procedure, in cases where the ordinary judiciary considers that the law has been explicitly overridden by the Constitution, the rulings issued by the ordinary judiciary are not deemed definitive judgments on constitutional matters. Such rulings only carry relative authority, binding the parties involved but not extending to the general public[240].

This means that the text of Article 49 of the Code of Criminal Procedure applies within the limits of the conditions prescribed by the text, which are the availability of the case of flagrante delicto, which allows the judicial officer to arrest and search those who are in the house of the person authorized to search it when the conditions of the case of flagrante delicto are met.

The principle is that it is not permissible to search except to search for objects related to the crime for which evidence is being collected or to conduct[241] an investigation.

The search went beyond the purpose for which it was initiated and prolonged for another purpose, and the person who conducted the search sought to search for a crime unrelated to that search, resulting in its nullity. It is permissible to adhere to the nullity of the search for the first time before the Court of Cassation as long as the records of the judgment bear its elements and the facts that it obtained are evidence of the occurrence of the nullity, and the nullity of the search requires the exclusion of all evidence resulting from it, including the testimony of those who conducted it [242].

---

delicto described exclusively in Article 30 of the Code of Criminal Procedure. It also did not indicate that the arrest warrant The appellant and his search were issued by the competent authority, and the contested judgment relied in his judgment on the conviction of the appellant on the evidence derived from his false search for his procedure based on the provision of Article 49 of the Criminal Procedure Law in the form of strong evidence against him, while he was in a house authorized to search him, provided that he hides with him something useful in revealing the truth, although it was copied in Article 1/41 of the Constitution, he has violated the law, by not excluding the evidence derived from that false procedure, which prevented him from assessing what other evidence may exist in the case] Appeal No. 2605 of 62 s issued at the hearing of September 15, 1993 and published in the first part of a letter Technical Office No. 44 Page No. 703 Rule No. 110.

([240]) Appeal No. 41799 of 85 S issued at the session of 25 November 2017 (unpublished), Appeal No. 17251 of 66 S issued at the session of 4 April 2009 (unpublished), Appeal No. 30342 of 70 S issued at the session of 28 April 2004 and published in the letter of the Technical Office No. 55 page No. 454 rule No. 61.

([241]) The first paragraph of Article 50 of Law No. 150 of 1950 - on the issuance of the Code of Criminal Procedure.

([242]) Appeal No. 4677 of 72 S issued at the session of November 23, 2009 and published in the book of the Technical Office No. 60 page No. 503 rule No. 65

In that judgment, the court ruled that: [Whereas it is clear from the minutes of the trial session that the appellant based his plea of nullity of his arrest and inspection on the lack of permission from the Public Prosecution and the absence of flagrante delicto and the fabrication of the incident officer for the crime of flagrante delicto to legitimize the inspection he conducted, which resulted in the seizure of the seized narcotic plant, and it was decided that it was not correct to raise a new basis for the nullity of the inspection for the first time before the Court of Cassation, as long as it is among the legal defenses mixed with reality unless it was raised before the trial court or the judgment codes were nominated for such nullity. If the facts stated in the judgment are indicative of the occurrence of nullity, it may be raised for the first time before the Court of Cassation, even if it was not pleaded before the trial court.

Whereas, the contested judgment had occurred the fact of the lawsuit by saying "that on the date of .. .. In the event of the passage of the captain/ .. .. He is accompanied by a force of undercover police in the Department of .. .. Witness of the Accused/ .. .. With a knife in his right hand, he was arrested, and by searching him, he was found with a pocket of trousers he wears on the left hand side on a box of Marlboro cigarettes with a cigarette inside it that turned out to be wrapped in a herbal plant suspected of having the narcotic banjo plant mixed with tobacco. "

The contested judgment then stated the proof of the incident against the appellant - in the advanced context - evidence derived from the statements of the officer of the incident and from the report of the chemical laboratories, and the judgment was then put forward by the appellant to invalidate his arrest and search by saying, "Whereas whenever the officer has arrested the accused in flagrante delicto by committing the crime of acquiring a white weapon"knife" without justification from personal or professional necessity, his search for him is correct because the search in this case is necessary not as an investigation procedure, but rather as a prerequisite for the arrest itself and is intended to protect the person who undertakes the arrest. Whenever the arrest is correct, the search is correct because the search in this case is necessary as a means of prevention and precaution that must be available to secure from the evil of the arrested person if he updates himself in order to regain his

freedom by assault with the weapon he may have, and the fact that the inspection is a prerequisite for the search, whatever the reason or purpose of the arrest. Thus, the payment of the arrest and search is based on an incorrect basis of reality and the law worthy of rejection."

Given this, although it is established that the search conducted by a judicial arrest officer on a person arrested in one of the cases specified in Article 34 of the Code of Criminal Procedure is a lawful procedure for evidence collection necessary for investigation pursuant to Article 46 of the same law, which is located within the provisions of Part Two of Book One titled "On Evidence Collection and Prosecution," interpreting the search referred to in this article as a preventive search departs from the general application indicated by its wording to a narrow application that has no basis in the context or language of the provision, which unequivocally applies to cases permitting the lawful arrest of a suspect.

However, as inferred from Article 50 of the Code of Criminal Procedure—also located in Part Two of Book One—and from the Senate Committee's report and the established jurisprudence of this court, searches are permissible only for locating items related to the crime under investigation or the evidence collection process. If, during a lawful search, items are discovered whose possession constitutes a crime or that assist in revealing the truth of another crime, the judicial arrest officer may seize them, provided that their discovery is incidental and not the result of a deliberate search for them.

Thus, based on the above, and considering the purpose intended by the legislature in setting forth boundaries for searches as stipulated in Article 50 of the Code of Criminal Procedure, adherence to these boundaries and limitations is required for any lawful search conducted by a judicial arrest officer, whether the search is conducted under Articles 34 and 46 of the Code of Criminal Procedure, pursuant to a warrant from the Public Prosecution, or as a necessary preventive measure for ensuring safety against potential harm posed by the arrested person, such as the use of a weapon to resist arrest.

This view is not contradicted by the argument that the Code of Criminal Procedure, in Article 46, provides a general rule allowing judicial arrest officers to search suspects in cases where arrest is permissible. While it may be interpreted that any lawful arrest justifies the officer's authority to search, this interpretation conflicts with the purpose and limitations explicitly set forth in Article 50, which confines searches to specific objectives and purposes related to the crime under investigation.

In the present case, as detailed in the contested judgment, the officer claimed to have observed the defendant flagrantly possessing a weapon (a knife) and thus had the right to search the defendant, during which he found a pack of Marlboro cigarettes in the defendant's left trouser pocket. Inside the pack was a cigarette that, upon being unwrapped, revealed a herbal substance suspected to be mixed with cannabis. Subsequent analysis confirmed the substance as hashish. However, it is evident to this court—the Court of Cassation—that the discovery of the drugs resulted from the officer deliberately searching for a drug possession offense and not as an incidental finding during a lawful search for the crime at hand. It is inconceivable that a search for a weapon would involve examining a tobacco wrapper that could not possibly conceal a weapon or any tool that would aid the defendant's escape.

Thus, the search conducted in this manner exceeded its intended purpose and extended to a different objective—searching for a crime unrelated to the type of search authorized. This contravenes the limitations and guidelines established in Article 50 of the Code of Criminal Procedure. As the search of the defendant was unlawful for the aforementioned reasons, the evidence obtained from it is also invalid, and all evidence derived from this invalid search, including the testimony of the officer who conducted it, must be excluded.

Since the contested judgment relied on the evidence obtained from the invalid search to convict the defendant, such reliance is impermissible as it invalidates the judgment. The defendant is entitled to raise this issue for the first time before the Court of Cassation, provided that the judgment's grounds establish its invalidity and the facts indicate the occurrence of such invalidity.

Accordingly, the contested judgment is flawed by a legal error that necessitates its annulment. As the case, as described in the judgment, lacks evidence other than the testimony of the officer who conducted the invalid search, the defendant must be acquitted pursuant to the first paragraph of Article 39 of the Law on the Cases and Procedures of Appeals before the Court of Cassation, issued by Law No. 57 of 1959, with the confiscation of the seized narcotic substance.

The Court of Cassation also ruled that: [Whereas it is evident from the records of the contested judgment that the incident occurred that the captain/.. ... Head of Police Station Investigations.. ... that one morning.. ... In implementation of the Public Prosecution's permission to search the person and residence of the accused - the respondent - to seize the weapons and ammunition he possesses or possesses without a license, he went to the residence of the accused/.. ... Accompanied by a secret police force, the accused's residence was searched in the presence of his wife for his absence at the time. He found in the accused's bedroom and below the bed mattress a paper roll containing the narcotic banjo plant. The judgment was based on the acceptance of the plea of nullity of the search and the acquittal of the appellee on the basis of his statement: "Since the court has surrounded the circumstances of the incident and familiarized it with sight and insight, and in the field of the plea presented by the accused to exceed the limits of the permission, it is a valid plea, as the judicial officer is restricted in the implementation of the permission to three things that do not have a fourth.

First: Adherence to the procedural rules governing assignment as an act of investigation, such as the necessity of the presence of the accused or his representative during the search.

Second: It is related to the compliance of the judicial officer with the procedures mentioned in the assignment decision related to the procedures he undertakes. It is not permissible for him to exceed these procedures, and this is what concerns us with regard to the incident of the lawsuit before the table of examination. It is not permissible for him to carry out other work that is not mentioned in the assignment decision, otherwise it will be invalid.

Third: The period of implementation of the permission.

The assessment of the purpose of the search is independent of the trial court and may be inferred from the circumstances of the case and the circumstances of the case without comment[243].

As an exception to the above, if it appears accidentally during the search that there are things whose possession is a crime, or useful in revealing the truth in another crime, the judicial officer may seize them [244].

For example, during a search of the house of the accused of theft, the judicial officer found pieces of hashish smelling inside a pack of cigarettes, which he estimated might contain part of the stolen amount [245].

While this was the case, the judicial police officer had conducted his secret investigations in its entirety and detail about the possession and possession of firearms and ammunition by the accused without a license, so he obtained permission from the Public Prosecution to search the person, the residence and the annexes of the accused's residence, so he conducted a search of that residence in the presence of the wife of the authorized person to search it. No weapons were found, but a paper roll was found whose nature was not revealed to contain weapons or ammunition and whose nature and contents were not known until after they were dispersed, and which turned out to contain the narcotic banjo plant. The seizure of the scroll by the judicial police officer in this way was an act that exceeded the limits of the permission, as it was not in a case of dressing and the circumstances of the permission did not require this order to be done, and therefore this procedure was invalid, and every evidence derived from it, including the seizure of the drug, is invalid. "
Whereas, it was decided that deciding whether the person who carried out this inspection adhered to its limit or arbitrarily exceeded its purpose in execution is the subject matter and not the law, and it was according to the trial court to question the validity of assigning the charge to the accused to rule his innocence as long as it surrounded the case out of sight and foresight and free of the defects of causation, and it was established that the court, after being aware of the circumstances of the case and the evidence of proof in it, had disclosed the nullity of the inspection to exceed The Judicial Control Officer found the limits of his permission after I realized that the officer did not find during the search of the accused's residence any weapons and ammunition - he is authorized to search for them to seize them - but rather found a paper roll whose nature was not revealed because it contained weapons or ammunition and did not know its nature and content only after it was broken, which turned out to contain the narcotic banjo plant. What the Judicial Control Officer did in this way of seizing the roll was an act that exceeded the limits of the permission, as he was not in a state of dress and the circumstances of the permission did not call for this order, and this was what he mentioned The judgment is valid and correct in reason and law and sufficient for the judiciary to invalidate the inspection and the innocence of the appellee and the validity of the law. The text of Article 50 of the Criminal Procedure Law and the report of the Senate Committee and the judiciary of this court stated that it is not permissible to search except for things related to the crime for which evidence is being collected or the investigation has taken place, and that if it appears during a true inspection that there are things whose possession is a crime or useful in revealing the truth in another crime, the judicial officer may seize them provided that they appear casually during the search and without any attempt to search for them. The contested judgment had established its judiciary that finding the drug was not accidental during a correct inspection within the limits of its purpose, but was the result of the officer's violation of the permission limits, and the assessment of the purpose of the search was independent of the trial court and it may detect it from the circumstances of the case and the evidence of the circumstances in which it is unpunched. What the appellant raises in her appeal has no place, as it is only an objective argument in the assessment of evidence]. Appeal No. 18868 for the year 73 S issued in the session of February 3, 2010 and published in the letter of the Technical Office No. 61, page No. 79, rule No. 12.
([243]) The Court of Cassation ruled that: [Based on the text of Article 50 of the Criminal Procedure Law, the report of the Senate Committee, and what the Court of Cassation has settled on, it is not permissible to search except for things related to the crime for which evidence is being collected or the investigation has taken place, and that if it appears during a true inspection that there are things whose possession is a crime or useful in revealing the truth in another crime, the judicial officer may seize them provided that they appear casually during the search and without seeking to search for them. Since the contested judgment has established its acquittal on the grounds that finding the drug was the result of the judicial officer's search for the crime of obtaining a drug and his appearance was not accidental during a proper inspection within the limits of its purpose, which is to search for weapons or ammunition, and the assessment of the purpose of the search was independent of the trial court and it may detect it from the circumstances of the case and the evidence of the circumstances in it without a punisher, then what the appellant raises in her appeal has no place]. Appeal No. 581 for the year 41 issued in the session of November 15, 1971 and published in the third part of the technical office letter No. 22 page No. 656 rule No. 159
See: Appeal No. 49 of 31 S issued at the session of April 17, 1961 and published in the second part of the book of the Technical Office No. 12 page No. 457 rule No. 84.
([244]) The second paragraph of Article 50 of the Criminal Procedure Code.
([245]) Appeal No. 461 of 33 S issued on May 27, 1963 and published in the second part of the Technical Office's letter No. 14 page No. 460 rule No. 90

The drug was seized accidentally during the search for weapons and ammunition and as a result of the search for ammunition [246].

The Court of Cassation ruled that: [It is clear from the records of the contested judgment that the scroll containing the narcotic cannabis plant was seized accidentally in the pocket of the appellant's trousers during the search of his person in implementation of the permission issued to do so in search of the proceeds of theft under the compulsion of the person authorized to search for it, the judicial seizure officer is about a flagrant crime and it is his duty to seize what was revealed by this inspection. If the court was satisfied that the seizure of the drug with the appellant occurred during the search for the proceeds of theft and was not the result of the judicial seizure man's search for the crime of acquiring the drug and that the seizure order was an accident and a result of what is required by the search order for the stolen items, as his failure to seize it does not necessarily require sufficing with the search, as the seizure officer may deem it necessary to complete the search of the accused in search for the stolen items for which the search is authorized. [Appeal No. 25295 of 83 S issued on 7 June 2014 (unpublished)

It also ruled that: [Evidence from the records of the contested judgment that the pack of cigarettes Inside which the narcotics officer was seized in the appellant's room by accident during the search for the ancient artifacts in implementation of the permission issued to do so in search of the objects of the crime of possession and acquisition of these pieces for the purpose of displaying and promoting the sale for which the search is authorized, the judicial seizure officer is about a flagrant crime and it is his duty to seize what was revealed by this inspection. If the court was satisfied that the seizure of the narcotics in the appellant's room occurred during the search for the ancient artifacts and was not the result of the judicial seizure man seeking to search for the crime of possession of narcotics, but was an accident and as a result of what is required by the search order for the ancient artifacts because the seizure of those pieces in the form in which they were made does not necessarily require this amount of inspection because the seizure officer may see the need to complete the inspection of the appellant after the seizure of the ancient artifacts in search for evidence or other things related to the crime of possession and acquisition of the ancient artifacts for which the search was authorized. has the said permission. Whereas, the assessment of the purpose of the search was entrusted to the trial court, which shall lower it as long as it deems appropriate, and it may infer it from the circumstances of the case and the evidence of the circumstances therein without comment] Appeal No. 13464 of 64 S issued at the hearing of May 26, 2003 (unpublished)

It ruled that: [It is clear from the judgment codes that the counterfeit securities were seized in a visible case and that he realized their imitation from the vanity of their colors and carried a single number. The court expressed its reassurance that their seizure occurred during the search for narcotic substances and was not the result of the arrestee's search for the crime of possessing counterfeit paper currency, and therefore what the appellant raises in this regard is not valid. [Appeal No. 22263 of 69 S issued on October 10, 2007 and published in the letter of the Technical Office No. 58, page No. 600, rule No. 115.

([246]) Appeal No. 11754 of 61 s issued at the session of March 16, 1993 and published in the first part of the technical office book No. 44 page No. 275 rule No. 36, Appeal No. 1888 of 34 s issued at the session of May 11, 1965 and published in the second part of the technical office book No. 16 page No. 452 rule No. 91

In another judgment, the Court of Cassation ruled that: [It is established that the court, after it was afflicted with the circumstances of the case and the evidence in it, disclosed the nullity of the search because the judicial officer exceeded the limits of his permission after it was convinced that the officer did not find during the search of the accused's residence any weapons and ammunition - which he was authorized to search for to seize them - but rather found a paper roll whose nature was not revealed to contain weapons or ammunition and whose content was not known until after it was dispersed, which was found to contain the narcotic plant banjo, The seizure of the scroll by the judicial officer in this way was an act that exceeded the limits of the permission, as it was not in a state of flagrante delicto and the circumstances of the permission did not call for this order, and this was stated by the judgment is valid and correct in mind and law and sufficient for the judiciary to invalidate the search and acquittal of the respondent and coincided with the validity of the law, and the benefit of the text of Article 50 of the Code of Criminal Procedure and the report of the Senate Committee and what was established by the judiciary of this court that it is not permissible to search except for things related to the crime for which evidence is being collected or investigation, and that if it appears During a true inspection, the presence of things considered to be a crime or useful in revealing the truth in another crime, the judicial officer may seize them provided that they appear casually during the inspection and without any attempt to search for them, and the contested judgment has established its judiciary that finding the drug was not an accident during a correct inspection within the limits of its purpose, but was the result of the officer exceeding the permission limits] Appeal No. 18868 of 73 S issued at the session of 3 February 2010 and published in the Technical Office's letter No. 61 page 79 rule No. 12, and see: Appeal No. 4677 of 72 S issued at the session of 23 November 2009 and published in the Technical Office's letter No. 60 page 503 rule No. 65

It ruled that: [The text of Article 50 of the Criminal Procedure Law, the report of the Senate Committee, and the decision of the Court of Cassation that it is not permissible to search except for things related to the crime for which evidence is being collected or to conduct an investigation, and that if it appears during a proper inspection that there are things whose possession is a crime or useful in revealing the truth about another crime, the judicial officer may seize them provided that they appear casually during the search and without seeking to search for them. Since the contested judgment has established its acquittal on the grounds that finding the drug was the result of the judicial officer's search for the crime of obtaining a drug and his appearance was not accidental during a proper inspection within the limits of its purpose, which is to search for weapons or ammunition, and the assessment of the purpose of the search was independent of the trial court and it may detect it from the

As well as the seizure of forged documents by the accused during the search for ammunition[247].

As well as the seizure of the drug by the accused who is authorized to search it for committing a bribery crime [248].

The validity of this seizure depends on the fact that the seized items appeared accidentally during the search related to the crime under investigation and without an attempt to search for them, and that finding them was not the result of arbitrariness in carrying out the search by searching for evidence of a crime other than what is under investigation [249].

The decision on whether the person who carried out this inspection has committed to its limit or exceeded its purpose arbitrarily in implementation is the subject matter and not the law. According to the trial court, it was to question the validity of attributing the charge to the accused in order to rule his innocence as long as it surrounded the case out of sight and foresight and free of the defects of causation [250].

---

circumstances of the case and the evidence of the circumstances in it without a punisher, then what the appellant raises in her appeal has no place]. Appeal No. 581 of 41 s issued at the hearing of November 15, 1971 and published in the third part of the Technical Office's letter No. 22 page No. 656 rule No. 159.

([247]) Appeal No. 11018 for the year 73 S issued at the session of March 17, 2004 and published in the letter of the Technical Office No. 55 page No. 258 rule No. 35.

([248]) Appeal No. 585 of 49 S issued at the session of January 21, 1980 and published in the first part of the Technical Office's letter No. 31 page No. 120 rule No. 23

In another ruling, the Court of Cassation ruled that: [Article 50 of the Code of Criminal Procedure states: "It is not permissible to search except for things related to the crime for which evidence is being collected or to conduct an investigation. However, if it appears accidentally during the search that there are things the possession of which is a crime or serves to uncover the truth of another crime, the judicial officer may seize them. " Whereas it is clear from the records of the contested decision that the search order was executed by finding the ten-pound security subject to the bribe, but the judicial officers did not stop at this limit, but went beyond it to search the clothes of the contested until they found the seized drug, to the effect that their finding of the drug was after the end of the authorized search procedure and exhausted its purpose, so finding it was a permission born of an illegal procedure that was not ordered, and did not come by accident during the search for things related to the crime being deduced or investigated, which is an objective assessment that is not subjective, because it is decided that the decision whether the person who carried out the search order was committed to its limit or exceeded its purpose is arbitrary in its implementation of the subject and not of the law]. Appeal No. 737 of 40 BC issued at the session of June 22, 1970 and published in the second part of the technical office letter No. 21 page No. 915 rule No. 216.

([249]) Appeal No. 1232 of 37 s issued at the session of October 16, 1967 and published in the third part of the technical office book No. 18 page No. 965 rule No. 195, Appeal No. 944 of 31 s issued at the session of October 15, 1962 and published in the third part of the technical office book No. 13 page No. 621 rule No. 155.

([250]) Appeal No. 18868 of 73 S issued in the session of February 3, 2010 and published in the letter of the Technical Office No. 61, page No. 79, rule No. 12

The Court of Cassation ruled that: [It is scheduled to estimate the purpose of the search from the independence of the trial court as it perceives from the circumstances of the case and the evidence of the circumstances in it without comment, and therefore if the contested judgment was certain of the nature, smallness and color of the seized scroll and the place of finding it, it does not indicate that it contains papers or documents on the basis of which a bribery or embezzlement accusation is based, which is the purpose for which the search order was issued to seize them and did not appear casually during the search - it was certain that the member of the administrative control when seizing the scroll and then unsealing it did not intend to search for papers or documents from what was mentioned, but rather intended to search for another crime unrelated to the two crimes for which the order was issued. It is not permissible to argue this before the Court of Cassation] Appeal No. 1235 of 45 BC issued at the session of November 24, 1975 and published in the first part of the Technical Office's letter No. 26, page No. 761, rule No. 168

It also ruled that: [If the court was not concerned with examining the circumstances and circumstances in which the seized drug was found to recall whether it appeared casually during the inspection related to the crime of bribery and without seeking to search for it, or that finding it was the result of arbitrariness in the implementation of the search warrant to seek to search for another crime unrelated to the original crime in which the investigation was carried out, its contested judgment, as it was limited in its response to the plea of nullity of the search - because there is no justification for continuing it after the amount of the bribe was seized with it - as stated in its blogs, is defective in deficiency] Appeal No. 208 of 45 s issued at the hearing of March 24, 1975 and published in the first part of the Technical Office's book No. 26 page No. 277 rule No. 64.

The legislator intended the procedures for seizing seizures to preserve the evidence for fear of weakening it, and the law did not make its violation null and void but left the matter to the reassurance of the trial court to the integrity of the evidence [251].

The judicial officer shall place seals on places with traces or objects useful in revealing the truth. They may establish guards on them, and they must notify the Public Prosecution immediately. The Public Prosecution shall, if it deems it necessary, submit the matter to the Magistrate Judge for approval [252].

The owner of the real estate may file a grievance before the judge against the order issued by the partial judge with a petition submitted to the Public Prosecution, and it must submit the grievance to the judge immediately [253].

The law did not require that the seal used in the seizure be for the judicial officer and the reference in the integrity of the proceedings of the trial court [254].

([251]) Appeal No. 5264 of 80 S issued at the session of 18 September 2011 and published in the Technical Office letter No. 62, page No. 232, rule No. 41, Appeal No. 12766 of 63 S issued at the session of 18 April 1995 and published in the first part of the Technical Office letter No. 46, page No. 752, rule No. 111, Appeal No. 3039 of 63 S issued at the session of 9 February 1995 and published in the first part of the Technical Office letter No. 46, page No. 336, rule No. 49, Appeal No. 12751 of 62 s issued at the session of June 2, 1994 and published in the first part of the Technical Office letter No. 45 page No. 688 rule No. 105, Appeal No. 22320 of 60 s issued at the session of September 15, 1992 and published in the first part of the Technical Office letter No. 43 page No. 714 rule No. 108, Appeal No. 696 of 58 s issued at the session of December 1, 1988 and published in the second part of the Technical Office letter No. 39 page No. 1159 rule No. 181, Appeal No. 594 of 58 s Issued at the hearing of April 17, 1988 and published in the first part of the Technical Office letter No. 39 page 627 rule No. 93, Appeal No. 5900 of 56 s issued at the hearing of February 11, 1987 and published in the first part of the Technical Office letter No. 38 page 246 rule No. 37, Appeal No. 4870 of 51 s issued at the hearing of March 9, 1982 and published in the first part of the Technical Office letter No. 33 page 310 rule No. 64, Appeal No. 726 of 48 s issued at the session of February 12, 1979 and published in the first part of the Technical Office letter No. 30 page No. 243 rule No. 49, Appeal No. 505 of 46 s issued at the session of October 17, 1976 and published in the first part of the Technical Office letter No. 27 page No. 738 rule No. 168, Appeal No. 1006 of 43 s issued at the session of December 9, 1973 and published in the third part of the Technical Office letter No. 24 page No. 1176 rule No. 240, Appeal No. 397 of 43 s issued at the session of 25 From June 1973 and published in the second part of the Technical Office letter No. 24 page No. 785 rule No. 164, Appeal No. 241 of 41 s issued in the session of 17 October 1971 and published in the third part of the Technical Office letter No. 22 page No. 539 rule No. 130, Appeal No. 2260 of 38 s issued in the session of 2 June 1969 and published in the second part of the Technical Office letter No. 20 page No. 795 rule No. 159, Appeal No. 3066 of 32 s issued at the session of February 4, 1963 and published in the first part of the Technical Office letter No. 14 page 88 rule No. 19, Appeal No. 1987 of 32 s issued at the session of December 10, 1962 and published in the third part of the Technical Office letter No. 13 page 827 rule No. 199, Appeal No. 647 of 29 s issued at the session of May 25, 1959 and published in the second part of the Technical Office letter No. 10 page 570 rule No. 127, Appeal No. 1407 of 25 s issued at the session of April 10, 1959 1956, published in the second part of Technical Office Letter No. 7, page No. 542, rule No. 158, Appeal No. 457 of 25 S issued at the hearing of June 13, 1955, published in the third part of Technical Office Letter No. 6, page No. 1117, rule No. 325, Appeal No. 1201 of 24 S issued at the hearing of April 26, 1955, published in the third part of Technical Office Letter No. 6, page No. 886, rule No. 265, Appeal No. 8 of 25 s issued at the hearing of March 14, 1955 and published in Part II of Technical Office Book No. 6 Page 644 Rule No. 210, Appeal No. 1963 of 24 s issued at the hearing of January 11, 1955 and published in Part II of Technical Office Book No. 6 Page 453 Rule No. 150, Appeal No. 1196 of 24 s issued at the hearing of December 15, 1954 and published in Part I of Technical Office Book No. 6 Page 315 Rule No. 104, Appeal No. 618 of 23 s issued at the hearing of May 18, 1953 and published in Part The third book of the Technical Office No. 4, page No. 837, rule No. 305.

([252]) Article 53 of the Criminal Procedure Code.

([253]) Article 54 of the Criminal Procedure Law.

([254]) Appeal No. 3473 of 62 S issued at the session of February 2, 1994 and published in the first part of the technical office book No. 45 page No. 181 rule No. 28, Appeal No. 289 of 49 S issued at the session of June 11, 1979 and published in the first part of the technical office book No. 30 page No. 679 rule No. 145, Appeal No. 226 of 43 S issued at the session of April 29, 1973 and published in the second part of the technical office book No. 24 page No. 559 rule No. 115

The Court of Cassation ruled that: [When the judgment responded to what was raised at the trial session regarding the difference in the weight of the seizure in the investigation of the prosecution, as evidenced by the analysis report that the seizure sent for analysis bears the name of the appellant and the seal of the prosecutor who made the seizure, this response is justified by which the judgment clarified the court's reassurance to the integrity of the seizure and the obituary is unfounded. [Appeal No. 241 of 41 S issued on October 17, 1971 and published in the third part of the Technical Office's letter No. 22, page No. 539, rule No. 130

Judicial officers may seize papers, weapons, and machines, and everything that may have been used in committing the crime, or resulted from committing it, or what the crime occurred to, and everything that is useful in revealing the truth [255].

Seizure of objects that may have been used in the commission of the crime or resulted from its commission or what the crime occurred to and everything that is useful in revealing the truth falls within the jurisdiction of the judicial police officers, provided that these objects are located in a place that the judicial police officers may enter [256].

The search prohibited by law to the judicial police officer is the search in which there is an attack on personal freedom or a violation of the inviolability of homes. As for the seizure of things that may have been used in the commission of the crime, or resulted from its commission, or what the crime was committed to, and everything that is useful in revealing the truth, it falls within the jurisdiction of these officers, provided that these things are located in a place that the judicial police officers may enter [257].

Seizures shall be presented to the accused, and he shall be asked to make his observations on them, and a report shall be signed by the accused, or in which he states his refusal to sign [258].

The purpose of writing a record of the search procedures is to record the observations that the accused may make on the seized objects, and the street did not arrange for the invalidity of the omission of editing this record [259].

Items and papers that are seized shall be placed in closed custody and attached whenever possible, stamped on them and written on a tape inside the seal the date of the written record by adjusting those things, and the subject for which the seizure was made is indicated [260].

It also ruled that: [When the contested judgment has proven that the seizure was deposited in the plucamine office to preserve it from tampering and that the law does not require that the seal used in the seizure be for the judicial officer and did not invalidate the violation of the seizure procedures when it is proven that the seizure is itself the seized seizure and the ring used in its seizure of a worker in the Narcotics Office, questioning the integrity of the seizure has no place. [Appeal No. 241 of 41 S issued on October 17, 1971 and published in the third part of the Technical Office's letter No. 22, page No. 539, rule No. 130

The Court of Cassation ruled that the judicial officer's seizure of seizures is subject to Article 56a. C. It is equal for this to be original or assigned by the prosecution: [The appellant argued that the seizure procedures are null and void based on Article 55 of the Criminal Procedure Law for the failure of the police assistant to seize the seizures, and the judgment responded that the scope of application of this article is when the judicial police officer carries out an investigation that he is competent to conduct without going beyond that to the case in which he is assigned by the Public Prosecution to search in an investigation. This distinction mentioned by the judgment is not supported by the law because Article 55 came in Chapter Four of Chapter Two of the First Book of the Criminal Procedure Law, which regulates the entry and search of homes and the search of persons, and the meaning of these texts is to protect persons and preserve their freedoms and is not valid in jurisprudence to invalidate a procedure if taken by the police officer as an original and is valid if he is an agent.

There is no basis in the law for the distinction made by the judgment - in listing the duties of the judicial officer regarding the seizure of seizures and his non-observance of the provisions of Article 56 of the Code of Criminal Procedure if he is delegated by the Public Prosecution to inspect and subject to its provisions if he exacts as an original] Appeal No. 970 of 29 BC issued at the session of 12 October 1959 and published in the third part of the book of the Technical Office No. 10 page No. 778 rule No. 166.

([255]) The first paragraph of Article 55 of the Criminal Procedure Code.

([256]) Appeal No. 39230 of 72 S issued at the 27th session of April 2009 and published in the Technical Office's letter No. 60, page No. 235, rule No. 31, Appeal No. 11772 of 67 S issued at the 17th session of May 1999 and published in the first part of the Technical Office's letter No. 50, page No. 300, rule No. 70.

([257]) Appeal No. 2032 of 29 S issued at the session of January 4, 1960 and published in the first part of the book of the Technical Office No. 11 page No. 11 rule No. 2, and in that judgment the Court of Cassation ruled that: [... If the judicial officer who seized the cloth in the accused's office was authorized to seize and bring it, if he saw this piece that he received the news of its use in committing the accident from the victim and seized it by guiding him with the intention of revealing the truth, he would not have violated the law]..

([258]) The second paragraph of Article 55 of the Criminal Procedure Code.

([259]) Appeal No. 441 of 27 S issued in the session of June 10, 1957 and published in the second part of the book of the Technical Office No. 8 page No. 633 rule No. 173.

([260]) Article 56 of the Criminal Procedure Law.

It is permitted, in the event that the person with whom the papers are seized has an urgent interest in them, to give him a copy of it certified by the judicial control officer [261].

The mere delay in writing the report of the seizure of the incident and taking the necessary measures to seize the seized forged documents does not indicate a certain meaning and does not prevent the court from taking into account the evidence produced in it from the lawsuit [262].

It is not permissible to unseal the seals placed on the places or on the exhibits except in the presence of the accused or his agent and those with whom these things are seized or after inviting them to do so[263].

And that it is proven that the court cleared the seizure containing the forged document in the presence of the accused and the defendant and that the minutes of the hearing are free of what the defendant claims that the defendant left the hearing before the seizure was cleared, so it is not acceptable to challenge the judgment that he did not see the forged document [264].

It is not permissible for the accused to appeal to the court not to inform it of the seized exhibits, as long as he has acknowledged the investigations into the crime he committed, and he has not asked the court to dismiss those exhibits [265].

A penalty of imprisonment for a period not exceeding six months or a fine not exceeding five hundred Egyptian pounds, which is the penalty prescribed for the crime of disclosing secrets in Article 310 of the Penal Code, shall be imposed on anyone who has come to his knowledge due to the search of information about seized objects and papers, and has resulted in it to any person other than a person of capacity or benefited from it in any way [266].

6- Seizure of items in the possession of the non-accused

The investigating judge may order the possessor of something that he deems necessary to seize or review to submit. If the possessor refuses to submit it, he shall be sentenced in the articles of violations to a fine not exceeding ten pounds and in the articles of misdemeanors and felonies to a fine not exceeding two hundred pounds, unless in one of the cases in which the law authorizes him to refrain from performing the testimony. He shall be exempted from the penalty imposed in whole or in part if he withdraws from this before the end of the inspection [267].

([261]) Article 59 of the Criminal Procedure Code.

([262]) Appeal No. 5769 of 60 S issued at the session of March 11, 1999 and published in the first part of the Technical Office letter No. 50 page No. 159 rule No. 37, Appeal No. 256 of 66 S issued at the session of February 3, 1998 and published in the first part of the Technical Office letter No. 49 page No. 170 rule No. 25

The Court of Cassation ruled that: [If the court has verified from the investigation it conducted itself at the hearing, that the hedge seized by the appellant was not tampered with, and that it was the one that the appellant was asked about the result of its calibration, then the goal pursued by the street from the procedures stipulated in Articles 56 and 57 of the Code of Criminal Procedure has been achieved, and the nullity of the procedures is not admissible due to the omission of the investigator to seize the hedge seized before him.] Appeal No. 1390 of 23 BC issued at the session of 24 November 1953 and published in the first part of the Technical Office's letter No. 5 page 112 rule No. 38.

([263]) Article 57 of the Criminal Procedure Law.

([264]) Appeal No. 11772 of 67 s issued at the session of May 17, 1999 and published in the first part of the technical office book No. 50 page No. 300 rule No. 70, Appeal No. 4870 of 51 s issued at the session of March 9, 1982 and published in the first part of the technical office book No. 33 page No. 310 rule No. 64.

([265]) The Court of Cassation ruled that: [Since it is established by the judgment that the appellant has acknowledged the investigations by requesting the exact amount of the amount reported, and that he did not ask the court to dispose of the seized amount of money and audio recordings, he has no longer to complain about the judgment not being seen by the court or presented to it, and therefore what the appellant raises in this regard is invalid] Appeal No. 696 of 58 S issued at the session of December 1, 1988 and published in the second part of the book of the Technical Office No. 39 page No. 1159 rule No. 181.

([266]) Article 58 of the Criminal Procedure Code, and Article 310 of the Penal Code.

([267]) Articles 99 and 284 of the Criminal Procedure Code.

7- Orders to seize letters and correspondence, monitor wired or wireless conversations, and make recordings

Technological development has allowed the security services to have at their disposal a wide range of electronic devices and means surveillance cameras, listening and recording tools, means of intercepting electronic messages, monitoring the Internet, etc.). These devices can be used in a dual way. They may be effective means for maintaining security and order, preventing and detecting crime if they are employed and used in accordance with legal controls. They may represent a threat to a wide range of basic rights of individuals, foremost of which is the right to private life, and the right to the inviolability of correspondence and communications, if used in violation of the law. Security authorities and agencies have a special responsibility to use these means in accordance with the conditions and guarantees specified by law, the most important of which is to obtain the prior consent of a judicial authority in each case of monitoring persons by such means.

The Egyptian Constitution guarantees the right to freedom of postal, telegraphic, and electronic correspondence, telephone conversations, and all means of communication. It also guarantees their confidentiality, and prohibits their confiscation, access, or censorship except by a reasoned judicial order and for a specific period. In the cases specified by law, it stipulates that: "Private life is inviolable, and it is inviolable. Postal, telegraphic, and electronic correspondence, telephone conversations, and other means of communication are inviolable, and their confidentiality is guaranteed. They may not be confiscated, accessed, or censored except by a reasoned judicial order, for a specific period, and in the cases specified by law.

The state is also committed to protecting the right of citizens to use public means of communication in all its forms, and it is not permissible to disrupt, suspend or deprive citizens of them, arbitrarily, and the law[268] regulates this.

The Constitution protects the private life of all people, whether citizens or non-citizens, enjoying their personal freedom, or restricting that freedom, whether free, detained, remanded in custody, or imprisoned in implementation of a judicial ruling. The Constitution did not distinguish between people in that right. It also prohibited the violation of the private life of any person except by a reasoned judicial order for a specific period and in the cases specified by law. In this regard, the Supreme Constitutional Court ruled that: [There are areas of the private life of each individual that are inaccessible to them, and should always - and to be considered legitimate - that no one invades them to ensure their confidentiality, preserve their sanctity, and push to try to eavesdrop on them or embezzle some of their aspects, especially through modern scientific means whose development has reached an astonishing degree, and their growing capabilities of penetration have had a far-reaching impact on all people, even in their finest affairs, and what is related to the features of their lives, but rather to their personal data that they have access to and collected for their eyes and ears. Access to them has often caused embarrassment or harm to their owners. These areas of the characteristics and intrinsics of life preserve two interests that may seem separate, but they are complementary, as they generally relate to the scope of personal matters that should be kept secret, as well as the scope of each individual's independence with some of his important decisions that - given their characteristics and effects - are more related to his fate and affect the conditions of life in which he chose their patterns, and crystallize all these areas - in which the individual resorts to them, reassured of their sanctity to dwell on them away from the forms and tools of censorship - the right to private life to have its borders in a way that takes care of intimate ties within their scope, and while some constitutional documents do not determine this right by an explicit text in them, but some

---

([268]) Article 57 of the Constitution.

consider it one of the most comprehensive and broad rights, and it is also the deepest in connection with the values advocated by civilized nations.

Whereas the current Constitution, after stipulating in the first paragraph of Article (57) that private life is inviolable, and inviolable, is a branch of this right - and in the text of the second paragraph of this article - the right to preserve postal, telegraphic and electronic correspondence, telephone conversations, and other means of communication in appreciation of their inviolability, and also guaranteed their confidentiality, so that they may not be confiscated, accessed, or censored except by a reasoned judicial order for a specific period, and in the cases specified by law, and in this context, the challenged text subjected the monitoring or registration report Determining its duration for a set of controls governing it, which guarantees its seriousness and effectiveness in preserving the rights and freedoms guaranteed by the Constitution, provided that a reasoned order is issued by the investigating judge - or a member of the Public Prosecution whose degree is not less than a chief prosecutor - based on the investigations and investigations revealed to him of the evidence of the seriousness of the accusation against the accused, which is valid and sufficient reason for issuing the order, for the period he estimates, which does not exceed thirty days, and if he permits its renewal for another similar period or periods, he has surrounded the determination and renewal of that period with guarantees that ensure that it is not perpetuated, and not compromised Personal freedom or beyond the limits of private life, which is guaranteed by the Constitution in Articles (54, 57) of it, except for the necessity required by the interest of the investigation as an aspect of the public interest, and its purpose is to reveal the truth in a felony or misdemeanor punishable by imprisonment for a period not exceeding three months, and within the limits required by that, so that these measures, with their seriousness, do not take a way to infringe on the rights and freedoms of individuals, and in crimes of little importance] [269].

Many international covenants have stipulated respect for the correspondence of all persons, and the right of every person to the protection of the law against arbitrary interference with his private life and the resolution of his correspondence, including the Universal Declaration of Human Rights, which stipulates that: “No one shall be subjected to arbitrary interference with his private life, family, home or correspondence, or to campaigns against his honor and reputation. Everyone has the right to the protection of the law against such interference or campaigns[270].

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which states: “The right to respect for private and family life

Everyone has the right to respect for his private and family life and the inviolability of his home and correspondence.

No interference may be made by the public authority in the exercise of this right, except to the extent that the law provides for such interference, and in which the latter constitutes a necessary measure in a democratic society, for national security, public safety, the economic well-being of the country, the defense of the regime, the prevention of criminal offenses, the protection of health or morals, or the protection of the rights and freedoms[271] of others.

and the International Covenant on Civil and Political Rights, which states that: «1. No unlawful arbitrary exposure shall be made to any human being in his private life, family, home, or correspondence, nor shall any unlawful infringement upon his honour and reputation.

([269]) The judgment of the Supreme Constitutional Court in Case No. 207 of 32 S issued on 1 December 2018 and published on 10 December 2018 in issue 49 bis of the Official Gazette page 39.

([270]) Article 12 of the Universal Declaration of Human Rights,.

([271]) Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Everyone has the right to the protection of the law against such exposure or prejudice[272].

The American Convention on Human Rights, which states: “The right to privacy: 1. Every human being has the right to respect for his honor and dignity.

No one shall be subjected to arbitrary or arbitrary interference with his private life, family, home or correspondence, nor to unlawful attacks on his honour or reputation.

3- Everyone has the right to be protected by law from such interference or attacks. "[273].

The Convention on the Rights of the Child, which states: “1. No arbitrary or unlawful exposure shall be made to a child in his or her private life, family, home or correspondence, nor shall any unlawful attack on his or her honour or reputation.

2-The child has the right to be protected by law from such exposure or prejudice[274].

The Arab Charter on Human Rights, which stipulates that: "Private life is inviolable, harming it is a crime. This private life includes the privacy of the family, the inviolability of the home, the confidentiality of correspondence and other means of private communication."[275].

The violation of the privacy of messages is achieved in two ways: either by not reaching the person of the addressee, or by disclosing the contents of the message.

Correspondence means all written messages, whether sent by regular mail or e-mail, and it is equal that that message be in a closed or open envelope, as long as the sender did not intend to inform others of it without discrimination [276].

The right to the inviolability of correspondence includes the following principles:

The addressee may not publish the contents of the message relating to the private life of the sender without his consent;

A sender who registers a communication concerning the private life of the addressee may publish its contents only with his consent;

The sender or addressee may not publish a letter relating to the private life of a third party except with the consent of such third party;

A third party who possesses a letter relating to the private life of the sender or the addressee may not publish the content of this letter except with the consent of the person concerned.

Whereas the principle in the field of accusation is that it is not permissible to rely in the conviction on illegal evidence resulting from the violation of personal freedom, it is an exception in the field of innocence, the court may rely on a personal letter in support of the innocence of the accused, even if it includes information about the private life of the sender, the consignee, or

---

([272]) Article 17 of the International Covenant on Civil and Political Rights.
([273]) Article 11 of the American Convention on Human Rights.
([274]) Article 16 of the Convention on the Rights of the Child.
([275]) Article 17 of the Arab Charter on Human Rights.
([276]) A. H. Rcbertson; Privacy and human rights, p. 62
The Court of Cassation ruled that: [The meaning of the words "letters and messages "referred to in the aforementioned article 206, and the permissibility of seizing them in any place outside the homes of the defendants in accordance with the reference to the second paragraph of Article 91, can in itself include all letters, letters, parcels and telegraphic messages, as well as telephone calls because they are nothing more than oral messages of their union in substance, even if they differ in form] Appeal No. 989 of 31 s issued at the session of February 12, 1962 and published in the first part of the Technical Office's letter No. 13 page 135 rule No. 37.

others, despite the fact that it is an illegal act, based on the fact that this is only a companion of the general origin in man, which is innocence[277].

The seizure of correspondence is one of the investigation procedures, which is independent of the investigation authority. The law has distinguished between the investigating judge and the Public Prosecution. The investigating judge may seize all letters, letters, newspapers, publications and parcels at post offices and all telegrams at telegraph offices, but in taking these procedures he adheres to specific guarantees, which are:

That this procedure has the benefit of showing the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months;

The seizure must be based on a reasoned order;

The exact period allowed shall not exceed thirty days, renewable for another similar period or periods

The Code of Criminal Procedure stipulates that: "The investigating judge may order the seizure of all letters, letters, newspapers, publications and parcels at post offices and all telegrams at telegraph offices and order the monitoring of wire and wireless conversations or recordings of conversations that took place in a private place when this has the benefit of showing the truth in a felony or in a misdemeanor punishable by imprisonment for more than three months.

In all cases, the seizure, review, monitoring or registration must be based on a reasoned order and for a period not exceeding thirty days, renewable for another similar period or[278] periods.

The law has granted to members of the Public Prosecution at least the rank of chief prosecutor - in addition to the competencies prescribed for the Public Prosecution - the powers of the investigating judge in the investigation of the felonies stipulated in Parts I, II, II bis and IV of Book II of the Penal Code. Accordingly, a member of the Public Prosecution at least the rank of chief prosecutor may order the seizure of all letters, letters, newspapers, publications and parcels at post offices and all telegrams at telegraph offices, in accordance with the prescribed authority of the investigating judge, in the investigation of felonies harmful to the security of the government from the outside side, felonies and misdemeanors harmful to the government from

---

([277]) The Court of Cassation ruled that: [It is recognized that a valid conviction may not be based on false evidence in law. It is also one of the basic principles in criminal procedures that every accused person enjoys the presumption of innocence until he is convicted by a final judgment and that until this judgment is issued, he has complete freedom to choose his means of defense to the extent that his position in the lawsuit and the factors surrounding himself of fear, caution, and other natural symptoms of the weakness of human souls. On the basis of these principles, the right of the accused to defend himself is based and has become a sacred right that transcends the rights of the social body, which does not harm the acquittal of the guilty as much as it harms them and harms justice together, an innocent conviction. This is not evidenced by the provisions of Article 96 of the Procedures Law that "the investigating judge may not seize the papers and documents handed over by the accused to them to perform the task entrusted to them, nor the correspondence exchanged between them in the case." This is to the fact that it is established that the law - except for the special means of proof it requires - has opened its door to the criminal judge wide, choosing from all its methods what it deems conducive to revealing the truth and weighing the strength of proof derived from each element, with absolute freedom to assess what is presented to it and the weight of its pampering power in each case, as is benefited from the facts and circumstances of each lawsuit with its true purpose, seeking it wherever it finds it and from any way it finds leading to it, and there is no control over it except its conscience alone. Hence, it does not accept the restriction of the defendant's freedom of defense with a condition similar to what is required in the evidence of guilt, and the judgment, when it went to the contrary of this opinion, excluded the aide-memoire submitted by the appellant's defender to prove his innocence of the crimes attributed to him, claiming that it reached the case papers through an illegal means that violated the appellant's right to defense, which is defective and requires its cassation. This consideration does not restrict the indictment authority or any person of interest in the actions he deems necessary to criminalize the means by which the aide-memoire came out of the possession of its owner] Appeal No. 1209 of 34 S issued at the session of January 25, 1965 and published in the first part of the Technical Office's letter No. 16 page No. 87 rule No. 21.

([278]) Article 95 of the Code of Criminal Procedure amended by Law No. 37 of 1972, amended by Law No. 107 of 1962.

the inside side, crimes of explosives, crimes of embezzlement of public money, aggression against it and treachery [279].

As for the Public Prosecution, it shall abide by the guarantees to which the investigating judge is committed, in addition to the following guarantees:

Obtaining in advance a reasoned order from the magistrate after reviewing the papers. The magistrate shall also have the right to renew that order for another similar period or periods, at the request of the Public Prosecution

The Public Prosecution shall be informed of the seized letters, letters and other papers in the presence of the accused and the holder thereof or the addressee thereof and shall record their observations thereon whenever possible. It may, according to what appears from the examination, order the inclusion of those papers in the case file or their return to the person who possessed them or to whom they were sent.

In this regard, the Code of Criminal Procedure stipulates that: "It is not permissible for the Public Prosecution to search a person other than the accused or a house other than his home unless it is clear from strong indications that he is in possession of things related to the crime.

It may seize at post offices all letters, letters, newspapers, publications, and parcels, and at telegraph offices, all telegrams, monitor wire and wireless conversations and make recordings of conversations that took place in a private place whenever this has the benefit of revealing the truth in a felony or in a misdemeanor punishable by imprisonment for a period exceeding three months.

In order to take any of the previous procedures, it is required to obtain in advance a reasoned order to do so from the magistrate judge after reviewing the papers.

In all cases, the order must be exact, briefed, or monitored for a period not exceeding thirty days. The magistrate may renew this order for another similar period or period.

The Public Prosecution may review the seized letters, letters, other papers, and records, provided that this is done whenever possible in the presence of the accused and the holder

---

([279]) Article 206 bis of the Criminal Procedure Law, and see: Appeal No. 1827 of 80 S issued at the hearing of 14 April 2014 and published in the Technical Office's letter No. 65, page No. 279, rule No. 29, Appeal No. 6202 of 79 S issued at the hearing of 21 February 2010 and published in the Technical Office's letter No. 61, page No. 158, rule No. 24, Appeal No. 30229 of 72 S issued at the hearing of 20 April 2008 (unpublished), Appeal No. 50614 of 74 S issued at the 7th session of December 2005 and published in the Technical Office letter No. 56, page No. 691, rule No. 105, Appeal No. 33316 of 72 S issued at the 21st session of March 2005 and published in the Technical Office letter No. 56, page No. 217, rule No. 33, Appeal No. 21459 of 67 S issued at the 9th session of November 1999 and published in the first part of the Technical Office letter No. 50, page No. 559, rule No. 126, Appeal No. 5011 of 63 S issued at the 22nd session of March 1995 and published in the first part of the Technical Office letter No. 46 Page No. 609 Rule No. 90, Appeal No. 23075 of 61, issued at the hearing of November 15, 1993 and published in the first part of the Technical Office's letter No. 44 Page No. 988 Rule No. 154

The Court of Cassation ruled that: [The law empowered the members of the Public Prosecution from the rank of chief prosecutor at least the powers of the investigating judge in certain matters in the felonies stipulated in the passages mentioned in the second book of the Penal Code, but it did not limit the chief prosecutors to conduct an investigation into these crimes, and therefore this does not affect the original competencies prescribed for the members of the Public Prosecution without the rank of chief prosecutor, including investigation, interrogation and confrontation, so their work remains valid, as long as it does not exceed those additional powers prescribed for the chief prosecutor, and then the prosecutors have the right to investigate these cases, while the jurisdiction in the additional authorities is limited to the rank of chief prosecutor at least] Appeal No. 7954 of 86 s issued at the session of December 10, 2016 (unpublished)

It also ruled that: [Under the second paragraph of Article 7 of Law No. 105 of 1980 establishing the State Security Courts, as well as Article 3 of the same law, in which the crime occurred under the application of its provisions and Article 95 of the Code of Criminal Procedure, the law has empowered the Public Prosecution with the powers of the investigating judge - in certain matters, including the order to make registrations in felonies that are within the jurisdiction of the Supreme State Security Court, including the felony of bribery - the subject of the present case, and therefore what the appellant raises in this regard has no place] Appeal No. 30229 of 72 BC issued at the session of 20 April 2008 (unpublished).

thereof or those sent to him, and take their observations thereon. According to what appears from the examination, it may order the inclusion of these papers in the case file or return them to the person who possessed them or to whom they were[280] sent.

The Court of Cassation ruled that [The Egyptian Constitution, which took place under the validity of its provisions, stipulates in Article 41 that "Personal freedom is a natural right and is guaranteed without prejudice to... "Article 45 stipulates that " the private life of citizens shall be inviolable and protected by law. Postal and telegraphic correspondence, telephone conversations and other means of communication shall be inviolable and their confidentiality shall be guaranteed. They may not be confiscated, accessed or censored except by a reasoned judicial order for a specified period and in accordance with the provisions of the law. "The legislator also stated in the Procedures Law, under the provisions of the Constitution, stipulates additional restrictions other than the restrictions on the search warrant stipulated in Articles 95, 95 bis, 206 of it. These restrictions, some of which are objective and some of which are formal, are that the crime attributed to the accused is a felony or misdemeanor punishable by imprisonment for a period exceeding three months, and that this measure has the benefit of revealing the truth and that the order issued for surveillance or registration is reasoned and that its validity is limited to thirty days, renewable for a period or other similar extensions. All these guarantees are guaranteed by the legislator, as the authorization of surveillance or registration is one of the most serious investigative measures taken against the individual and reported to have an impact on him. Because this procedure allows the explicit disclosure of the veil of secrecy and the veil of secrecy that the two speakers hide behind and the exposure to their secret warehouse, for all this, the commanding authority must observe and respect these guarantees, and they must be carried out in a fence of legitimacy and law. This is not precluded by the fact that the evidence is blatant and clear on the conviction of the accused, as it is necessary in the first place to respect personal freedom and not to abuse it in order to access the evidence of proof][281] .

([280]) Article 206 of the Code of Criminal Procedure amended by Law No. 37 of 1972, Law No. 107 of 1962, and Law No. 353 of 1952.

([281]) Appeal No. 2257 of 82 S issued on December 26, 2012 and published in the Technical Office's letter No. 63, page No. 892, rule No. 161

In the same judgment, the Court of Cassation ruled that: [It shows from reading the minutes of the administrative control investigations dated February 17, 2010 and the attached official copy of them that the minutes of the previous administrative control investigations, which is the first procedure of inference in the case, were focused on three persons, namely 1- "Appellant" 2- "Second Appellant" 3- "Third Defendant", and the minutes of the minutes proved that his investigations indicated that the first and second investigators exploited the powers of their jobs and obtained material and in-kind benefits as a bribe from some businessmen dealing with the company .... Among them is the third investigator and the request for permission to monitor, photograph and record the meetings between the aforementioned and to monitor and record the communications received through their phones referred to in the minutes. It is necessary from the permission of the Supreme State Security Prosecution issued on the same date at 2 pm that it has focused on recording and photographing the conversations and meetings and monitoring and recording the telephone communications that take place between the three investigators and that take place through the phones of these three investigators, which are shown by the permission, within a period of thirty days starting from the hour and the date of issuance of this permission. This is necessary that the permission of the prosecution issued to monitor and record was limited to recording the conversations that take place between the three persons of the aforementioned investigator whose names are identified by the permission and through the phones specified in it. It is not permissible to extend the permission to monitor and record to a person other than these three investigators who are included in the permission, even if one of these three parties to this communication or if its subject is related to the crime in which evidence is being collected or otherwise. This is due to what is established by permission from limiting monitoring and recording to telephone communications between these people and through their phones specified by permission. Whereas, it was evident from reading the official copy of the administrative control report dated March 16, 2010 attached to the appeal file, which was issued by the prosecution on the same date in implementation of it, which included a statement of the recordings that were made in implementation of the Public Prosecution's permission issued on February 17, 2010, stating that the editor of the report exceeded the limits of the permission to record telephone conversations between the three investigators and the fourth defendant/ .. ... and the fifth/ .. ... And the sixth/ .. ... Others, all of whom were not covered by the permission. Whereas the foregoing, and the judicial officer has committed the correctness of the law by deviating from the legality, it was

The Court of Cassation ruled that the inspection of postal parcels sent abroad by postal parcel carriers is not a judicial inspection, but rather a precautionary administrative measure that does not require sufficient evidence or prior permission from the investigating authority. If the inspection results in evidence that reveals a crime punishable by law, this evidence may be cited as the fruit of a legitimate procedure in itself and no violation was committed in order to obtain it [282].

The Court of Cassation ruled that although the legislator had been required in ordering the monitoring of wire and wireless conversations or making recordings of conversations that took place in a private place to be reasoned, it did not draw a special form of reasoning [283].

It is sufficient to justify the permission to record conversations. The Public Prosecution shall issue this permission after reviewing the minutes of the investigations submitted to it [284].

---

not permissible for him to record the telephone conversations that took place between the investigators identified with the permission issued on February 17, 2010 and the rest of the defendants and others. However, having been registered, this registration is the result of an illegal procedure that was not authorized, and the nullity of the evidence derived from it is properly pleaded. If the contested judgment violated this consideration and was ruled to reject that plea and relied on the conviction of the appellants from among the reliance on the aforementioned evidence, it may have erred in the application of the law].

([282]) Appeal No. 2238 of 80 S issued on May 5, 2011 (unpublished).

([283]) Appeal No. 1938 of 81 s issued at the session of 19 November 2011 (unpublished), Appeal No. 6904 of 79 s issued at the session of 3 November 2010 and published in the book of the Technical Office No. 61 page No. 609 rule No. 76, Appeal No. 63909 of 74 s issued at the session of 26 January 2006 and published in the book of the Technical Office No. 57 page No. 157 rule No. 19, Appeal No. 4184 of 73 s issued at the session of 29 September 2003 and published in the book of the Technical Office No. 54 page No. 884 rule No. 120

It also ruled that: [The text of Article 45 of the Constitution states that it has placed a general ban on the monitoring of telephone conversations in any place where these conversations take place except with a reasoned judicial permission, which was committed by Article 95, as it stipulated that the investigating judge may order the monitoring of wired and wireless conversations that take place in any private or public place. It added a special provision for recording conversations of any kind that take place in a private place in support of the citizen's right to protect his freedom and the inviolability of his private life - which was revealed by the explanatory memorandum that the legislator explicitly added the text in this article to the provision of the recordings of conversations taking place in a private place. It also requests that a reasoned order be issued by the judge, as the seizure of personal conversations by recording them is considered a kind of inspection and therefore must be subject to the provisions of inspection] Appeal No. 43945 of 72 BC issued at the 27th session of October 2003 (unpublished).

([284]) Appeal No. 61340 of 59 S issued in the session of February 4, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 223 rule No. 31

The Court of Cassation ruled that the issuance of the permission to monitor and record based on information received by the member of the administrative control, in respect of which no investigations were conducted before its issuance, invalidates it: [The monitoring and recording of telephone conversations is a search procedure, but due to the seriousness of this procedure, as it is exposed to the warehouse of the individual's secret and removes the prohibition on keeping his confidentiality limited to himself and whoever wants to trust him, so it is permissible for others to see what is hidden in his secret, the Constitution, in Article 45 of it, was keen to confirm his inviolability and confidentiality and required the issuance of a reasoned judicial order to monitor telephone conversations. The legislator also came in the Code of Criminal Procedure in line with the provisions of the Constitution. In order to authorize this surveillance and violate its confidentiality, additional restrictions other than the restrictions of the previous search warrant were stipulated in Articles 95, 95 bis, 206 thereof. It was decided that the authority ordering the surveillance and registration should take into account these restrictions and verify their availability. Otherwise, the procedure shall be null and void and the consequent lack of reliance on the evidence derived from it. It was clear from reviewing the included vocabulary in order to investigate the appeal that the statements of the authorized member of the administrative control in the investigations of the Public Prosecution were made However, he did not conduct any investigations about the incident until after the issuance of the permission of the Supreme Judicial Council to monitor and record until the end of its validity period. This statement is confirmed by the reality in the current lawsuit, as shown by the vocabulary, as the member of the administrative control wrote a report on May 29, 2001 in which he proved that he received information about the first appellant that he is a bribe-taking judge and that he is related to some fallen women who are ignorant of their names and that they intervene with him in the cases he is competent to consider. The recordings and investigations were subsequently devoid of The presence of any role of any of the fallen women, and added in his report that the first appellant will consider a case for the fourth defendant in the lawsuit and that he received from him some gifts in kind and requested permission to monitor and record, and after the issuance of permission, the role of administrative control was limited to unpacking the results of the registration process and the contact of each of the other defendants with the first appellant, and his request to monitor these because of the conversations between the defendants, together that he used the

And that the expiry of the period prescribed for monitoring and registration in the permission issued to do so does not result in its nullity, but it is not valid to implement under it after that unless it renews its effect [285].

It also ruled that if an authorized phone is monitored and a conversation is recorded between one of the parties authorized to monitor it and the other party is not authorized to monitor it, that conversation must be considered as long as it relates to the accusation in question, taking into account the benefit of this in the emergence of the truth, which is the purpose for which the permission was issued and this is not beyond the scope of the permission[286].

The duration of the permission shall be calculated in accordance with the Code of Procedure from the day following the issuance of the permission, so the day on which it was issued shall not be counted [287].

The Public Prosecution may assign one of the judicial control officers to implement the telephone surveillance permit [288].

On the other hand, the president of the competent court of first instance may, in the event of strong evidence that the perpetrator of the crime of deliberately causing inconvenience to others by misusing telecommunications devices, or the crime of slander by telephone, has used a specific telephone device to order, based on the report of the Director General of the Telegraphs and Telephones Authority and the complaint of the victim in the aforementioned crime, to place the aforementioned telephone device under surveillance for the period specified by him [289].

However, these procedures do not apply to the registration of the words of insult and slander from the phone of the victim, who has the sole will - without the need to obtain permission from the president of the competent court - to register them, and without this being considered an attack on the private life of anyone. The Court of Cassation ruled that: [The legislator imposed the initiation of the procedures mentioned in order to be placed under surveillance the phone used by the perpetrator to direct the words of insult and slander to the victim, considering that these procedures imposed a guarantee to protect the private life and personal conversations of the accused. Therefore, these procedures do not apply to the registration of the words of insult and slander from the phone of the victim, who has the sole will - without the need to obtain permission from the president of the competent court - to register them, and without this being considered an attack on the private life of anyone. Therefore, there is no wing against the civil

---

monitoring of telephone conversations as a means of collecting information and excavating the crimes attributed to the defendants, which was prohibited by law in order to preserve the The confidentiality of the telephone conversations that the Constitution was keen to protect, since the foregoing, and the first permission issued on May 30, 2001 for monitoring and recording was based on mere information received by the authorized person in a sent form and that he did not conduct any investigations as his statements took place in the investigations of the Public Prosecution before obtaining the permission and then invalidate this permission, and this invalidity extends to the subsequent permits, because it was an extension of it and was established as a result of the implementation of this permission and what followed in interlocking episodes and each of them was linked to the permission that preceded it in an indivisible way and negates the independence of each permission from the other. Whereas, the contested judgment violated this consideration and justified the issuance of monitoring and registration permits despite the absence of previous investigations that may have erred in the application of the law above its corruption in inference, and therefore the evidence derived from the implementation of these permits must be invalidated and no reliance or reliance must be placed on a certificate from it, as its information was derived from procedures contrary to the law] Appeal No. 8792 of 72 S issued at the 25th session of September 2002 and published in the Technical Office's letter No. 53, page No. 876, rule No. 147.

([285]) Appeal No. 1938 of 81 S issued at the session of 19 November 2011 (unpublished).

([286]) Appeal No. 1938 of 81 S issued at the session of 19 November 2011 (unpublished).

([287]) Appeal No. 18485 of 74 S issued on January 6, 2005 (unpublished).

([288]) Appeal No. 986 of 47 S issued at the session of February 27, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 193 rule No. 34.

([289]) Article 95 bis of the Criminal Procedure Law added by Law No. 98 of 1955.

rights plaintiff if he places on his private phone a recording device to control the words of insults directed to him in order to identify the perpetrator][290] .

It is not permissible for the investigating judge to seize the papers and documents handed over by the accused to them to perform the task entrusted to them, nor the correspondence exchanged between them in the case [291].

The investigating judge shall examine only the seized letters, letters, and other papers, provided that this is done if possible, in the presence of the accused and the holder of them or those sent to him, and he shall record their observations thereon.

If necessary, he may assign one of the members of the Public Prosecution to sort the aforementioned papers. According to what appears from the examination, he may order the inclusion of these papers in the case file or return them to those who possessed them or to the addressee [292].

Seized letters and telegraphic messages shall be communicated to the accused or sent to him, or a copy of them shall be given to them as soon as possible, unless this harms the course of the investigation. Any person who claims a right to the seized items may request the investigating judge to hand them over to him. In the event of refusal, he may file a grievance before the Appellate Misdemeanor Court sitting in the Counseling Chamber, and request to hear his statements before it[293].

The Court of Cassation ruled that the hearing of the recorded conversations by the judicial officer and his transcription thereof, because he considered that such hearing is necessary to complete his procedures, does not result in any invalidity [294].

8- Disposition of Seized Items

It is permissible to order the return of items seized during an investigation, even before a judgment is issued, provided they are not necessary for the continuation of the case or subject to confiscation[295].

The handling of seized items by the Public Prosecution in cases falls within its judicial function and does not constitute an administrative decision. Accordingly, appeals against the Public

---

([290]) Appeal No. 8862 of 65 S issued at the 2nd session of December 2003 and published in the Technical Office's letter No. 54, page No. 1149, rule No. 158, Appeal No. 22340 of 62 S issued at the 18th session of May 2000 and published in the Technical Office's letter No. 51, page No. 481, rule No. 90.

([291]) Article 96 of the Criminal Procedure Law.

([292]) Article 97 of the Criminal Procedure Law, as amended by Law No. 37 of 1972.

([293]) Article 100 of the Code of Criminal Procedure as amended by Law No. 107 of 1962.

([294]) Appeal No. 7954 of 86 S issued at the 10th session of December 2016 (unpublished)

In that judgment, the Court of Cassation ruled that: [The contested judgment was presented to plead the invalidity of unloading the registered cylinder, which was done with the knowledge of the captain/ .. ... Considering that this work is an investigation, and that the person implementing this permission has exceeded its limits. He has unloaded the content of those recordings, distorted them, modified them, reviewed them, and has no right to everything he has done, because what he has done is not within his competence, and the judgment has responded adequately and put forward what justifies his dismissal based on what is stipulated in Article 24 of the Criminal Procedure Law, and what was settled on by the judiciary of this court - the Court of Cassation - that the judicial officer must prove all the procedures he performs in minutes signed by him showing the time of taking those procedures and the place of their occurrence. However, while the law has obligated the judicial officer to do so, this was only responded to by way of organization and guidance, and it was not arranged to violate that invalidity, and the recording of the conversations that took place in this case is legally authorized, so there is no rebuance on the officer if he listened to the recorded conversations and unloaded them, as long as he considered that such hearing is necessary to complete his procedures and he is aware of it, what the appellants raise in this regard is not valid].

([295]) Article 101 of the Criminal Procedure Law.

If the judgment decides to return the seized weapon to the accused, he has erred in the application of the law, Appeal No. 1810 of 37 s issued at the session of December 11, 1967 and published in the third part of the Technical Office's letter No. 18 page No. 1233 rule No. 260.

Prosecution's decisions regarding seized items fall outside the jurisdiction of administrative courts [296].

However, if the Public Prosecution refrains from returning seized items after a judgment has been issued against the defendant, and the judgment does not include an order for confiscation, this refusal does not fall within any jurisdiction granted to the Public Prosecution under the Code of Criminal Procedure. Instead, it constitutes a fully formed administrative decision by the Public Prosecution, which falls under the jurisdiction of the administrative judiciary to hear appeals against it [297].

Seized items are to be returned to the person who had possession of them at the time of seizure[298].

This applies whether the possession was intended for ownership or was mere physical possession on behalf of another party[299].

If the seized items are those upon which the crime was committed or derived from it, they are to be returned to the person who lost possession of them due to the crime, unless the person from whom they were seized has a legal right to retain them[300].

The Court of Cassation has ruled that granting a security guard employed by the owner a license to carry a weapon does not strip the owner of their ownership of the weapon subject to the license[301].

The order for the return of seized items is issued by the Public Prosecution, the investigating judge, or the Misdemeanor Appellate Court sitting in chambers. The court may also order the return of items during the proceedings [302].

([296]) Administrative Court of Justice, Case No. 34655 of 62 S issued at the session of March 17, 2009, page No. 443.

([297]) Administrative Court, Judgment in Case No. 9536 of 49 Q and Case No. 31016 of 57 Q issued at the session of January 16, 2007, page No. 261.

([298]) Article 102 of the Criminal Procedure Code.

([299]) The Court of Cassation ruled that: [The text of Articles 101 and 102 of the Code of Criminal Procedure states that the things seized during the investigation of criminal cases and their possession in itself was not a crime that is returned to those who were in possession at the time of its seizure, whether this possession is authentic with the intention of ownership or material possession for the account of others, unless these seizures are among the things that the crime occurred or obtained from it, they are returned to those who lost possession of the crime. This consideration supports the provision of Article 104 of the Code of Criminal Procedure that the order to return the seizures to those with whom they were seized does not prevent the first matter from claiming their rights before the civil courts. Whereas it is established that the gold bars in question were seized with the appellants on the train and they decided that a person assigned them to transport them from Al-Hamam station to Alexandria in return for a fee, and the Public Prosecution accused them of importing these bars before obtaining a license to import them and that they smuggled them into the territory of the Republic illegally without paying the customs duties due from them and ruled their acquittal definitively, and if the mere possession of the aforementioned gold bars is not in itself a crime, the appellants with whom they were seized shall have the right to recover them] Appeal No. 5 of 40 s issued at the hearing of March 11, 1975 and published in the first part of the Technical Office's letter No. 26 page No. 545 rule No. 110.

([300]) Article 102 of the Criminal Procedure Code.

The Court of Cassation ruled that: [... Whereas the contested judgment ruled the return of the seizures that the first and second appellants owed by hiding them as a result of the crime of theft that occurred against the plaintiff in civil rights to the latter. It is true that the law [Appeal No. 38 of 33 S issued at the session of October 22, 1963 and published in the third part of the Technical Office's letter No. 14 page No. 670 rule No. 122.

([301]) It ruled that [confiscation must require that the thing must be prohibited from circulation for all - including both the owner and the possessor - which does not apply to weapons legally licensed to carry. However, if the thing is permissible to its owner who did not contribute to the crime and who is legally licensed to do so, it is not legally valid to order the confiscation of what he owns.

The Court of Cassation ruled that licensing the guard of the owner to carry the weapon does not result in stripping the owner of his ownership of the weapon subject of the licence. Hence, the proof of the credit bank's ownership of the seized weapon with its guard and the interruption of the bank's link to the crime prevents the judgment of its confiscation] Appeal No. 1810 of 37 BC issued at the session of December 11, 1967 and published in the third part of the Technical Office's letter No. 18 page No. 1233 rule No. 260.

The order for return does not preclude interested parties from pursuing their rights before civil courts. However, this does not apply to the defendant or the civil plaintiff if the court issued the order for return based on the request of one of them against the other[303].

The court or the Misdemeanor Appellate Court sitting in chambers may order the parties to litigate before civil courts if it deems this necessary. In such cases, the seized items may be placed under custody or other precautionary measures taken[304].

Returning seized items to the person who had possession of them at the time of seizure is contingent upon the absence of a dispute or doubt regarding who has the right to receive them. If either exists, the Public Prosecution and the investigating judge are prohibited from ordering the return, and the matter must be referred to the Misdemeanor Appellate Court sitting in chambers. If the court finds that the dispute over the rightful recipient of the seized items is better resolved by the civil judiciary, it may direct the parties to litigate before a civil court. The civil court must then examine the underlying right to determine who is entitled to receive the seized items[305].

The return may be ordered even without a request. The Public Prosecution and the investigating judge are prohibited from ordering the return in cases of disputes, and the matter must be referred to the Misdemeanor Appellate Court sitting in chambers at the primary court upon the request of the interested parties for the court to issue the appropriate order[306].

When a preservation order is issued, or that there is no need to file a lawsuit, a decision must be made on how to dispose of the seized items, as well as when ruling on the lawsuit if the claim for restitution occurs before the court [307].

Seized things that are not requested by their owners within a period of three years from the date of the end of the lawsuit shall become the property of the government without the need for a judgment issued to that effect [308].

It follows that the right to file a lawsuit to claim restitution is statute-barred by the lapse of three years from the date of ratification of the judgment issued in the criminal case [309].

([302]) Article 103 of the Criminal Procedure Law.

([303]) Article No. 104 of the Code of Criminal Procedure, and see: Appeal No. 11542 of 59 S issued on 14 May 1992 and published in the first part of the Technical Office's letter No. 43 page No. 515 rule No. 75.

([304]) Article 107 of the Criminal Procedure Law.

([305]) Appeals No. 14297, 14452 of 76 issued at the session of January 18, 2016 (unpublished).

([306]) Article 105 of the Criminal Procedure Code.

([307]) Article 106 of the Criminal Procedure Law.

In this regard, the Court of Cassation ruled that the appellant's obituary for the error of the ruling in the application of the law because he was acquitted of the charge of trafficking in weapons without refunding the proceeds thereof is irrelevant, as long as he did not ask the court to dismiss him in accordance with Article 106 of the Criminal Procedure Code: [Since the judgment acquitted the appellant of the charge of trafficking in weapons, which the incident officer decided by his statements that the money seized in his possession was the proceeds of that trafficking, and the appellant did not request the court to refund this money in accordance with the text of Article 106 of the Criminal Procedure Code, and the law was free from obliging the court to respond to this response, but it regulated the procedures to be followed to claim this, so there is no impediment to the ruling as he was not presented to this order, and the obituary against him is a mistake in the application of the law misplaced], Appeal No. 25366 of 86 Q issued at the hearing of 15 December 2016 and published in the book of the Technical Office No. 67, page 914, rule No. 113.

([308]) Article 108 of the Criminal Procedure Code.

([309]) The Court of Cassation ruled that: [If the contested judgment had rejected the plea of limitation on the basis that the lawsuit against the Customs Authority to request the refund of the value of the confiscated goods is based on the text of Article 104 of the Criminal Procedure Law, and not a lawsuit of unjust enrichment or payment of the undue, it should have - depending on the region - the provision of Articles 108 and 109 of the Procedures Law, which stipulate that the seized items that are not requested by their owners or ask for their sale price on time Three years from the date of the end of the lawsuit becomes the property of the government without the need for a judgment issued to that effect, since the criminal cases in which the goods were seized ended with the ratification of the military governor on the judgments issued in 1964/3/1, as shown by

If the seized thing is damaged over time or entails expenses that take its value, it may be ordered to be sold by public auction whenever the requirements of the investigation allow it. In this case, the owner of the right to it may claim within three years from the date of the end of the lawsuit the price at which it was sold [310].

Seventh: Obtaining a detention order for the accused

In Egypt, the investigating judge may, after interrogating the accused or in the event of his escape, if the incident is a felony or misdemeanor punishable by imprisonment for a period of no less than one year, and the evidence is sufficient, issue an order to detain the accused provisionally, if one of the following cases or reasons is available:1- If the crime is in flagrante delicto, and the judgment must be executed immediately upon its issuance. 2- Fear of the escape of the accused. 3- Fear of harming the interest of the investigation, whether by influencing the victim or witnesses, tampering with evidence or material evidence, or making agreements with the rest of the perpetrators to change the truth or obliterate its features. 4- Preventing the serious breach of security and public order that may result from the gravity of the crime. However, the accused may be remanded in custody if he does not have a known fixed place of residence in Egypt, and the crime is a felony or misdemeanor punishable by imprisonment [311].

1-The Competent Authority to Issue the Pre-Trial Detention Order

Origin Any restriction on personal freedom as a natural human right may not be made except in cases of flagrante delicto as defined by law or with the permission of the competent authority [312].

The Constitution celebrated personal freedom, raising it to the level of the rights attached to the person of the citizen, which does not explicitly accept the text of the first paragraph of Article (92) of that Constitution as a disruption or derogation, and is inseparable from the person of man, and does not authorize its departure from him, following the values of democratic societies, which adhere to the legal frameworks and controls of the state, making personal freedom an essential tributary to other rights and freedoms, shared by reason and cause, and shared by the goal and purpose, strict in protecting them, ordering their preservation, preventing - according to the text of Article (99) of the Constitution - prescription The offense of aggression against it, let alone violating it, except for a criminal offense in flagrante delicto, or for the requirement of a reasoned judicial order necessitated by an investigation conducted by the competent judicial authority in circumstances other than flagrante delicto, which requires that the criminal text prescribed for freedom-restricting measures includes a designation of these measures, the conditions of their application, their reasons, their scope, frameworks and controls governing them, while ensuring the constitutional rights of those before whom any of these procedures are taken, especially informing them of the reasons for this, informing them in writing of their rights, and ensuring their right to litigation and defense in the frameworks specified by the Constitution, and ensuring that they are included in the text of Article (54) thereof, including the right to file a grievance before the Judiciary of these procedures, and

---

the judgment of the court of first instance, which means that the right to claim it was forfeited before the lawsuit was filed on 11/2/1968, and if the contested judgment did not comply with this consideration, it violated the law and erred in its application] Appeal No. 276 of 48 BC issued at the session of December 20, 1978 and published in the second part of the Technical Office's letter No. 29 Page No. 1969 Rule No. 383.

([310]) Articles 108, 109 of the Criminal Procedure Code.

([311]) Article 134 of the Criminal Procedure Law.

([312]) Appeal No. 30770 of 83 S issued in the session of February 15, 2017 (unpublished).

adjudication within a week from the date of taking the action, which are guarantees that the Constitution obliges the law to abide by, and that the text restricting freedom is achieved [313].

The principle is that the investigating authority is the one that has the power to issue the order to detain the accused on remand, and this authority is the investigating judge, and the Public Prosecution of at least one prosecutor [314].

The Public Prosecution may request at any time the provisional detention of the accused [315].

It is not permissible for the victim or the plaintiff of the civil right to request pretrial detention, because there is no litigation for either of them in relation to the criminal case, but their litigation is limited to the civil case, and therefore they have no capacity in the request for pretrial detention [316].

The detention order shall be issued by the Public Prosecution at least by a prosecutor for a maximum period of four days following the arrest of the accused or handing him over to the Public Prosecution if he was previously arrested [317].

The judicial seizure officer is not competent to issue an order for pretrial detention, even if he is assigned to the investigation, because pretrial detention must be preceded by the interrogation of the accused, which the judicial seizure officer does not have.

The detention order issued by the Public Prosecution may not be executed after the lapse of six months from the date of its issuance unless approved by the investigating authority that issued it for another period [318].

2-The crime is one for which preventive detention is permissible

The general rule is that it is not permissible to order preventive detention unless the incident is a felony or misdemeanor punishable by imprisonment for a period of no less than one year.[319]

It is not permitted to order preventive detention except in the following cases:

If the incident attributed to the accused is a felony or misdemeanor punishable by imprisonment for a period not exceeding three months;

If the incident attributed to the accused is a misdemeanor punishable by imprisonment if the accused does not have a known fixed place of residence in Egypt [320].

The Special Rapporteur on Torture argued in his report that: “Policies known as' tough on crime', which overly penalize non-violent crimes, are not only counterproductive in terms of not reducing crime rates in the long term, but also create environments conducive to corruption, torture or ill-treatment. For example, the criminalization and mandatory and punitive detention of irregular border crossing and minor drug-related offences or other repeated and non-violent assaults inevitably leads to excessive confinement, prolonged pre-trial detention, overcrowding and lack of resources in detention facilities, with all of the above corruption and abuse that must be expected in such cases.

([313]) The judgment of the Supreme Constitutional Court in Case No. 49 of 28 S issued in the session of April 1, 2017, published on April 10, 2017, page No. 12.
([314]) Articles 134, 201 of the Criminal Procedure Code.
([315]) Article 137 of the Criminal Procedure Law.
([316]) Article 530 of the Judicial Instructions of the Public Prosecution.
([317]) Paragraph 1 of Article 201 of the Criminal Procedure Code.
([318]) Article 201 of the Criminal Procedure Law, and Article 400 of the Judicial Instructions of the Public Prosecution.
([319]) Article 134 of the Criminal Procedure Law.
([320]) Article 382 of the Judicial Instructions of the Public Prosecution.

Moreover, the handling of minor offences on a case-by-case basis is often left to the discretion of the police, which encourages extortion or the use of torture to obtain coerced confessions. Similar “hotbeds” of corruption, abuse, and impunity also result from widespread practices of prolonged or indefinite administrative detention of irregular migrants, or involuntary institutionalization of older persons or persons with actual or perceived psychosocial disabilities. In order to avoid corruption, torture or ill-treatment in the context of excessive deprivation of liberty and involuntary institutionalization, States should develop policies and practices to comprehensively address emerging challenges in areas as diverse as crime prevention, migration management and social welfare, and should avoid any deprivation of liberty or involuntary institutionalization that is not lawful, categorically required and appropriate to these[321] circumstances.

Defendants must be remanded in custody for felonies, theft misdemeanors, and other crimes against public security whenever there is evidence that the accusation is proven, unless in the circumstances of the case there is justification for releasing the defendants as if its subject matter takes a long time to investigate and it is not feared that the defendants will escape.

When ordering the provisional detention of the accused, the date of his arrest shall be taken into account [322].

The members of the prosecution must imprison those of the accused in cases of riding public transport in places other than those designated for this, in violation of the provision of Article 170 bis of the Penal Code, and determine the nearest hearing for his trial, so that it is possible to implement the judgment issued against him because they often do not reside in the competent court circuit, or there is a place of residence known to them [323].

There are several exceptions to this rule:.

Pre-trial detention is permissible if the accused does not have a fixed and known place of residence in Egypt and the crime is a felony or misdemeanor punishable by imprisonment, even if the period of imprisonment is less than one year.

This is justified by the possibility that the whereabouts of the accused may not be found at trial. The investigator is the one who decides that there is no fixed and known place of residence in Egypt, and his estimate is subject to the control of the trial court. However, preventive detention is never permissible for violations and misdemeanors punishable by a fine or imprisonment for a period of less than one[324] year.

If it is established that pre-trial detention is not permissible in respect of offences committed by the press, except where the offence is an insult to the President of the Republic. Pre-trial detention is not permitted if the crime attributed to the accused is one of the crimes committed by the newspapers, except if it is one of the crimes stipulated in Article 179 of the Penal Code or includes a challenge to the symptoms or incitement to corrupt morals. [325].

Report [321]of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, United Nations General Assembly, 16 January 2019, (A/HRC/40/59), §59 - §60.

([322]) Article 388 of the Judicial Instructions of the Public Prosecution.

([323]) Article 389 of the Judicial Instructions of the Public Prosecution

Article 170 bis of the Penal Code stipulates that: “A penalty of imprisonment for a period not exceeding six months and a fine of no less than ten pounds and no more than two hundred pounds or one of these two penalties shall be imposed on anyone who rides in railway cars or other means of public transport and refuses to pay the fare or fine or rides in a class higher than the class of the ticket he carries and refuses to pay the difference. Second - Anyone who rides in places other than those intended for riding on a public transport.

([324]) Article 134 of the Criminal Procedure Law.

([325]) Article 384 of the Judicial Instructions of the Public Prosecution

The principle is that a juvenile accused who has not exceeded fifteen years may not be remanded in custody, as the law stipulates that until the order to remand the accused is issued, he must have exceeded fifteen years, due to the absence of justification for remand in custody, it is not likely that he will tamper with evidence, and the chances of his escape are often few. Article 119 of the Child Law stipulates that: "A child who has not exceeded fifteen years shall not be remanded in custody, and the Public Prosecution may place him in an observation home for a period not exceeding one week and submit him upon each request if the circumstances of the case require his detention, provided that the period of custody does not exceed one week unless the court orders its extension in accordance with the rules of remand in custody stipulated in the Criminal Procedure Law.

In lieu of the procedure stipulated in the preceding paragraph, it is permitted to order the handover of the child to one of his parents or whoever has guardianship over him to preserve him and provide him with every request. Violation of this duty shall be punishable by a fine not exceeding one hundred pounds[326].

It is not permitted to detain a child under the age of fifteen years in pretrial detention, and the member of the prosecution may order his placement in one of the observation houses for a period not exceeding one week. If he deems it necessary to extend it, the matter shall be presented to the child's court [327].

3- Hearing the statements of the Public Prosecution and the defendant's defense before issuing the detention order

Before issuing a detention order, the investigating judge must hear the statements of the Public Prosecution and the defense of the accused [328].

The permissibility of the preventive detention order requires that the accused be interrogated or be a fugitive, and that it be proven to the investigator that there is sufficient evidence indicating the attribution of the crime to the accused [329].

The accused may not be remanded in custody until after being interrogated, and this interrogation is an essential measure because the purpose of it is to hear the defense of the accused, and to refute the evidence against him, and in order for the investigator to gather elements to assess the appropriateness of the order to detain him, and if he does not interrogate the accused, the order is invalid, with the exception of the case of the escape of the accused, as it is permissible to order that the accused be remanded in custody without interrogation.

It is noted that if the pre-trial detention order was issued by the investigating judge, the law required hearing the statements of the Public Prosecution and the defendant's defense before the detention order was issued, but the victim or civil rights plaintiff is not accepted to request the detention of the accused and no statements are heard from him in discussions related to imprisonment and release [330].

Article 179 of the Penal Code stipulates that: "Anyone who insults the President of the Republic in one of the aforementioned ways shall be punished by a fine of no less than ten thousand pounds and no more than thirty thousand pounds."

([326]) Article 119 of the Child Law.

([327]) Article 385 of the Judicial Instructions of the Public Prosecution.

([328]) Article 136 of the Criminal Procedure Code, and Article 647 of the Judicial Instructions of the Public Prosecution.

([329]) Article 383 of the Judicial Instructions of the Public Prosecution.

([330]) Articles 136, 152 of the Criminal Procedure Code, Article 386 of the Judicial Instructions of the Public Prosecution.

4- Availability of sufficient evidence for the accusation

In order to issue a detention order, the investigator must have sufficient evidence to attribute the crime to the accused, whether as a principal or an accomplice [331].

The investigator must prove that there is sufficient evidence indicating the attribution of the crime to the accused, and the assessment of this evidence is left to the investigator under the supervision of the competent authority to extend pretrial detention, and then the trial court. If the court finds that the evidence is insufficient to justify the order issued by the investigator to detain the accused provisionally, this shall result in the nullity of the order and the nullity of all the procedures resulting therefrom.

5- Data to be available in the detention order

The detention order must include the name of the accused, his surname, industry, place of residence, the charge against him, the date of the order, the signature of the investigator, the official seal, and the assignment of the prison warden to accept the accused and put him in prison with a statement of the crime attributed to the accused and a statement of the article of law applicable to the incident and the punishment prescribed for it, and the reasons on which the order is based [332].

The member of the prosecution shall record in the record the order he issues to detain the accused provisionally, indicating its date and signing it with an apparent signature, as well as a request to extend it from the partial judge. The partial judge shall also issue his order on the record to extend the detention or release the accused.

The form of the detention order or its extension shall be drawn up in original and two copies, taking into account the requirement of Article 127 of the Code of Criminal Procedure that the provisional detention order include the name of the accused, his surname, industry, place of residence, the charge attributed to him, the articles of law applicable to the incident and the date of issuance of the order, and that it is signed by the member of the prosecution or the judge, as the case may be, and the stamp of the prosecution shall be placed on him with the assignment of the prison warden to accept the accused and place him in prison, and a copy of this form shall be kept in the case file [333].

The criminal record of the accused must be requested as soon as the pre-trial detention order is issued[334].

6. Duration of pre-trial detention

If the Public Prosecution undertakes the investigation, the preventive detention order issued by it shall be effective only for a period of four days following the arrest of the accused or his surrender to the Public Prosecution if he is arrested [335].

If the Public Prosecution has ordered the bringing of the accused and then issued after interrogation an order for his provisional detention, the period of detention starts from the day following the implementation of this order [336].

The prosecution may, if it initiates an investigation into the crimes stipulated in Section One of Part Two of Book Two of the Penal Code (Terrorism Crimes), order the detention of the accused

---

([331]) Article 134 of the Criminal Procedure Law.
([332]) Articles 127, 136, 199 of the Criminal Procedure Code.
([333]) Article 395 of the Judicial Instructions of the Public Prosecution.
([334]) Article 396 of the Judicial Instructions of the Public Prosecution.
([335]) Article 201 of the Criminal Procedure Code, and Article 390 of the Judicial Instructions of the Public Prosecution.
([336]) Article 201 of the Criminal Procedure Code, and Article 390 of the Judicial Instructions of the Public Prosecution.

for a total period of up to sixty days. If the investigation is not completed and the prosecution deems it necessary to extend the pretrial detention further, it shall, before the expiry of that period, issue an order to extend the detention for successive periods not exceeding forty-five days each, provided that the matter is submitted to the Public Prosecutor if it lapses three months from the pretrial detention of the accused, in order to take the measures it deems necessary to complete the investigation.

The period of preventive detention in accordance with the aforementioned rules may not exceed three months except after obtaining, before its expiry, the order of the competent court to extend the detention for a period not exceeding forty-five days, renewable for a period or other similar periods, otherwise the accused must be released in all cases [337].

In all cases, it is not permitted for the period of pretrial detention at the stage of the preliminary investigation and the other stages of the criminal case to exceed one-third of the maximum penalty of deprivation of liberty, provided that it does not exceed six months in misdemeanors, eighteen months in felonies, and two years if the punishment prescribed for the crime is life imprisonment or death. [338].

However, the Court of Cassation and the Referral Court may, if the judgment is issued with the death penalty or life imprisonment, order the provisional detention of the accused for a period of forty-five days, renewable without limiting the periods stipulated in the preceding paragraph [339].

It is clear from the above that the period of imprisonment varies according to the issuer as follows:

With regard to arrest by the judicial officer:

24 hours

For arrest by the investigating authority:

24 hours

With regard to pretrial detention by the Public Prosecution:

Only 4 days starting from the day of arrest of the accused if she is the one who ordered the arrest, and starting from the day of handing him over to her if he was previously arrested by the judicial officer.

With regard to pre-trial detention by the investigating judge:

The period that the investigating judge has the power to order after hearing the prosecution and the accused is 15 days with renewal for a similar period or periods provided that the statements of the prosecution and the accused are heard so that they do not exceed a total of 45 days.

For pre-trial detention with the knowledge of the counselling room:

The counselling room has the right to renew the confinement for a period or consecutive periods not exceeding 45 days, noting the following:

First: The matter must be presented to the Public Prosecution after 3 months of pretrial detention

Second: In all cases, the period of pretrial detention may not exceed three months unless the accused has been notified of his referral to the competent court. If the charge is a felony, the period of pretrial detention shall not exceed five months except after obtaining, before its expiry,

---

([337]) Article 392 bis of the Judicial Instructions of the Public Prosecution.
([338]) Article 143 of the Criminal Procedure Law.
([339]) Article 143 of the Criminal Procedure Law.

an order from the competent court to extend pretrial detention for a period not exceeding 45 days, renewable for another similar period or periods. The accused must be released inevitably in any of the following three cases:

If the defendant's order is not presented to the court in the first place;

If the order of the accused is presented to the court after the expiry of the previous renewal period;

If the order of the accused is presented to the court and it does not order the extension of his detention.

With regard to pretrial detention by the Court of Cassation or the Court of Referral:

The court of cassation and the referral court may, if the judgment is issued with the death penalty or life imprisonment, order the provisional detention of the accused for a period of forty-five days, renewable without adhering to the previous periods.

7-The right of the pre-trial detainee to contact whomever he deems to be informed of the detention order

The person against whom a provisional detention order is issued shall have the right to contact whoever he deems fit to inform of what has happened, and he must be promptly notified of the charges against him [340].

If the interest of the investigation requires that the foreign accused be remanded in custody, the investigating prosecutor shall send an urgent memorandum to the General Technical Office, in which the name of the accused shall be indicated in Arabic and Latin letters, the country to which he belongs, the facts of the incident and the accusation against him so that the Ministry of Foreign Affairs can be notified of this in order to inform him to his consulate [341].

8-The right of the pre-trial detainee to have access to a lawyer

The person against whom a preventive detention order is issued shall have the right to seek the assistance of a lawyer [342].

Eighth: Informing the accused of the information related to their arrest

1- Rights to be protected during arrest and detention

The arrested accused has the right to appear before a judicial authority, or authorized by a judicial authority such as the Public Prosecution, as soon as possible, or within twenty-four hours from the time of restricting his freedom [343].

There is no doubt that the police and other security agencies, as guardians of the law and custodians of human rights at the same time, are well aware that arrest and detention is a serious measure that affects the right of individuals to liberty, an exceptional and temporary measure, and is legal only if it is necessary and justified to prevent crime and maintain order, depending on the circumstances of each case.

Accordingly, every person who believes that his arrest or detention is illegal must be able to challenge the legality of this before a judicial authority (which may be represented by the investigating judge, the Public Prosecution or a court. This authority must consider the appeal

---

([340]) Article 139 of the Criminal Procedure Law.

([341]) Article 1386 of the Judicial Instructions of the Public Prosecution.

([342]) Article 139 of the Criminal Procedure Law.

([343]) Article 54 of the amended Constitution of the Arab Republic of Egypt for the year 2014, Article 36 of the Code of Criminal Procedure, and the third paragraph of Article 9 of the International Covenant on Civil and Political Rights.

without delay and verify in particular that the arrest and detention was carried out in accordance with the procedures specified in the law, and by an authority authorized by law, and that it was not arbitrary, and order the release of the person if his arrest or detention is illegal. The Public Prosecution may appeal, even in the interest of the accused, all orders issued by the investigating judge (including detention orders), whether on its own initiative or at the request of the litigants[344].

The appeal shall be filed before the appellate misdemeanor court sitting in the counseling chamber if the appealed order is issued by the investigating judge to remand in custody or for a period of time. If the order is issued by that court, the appeal shall be submitted to the criminal court sitting in the counseling chamber. If it is issued by the criminal court, the appeal shall be submitted to the competent department. In other than these cases, the appeal shall be submitted to the appellate misdemeanor court sitting in the counseling chamber unless the appealed order is issued that there is no cause of action in a felony or issued by this court to release the accused. The appeal shall be submitted to the criminal court sitting in the counseling chamber.

If the person who undertook the investigation is an advisor, the order issued by him shall not be appealed unless it is related to jurisdiction or there is no need to file a lawsuit, pretrial detention, duration, or provisional release. The appeal shall be before the Criminal Court sitting in the counselling room.

The counselling chamber shall, upon revoking the order to file the lawsuit, return the particular case, the acts constituting it, and the text of the law applicable to it, in order to refer it to the competent court.

In all cases, the challenge to the orders of provisional detention, its extension, or provisional release must be adjudicated within forty-eight hours from the date of filing the challenge, otherwise, the accused must be released.

One or more of the Chambers of the Court of First Instance or the Criminal Court shall have jurisdiction to consider the appeal of the provisional detention or provisional release orders referred to in this article.

Decisions issued by the Chamber of Counsel shall in all cases be final[345] .

Every person who is arrested or detained has the right to seek the assistance of a lawyer of his choice or to have a qualified lawyer assigned to him to defend him when the interest of justice so requires. The police should enable the accused to exercise this right so that he is able to contact his lawyer from the beginning of his detention and during the investigation with him at the stage preceding his referral to the court, and to contact the lawyer in an atmosphere of confidentiality and privacy, noting that it does not conflict with confidentiality and privacy that this is done in front of the competent authorities, but not in front of them[346].

The investigation of the accused must begin only in the presence of his lawyer, and if he does not have a lawyer, assign him a lawyer, with the necessary assistance for people with disabilities, in accordance with the procedures established by law [347].

([344]) The fourth paragraph of Article 54 of the Arab Republic of Egypt amended for the year 2014, Article 161 of the Code of Criminal Procedure, and the fourth paragraph of Article 9 of the International Covenant on Civil and Political Rights.
([345]) Article 167 of the Criminal Procedure Law, as amended by Law No. 153 of 2007.
([346]) (Article 49 of the Constitution, Article 1/9 of the Criminal Procedure Code, Article 1/11 of the Universal Declaration of Human Rights, and Article 3/14 of the International Covenant on Civil and Political Rights).
([347]) Article No. 54 of the Arab Republic of Egypt amended for the year 2014.

It is not permissible for the investigator in felonies and misdemeanors punishable by imprisonment to interrogate the accused or confront him with other defendants or witnesses except after inviting his lawyer to attend, except in case of flagrante delicto and in case of speeding due to fear of loss of evidence as evidenced by the investigator in the record

The accused must announce the name of his lawyer with a report to the court clerk's office or to the prison warden, or notify the investigator of it, and his lawyer may also take over this announcement or notification

If the accused does not have a lawyer, or his lawyer does not attend after his invitation, the investigator shall, on his own initiative, assign him a lawyer

The lawyer may record in the minutes any defenses, requests or observations of his own.

After the final disposition of the investigation, the investigator shall issue, at the request of the assigned lawyer, an order to estimate his fees, guided by the fee estimation table issued by a decision of the Minister of Justice after taking the opinion of the Board of the General Bar Association. These fees shall take the judgment of the judicial fees [348].

Every person accused of a crime is considered innocent until proven guilty by law in a public trial in which he is provided with all the guarantees necessary to defend himself, so he has the right to be tried in his presence and to be able to defend himself in person or by a defender of his choice, and to be informed of his right to have a defender, and to be provided, when the interest of justice so requires, with a defender who appoints him a referee free of charge if he cannot reward him for his fees [349].

Every person who has been detained on a criminal charge has the right to be brought to trial within a reasonable period of time or to be released until the date of his trial. This right is based on the presumption of innocence of the accused and his right to liberty. If the right to liberty is the origin, the exception is detention, which must not last more than is necessary depending on the circumstances of each individual case and does not mean the temporary release of the accused until the date of his trial, dropping the charges against him. Therefore, the authorities may, if they decide to release the accused, request the guarantees they deem necessary, when necessary and appropriate, in order to ensure that the person will appear before the court when his case is due to be heard[350].

2- Hearing the statement of the seized accused

Article 36 of the Code of Criminal Procedure stipulates that: “The judicial officer must immediately hear the statements of the seized accused, and if he does not come to acquit him, he sends him within twenty-four hours to the competent public prosecution

The Public Prosecution must interrogate him within twenty-four hours, and then order his arrest or release. "

The judicial officer shall hear the statements of the arrested accused, and if he does not produce what he exonerates, he shall send it to the competent public prosecution within twenty-four hours, otherwise he must be released immediately.

Hearing the statements of the accused is not an interrogation, but it is an evidentiary procedure, and therefore it is not permissible for the judicial officer to ask many detailed questions aimed at

---

([348]) Article 124 of the Criminal Procedure Law, as amended by Law No. 74 of 2007.

([349]) Article 11, paragraph 1, of the Universal Declaration of Human Rights and article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights.

([350]) Article 54 of the amended Constitution of the Arab Republic of Egypt of 2014, the third paragraph of Article 9 of the International Covenant on Civil and Political Rights.

implicating the accused in the charge, and he is also prohibited from confronting the accused with the victim. Confrontation and interrogation are investigative measures that the judicial officer is prohibited from taking, as this is the prerogative of the investigator alone [351].

The Public Prosecution shall also, when sending the accused to it within the time specified by law, interrogate him within twenty-four hours, and then issue its order either to arrest him or to release him.

The absence of the seizure report from the question of the accused or his confrontation with the victim does not invalidate it, and the matter in this regard is due to the appreciation of the trial court for the integrity of the measures taken by the judicial seizure officer [352].

A confession is a self-confession by the accused to commit the facts constituting the crime in whole or in part [353].

One of the conditions for the validity of the confession as evidence is that the accused has made the confession in his full will and that it is issued by him voluntarily, of his choice and of his free will. The last paragraph of Article 55 of the 2014 Constitution stipulates that: "... The accused has the right to silence, and any statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable."

The accused must have made the confession at will, away from any pressure that defects or affects his will. Any impact on the accused, whether it is violence, threat or promise, defects his will and thus corrupts his confession.

A confession is irrelevant, even if it is true, if it is the result of material or moral coercion, whatever its value, because of its impact on the will of the accused and his freedom to choose between denial and confession. The last paragraph of Article 302 of the Code of Criminal Procedure stipulates that: "... Every statement that is proven to have been made by one of the accused or witnesses under duress or threat of coercion is wasted and unreliable."

The Court of Cassation ruled that: [A reliable confession must be optional, and it is not considered so even if it is true if it was issued under coercion or threat of coercion, whatever its fate, and the principle is that the court must, if it decides to rely on the evidence derived from the confession, urge the link between it and the coercion said to be obtained and deny the existence of this coercion in a reasonable inference][354] .

The plea of nullity of the confession due to its issuance under the influence of coercion is a substantive plea that the trial court must discuss and respond to. In this regard, the Court of Cassation ruled that: [The plea of nullity of the confession due to its issuance under the influence of coercion is a substantive plea that the trial court must discuss and respond to, equal to the fact that the defendant was the one who pleaded the nullity or that one of the other defendants in the case has adhered to it][355] .

([351]) Appeal No. 9588 of 60 S issued at the hearing of November 14, 1991 and published in the second part of the book of the Technical Office No. 42 page No. 1213 rule No. 166.

([352]) Appeal No. 9588 of 60 S issued at the hearing of November 14, 1991 and published in the second part of the book of the Technical Office No. 42 page No. 1213 rule No. 166.

([353]) Guarantees of the accused at the stage of criminal investigation - Dr. Abdul Hamid Al-Shawarbi - Al-Maaref Establishment in Alexandria - page 415..

([354]) Appeal No. 737 of 73 S issued at the session of April 18, 2010 (unpublished).

([355]) Appeal No. 9801 of 80 S issued at the session of 13 February 2011 and published in the book of the Technical Office No. 62 page No. 59, Appeal No. 34525 of 77 S issued at the session of 8 March 2009, Appeal No. 34294 of 77 S issued at the session of 20 January 2008, Appeal No. 1114 of 67 S issued at the session of 16 February 2006, Appeal No. 26783 of 67 S issued at the session of 19 January 2006, Appeal No. 14847 of 63 S issued at the session of 7 November 2002, Appeal No. 9496 of 63 S issued at the session of 26 September 2002.

It also ruled: [The original of the reliable confession must be optional, and it is no more than that even if it is true - if it is issued after a promise, pressure or coercion, whatever its fate, and that it is one of the elements of inference that the trial court has full freedom to assess its validity and value in evidence, it has the unquestionable appreciation of the invalidity of the defendant's claim that his confession is due to coercion or that it was issued without his free will as long as it is based on justifiable reasons, and the contested judgment was offered to pay an unreasonable response and was not paid by his right, and he did not mean to scrutinize it until the end of the matter because of his connection with the fact of the case and his relationship to its subject matter and the investigation of the evidence in it, it, it is above the deficiencies it has been tained by violating the right of defense, which requires its reversal and return][356] .

If the court decides to rely on the evidence of guilt derived from the confession of the accused to examine the link between that confession and the injuries said to have been obtained to coerce the accused against him, otherwise its judgment is tainted by invalid deficiencies, and is not immune from that invalidity and the other evidence on which its judgment is based, the Court of Cassation ruled that: [It is decided that the confession relied upon as evidence in the case must be optional issued by free will, so it is not valid to rely on the confession - even if it is true - when it is the result of coercion, no matter what Whereas, the principle is that the court, if it deems it necessary to rely on the evidence derived from the confession, to examine the link between it and the injuries said to have occurred to coerce the appellant, and to deny that it has made a reasonable inference, and since it is established from the records of the contested judgment that the court presented the appellant's defense of the invalidity of his confession based on the statement of its confidence in him and the absence of evidence from the papers without being exposed to the link between this confession and the fact that the appellant raised the minutes of the trial session that he suffered a fracture in his right arm as a result of the physical coercion that he signed without the court referring to those The injury and exposure to the link between it and the confession, its judgment is tainted by the invalid deficiency and is not immune from the invalidity of the other evidence on which it is based, as the evidence in the criminal articles is supportive and complements each other, including collectively the doctrine of the judge is formed so that if one of them falls or is excluded, it is not possible to identify the amount of impact that the invalid evidence had in the opinion reached by the court or to determine what result it would have reached if it had realized that this evidence does not exist][357] .

The Court of Cassation argued that the plea of nullity of the confession because it was issued under the influence of coercion is an objective plea, which does not fall among the defenses related to public order, and it follows that it may not be raised for the first time before the Court of Cassation: [It is decided that the plea of nullity of the confession may not be raised before the Court of Cassation - as long as the records of the judgment do not bear its elements - because it is one of the legal defenses that mix with reality and require an objective investigation that distances from the function of the Court of Cassation, and therefore it is not accepted by the appellants after the obituary on the court to respond to a defense that was not raised before it and it is not challenged for the first time before the Court of Cassation][358] .

([356]) Appeal No. 34150 of 77 S issued on June 11, 2008 (unpublished).
([357]) Appeal No. 7555 of 69 S issued on January 27, 2008 (unpublished).
([358]) Appeal No. 5173 of 4Q issued at the session of 20 May 2014 and published in the letter of the Technical Office No. 65 page No. 442, Appeal No. 26503 of 75Q issued at the session of 6 January 2013 and published in the letter of the Technical Office No. 64 page No. 33, Appeal No. 36048 of 74Q issued at the session of 27 November 2012 and published in the letter of the Technical Office No. 63 page No. 790, Appeal No. 37273 of 74Q issued at the session of 25 November 2012 and published in the letter of the Technical Office No. 63 page No. 777, Appeal No. 3746 of 80 S issued at the session of January 2, 2012 and published in the letter of the Technical Office No. 63 page No. 41, Appeal No. 23979 of 73 S issued at the session of March 16, 2010, Appeal No. 20251 of 72 S issued at the session of November 23, 2009, Appeal No. 10118 of 78 S issued at the session of November 21, 2009 and published in the letter of the Technical Office No. 60 page No. 477, Appeal No. 14527 of

The Court of Cassation has even gone further by ruling that the defendant's statement that "the defendant's statements in the investigations were affected by his threat and intimidation by the police" without showing the face of what makes him confess and that it cannot be said that this phrase constitutes a defense to the invalidity of the confession or refers to the invalidated coercion: [Since it was established from the trial minutes that the appellant or his defender did not defend the invalidity of his confession to the investigation of the prosecution because it was the result of coercion, and the ends of what the defender of the appellant said that "the statements of the accused in the investigations were affected by his threat and intimidation by the police and that they told him to confess in order to be a fraud case" without showing the face of what he attributes to his confession and that it cannot be said that this phrase constitutes a defense to the invalidity of the confession or refers to the invalidated coercion. Whereas, the contested judgment relied in its conviction on the appellant's confession after he was assured of his safety - and it was not acceptable for the appellant to raise the forced plea in his regard for the first time before the Court of Cassation, as it requires an investigation to be conducted in which the function of this court is reduced, and then the obituary in this regard is not valid][359] .

It also ruled that the defendant's statement that his confession was the result of moral coercion represented by the arrest of his family is not a defense to the invalidity of the confession, the trial court must examine it and respond to it: [Whereas it was clear from reference to the minutes of the trial session that the defense of the appellants did not defend the invalidity of the confession because it was the result of coercion, and all that was stated by the defender of the first appellant in this regard was that he was subjected to moral coercion and the arrest of his family, as stated by the defender of the second appellant, a phrase sent is the invalidity of the confession of the seizure record, without any of them showing the face of what challenges him to this confession, which calls into question his safety. It cannot be said that these two sent statements that he made constitute a defense of the invalidity of the confession or refer to the invalidated coercion, and all that can be done is to question the evidence derived from the confession, so that the court does not rely on it, it is not acceptable for the appellant to raise it for the first time before the Court of Cassation, as it requires an objective investigation that recedes The function of the Court of Cassation[360] .

---

72 S issued at the session of October 21, 2009 Published in Technical Office Letter No. 60, page No. 354, Appeal No. 7961 of 78 S issued at the hearing of 14 May 2009 and published in Technical Office Letter No. 60, page No. 246, Appeal No. 10938 of 77 S issued at the hearing of 2 March 2008 and published in Technical Office Letter No. 59, page No. 172, Appeal No. 51030 of 74 S issued at the hearing of 10 July 2006, Appeal No. 4184 of 73 S issued at the hearing of 29 September 2003 and published in Technical Office Letter No. 54 Page No. 884, Appeal No. 29650 of 70 S issued at the session of April 17, 2003 and published in the Technical Office's letter No. 54 Page No. 569, Appeal No. 7981 of 70 S issued at the session of February 8, 2002 and published in the Technical Office's letter No. 52 Page No. 243, Appeal No. 5223 of 70 S issued at the session of February 4, 2001 and published in the Technical Office's letter No. 52 Page No. 205, Appeal No. 17411 of 69 S issued at the session of April 3, 2000 and published in the Technical Office's letter No. 51 page No. 373, Appeal No. 26293 of 67 s issued at the session of March 13, 2000 and published in the Technical Office's book No. 51 page No. 288, Appeal No. 20205 of 67 s issued at the session of October 20, 1999 and published in the first part of the Technical Office's book No. 50 page No. 544, Appeal No. 8651 of 67 s issued at the session of April 20, 1999 and published in the first part of the Technical Office's book No. 50 page No. 235, Appeal No. 2370 of 62 s issued at the session of October 18, 1998 and published in the first part of the Technical Office's book No. 49 page No. 1117, Appeal No. 8744 of 66 s issued at the session of April 22, 1998 and published in the first part of the Technical Office's book No. 49 page No. 608.

([359]) Appeal No. 29650 of 70 BC issued at the session of 17 April 2003 and published in the letter of the Technical Office No. 54 page No. 569.

([360]) Appeal No. 26293 of 67 S issued at the session of March 13, 2000 and published in the letter of the Technical Office No. 51 page No. 288.

1.1.2 Within the framework of international covenants

Everyone has the right to personal freedom [361].

Individuals may not be lawfully deprived of their liberty except in certain specific cases. International human rights standards provide for a series of procedures that ensure protection in order to ensure that no one is deprived of their liberty unlawfully or arbitrarily. They also provide safeguards against other forms of ill-treatment of detainees, including those that apply to all persons deprived of their liberty, while others apply to persons detained on criminal charges only. Others apply to specific categories of individuals, such as foreign nationals or children. Although this guide introduces many of the rights that apply to all persons deprived of liberty, it focuses on the rights that apply to persons accused of committing criminal offences.

As a general rule, persons arrested on suspicion of criminal offences should not be detained pending trial.

Everyone has the right to life, liberty and security of person [362].

Everyone has the right to liberty and security of person, and no person may be arrested or detained, and no person may be deprived of his liberty except on the grounds and in accordance with the procedures stipulated by law [363].

Related to the right to liberty is another inherent right, which is the right to be presumed innocent until proven guilty by a final judgment. This right is one of the absolute rights to which no exception is made, and it must be respected at all times, including war and other emergencies.

The accused is innocent until proven guilty in a fair legal trial [364].

It is prohibited to use pretrial detention of juveniles - pre-trial detention - except as a last resort and for the shortest possible period of time, and it is replaced whenever it is secured by alternative measures such as close monitoring, intensive care or placement with a family or one of the institutions or educational homes, provided that the detained juvenile enjoys all the rights and guarantees mandated by the Standard Minimum Rules for the Treatment of Prisoners [365].

provided that each case in which an accused person has occurred shall be heard expeditiously without any unnecessary delay [366].

Following the arrest of the juvenile, his parents or guardian must be notified of this immediately, and in the event that immediate notification is not possible, the notification must be within the most possible period of time after his arrest, provided that a judge or a competent official considers without delay the order for his release [367].

The International Covenant on Civil and Political Rights also prohibits the arrest, detention or deprivation of liberty of any person except on the grounds and in accordance with the procedures stipulated by law, and must be tried within a reasonable time or released, and that

---

([361]) Article 3 of the Universal Declaration, Article 9 (1) of the International Covenant, Article 16 (1) of the Migrant Workers Convention, Article 6 of the African Charter, Article 7 (1) of the American Convention, Article 14 (1) of the Arab Charter, Article 5 (1) of the European Convention, Section M (1) of the Principles of Fair Trial in Africa, and Article 1 of the American Declaration; see Article 37 (b) of the Convention on the Rights of the Child..

([362]) Article 3 of the Universal Declaration of Human Rights.

([363]) The first paragraph of Article 9 of the International Covenant on Civil and Political Rights.

([364]) Article 11 of the Universal Declaration of Human Rights, and the second paragraph of Article 14 of the International Covenant on Civil and Political Rights.

([365]) Rule No. 13 of the Beijing Rules, Article No. 17 of the African Charter on the Rights and Welfare of the Child.

([366]) Rule No. 20 of the Beijing Rules.

([367]) Rule No. 10 of the Beijing Rules.

pretrial detention is not the general rule for all those awaiting trial, and any person arrested at the time of arrest must be informed of this, and promptly informed of any charge against him [368].

Any person who is arrested, detained, imprisoned or accused of committing a criminal offence must be informed of his right to be represented and assisted by a lawyer of his choice [369].

Every person who does not have a lawyer has the right to appoint an experienced and competent lawyer consistent with the nature of the crime with which he is accused to provide him with effective legal assistance, without paying for this service if they do not have sufficient resources for it [370].

It is also prohibited to keep any detained person without giving him a real opportunity to make his statement as soon as possible before a judicial or other authority, and he has the right to defend himself or obtain the assistance of a lawyer, and the detained person and his lawyer shall be provided with all information about the detention order and its reasons, with the right to review the continuation of detention before the judicial or any other authority [371].

The detained person or his lawyer has the right at any time to file a simple and urgent lawsuit in accordance with domestic law before a judicial authority or any other authority to challenge the legality of his detention, with the aim of obtaining an order for his release without delay, if his detention is illegal, provided that the lawsuit is free of any costs for those who do not have sufficient means, and the authority detaining the person is obligated to bring him without undue delay before the authority that undertakes the review[372].

The juvenile also has the right to be represented by his legal counsel for the duration of the judicial proceedings, and he has the right to request that the court assign him a lawyer free of charge, and his parents or guardian have the right to participate in all judicial proceedings, and the competent authority may request their presence for the benefit of the juvenile, unless the competent authority refuses their participation in the proceedings if there are necessary reasons to exclude them in favor of the juvenile[373].

Any person who has been detained without observing the established rules must be released immediately, and the state must take the necessary measures to ensure that he has already been released, and to ensure his physical safety and his full ability to exercise his rights upon his release[374].

First: General Provisions

The police must adhere to the four principles that govern all their actions and procedures, that is, adhere to the principles of legality, necessity, proportionality and accountability in case of violation.

In general, in all cases where the police decide to arrest or detain persons, given the availability of sufficient legal grounds to do so, the extent to which there is an "actual necessity" to carry out the arrest or detention must be assessed. If other means are found to achieve the purpose, it is

---

([368]) Article 9 of the International Covenant on Civil and Political Rights, Principles No. 10, 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([369]) Principle No. 5 of the Basic Principles on the Role of Lawyers.

([370]) Principle No. 6 of the Basic Principles on the Role of Lawyers.

([371]) Principles Nos. 11, 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([372]) Principle No. 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Articles No. 14, 16 of the Arab Charter on Human Rights.

([373]) Rule No. 15 of the Beijing Rules.

([374]) Article 21 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article 11 of the Declaration on the Protection of All Persons from Enforced Disappearance.

better to resort to them rather than to restriction of liberty. For example: Taking action: withdrawing the passport of a specific person may be sufficient to prevent him from fleeing the country, collecting and documenting evidence in a timely manner may prevent the accused person from destroying it, and so on.

It is a matter that deserves the attention of the police, that the implementation of arrest and detention procedures does not harm the reputation of the person, such as arresting him at his workplace, or in front of the public, and of course, unless necessary otherwise, it is taken for granted that the arrest or detention must be legally justified, and commensurate with the goal that the police seek to achieve (such as the reason for the arrest is a crime of a certain level of seriousness that does not allow the suspect to be left at large).

In all cases, all police actions in arrest and detention must be subject to the principle of accountability, whether with regard to the validity of legal reasons, the validity of procedures, adherence to the legally specified periods, or in terms of the authority of persons and the validity of their authorization to do so. It has already been mentioned that the failure to observe the legal rights and guarantees of suspects or detainees converts the incident of detention from a legitimate to an illegal procedure, and the arrest or detention becomes arbitrary.

If the police decide to use force or shoot to arrest a person suspected of violating the law, this must be in accordance with international and national controls and standards for the use of force and firearms, the most important of which - in such cases - is that the person to be arrested represents a danger to the lives of others or to the lives of the police officers themselves. When the potential damage resulting from the use of force and firearms in the arrest is greater than the legal interest to be achieved, the police must refrain from arresting or postpone it to another time.

It is worth mentioning here the importance of training and qualifying police officers to deal with situations that may call for resorting to force or shooting, as such situations often occur unexpectedly and as a result of the escalation of a particular situation. This means that police officers must be prepared in advance to face all possibilities, and in a manner consistent with reality, to enable them to make sound, immediate and consistent decisions in accordance with legal standards.

In accordance with international and national standards, anyone who has been arbitrarily arrested or detained, whose rights have been violated or who has been tortured while in police custody is entitled to full reparation, as well as an apology and reparation, and punishment for those responsible.

Second: The condition for issuing a warrant for the detention of the accused

In order to justify the detention of a person pending trial, the following must be available:[375].

Reasonable suspicion that the person has committed an offence punishable by imprisonment, as well as [376].

A real public interest that outweighs in importance personal freedom, regardless of the principle of the presumption of innocence, as well as [377].

Substantial reasons to believe that the person will do the following, if released:[378] .

([375]) Rules 6 and 7 of the European Rules for Pre-trial Detention..

([376]) (210) Pareto Leyva v. Venezuela, Inter-American Court 122§ (2009); Pirano Basso v. Uruguay (12. 533), American Commission (110§ (2009).

Van [377]der Tang v. Spain (19382 / 92), European Court (1995) 55§; Pinheiro and dos Santos v. Uruguay (11. 506), Inter-American Commission 66-65§ § (2002); Human Rights Committee General Comment 32, 30§..

He will run away, [379].

will commit a serious offense,.

Will interfere in the course of the investigation or justice, or [380].

It will pose a serious threat to public order, as well as [381].

There is no possibility of alternative measures to address these concerns [382].

The grounds for ordering pre-trial detention should be interpreted strictly and narrowly [383].

In reviewing the risks involved in a particular individual case, attention may be paid to the nature and seriousness of the alleged offence, although this alone will not be sufficient to justify detention. Moreover, the circumstances of the case and the individual's own circumstances must also be taken into account, including his age, health, personality and record, as well as his personal and social status, including his links to society. The fact that a person is a foreign national, in itself, is not sufficient reason to conclude that there is a risk of fleeing. The same applies to a person who does not have a fixed place of residence[384].

Particular attention should be paid to the person with responsibility for caring for young children[385].

Detention of children should be the last resort [386].

Detention pending trial is a preventive measure aimed at avoiding further harm or obstruction of justice, and is not a punishment and may not be used for inappropriate purposes or constitute an abuse of power [387].

It may not last longer than necessary, and the process of examining the legality and necessity of detention must continue in each case [388].

This principle is violated by laws that abolish judicial control, for example by prohibiting bail for a certain category of people, such as offenders who repeat their crimes; or laws that make pre-trial detention for any specific crime mandatory [389].

([378]) See Bronstein et al. v. Argentina (11. 205 et al., American Commission, 37-25 §§ (1997).

([379]) Pirano Basso v. Uruguay (12. 533), Inter-American Commission (81§ § (2009, 85); European Court: Letelier v. France (12369 / 86), (43§ (1991), Batsouria v. Georgia (30779/ 04), 69§ (2007).

([380]) Batsouria v. Georgia (30779 / 04), 71§ (2007); Pirano Basso v. Uruguay (12. 533), American Commission 131§ § (2009) .

([381]) Letelier v. France (12369 / 86), European Court 51§ (1991)..

([382]) Batsouria v. Georgia (30779 / 04), (76-75§ (2007..

([383]) Medvedev v. France, (3394/03) Grand Chamber of the European Court 117§ § (2010) and 120..

[384]See, e.g., Fifth Report on Guatemala, Inter-American Commission (2001), chap. 4§ § 7, 28-29, 33-34.

Batsouria v. Georgia (30779 / 04), European Court (72§ (2007);Pirano Basso v. Uruguay (12. 533), American Commission (84§ § (2009) and 89-90.

Hill v. Spain, Human Rights Commission, / UN Doc. CCPR . C/59/D/5262/1993 3/12§ (1997); Recommendation 12) Rec)2012 of the Committee of Ministers of the Council of Europe, Supplement 2/13§ § (b) and 5.

Article 16 (6) of the Migrant Workers Convention, and Rule 9(1) - (2) of the European Rules for Pre-Trial Detention.

Sulawea v. Estonia (55939 / 00), ECtHR (64§ (2005)..

([385]) Rule 58 of the Bangkok Rules, Rule 10 of the European Rules for Pre-Trial Detention, and Section M(1) (f) of the Fair Trial Principles in Africa.

Resolution 65/229 of the United Nations General Assembly, 9§ ..

([386]) Article 37 (b) of the Convention on the Rights of the Child and rule 65 of the Bangkok Rules.

Principle 3(2[387]) of the Principles Relating to Persons Deprived of their Liberty in the Americas.

López Álvarez v. Honduras, Inter-American Court (69§ (2006); Pirano Basso v. Uruguay (12. 533), Inter-American Commission (84§ § (2009) and 141 - 145; Prosecution v. Bemba (475 - 08/01 - 05 / ICC-01), ICC Pre-Trial Chamber II, Decision on the Provisional Release of Jean-Pierre Bemba Gombo (14 August 38§ (2009).

Gusinsky v. Russia (70276 / 01), European Court (2004) . 78-71§§..

([388]) European Court: Weimhof v. Germany (2122/64), (§ (1968a. 10, McKay v. United Kingdom (543/03), Grand Chamber (42§ § (2006 and 43..

Detention decisions should not be based exclusively on the length of imprisonment that the accused may face [390].

On the other hand, all international conventions have prohibited the admission of any person to prison without a legitimate detention order, and it is prohibited to keep any person detained pending investigation or trial except on the basis of a written order issued by a competent authority [391].

To ensure protection against discrimination on the basis of economic status, in cases where bail may be granted, the person's financial resources should be taken into account when determining the appropriate and proportionate amount of bail [392].

It is also prohibited to receive any juvenile in a detention institution without a valid detention order issued by a judicial, administrative or any other public authority, provided that the details of the detention order are recorded in the records of the institution immediately, and no juvenile may be detained in any institution or facility without records [393].

In cases of violent crimes, including domestic violence, the authorities must take into account the risk that the suspect may pose. Failure to protect a victim of violence from a known risk posed by a particular individual constitutes a violation of the victim's rights. In such cases, a range of measures commensurate with this risk should be considered [394].

Therefore, the detained person accused of committing a criminal charge must be brought before a judicial authority or any other competent authority promptly after his arrest, and that authority must decide on the legality and necessity of his detention without delay, and the detained person has the right to make a statement about the treatment he received during his detention[395].

The International Convention for the Protection of All Persons from Enforced Disappearance also prohibited the subjection of any person to enforced disappearance, and prohibited invoking any exceptional circumstances, whether a state of war or the threat of war, internal political instability, or any other state of exception, to justify enforced disappearance [396].

([389]) European Court: Cabellero v. United Kingdom (32819 / 96), Grand Chamber (15-14§ § (2000 and 18-21), Moiseev v. Russia (62936 / 00), . 154§ (2009).

Rule 3(2) of the European Rules for Pre-trial Detention.

Concluding observations of the Human Rights Committee: Mauritius, UN Doc 12§ § (2005) CCPR/C0/83/MUS and 15.

([390]) Concluding observations of the Human Rights Committee: Argentina, UN Doc 10§ (2000) CCPR/C0/70/ARG, Moldova, UN Doc. CCPR/C/MDA/CO/2 19§ (2009), Italy, 14§ (2005) UN Doc. CCPR/C/ITA/CO/5; López Álvarez v. Honduras, Inter-American Court (69§ (2006).

([391]) The first paragraph of Rule 7 of the Nelson Mandela Rules, Principles Nos. 2, 4 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

General [392]Recommendation 26§ 31 (b) of the Committee on the Elimination of Racial Discrimination; Working Group on Enforced Disappearances, 7/2006 / UN Doc. E/CN. 4 66-65§§ (2005). See Concluding Observations of the Committee against Torture: Kenya, 12§ (2008) UN Doc. CAT/C/Ken/CO/1; SPT: Mexico, 208§ (2010) UN Doc. CAT/OP/MEX/1..

([393]) Rule No. 20 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

([394]) Article 7(b) - (f) of the American Convention on Violence against Women, Articles 51-52 of the European Convention on Preventing and Combating Violence against Women and Domestic Violence.

European Court: Osman v. United Kingdom (23452 / 04), Grand Chamber (115§ § (1998 and 116), Opuz v. Turkey (33401/ 02), (2009) 202-192§ §; see CEDAW Committee Views: Yildirim v. Austria, UN Doc 5/1/12§ (2007) CEDAW/C/39/D/6/2005, A. T. v Hungary (2/2003), UN Doc. A/60/38 (Part 1), Supplement 3 (4/8§ § (2005) and 9/2-9/ 4, Guixe v. Austria (5/2005), 2005/2007) UN Doc. CEDAW/C/39/D/5) 5/1/12 §; Linahan et al. v. United States (12. 626) of the American Commission. 213-211§§ (2011)..

([395]) Principal No. 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([396]) Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance.

Third: Enforced Disappearance

Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance states: “1. No one shall be subjected to enforced disappearance.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other state of exception, may be invoked to justify enforced disappearance.”

In international human rights law, enforced disappearance is defined as “the abduction or secret imprisonment of a person by a State, a political organization or a third party with the authorization, support or acquiescence of a State or a political organization, with the abductee refusing to acknowledge the fate and whereabouts of the person, for the purpose of placing the victim outside the protection of the law”.

On the other hand, the International Criminal Court has defined enforced disappearance as: “the arrest, detention or abduction of any person/persons by a State or a political organization, or with its permission, support or acquiescence to such act, followed by its refusal to acknowledge the deprivation of liberty of such persons or to give information on their fate or whereabouts with a view to depriving them of the protection of the law for a prolonged period of time.”

1.2 When Does Arrest or Detention Become Lawful?

1.2.1 Within the framework of Egyptian law

Article 34 of the Code of Criminal Procedure stipulates that: "The judicial officer may, in cases of flagrante delicto or misdemeanors punishable by imprisonment for a period of more than three months, order the arrest of the present accused, for whom there is sufficient evidence to charge them."[397].

Arrest is an investigation procedure, which is intended to deprive a person of the freedom to roam, even for a short period, and put him at the disposal of the Inferences and Investigations Authority, until it becomes clear to what extent he should be remanded in custody or released[398].

([397]) The Court of Cassation ruled that: [Articles 34 and 35 of the Code of Criminal Procedure, as amended by Law No. 37 of 1972, allowed the judicial officer in cases of flagrante delicto punishable by imprisonment for a period of more than three months to arrest the present accused, for whom there is sufficient evidence to charge him. Article 46 of the same law allowed the search of the accused in cases where he may be legally arrested. The act of flagrante delicto was a characteristic of the crime itself and not of the person who committed it, which allows the judicial officer who witnessed its occurrence to arrest the accused, who has sufficient evidence that he committed it, and to search him without permission from the Public Prosecution. The case in the case at hand, as stated in the records of the contested judgment, was that if the officer of the incident implemented the permission issued to him to arrest and search the person of the first appellant, the presence of the second appellant was found and he saw him selling foreign currency to the first appellant, it was verified The case of flagrante delicto dealing in foreign exchange through banks other than those approved to deal in it or the legally licensed entities, punishable by imprisonment for a period of no less than three years and no more than ten years and a fine of no less than one million pounds and no more than five million pounds or the financial amount subject of the crime, whichever is greater. Sufficient evidence was also available that the second appellant committed it, and the procedures for his arrest and search initiated by the judicial officer afterwards were characterized by legality. Therefore, the appellant may take its result, and the immunity of the second appellant in this regard is unacceptable] Appeal No. 17646 For the 88th session of July 22, 2019 (unpublished), see also: Appeal No. 5979 of 88th session of November 21, 2018 (unpublished).

([398]) Article 360 of the Judicial Instructions of the Public Prosecution.

Arresting a person means restricting his freedom and subjecting him to arrest and detention, even for a short period, in preparation for taking some measures against him, without having to spend a certain period of time [399].

It is clear from the text of Article 34 of the Criminal Procedure Law that several conditions are required for the validity of the arrest of the accused present:

First: Instructing the accused to attend

1- The authority of the investigator to order the accused to appear

The investigator may, in all articles, issue, as the case may be, a warrant for the presence of the accused, or to arrest and bring him [400].

The order issued by the prosecution in the presence of the accused includes assigning him to attend on a certain date, and it does not authorize the use of force with the accused to oblige him to attend. The prosecution may, if the accused does not attend after being assigned to attend without an acceptable excuse, issue an arrest warrant and bring him, even if the incident is one in which the accused may not be remanded in custody [401].

The Public Prosecution may, when it proceeds with the investigation, issue, as the case may be, an order for the presence of the accused or to arrest and bring him, and the assessment of the circumstances that require this is left to the discretion of the investigator, and the law did not require to issue this order to be at the request of the judicial officer or to be preceded by investigations about the person of the accused [402].

The text of Articles 126 and 199 of the Code of Criminal Procedure stipulates that the Public Prosecution, when conducting an investigation, may issue, as the case may be, a warrant for the presence of the accused or for his arrest and bringing him, and the assessment of the circumstances that require this is left to the discretion of the investigator, and the law did not require to issue this order that the crime be flagrante delicto [403].

2- The data to be provided in the order to summon the accused to appear

Each order must include the name of the accused, his surname, industry, place of residence, the charge against him, the date of the order, the signature of the investigator and the official seal.

The order for the presence of the accused includes, in addition, assigning him to appear on a certain date [404].

([399]) Appeal No. 44270 of 85 S issued at the 22nd session of October 2016 and published in the book of the Technical Office No. 67 Page No. 735 Rule No. 94, Appeal No. 30455 of 69 S issued at the 6th session of December 2007 and published in the book of the Technical Office No. 58 Page No. 779 Rule No. 146, Appeal No. 2761 of 56 S issued at the 25th session of February 1987 and published in the first part of the book of the Technical Office No. 38 Page No. 325 Rule No. 48, Appeal No. 405 of 36 S issued at the 16th session of May 1966 and published in the second part of the book of the Technical Office No. 17 Page No. 613 Rule No. 110, and Appeal No. 212 of 29 S issued at the 27th session of April 1959 and published in the second part of the book of the Technical Office No. 10 Page No. 482 Rule No. 105..

([400]) Articles 126 and 199 of the Criminal Procedure Code.

([401]) Article 370 of the Judicial Instructions of the Public Prosecution.

([402]) Appeal No. 4324 of 88 S issued at the hearing of 14 November 2019 (unpublished), Appeal No. 11099 of 79 S issued at the hearing of 25 November 2010 and published in the Technical Office's letter No. 61, page No. 656, rule No. 85, Appeal No. 2592 of 79 S issued at the hearing of 21 April 2010 (unpublished), Appeal No. 24628 of 63 S issued at the hearing of 7 July 2002 and published in the Technical Office's letter No. 53, page No. 787, rule No. 134, Appeal No. 6280 of 66 S issued at the hearing of 13 April 1998 and published in the first part of the Technical Office's letter No. 49, page No. 548, rule No. 72.

([403]) Appeal No. 293 of 82 S issued at the 24th session of October 2012 (unpublished).

([404]) Article 127 of the Criminal Procedure Law.

3- Service of orders to the accused

The orders shall be served on the accused by one of the bailiffs or a member of the public authority, and a copy thereof shall be delivered to them[405].

The orders issued by the investigating judge shall be effective in all Egyptian territories [406].

Second: The order to arrest and bring the accused

1- The power of the investigator to order the arrest and bringing of the accused

Article 40 of the Code of Criminal Procedure stipulates that no person may be arrested or imprisoned except by order of the legally competent authorities. Article 40 of the Code of Criminal Procedure stipulates that: "No person may be arrested or imprisoned except by order of the legally competent authorities. He must also be treated in a manner that preserves human dignity, and he may not be harmed physically or morally."[407].

However, in accordance with the Code of Criminal Procedure, the investigator may, in all articles, issue, as the case may be, a warrant for the presence of the accused, or to arrest and bring him [408].

The prosecution may, if the accused does not attend after being assigned to attend without an acceptable excuse, issue a warrant to arrest and bring him, even if the incident is one in which the accused may not be remanded in custody [409].

The investigator may, if the accused does not attend after being assigned to attend without an acceptable excuse, if it is feared that he will escape, if he does not have a known place of residence, or if the crime is in flagrante delicto, issue a warrant to arrest and bring the accused, even if the incident is one in which the accused may not be remanded in custody [410].

The Public Prosecution may, when it proceeds with the investigation, issue, as the case may be, an order for the presence of the accused or to arrest and bring him, and the assessment of the circumstances that require this is left to the discretion of the investigator. The law did not require to issue this order to be at the request of the judicial officer or to be preceded by investigations about the person of the accused. The law did not require to issue this order that the crime be flagrante delicto[411].

The order to arrest and bring the accused is aimed at enabling the investigator to conduct his interrogation or confront him with other accused or witnesses [412].

The prosecution may issue a warrant for the arrest and bringing of the accused, including the assignment of the public authority to arrest and bring, if the accused refuses to appear voluntarily immediately. This order shall be issued in the following cases:

([405]) Article 128 of the Criminal Procedure Law.

([406]) Article 129 of the Criminal Procedure Law.

([407]) Appeal No. 1457 of 48 BC issued at the session of 31 December 1978 and published in the first part of the book of the Technical Office No. 29 page No. 993 rule No. 206.

([408]) Articles No. 126, 199 of the Criminal Procedure Code.

([409]) Article 730 of the Judicial Instructions of the Public Prosecution.

([410]) Whether the investigation is carried out by the investigating judge or the Public Prosecution, see: Appeal No. 33442 of 84 S issued at the hearing of June 14, 2015 (unpublished).

([411]) Appeal No. 4324 of 88 S issued at the session of November 14, 2019 (unpublished), Appeal No. 293 of 82 S issued at the session of October 24, 2012 (unpublished), Appeal No. 11099 of 79 S issued at the session of November 25, 2010 and published in the Technical Office's letter No. 61, page No. 656, rule No. 85, Appeal No. 2592 of 79 S issued at the session of April 21, 2010 (unpublished), Appeal No. 6280 of 66 S issued at the session of April 13, 1998 and published in the first part of the Technical Office's letter No. 49, page No. 548, rule No. 72.

([412]) Appeal No. 45353 for the year 73 S issued at the session of January 24, 2011 and published in the letter of the Technical Office No. 62 page No. 54 rule No. 9.

If the Public Prosecution considers that the integrity of the investigation and its reasons may require the provisional detention of the accused following the outcome of his interrogation after his arrest

If the accused does not attend after being assigned to attend without an acceptable excuse;

If it is feared that the accused will escape;

If he does not have a known place of residence;

If the crime is in flagrante delicto.

In the last four cases, the prosecution shall not be bound by whether the crime is one in which the accused may be remanded in custody.

The order must include the data necessary to determine the personality of the accused so as not to expose him to its nullity and the nullity of the resulting procedures [413].

The investigator must improve the assessment of the reasons for arrest when issuing his order in terms of the availability of sufficient evidence of the accusation, the condition of the accused in terms of masculinity, femininity and age, the status of the accused in his society, the likelihood of his escape, as well as the seriousness of the crime attributed to him [414].

Every accused person who is arrested must be treated or his freedom restricted in any way that preserves human dignity. It is not permissible to harm him physically or morally. It is also not permissible to detain him in places other than those subject to the laws issued to regulate correction and rehabilitation centers [415].

The order of the foreign accused arrested shall be submitted to the investigating member of the prosecution to inform him that he has the right to notify the consular mission of his state. If he wishes to do so, his request shall be responded to without delay. The member of the prosecution shall authorize him to meet with the consul of his state or authorize him to visit him in the reform center in accordance with the rules prescribed in this regard, and within the limits permitted by the circumstances of the investigation and the requirements of the public interest. These procedures shall be recorded in the minutes of the investigation [416].

If the prosecution issues a warrant for the arrest of an accused present during the investigation or orders his pre-trial detention - the investigation clerk must immediately execute the arrest or pre-trial detention order in original and two copies on the form prepared for that and complete all the data in it, especially the description of the charges, the applicable legal materials, the full name of the accused, his place of residence, his age, industry, and the date of the detention order issued and put the fingerprint of the seal of the emblem of the Republic on his behalf - then he submits the form to the member of the prosecution for signature and two copies; then he sends the order and a copy of it immediately to the competent authority to implement it and keeps the second copy in the case file and follows up the return of the original of the form to the prosecution from the prison after signing it to receive the copy and attach it to the case and put it on its file after reviewing it on the copy kept in the file.

The statements of arrest and detention shall be recorded on the case file and in the schedule referred to in article 80 of these instructions, and the detention shall be renewed on the scheduled dates.

([413]) Article 371 of the Judicial Instructions of the Public Prosecution.
([414]) Article 372 of the Judicial Instructions of the Public Prosecution.
([415]) Article 374 of the Judicial Instructions of the Public Prosecution.
([416]) Article 376 of the Judicial Instructions of the Public Prosecution.

The investigation clerk shall record on the aforementioned file the case number, its year, its registration number in the investigation inventory book, the statement of the charge, the names of the accused, witnesses, victims, litigants in the civil prosecution, and its data, if any, as well as the dates of arrest of the accused, the statements of pretrial detention, the days specified for its renewal, the dates of release and guarantees, the dates and number of the payment vouchers, the numbers of the seizures in the warehouse or deposited in the court treasury, as well as the dates of the investigation sessions and what is related to the implementation of its decisions [417].

If the investigation requires the arrest of a government or public sector employee, the prosecution must notify its affiliate immediately after the issuance of the arrest warrant[418].

2- The data to be provided in the arrest and habeas corpus orders

The order to arrest the absent accused and bring the accused must include the name of the accused, his surname, industry, place of residence, the charge against him, the date of the order, the signature of the person who issued it, and the official seal. It includes assigning the public authority to arrest the accused and bring him before the judge, if he refuses to appear voluntarily immediately [419].

It shall be taken into account that in regard to foreigners sentenced or required to be arrested, their full names shall be written indicating the name, father and grandfather in the Arabic and Latin alphabets, indicating the destination, date of birth, profession and distinctive descriptions, and attaching a photograph whenever possible [420].

It is noted that the issuance of the permission to search the accused requires the restriction of his freedom to the extent necessary to conduct the search, even if the permission does not include an explicit arrest warrant between the two procedures, and therefore there is no need to say that the arrest warrant is invalid in this case because it does not meet the form prescribed in Article 127 of the Code of Criminal Procedure[421].

It is also noted that the plea of nullity of the arrest and habeas corpus order is a substantive plea that the accused or his defender must adhere to before the trial court and may not be pleaded for the first time before the Court of Cassation [422].

It is established that the text of Article 127 of the Code of Criminal Procedure absolutely obliges all men of the public authority to arrest the accused who has been issued an arrest warrant and bring him from those who legally own him, and therefore the accused may not dispute the jurisdiction of the person who executed the arrest warrant from the judicial officers [423].

([417]) Article 377 of the judicial instructions of the Public Prosecution, and Articles 80 and 114 of the written, financial and administrative instructions.

([418]) Article 378 of the Judicial Instructions of the Public Prosecution.

([419]) Article 127 of the Criminal Procedure Code, and Article 375 of the Judicial Instructions of the Public Prosecution.

([420]) Article 1394 of the Judicial Instructions of the Public Prosecution.

([421]) Appeal No. 49552 of 85 S issued at the session of July 20, 2016 (unpublished), Appeal No. 427 of 27 S issued at the session of June 3, 1957 and published in the second part of the book of the Technical Office No. 8 page No. 590 rule No. 162.

([422]) Appeal No. 3343 of 83 S issued at the session of June 10, 2014 (unpublished), Appeal No. 11803 of 82 S issued at the session of April 2, 2013 and published in the book of the Technical Office No. 64 page No. 447 rule No. 59, Appeal No. 2575 of 82 S issued at the session of January 12, 2013 (unpublished).

([423]) Appeal No. 21458 for the year 67 S issued in the session of January 1, 2006 and published in the letter of the Technical Office No. 57 page No. 31 rule No. 2.

The Court of Cassation ruled that: [The text of Article 127 of the Criminal Procedure Law absolutely obliges all men of the public authority to arrest the accused who was issued with an arrest warrant and bring him who legally owns him, and therefore the plea of nullity of the arrest because it was made by the head of the Drug Enforcement Office, while the prosecution assigned the Sentencing Enforcement Unit to do so, is baseless], Appeal No. 335 of 43 BC issued at the session of May 21, 1973 and published in the second part of the Technical Office's letter No. 24 page No. 645 rule No. 132.

The request from the Public Prosecution to the police to search for and arrest the offender - unknown - is not considered a valid arrest warrant, because the text of Article 127 of the Criminal Procedure Code explicitly states that the person of the accused who was issued with an arrest warrant must be identified and brought from whom he legally owns [424].

3- Announcing the warrant of arrest and habeas corpus to the accused

The order of the investigating judge shall be announced to the accused if it is issued without facing the litigants through the Public Prosecution, which must notify the accused within twenty-four hours from the date of its issuance. The announcement shall be made by the bailiffs. The announcement may be made by a member of the public authority, and a copy of it shall be delivered to him [425].

4- Enforcement of orders issued by the investigating judge

The orders issued by the investigating judge shall be effective in all Egyptian territories [426].

5- Arrest of the accused outside the jurisdiction of the court being investigated

If the accused is arrested outside the circuit of the court in which the investigation is being conducted, he shall be sent to the Public Prosecution in the place where he was arrested. The Public Prosecution shall verify all data relating to his person, inform him of the incident attributed to him, record his statements in this regard, and record all of this in a report sent with the accused to the prosecution in which the investigation is conducted [427].

If the investigation is carried out by the investigating judge, and the accused is arrested in a prosecution department other than the one in which the investigation is carried out by the judge, the prosecution in whose department he was arrested must verify his personality, inform him of the incident attributed to him, record his statements in this regard, and then send him with the record to the prosecution in whose department the investigation is carried out to submit it to the judge [428].

If the accused objects to his transfer or if his health condition does not allow the transfer, the investigator shall be notified of this and shall immediately issue his order as follows [429].

The Court of Cassation ruled that: [The Public Prosecution is indivisible and complements each other and Article 132 has not been sanctioned for its violation, ... Also, when the competent

---

([424]) Appeal No. 1457 of 48 BC issued at the session of 31 December 1978 and published in the first part of the book of the Technical Office No. 29 page No. 993 rule No. 206.

([425]) Articles No. 128, 199 of the Criminal Procedure Code, and Article No. 644 of the Judicial Instructions of the Public Prosecution.

([426]) Article 129 of the Criminal Procedure Law.

The Court of Cassation ruled that: [Whereas, the contested judgment responded to the appellants' plea that their arrest was null and void because it fell outside the territorial jurisdiction, to the effect that "according to Article 129 of the Criminal Procedure Law, the orders issued by the investigating judge to arrest and bring the accused shall be effective in all Egyptian territories and that the defendants have been issued with an exact order from the competent prosecution - the prosecution of Attarin - after the investigations and investigations of the prosecution proved that they committed the crime of killing the victim............ .. .. And the theft of its instruments and that the judicial officer and the public authority must implement this order in any place where the two defendants are present, this is what was stated by the judgment is correct in the law and permissible in responding to this plea], Appeal No. 31078 of 85 S issued at the session of February 2, 2016 (unpublished)

The Court of Cassation ruled that: [The text of Article 127 of the Criminal Procedure Law absolutely obliges all men of the public authority to arrest the accused who was issued with an arrest warrant and bring him who legally owns him, and therefore the plea of nullity of the arrest because it was made by the head of the Anti-Narcotics Office, while the prosecution assigned the Sentences Enforcement Unit to do so, is baseless] Appeal No. 335 of 43 BC issued at the session of 21 May 1973 and published in the second part of the Technical Office's letter No. 24 page No. 645 rule No. 132.

([427]) Articles 132, 199 of the Criminal Procedure Code, and Article 379 of the Judicial Instructions of the Public Prosecution.

([428]) Article 645 of the Judicial Instructions of the Public Prosecution.

([429]) Articles 133, 199 of the Criminal Procedure Code.

prosecutor begins the investigation procedures in his spatial jurisdiction department and then the circumstances and requirements of the investigation necessitate the follow-up of the procedures and their extension outside that department, these procedures from him or whoever he assigns to them shall be valid and irrevocable][430] .

The Court of Cassation ruled that since: "The judgment was presented to the appellant's defense that the officer of the incident exceeded his spatial jurisdiction and put it in the statement: "As for the plea of nullity of the arrest of the accused for having taken place in a place outside the jurisdiction of the bailiff, it is due to the fact that Article 132 of the Code of Criminal Procedure stipulates that if the accused is arrested outside the circuit of the court in which the investigation is underway, he shall be sent to the Public Prosecution of the party in which he was arrested. Therefore, it becomes clear that this text is regulatory and does not arrange for nullity if the arrest order is issued by the Public Prosecution based on the text of Article 126 of the same law. On the other hand, it is proven from the investigations and lawsuit papers that Major ..... Investigators at Al-Khanka Police Station prepared the report of his investigations on 28/11/2009 at 10 am and presented it to the Public Prosecution, which issued its decision on the same date at 2:52 pm to seize and bring the accused, provided that he is with the knowledge of the record editor or his representative. The officer ambushed and seized the first accused in this ambush and not in her residence as decided by the investigations, and then this plea is misplaced and must be rejected. " The response of the judgment to the appellant's defense in this regard was sufficient and the conclusion of his dismissal is correct, so preventing the appellant in this regard is misplaced "[431] .

6- Exact Duration of the Order and Subpoena

Seizure and habeas corpus orders and detention orders may not be executed after the lapse of six months from the date of their issuance unless approved by the investigating judge for another period[432].

Although the issuance of an arrest warrant for the accused who owns it by law requires all men of public authority to implement it pursuant to Article 127 of the Code of Criminal Procedure, only the arrest warrant when executed is still valid [433].

The Court of Cassation ruled that the referral of the accused to trial results in the disappearance of the investigating authority and the fall of the warrant issued to arrest and bring him, which was not executed. If the judicial officer executes the arrest warrant despite its fall, this results in the nullity of the arrest and the nullity of the evidence derived from it, as well as the testimony of the arrestee, and this nullity does not correct the good faith of the arrestee and his belief that the order is still valid: [Whereas the meaning of articles 40, 126, 131 of the Code of Criminal Procedure is that the purpose of the order By arresting the accused and bringing him, it is to enable the investigator to conduct his interrogation or confront him with other accused or witnesses, and that interrogation and confrontation, the investigator refrains from conducting them with the same accused who presented him for trial and for the same incident because by referring the case to trial, the mandate of the investigating authority has ceased and its jurisdiction has been emptied, to the effect that referring the accused to trial lapses the previous arrest warrant and bringing him, which was not implemented to exhaust his purpose. If the judicial officer executes the arrest warrant despite its lapse, the arrest is null and void, and the evidence derived from it and the testimony of those who conducted it is null and void, and this

---

([430]) Appeal No. 8352 of 88 S issued on 5 May 2019 (unpublished).

([431]) Appeal No. 12486 of 80 S issued on February 7, 2012 (unpublished).

([432]) Article 139 of the Criminal Procedure Law.

([433]) Appeal No. 23607 for the year 67 S issued in the session of June 1, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 348 rule No. 82.

nullity is not valid that the judicial officer is in good faith In his belief that the previously issued arrest warrant is still valid, because Article 63 of the Penal Code, even if it denies the public official responsibility if he improves his intention and commits an act in implementation of what was ordered by the laws or believes that his action is within his competence after proving and investigating it, but this does not correct the invalid action and does not legitimize it after it has receded from it, and it is not enough for the integrity of the judgment that the evidence is truthful when it is the result of an illegal action][434] .

7- Controls on the use of firearms in the event of the arrest of a convicted person

Minister of Interior Decree No. 156 of 1964 stipulates the controls on the use of firearms, in the event of the arrest of a person sentenced to a felony or imprisonment for a period not exceeding three months or accused of a felony or flagrante delicto in which an arrest warrant may be issued if he resists or tries to escape:

The convict or accused shall be given an audible verbal warning of the use of a firearm if he has not ceased to resist or run away;

If it is impossible for the verbal warning to reach the hearing of the convict or the accused, his warning shall be to fire a shot in space;

If the convict or the accused continues to resist him or his attempt to escape after being warned by one of these two means, he shall be shot [435].

8- Interrogation of the accused immediately after arrest

If the investigation is conducted with the knowledge of the investigating judge, the investigating judge must immediately interrogate the arrested accused, and if this is not possible, he shall be placed in prison until he is interrogated, and the period of his deposit shall not exceed twenty-four hours. If this period lapses, the warden of the prison shall hand him over to the Public Prosecution, and it shall immediately request the investigating judge to interrogate him. If necessary, this shall be requested by the magistrate, the president of the court, or any other judge appointed by the president of the court. Otherwise, it shall order his release.

If the investigation is carried out with the knowledge of the Public Prosecution, the Public Prosecution must immediately inform whoever is arrested of the reasons for the arrest and facilitate his communication with whoever he deems appropriate to inform him of what has happened, as well as seek the assistance of a lawyer, and he must be promptly notified of the charges against him.

Seizure and habeas corpus orders may not be executed after the lapse of six months unless approved by the prosecution for another period [436].

9- Imprisonment of the accused in the event that they cannot be interrogated

If it is not possible to interrogate the arrested accused immediately, he shall be placed in the reform center until he is interrogated, provided that the period of his detention shall not exceed twenty-four hours. If this period lapses, the director of the reform center must hand him over to the Public Prosecution, and it must immediately ask the investigating judge to interrogate him,

---

([434]) Appeal No. 45353 for the year 73 S issued at the session of January 24, 2011 and published in the letter of the Technical Office No. 62 page No. 54 rule No. 9.

([435]) Article 1 of the Minister of Interior Resolution No. 156 of 1964 on regulating the use of firearms.

([436]) Articles No. 131, 199 of the Criminal Procedure Code, and Article No. 373 of the Judicial Instructions of the Public Prosecution.

and when necessary, it requires the partial judge, the president of the court, or any other judge appointed by the president of the court, otherwise it orders his release [437].

The only places prescribed for detention under Egyptian laws are police stations and correctional centers, both of which are subject to unannounced visits by the prosecution. The Egyptian Constitution prohibits the detention or imprisonment of any person except in the places designated for that purpose and stipulates that the places in which a person is detained must be humane and healthy and prohibits everything that is contrary to human dignity or endangers his health. This is confirmed by the Code of Criminal Procedure, which stipulates that no person may be imprisoned except in the correctional centers designated for that purpose. It also prohibits the director of any correctional center from admitting any person except by virtue of an order signed by the competent authority and not to keep him after the period specified in this order[438].

The Egyptian legislator stipulated that the penalty of imprisonment shall be imposed on every public official or person in charge of a public service who has deposited or ordered the placement of those deprived of their liberty in any way, in other than reform centers and the places indicated in the Law on the Organization of Reform and Community Rehabilitation Centers [439].

The legislator has determined the places designated for the detention or imprisonment of persons and divided them into three types: public reform and rehabilitation centers, geographical reform centers, and private reform and rehabilitation centers established by a decision of the President of the Republic, in which he determines the categories of inmates who are placed in them, how they are treated, and the conditions for their release.

The Minister of Interior issues a decision specifying the entities in which public reform and rehabilitation centers and geographical reform centers are established. The legislator also authorized the Minister of Interior to issue a decision specifying one of the places to place anyone who is detained, arrested, detained, or deprived of his freedom in any way [440].

Accordingly, the criterion in the extent to which the place where the person whose freedom has been restricted is considered a reform center is the issuance of a decision by the Minister of Interior as a reform center, so the imprisonment of the accused in the Human Frogs Unit of the National Security Agency is valid, and the provisions contained in the Law Regulating Reform and Rehabilitation Centers apply to him, prior to the issuance of a decision by the Minister of Interior as a reform center[441].

Third: Arrest of the Accused

1- Conditions of Arrest

The first condition: Flagellation of a felony or misdemeanor punishable by imprisonment for a period of more than three months

(437) Articles No. 131, 199 of the Criminal Procedure Code.
(438) Article 55 of the Constitution and Article 41 of the Criminal Procedure Code.
(439) Article 91 bis of the Law on the Organization of Correction and Community Rehabilitation Centers, added by Law No. 57 of 1968.
(440) Article No. 1 of the Law on the Organization of Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015, and Article No. 1 bis of the Law on the Organization of Correction and Community Rehabilitation Centers, added by Law No. 57 of 1968.
(441) See Appeal No. 44270 of 85 BC issued at the 22nd session of October 2016 and published in the letter of the Technical Office No. 67, rule No. 94, page 735.

In order to arrest the accused present in cases of flagrante delicto, the crime committed in flagrante delicto must be a felony or misdemeanor punishable by imprisonment for a period exceeding three months[442].

([442]) The Court of Cassation ruled that: [... The judicial officer may, under the judicial authority authorized by Articles 34/1 and 46 of the Code of Criminal Procedure, arrest the defendant present who has sufficient evidence to be charged with the felony of drug possession, and search him without the need for an order from the investigating authority] Appeal No. 2410 of 86 S issued at the 24th session of March of 2018 (unpublished), Appeal No. 208 of 85 S issued at the 6th session of April of 2017 (unpublished)

It also ruled that: [... Whereas, the contested judgment had offered to plead the invalidity of the arrest and search of the appellants because of the absence of the state of flagrante delicto and put it forward, as he was reassured by the statements of the officer of the incident, the first witness of the evidence that he informed the Center of the existence of a march against the supporters of the Brotherhood, during which they blocked the public road, fired fireworks and incendiary devices, fired firearms from cartridges and threw stones at some shops, so there was damage to the facades of those shops, the defendants (appellants) were caught by the knowledge of the parents of the scene of the accident, which arranges the state of flagrantement of those crimes that allows the judicial officer to seize and search the appellants without permission from the Public Prosecution, which is sufficient and justifiable in response to the payment and is consistent with the correct law in accordance with Articles 34, 35, 37, 37, 46 of the Code of Criminal Procedure] Appeal No. 37205 of 85 issued at the hearing of November 25, 2017 (unpublished).

It also ruled that: [It is established from the contested judgment in its statement of the incident of the case and its evidence that the incident officer, after being informed of the kidnapping incident, conducted the necessary investigations until he was soon able to arrest the first appellant and the kidnapped child, which makes him flagrante delicto committing the felony of kidnapping the victim child, which allows the incident officer to arrest and search him, as well as the arrest of the second and third appellants whose investigations resulted in their contribution to the crime in question] Appeal No. 4220 of 85 Q issued at the session of November 18, 2017 (unpublished), and see: Appeal No. 2410 of 86 Q issued at the session of March 24, 2018 (unpublished)

It also ruled that: [Since Article 34 of the Code of Criminal Procedure allows the judicial officer to arrest the accused in cases of flagrante delicto in general if the law punishes them with imprisonment for a period of more than three months, and it was established from the judgment that the officer caught the appellant driving a car without metal plates, which is a misdemeanor - according to the foregoing - punishable by imprisonment for a period not exceeding six months in accordance with the text of Article 75/2 of the Traffic Law No. 66 of 1973, as amended by Law No. 121 of 2008, the appellant's arrest is valid] Appeal No. 49902 of 85 s issued at the session of February 28, 2017 (unpublished), and see also: Appeal No. 49787 of 85 s issued at the session of February 28, 2017 (unpublished), Appeal No. 29358 of 86 s issued at the session of January 14, 2017.

It ruled that: [Watching the arresting officer - the appellant holding in his hand a firearm "individual cartridge" in a visible way is considered per se to be in flagrante delicto carrying a weapon without a license that allows the judicial arresting officer to arrest and search him pursuant to the provisions of Articles 34 and 46 of the Criminal Procedure Law] Appeal No. 51387 of 85 S issued at the session of February 28, 2017 (unpublished), Appeal No. 5346 of 81 S issued at the session of April 15, 2012 (unpublished), Appeal No. 4033 of 81 S issued at the session of January 1, 2012 and published in the letter of the Technical Office No. 63, page No. 33, rule No. 3

It ruled that: [Article 34 of the Criminal Procedure Law has allowed the judicial officer to arrest the accused in cases of flagrante delicto or misdemeanors in general if the law punishes them with imprisonment for a period of more than three months. The penalty is estimated as stipulated in the law and not as pronounced by the judge in the judgment. The crimes of acquiring explosives without a license and using them in a way that would endanger the lives of persons and funds, participating in a demonstration without notification from the competent authorities that violated public order and endangered the lives of persons and public property, and promoting by word and leaflet to disrupt the Constitution and the law and prevent state institutions and public authorities from practicing their work. The law has linked the penalties of life imprisonment, severe imprisonment, imprisonment and fine under Articles 98b, 102 (a), (c) of the Penal Code and Articles 1, 2, 3, 4, 6/1, 7, 8 and 17 of Law No. 107 of 2013 on demonstration. It justifies the judicial arrest of the accused therein. In accordance with Article 31 of the Criminal Procedure Law, which requires him to move immediately to the place of the incident and to inspect and preserve the material effects of the crime, as well as Articles 34 and 46 of the same law, which allows him to arrest the present accused who has sufficient evidence of his accusation and search him, and therefore the court, having concluded the conviction of the accused of the crimes mentioned and raised the plea of nullity of arrest and search, has applied the correct law and its ruling is free of deficiencies in this regard and the obituary for him in this regard is incorrect] Appeal No. 31186 of 85 BC issued at the session of 25 February 2017 (unpublished).

It ruled that: [It is established that flagrante delicto is a condition inherent in the crime itself and not the person of its perpetrator, and that the fact that the judicial officer reports the crime to a third party, whether the witness or the accused confesses to himself, is not sufficient for the case of flagrante delicto to arise as long as he has not witnessed a self-evident impact of it. The perpetrator of the incident mentioned in the judgment had no evidence that the crime was witnessed in one of the cases of flagrante delicto described exclusively in Article 30 of the Code of Criminal Procedure. It is not correct to rely on the statement that the appellant was in a state of flagrante delicto for the crime of possessing a narcotic substance, and

therefore the officer is not in front of a crime in flagrante delicto, and his arrest of the appellant is not justified and has no basis in the law] Appeal No. 31155 of 84 BC issued at the session of 26 March 2016 (unpublished).

The Court of Cassation ruled that: [Watching the appellant arrestee holding a bag with the drug "Tramadol" in his hand apparently, the appellant does not claim in the reasons for his appeal that the bag does not heal what is inside itself is considered flagrante delicto without a license that allows the judicial arrestee to arrest and search him pursuant to the provisions of Articles 34 and 46 of the Code of Criminal Procedure. The judgment is valid in the case of refusing to pay the nullity of the arrest and search procedures based on the availability of the case of flagrante delicto, and what the appellant raises in this regard becomes invalid.] Appeal No. 25776 of 84 Q issued at the session of February 7, 2016 (unpublished).

It ruled that: [Articles 34 and 35 of the Code of Criminal Procedure, amended by Law No. 37 of 1972, allowed the judicial officer in cases of flagrante delicto punishable by imprisonment for a period of more than three months to arrest the present accused, for whom there is sufficient evidence of accusation. If he is not present, the judicial officer may issue an order to arrest and bring him. Article 46 of the Code of Criminal Procedure allows the search of the accused in cases where it is legally permissible to arrest him. Flagrante delicto was a characteristic associated with the crime itself and not a person who committed it, which allows the judicial officer who witnessed its occurrence to arrest the accused who has sufficient evidence of committing it and to be searched without permission from the Public Prosecution. Article 37 of the Code of Criminal Procedure also allows non-judicial officers to hand over and bring the accused to the nearest judicial officer for judicial arrest in felonies or misdemeanors in which it is permissible to remand in custody whenever the felony or misdemeanor is in a state of flagrante delicto. This authority requires that individual persons have the custody of the accused and the body of the crime with which he saw him, as this procedure is necessary and necessary to carry out that authority in the manner prescribed by the law, in order to hand him over to the judicial officer, and nothing in the law prevents the court within the limits of its authority to assess the evidence of the case from inferring the state of flagrante delicto on the accused as long as it shows that they were seen running from the scene of the incident immediately after it happened and the parents shouting behind them as they were preparing in front of them until they were caught at a distance from the scene of the incident, and watching the appellant judicial officers and those with them on the march carrying visible firearms. And white weapons and tools used to attack people in their hands is itself considered a crime of carrying a weapon that allows the judicial officer to arrest and search them] Appeal No. 645 of 85 S issued at the hearing of 14 December 2015 and published in the book of the Technical Office No. 66 Page No. 868 Rule No. 129.

It ruled that: [... Article 77/1 Clause "2" of the Telecommunications Law No. 10 of 2003 stipulates that the crime of possessing wireless communication devices without obtaining a permit shall be punishable by imprisonment for a period of no less than one year and a fine of no less than twenty thousand pounds and no more than fifty thousand pounds or one of these two penalties. The arresting officer shall be entitled to arrest the accused in flagrante delicto... [Appeal No. 15915 of 84 S issued at the session of January 12, 2015 and published in the letter of the Technical Office No. 66, page No. 144, rule No. 11.

The Court of Cassation also ruled that the crime of driving a fast transport vehicle without metal plates, including tuk-tuk motorcycles, is one of the misdemeanors that justify arrest and search. Appeal No. 10916 of 84 S issued on December 8, 2014 and published in the Technical Office's letter No. 65, page No. 942, rule No. 125.

It ruled: [Article 34 of the Code of Criminal Procedure allows the judicial officer to arrest the accused in cases of flagrante delicto in general if the law is punishable by imprisonment for a period of more than three months, and it is proven from the judgment that the officer caught the appellant while driving a motorcycle without driving licenses, which is a misdemeanor punishable by imprisonment for a period not exceeding six months in accordance with the text of Article 75 of Law No. 66 of 1973 promulgating the Traffic Law amended by Law No. 121 of 2008, and therefore the arrest of the appellant is valid.] Appeal No. 18712 of 83 s issued at the hearing of April 7, 2014 (unpublished)- Appeal No. 8155 of 81 s issued at the hearing of April 7, 2012 (unpublished), Appeal No. 4860 of 80 s issued at the hearing of March 21, 2011 (unpublished)

It ruled that: [The crime of reverse traffic, which was committed by the appellant - and this was not disputed by the reasons for his appeal - has been linked by law to the penalty of imprisonment and a fine of no less than one thousand pounds and no more than three thousand pounds or one of these two penalties, pursuant to the text of Article 76 bis of Law No. 66 of 1973 promulgating the Traffic Law added by Law No. 121 of 2008, it entitles the arresting officer to arrest the accused in it] Appeal No. 10137 of 83Q issued at the session of June 10, 2014 and published in the Technical Office's book No. 65 page No. 537 Rule No. 63,

It also ruled that: [The judgment was presented to the defense presented by the appellant that the arrest and search were null and void because it was contrary to the provisions of the law due to the lack of flagrante delicto, and it was put forward based on the fact that the officer saw the appellant selling alcohol in the public way, so he seized it and by unsealing a bag she was carrying in her hand, it was found that it contained the seized narcotic substances. Whereas, Article 34 of the Criminal Procedures Law has allowed the judicial officer to arrest the accused in cases of flagrante delicto in general, as the law is punishable by imprisonment for a period of more than three months, and if the crime of whoever is caught in a public place selling the alcohol substances that the appellant has consumed, the law has linked to it the penalty of imprisonment for a period not exceeding six months and a fine not exceeding two hundred pounds or one of these two penalties in accordance with the text of Article 5 of Law No. 63 of 1976 prohibiting drinking alcohol] Appeal No. 29774 of 83Q issued at the session of 5 June 2014 (unpublished).

It ruled: [If the crime of violating the provisions of surveillance imposed by the appellant has been linked by law to the punishment of imprisonment for a period not exceeding one year under Article 13 of Decree-Law No. 99 of 1945 regarding placement under police surveillance, it entitles the arresting officer to arrest the accused in it, and in addition, Article 16 of the

aforementioned Decree-Law entitles the judicial control officer to arrest the person under police surveillance when there is strong evidence that he committed a felony, attempt, or misdemeanor, which may be sentenced to imprisonment.] Appeal No. 24179 of 83 BC issued at the session of 13 May 2014 (unpublished).

It ruled that: [Articles 34 and 35 of the Code of Criminal Procedure, as amended by Law No. 37 of 1972, have allowed the judicial officer in cases of flagrante delicto punishable by imprisonment for a period of more than three months to arrest the accused present who has sufficient evidence of his accusation. If he is not present, the judicial officer may issue an order to arrest him and bring him. Flagrante delicto is a characteristic of the crime itself and not a person who committed it, which allows the judicial officer who witnessed its occurrence to arrest The accused, who has sufficient evidence that he has committed it, shall be searched without the permission of the Public Prosecution. In the case at hand, as stated in the records of the contested judgment, and in response to the plea of the appellant that his arrest and search are null and void, the officer witnessed the appellant crossing the railway tracks from a place not designated for pedestrian crossing, the case of flagrante delicto of crossing the railway lines in places other than those designated for this purpose and criminalized in Articles 14 and 20 of Law 277 of 1959 regarding the railway travel system amended by Law No. 13 of 1999, which is punishable Imprisonment for a period not exceeding six months and a fine not exceeding twenty pounds or one of these two penalties, which allows the judicial officer to arrest the appellant] Appeal No. 29598 of 77 S issued at the session of 7 April 2014 and published in the letter of the Technical Office No. 65 page No. 247 rule No. 25.

It ruled that: [Article 34 of the Code of Criminal Procedure allows the judicial officer to arrest the accused in cases of flagrante delicto in general if the law is punishable by imprisonment for a period of more than three months, and it is established from the judgment in response to the defense of the second appellant that the arrest and search is null and void, that the officer of the incident seized him after he was found to be driving the motorcycle without driving and driving licenses, which is a misdemeanor punishable by imprisonment for a period not exceeding six months in accordance with the text of Article 75 of Law No. 66 of 1973 promulgating the Traffic Law amended by Law No. 121 of 2008, and therefore the arrest of the second appellant occurred correctly. [Appeal No. 4648 of 83 S issued on November 4, 2013 (unpublished).

It also ruled that : [. Whereas, and the incident, as mentioned above, makes the arrestee in the face of the crime of attempted theft, which is criminalized in the second and third paragraphs of Article 316 ter of the Penal Code, flagrante delicto, whose penalty exceeds three months, and then allows the judicial arrestee to arrest and search the appellant] Appeal No. 5828 of 83 S issued at the session of November 4, 2013 (unpublished).

It ruled: [The court has concluded, within the limits of its substantive authority and from the permissible evidence it stated, that the officer's meeting with the appellants took place within the limits of the legally legitimate investigation procedures, and that the arrest of the appellants and the seizure of the trace offered for sale took place after the crime of possessing an trace owned by the state for the purpose of trafficking and in other than the legally authorized cases of flagrante delicto, in which the officer pretended to participate with the guide in his purchase from the appellants, and as this crime was one of the misdemeanors punishable by imprisonment for a period of more than three months, and the judicial officer had serious and sufficient evidence of the accusation of the appellants to commit it, then he may order their arrest as long as they were present, in accordance with the text of Article 34 of the Code of Criminal Procedure, as amended by Law No. 37 of 1972] Appeal No. 19082 of 76 issued at the session of 22 January 2013 and published in the book of the Technical Office No. 64, page 151, rule No. 16.

It ruled that Law No. 4 of 1990 regarding the subway is free from criminalization or punishment for riding a person in the carriage designated for women on the subway, which results in the inadmissibility of arresting or searching him, Appeal No. 30967 of 75 S issued at the session of November 3, 2012 and published in the book of the Technical Office No. 63 page No. 595 rule No. 106

The Court of Cassation ruled that: [Whereas the text of Articles 34 and 35 of the Criminal Procedure Law, as amended by Law No. 73 of 1972, does not allow the judicial officer to arrest the accused present except in cases of flagrante delicto punishable by imprisonment for a period exceeding three months if there is sufficient evidence of his accusation, and Article 46 of the same law empowers him to search the accused in cases where it is legally permissible to arrest him, whatever the reason or purpose of the arrest, Whereas the contested judgment proved that the officers of the incident seized the appellant immediately after his attempt to escape, following his acknowledgment that he did not hold a driving or driving license, without indicating whether the incident that the appellant was involved in was limited to not holding a driving and driving license in violation of the provisions of Article 12/2, 41 of Law No. 66 of 1973, as amended by Law No. 121 of 2008, which stipulates that the license of the vehicle must be in it, and that the licensee holds a driving license while driving and submits it to the police and traffic officers whenever they request it, which is a violation punishable by Article 77 of the law. Twenty pounds and not more than fifty pounds, and therefore does not allow the arrest and search of the appellant, or that the incident that the appellant drove a vehicle without obtaining a driving license or driving criminal article 74 bis/ 2 added to Law No. 121 of 2008, which stipulates that the penalty shall be imprisonment for a period not exceeding six months and a fine of not less than one hundred pounds and not more than five hundred pounds, or one of these two penalties, whoever drives a vehicle without obtaining a driving license or a driving license "and then he may be arrested, searched and searched for his driving, whether owned or leased to him, because its deprivation is derived from its contact with the person in possession, and then the contested judgment is sacrificed, as well as its incompatibility is tainted with the contradiction that the appellant can afford, which necessitates its reversal]. Appeal No. 4467 of 81 S issued at the session of 19 May 2012 (unpublished).

It ruled that: [Articles 12 and 41 of Law No. 66 of 1973 regarding the issuance of the Traffic Law required every driver of a vehicle to provide driving and driving licenses to the police and traffic officers whenever they requested, and Article 77 of the same law, as amended by Law No. 121 of 2008, punished every violation of those two texts with the penalty of the violation,

However, if the crime committed in flagrante delicto depends on a complaint, the accused may not be arrested unless the complaint is declared by the person who has the right to submit it. In this case, the complaint may be filed by a member of the public authority (Article 39 Criminal procedures). This provision indicates that in other cases, if the crime committed in flagrante delicto depends on a permit or request, the arresting officers may arrest the accused and take all these investigative measures before submitting the permit or request [443].

The lesson in assessing the punishment is what is stipulated in the law, not what the judge pronounces in the judgment [444].

The second condition: Sufficient Evidence of Accusation

The assessment of the availability or non-availability of the case of flagrante delicto is one of the objective matters that are initially entrusted to the judicial officer, provided that his assessment is subject to the control of the investigating authority under the supervision of the trial court - according to the facts presented to it - without comment as long as the result it reached is logically consistent with the premises and facts it proved in its judgment, provided that the

---

which is a fine not exceeding fifty pounds, and if the contested judgment proved that the officer had searched the appellant when he was asked to provide the driving and driving licenses and did not submit them to him, the incident in this way does not provide the appellant with the case of flagrante delictum stipulated in Articles 34 and 35 of the Code of Criminal Procedure, and therefore does not allow the judicial officer the right of arrest and search, even if it is preventive] Appeal No. 2351 of 81 issued at the session of February 15, 2012 (unpublished)

It ruled that: [The Code of Criminal Procedure, in its article 34, authorizes the judicial officer to arrest the accused in cases of flagrante delicto in general if the law punishes him with imprisonment for a period of more than three months when there is sufficient evidence to charge him with the crime, and the main thing in estimating the penalty is what is stipulated in the law and not what the judge pronounces in the judgment, and since the crime of throwing dirt inside the yards of stations or on the railway bridges that the contested against falls under the text of Articles 10 (h) and 20 of Law No. 277 of 1959 regarding the railway travel system, which linked the penalty of imprisonment to it for a period not exceeding six months and a fine not exceeding twenty pounds or one of these two penalties, it was permissible for the judicial officer to arrest the accused] Appeal No. 26303 of 73 Q issued at the hearing of April 26, 2010 and published in the book of the Technical Office No. 61, page No. 348, rule No. 46.

It ruled that: [Since the crime of throwing dirt inside the railway yards of the respondent falls under the text of Articles 10/ H, 20 of Decree-Law No. 277 of 1959, which linked the penalty of imprisonment for a period not exceeding six months and a fine not exceeding twenty pounds or one of these two penalties, it was permissible for the judicial officer to arrest the accused] Appeal No. 23182 of 73 S issued at the session of 11 March 2010 and published in the book of the Technical Office No. 61 page No. 256 rule No. 31.

It ruled that: [Since Article 1/2 of Law No. 277 of 1959, as amended by Law No. 13 of 1999 regarding the railway travel system, prohibited the entry into or exit from stations and parking lots "Multan" except from the places designated for that purpose, and Article 20/2 of the same law punished anyone who violates this by imprisonment for a period not exceeding one week and a fine not exceeding one pound or one of these two penalties, and if the contested judgment proved that the officer had arrested the appellant and searized the bag he was carrying, after entering the railway station from places other than the places designated for that purpose, the incident in this way does not provide the right of the appellant in flagrantement stipulated in Articles 34 and 35 of the Code of Criminal Procedure, and therefore does not allow the judicial officer the right of arrest and search, even if it is preventive] Appeal No. 7784 of 73 Q issued at the session of January 27, 2010 (unpublished).

([443]) Appeal No. 3679 of 56 S issued in the session of November 2, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 812 rule No. 157.

([444]) Appeal No. 11530 of 86 S issued at the 27th session of October 2018 (unpublished), Appeal No. 26303 of 73 S issued at the 26th session of April 2010 and published in the Technical Office's letter No. 61, page No. 348, rule No. 46, Appeal No. 20755 of 70 S issued at the 6th session of April 2008 and published in the Technical Office's letter No. 59, page No. 255, rule No. 43, Appeal No. 4064 of 56 S issued at the 13th session From November 1986 and published in the first part of the Technical Office letter No. 37 page No. 878 rule No. 169, Appeal No. 902 of 55 s issued in the session of May 9, 1985 and published in the first part of the Technical Office letter No. 36 page No. 643 rule No. 113, Appeal No. 865 of 45 s issued in the session of June 8, 1975 and published in the first part of the Technical Office letter No. 26 page No. 500 rule No. 117, Appeal No. 1769 of 38 s issued in the session of January 13, 1969 and published in the first part of the Technical Office letter No. 20 Page No. 96 Rule No. 21.

reasons and considerations on which the court bases its assessment are valid until they lead to the result it reached [445].

([445]) The Court of Cassation ruled that: [It is decided that the judicial seizure officer - without the permission of the Public Prosecution or the investigating authority - should not be subjected to the personal freedom of individual people except in case of flagrante delicto, and considering that flagrante delicto is a condition of the crime and not the person of the perpetrator, and it was decided in this court that the state of flagrante delicto requires that the judicial seizure officer verify that the crime was watched by himself or perceives it with a sense of his senses, and that while the assessment of the circumstances that clothed the crime and surrounded it at the time of its commission, and the extent of its sufficiency for the state of flagrante delicto is entrusted to the trial court, it is conditional that the reasons and considerations on which the court bases its assessment are valid to lead to the result that it reached, and what the ruling in response to the pleament does not show that the judicial seizure and search are the anest. Whereas, the arrest of the appellant has occurred in a state other than flagrante delicto and without sufficient evidence of the validity of his accusation] Appeal No. 26133 of 86 S issued at the session of February 28, 2017 (unpublished).

It ruled that: [If the judgment proves that the Public Prosecution issued its order to seize and search the person and residence of the investigator. .. To seize the narcotic substances in its possession or possession, and when the appellant felt them, he tried to escape. The officer of the incident followed him and was able to seize him. By opening the bag he was carrying, he found ten paper rolls inside him by breaking them that were found to contain the narcotic plant banjo. The inspection of this image is correct in law because the presence of the appellant with the person who issued the order to seize and search them and the appellant's attempt to escape from seeing the police officers is a strong suspicion of his accusation, which justifies his arrest and search based on the provision of Article 34 of the Criminal Procedure Law, even if the search order is limited to those who are authorized to seize and search them only, and the appellant's immunity in this regard is not valid.] Appeal No. 5420 of 83 Q issued at the session of June 10, 2014 (unpublished).

The Court of Cassation ruled that: [Flagrante delicto is a characteristic of the crime itself and not a person who commits it, and if the judgment was based on the permissible considerations that he cited from authorizing the arrest of the appellant to arrest him in flagrante delicto for assaulting a person by force shortly after committing it and watching its effects from the presence of me on the pants of the victim in a way that foretells the commission of that crime and allows the judicial officer to arrest him pursuant to Article 34 of the Code of Criminal Procedure, and therefore what the appellant raises in this regard is not valid] Appeal No. 7706 of 78 BC issued at the session of January 5, 2017 (unpublished).

It ruled that: [It is established that the case of flagrante delicto allows the judicial officer in accordance with Articles 34 and 46 of the Code of Criminal Procedure to arrest and search the present accused who has sufficient evidence of his accusation, and the assessment of the availability or non-availability of the case of flagrante delicto is one of the purely objective matters that are initially entrusted to the judicial officer, provided that his assessment is subject to the control of the investigating authority under the supervision of the trial court according to the facts presented to it without delay as long as the result that it reached is consistent with the premises and facts that it proved in its judgment, The contested judgment, after providing a copy of the incident, obtained the appellant's defense of the nullity of the arrest and search and responded by saying: "Whereas the defense of the defendants of the nullity of the arrest and search for the absence of the state of flagrante delicto is misplaced because flagrante delicto is a condition that accompanies the crime and is available to the perpetrator when it is seized immediately or soon after its commission or followed by shouting from the public after its occurrence or seizure soon after its occurrence with tools, luggage, papers or other things indicating that he is the perpetrator or caught after its commission It has traces or signs that indicate that he and only the perpetrator or an accomplice in the crime, which in all cases is the seizure of the crime and its fire is burning or the smoke of its fire is still rising. Whereas, the defendants had provided the victim with the forged amount, so he informed the incident officer, who informed him of the location of the incident, so the victim provided him with the forged amount that the defendants had saved him in exchange for buying a motorcycle, and the amount was for securities of different categories bearing each category one serial number, so the incident officer seized them. Therefore, what the incident officer did does not fall outside the scope of procedural legitimacy specified in Article 20 of the Criminal Procedure Law, and the defense presented by the defendants in this regard is misplaced and the court turns away from it. "It is a sufficient and justifiable response that is consistent with the correctness of the law. What the appellants raise in this regard is invalid [Appeal No. 4192 of 81 S issued at the session of February 9, 2012 and published in the letter of the Technical Office No. 63 page No. 195 rule No. 25.

See: Appeal No. 3322 of 85 S issued at the session of January 2, 2016 and published in the letter of the Technical Office No. 67, page No. 23, rule No. 2, Appeal No. 645 of 85 S issued at the session of December 14, 2015 and published in the letter of the Technical Office No. 66, page No. 868, rule No. 129, Appeal No. 21527 of 84 S issued at the session of March 2, 2015 (unpublished), Appeal No. 24057 of 84 S issued at the session of February 5, 2015 (unpublished), Appeal No. 15682 of 83 S issued at the 8th session of April 2014 (unpublished), Appeal No. 17780 of 83 S issued at the 7th session of April 2014 (unpublished), Appeal No. 11501 of 83 S issued at the 2nd session of February 2014 and published in the Technical Office letter No. 65, page No. 42, rule No. 4, Appeal No. 4876 of 83 S issued at the 4th session of November 2013 (unpublished), Appeal No. 6068 of 82 S issued at the 24th session of February 2013 (unpublished), Appeal No. 6019 of 82 S issued at the session of February 5, 2013 (unpublished), Appeal No. 18292 of 75 S issued at the session of November 13, 2012 and published in Technical Office letter No. 63, page No. 678, rule No. 121, Appeal No. 1382 of 82 S issued at the session of November 5, 2012 (unpublished), Appeal No. 1382 of 82 S issued at the session of November 5, 2012(unpublished), Appeal

Whereas Article 34 of the Criminal Procedure Law has allowed the judicial officer to arrest the defendant present who has sufficient evidence of his accusation, the presence here is not limited to the actual presence alone, that is, the presence in which the defendant is present before the judicial officer, but it is sufficient for the presence to be legally in the judgment of the defendant present, which justifies saying whenever the crime is in a state of flagrante delicto and there is sufficient evidence of the defendant's contact with it and his original or subsequent contribution to it, and if the street limited the meaning of the presence in this place to the actual presence, it would not be possible for the judicial officers to perform their duties imposed on them by law from the initiative to arrest the defendant whose contribution to the crime, which is originally intended from the street letter to the officers in Articles 34, 35[446].

2- Distinguishing between arrest and detention

It is permissible to suspend with the knowledge of the public authority

It is permitted to arrest with the knowledge of any member of the public authority, even if he is not a judicial police officer, while it is not permitted to arrest without the knowledge of judicial police officers and investigative authorities.

The permissibility of arrest on suspicion of all crimes

The arrest does not require the existence of one of the crimes stipulated in Article 34 of the Criminal Procedure Law, but it is permissible upon suspicion of the availability of any felony or misdemeanor.

The arrest itself does not allow the search of the accused

The arrest does not permit the search of the person of the accused, unlike the arrest, which itself permits the search.

No. 7616 of 81 S issued at the session of February 11, 2012 (unpublished), Appeal No. 3188 of 81 S issued at the session of November 27, 2011 (unpublished), Appeal No. 8517 of 79 S issued at the session of October 5, 2011 (unpublished), Appeal No. 11 of 81 S issued at the session of June 7, 2011 (unpublished), Appeal No. 8522 of 80 S issued at the session of May 7, 2011 and published in Technical Office letter No. 62, page 211, rule No. 36, Appeal No. 2169 of 79 issued at the session of January 19, 2011 (unpublished)

The Court of Cassation ruled that: [Article 34, 35 of the Criminal Procedure Law has allowed the sheriff to make judicial arrests in cases of flagrante delicto punishable by imprisonment for a period of more than three months to arrest the present accused who has sufficient evidence to charge him. If he is not present, the sheriff may issue an order to arrest him and bring him. Article 46 of the same law also empowered him to search the accused in cases where he may be legally arrested. It was legally established that flagrante delicto is a characteristic of the crime itself and not a person who committed it, which allows the sheriff who witnessed its occurrence to arrest anyone who carries out evidence of his contribution to it and to be searched without permission from the Public Prosecution and that although the assessment of the circumstances that clothed the crime and surrounded it at the time of its commission and its sufficiency to carry out the case of flagrante delicto is entrusted to the trial court, but this is conditional on the reasons and considerations on which the court bases its assessment to be valid to lead to the result it reached, as it was, and what was stated by the judgment - whether in its response to the plea of nullity of arrest and search or in its statement of the fact of the case - is not included in it This indicates that the crime was witnessed in one of the cases of flagrante delicto described exclusively in Article 30 of the Criminal Procedure Law, and what was stated by the contested judgment - according to the above context - of the officer watching the appellant hand over a bag to the other accused - who is authorized to search him - is available in the case of flagrante delicto that allows the judicial officer to arrest him is not correct in law, as the text of the first paragraph of Article 41 of the 1971 Constitution - applicable to the incident - conclusively indicates that in other than the cases of flagrante delicto, no restriction on personal freedom may be placed except with the permission of the competent judge or the Public Prosecution. When this was done, the arrest of the appellant occurred in a state not in flagrante delicto of the crime, and therefore what happened to him is a false arrest, and if the contested judgment violated this consideration and the validity of this measure, it is wrongly flawed in the application of the law, which requires its reversal] Appeal No. 6 of the year 81 issued in the hearing of December 11, 2011 (unpublished).

See: Appeal No. 18565 of 84 S issued at the 11th session of April 2016 and published in the Technical Office's letter No. 67, page No. 433, rule No. 50, Appeal No. 21782 of 74 S issued at the 16th session of October 2012 and published in the Technical Office's letter No. 63, page No. 511, rule No. 87.

([446]) Appeal No. 25868 of 84 S issued on June 6, 2015 (unpublished).

Suspension is an inference procedure, not an investigation

Suspension is not an investigation procedure, but it is an inference procedure owned by men of public authority as an exception.

Arrest does not allow detention

The correct legal arrest allows the detention of the accused for a period of 24 hours by the judicial officers, while the arrest does not allow more than taking the suspect to the nearest judicial officers to verify and clarify his case.

Fourth: Travel Ban Order

The decision to be included on the travel ban list aims to prevent a person from traveling abroad. This decision must be issued with regard to a person who is inside the country for the purpose of keeping him inside it and preventing him from leaving it for a legal reason that justifies this.

As for inclusion on arrival watch lists, it is issued against a person who is not present inside the country but is located outside it with the aim of informing the competent administration of the incident of his arrival in the country, either to arrest him to implement a final sentence issued against him to a penalty restricting his freedom or in implementation of an order issued by the investigation authorities to arrest him or to present him to the investigation authority at its request upon his arrival from abroad [447].

1- Request for inclusion on the travel ban lists

It is permissible to be included on the travel ban lists for natural persons and at the request of the courts in their enforceable judgments and orders, the Attorney General, and the investigating judge[448].

Upon the release of a person accused of a felony or misdemeanor sponsored by the state or foreigners, the investigator may decide to prevent him from traveling outside Egypt if he sees a place for this and the interest of the investigation requires it. However, this measure may not be taken against a person unless there are elements and evidence of his comparison with a specific crime [449].

The special register prepared in the Technical Office of the Attorney General and in each college prosecution shall be recorded the names of the defendants who are to be prevented from traveling abroad and all data related to them and the orders issued to lift the ban in order to facilitate reference to them. In this regard, the following shall be taken into account:

That the request for inclusion in the travel ban list and the lifting of the ban is through the technical office of the Public Prosecutor's Office.

If, upon the release of an accused person who is a citizen of the State or a foreigner in a felony or in an important misdemeanor such as theft, fraud, waste and manslaughter, he deems that the interest of the investigation requires a ban from traveling abroad, the investigator shall urgently send a memorandum to the Chief Public Prosecutor explaining the reasons for this ban. In the event that the name is approved for inclusion in the list of prohibited persons, the Chief Public Prosecutor shall send this memorandum explaining the important considerations from the point of view of the technical office to examine the application and notify the Passport and Citizenship Department and the Public Security Department "Listing Committee". It shall be

---

([447]) Administrative Court, First Circuit, Judgement No. 1379 of 69 K issued at the session of January 20, 2015 (unpublished).
([448]) Article 1 of the Minister of Interior Decision No. 2214 of 1994 regarding the organization of lists of prohibited persons.
([449]) Article 426 of the Judicial Instructions of the Public Prosecution.

taken into account that a memorandum shall be attached to these papers indicating the full name of the person who requests a ban from traveling in the Arabic and English alphabets, his profession, his date of birth by day, month and year from the reality of his personal or family card, passport, place of residence, nationality, description, distinctive signs, special case number, evidence, evidence and punishment materials, accompanied by a photograph of the accused whenever possible.

The technical office shall be informed of what has been done in the cases of those banned from travel to consider lifting the ban on them.

In the event that a decision is issued by the court competent to hear the criminal case, the name of the defendant included in the list of prohibited persons or his authorization to travel shall be removed. These decisions shall be recorded in the special register of the vice-college and then the papers shall be sent to the technical office to notify the competent authority of this for implementation [450].

It is established that, while it is true that freedom of movement and travel inside or outside the country is an inherent right of the individual and may not be violated without justification, nor undue derogation from it, the Constitution entrusts the legislative authority with regulating that right in order to preserve the safety of the State, protect its security at home and abroad, protect public order and maintain the affairs of justice, all without prejudice to the constitutional right to movement and travel or prejudice to its essence and content. The constitutional legislator itself has restricted this right if the need to investigate and maintain the security of society so requires, provided that the order to prevent movement is issued by the competent judge or the Public Prosecution as determined by law[451].

Whereas Article 1 of the Minister of Interior's Resolution No. 2214 of 1994 on Regulating the Prohibited Lists stipulates that the entities authorized to request inclusion on the prohibited lists for natural persons, including (the Attorney General), and because of the seriousness of this order and because it relates to the personal freedom of citizens (travel ban or anticipation of arrival from abroad), the decision required that the listing be in cases other than the request of the courts issued by the presidency of the entity requesting the listing, This assumes, by virtue of necessity and its impact on restricting the freedom of the citizen to travel or return to the country, that this is based on an investigation conducted by the Public Prosecution and that the necessary investigation duties require preventing the citizen from traveling or placing him on arrival waiting lists, especially since the right of the citizen to move and return to his homeland has become in addition to being a right established in the Egyptian Constitution under Chapter Two on the basic elements of society in Article (50), which stipulates that no citizen may be prohibited from residing in a specific destination nor be required to reside in a specific place except in the cases set forth in the law and Article (51), which prohibits the deportation of any citizen This right has become one of the universal rights stipulated in the Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations on December 10, 1948 and called on Member States to act in accordance with it, which stipulates in Article 13:

Everyone has the freedom of movement and choice of residence within the borders of each State.

Everyone has the right to leave any country, including his country, and to return to it, as confirmed by the International Convention on Civil and Political Rights, which was approved by

---

([450]) Article 407 of the Judicial Instructions of the Public Prosecution.

([451]) Administrative Court, First Circuit, Judgement No. 23511 of 63 BC issued at the session of 24 November 2009 (unpublished), Judgement No. 20677 of 62 BC issued at the session of 10 February 2009 (unpublished).

the General Assembly of the United Nations on December 16, 1966 and signed by the Arab Republic of Egypt on August 4, 1967 and approved by Presidential Decree No. 536 of 1981, which included in its articles that no one may be arbitrarily deprived of the right to enter his country. Therefore, as long as the investigation authorities do not order the placement of a person on the lists of prohibited persons or wait for access to the considerations of the interest of the investigation that they value only, a person has the right to leave his country whenever he wishes and wherever he wishes, and to return to his country whenever he wishes and reside in his country wherever he wishes, and this fundamental human right is not restricted except by the controls imposed by law and within the limits necessary for him[452].

The prohibition of movement is owned only by a judge or a member of the Public Prosecution entrusted by law without interference from the executive authority [453].

Whereas, the entities that are allowed to request inclusion on the lists of those banned from travel, lifting from them, or entering the country are limited, and whereas the legislator has not granted natural persons and individuals to request such inclusion except in the case of a court ruling or an enforceable order to register a person on these lists, and therefore individuals may not request the registration of any person on the lists of those prohibited from leaving the country unless he submits evidence that he has obtained from a court a judgment or an enforceable decision to register on these lists [454].

Requests for listing and uploading on the lists shall be submitted to the Department of Travel, Immigration and Nationality Documents from the same listing authorities with the same restrictions contained therein. These requests shall be submitted to the Director of the Listing Department in the Department to take the necessary action towards them.

The Director of the Travel, Immigration and Nationality Documents Authority shall have the right to consider and decide on applications for registration on the lists of those prohibited from leaving or entering the country or from being removed from the lists [455].

Requests for listing must include the following data:

The name is at least binary and the year of birth is approximate for non-Arabic names and in the French spelling.

The name must be at least threefold for Arabic names and the year of birth in approximation (for non-Egyptians). As for the Egyptians, the name must be at least threefold, indicating the date of birth in the day, month and year.

Nationality.

Profession.

In the event that the previous data are not available, the name shall be included on the lists to anticipate travel or arrival, and the Director of the Travel, Immigration and Nationality Documents Authority may register names that do not meet some of the mentioned data, in the cases he estimates[456].

It must be taken into account that:

([452]) Administrative Court, First Circuit, Judgement No. 15844 of 61 S, issued at the session of 13 May 2008 (unpublished).

([453]) Administrative Judicial Court, First Circuit, Judgement No. 47576 of 68 S issued on 16 February 2016 (unpublished).

([454]) See: Administrative Court, First Circuit, Judgement No. 8868 of 62 S issued at the session of April 29, 2008 (unpublished).

([455]) Article 3 of the decision of the Minister of Interior regarding the organization of the prohibited lists.

([456]) Articles 4 and 5 of the decision of the Minister of Interior regarding the organization of the prohibited lists.

When interrogating the accused, to mention in the investigation report his triple name (name of the accused, father's name, grandfather's name), date of birth on the day, month, year, place of birth, place of residence, profession and nationality, and access to his card or passport - so that these data can be used in editing the application forms for inclusion in the travel ban list if the interest of the investigation requires that the accused be prevented from traveling abroad.

When editing the application forms for inclusion in the travel ban list, they must include from the investigations the triple names of the accused (the name of the accused, the name of the father, the name of the grandfather - each separate field) and the rest of the data referred to in the previous clause.

The prosecution offices may not address the Department of Travel, Immigration and Nationality Documents directly regarding requests for inclusion in the travel ban and arrival anticipation lists. All correspondence of the prosecution offices in this regard shall be sent to the Technical Office of the Attorney General, which alone may address the Department of Travel, Immigration and Nationality Documents in this regard[457].

When accusing foreigners in cases of felonies in general and in cases of assault on persons (intentional or tortious) and property, prosecutors must request to be included on the lists of travel bans in the procedures stipulated in Articles 407 and 408 of these instructions.

The name of the foreign defendant on the travel ban lists shall not be requested to be removed until after the judgment issued against him is executed[458].

The passport of the foreign accused shall not be detained in cases of travel ban except for the period necessary to issue the order to include him on the travel ban lists and verify the completeness of the listing, provided that he is handed an official receipt approved by the stamp of the prosecution indicating the detention of his passport and the number and subject matter of the case in which he is accused[459].

2- Lifting the travel ban lists

The names that meet the data shall remain on the lists from the date of listing, and the listing shall be automatically lifted after the expiry of three years starting from the first of January following the date of listing if it is not lifted before its expiry at the request of the requesting entity, and the listing shall continue after its expiry if requested by the entity.

The liquidation operations shall be limited to the Passport, Immigration and Nationality Department sending the rolling authority an original form and a copy of each list containing the number of the drawer book for examination and signature indicating the lifting of the listing or the continuation of it with the return of the original to the Department [460].

The inclusion of persons on the travel ban lists and arrival watch lists is the other side of the travel ban, and it shall continue for a period of three years unless it is lifted before that. If this period lapses without the entity requesting its renewal requesting the automatic removal of the listing from these lists. The three-year calculation begins from the first of January following the date of listing, and the basis for this is that it is related to one of the freedoms guaranteed by the Constitution to the citizen, and then it must be limited or restricted for necessity, so the listing request must be clear and explicit in its meaning, significance, and issuing point, and that the administration authority does not rely on the mere request, but must follow positive and explicit procedures consistent with the nature of that freedom and that right, and that the administration

---

([457]) Article 408 of the Judicial Instructions of the Public Prosecution.
([458]) Article 1387 bis of the Judicial Instructions of the Public Prosecution.
([459]) Article 1387 bis (a) of the Judicial Instructions of the Public Prosecution.
([460]) Article 6 of the decision of the Minister of Interior regarding the organization of the prohibited lists.

authority must explicitly request the lifting of the listing when its duty ends, or request its renewal after the expiry of the three years explicitly when the reason for listing is present. It must also be explicit, not implicit, in which it expresses its will with its authority, and with the justifications and reasons for the request, and accordingly, if a period of three years has elapsed from the date of the first of January following the listing request, and the entity requesting the listing has not requested its renewal, the listing has been dropped, and its effect has been definitively lifted[461].

In light of the absence of a rule in the Code of Criminal Procedure that specifies the methods of appeal against the cancellation of the Attorney General's decision to include an accused on the travel ban lists, it follows that the general rules on filing and recording the lawsuit must be referred to. The legislator stipulates that the competent judge and the Public Prosecution have the competence only to issue decisions prohibiting movement and travel inside and outside the country. The Public Prosecution, which is the custodian of the criminal case and a division of the ordinary judiciary, undertakes judicial work, the most important of which are the investigation and indictment functions. It is competent to issue a decision to include an accused on the travel ban lists on the occasion of its investigations into a criminal incident based on the Constitution. The completion of such inclusion by the Department of Travel, Immigration and Nationality Documents is only in implementation of the Attorney General's decision. The decision of the Minister of the Interior No. 2214 regarding the organization of the travel ban lists does not change the jurisdiction of the Public Prosecution or the courts, and in application, it is competent to consider the request to cancel the Attorney General's decision to include the travel ban lists without grievance by the ordinary courts and in accordance with the rules of its jurisdiction[462].

([461]) Administrative Judicial Court, First Circuit, Judgement No. 50214 of 65, issued at the session of January 19, 2016 (unpublished).

([462]) In this regard, the Court of Cassation ruled that: [Whereas it is clear from viewing the papers that the Attorney General issued a decision to include the name of.. ... On the travel ban lists on the occasion of the investigations carried out by the Public Funds Prosecution in the two cases, my number .. .. ‘ .. .. For the year .. .. Inventory of higher public funds, so the aforementioned appealed against this decision by way of a lawsuit before the Administrative Court requesting a ruling to cancel the decision, and the aforementioned court ruled to reject the lawsuit, so the appellee appealed against this ruling before the Supreme Administrative Court and the aforementioned court ruled that it does not have jurisdiction to hear the lawsuit and refer it to the Court of Appeal . .. For consideration, and when the case was referred for consideration before a criminal court.. ... It ruled that it does not have jurisdiction to hear the lawsuit, and the Public Prosecution must resort to the Supreme Constitutional Court to determine the competent body.

The Public Prosecution appealed this ruling by way of cassation.

Whereas, the judgments issued are final in matters of jurisdiction that may be appealed independently by way of cassation are those in which jurisdiction relates to the jurisdiction of the court or those that are issued for lack of jurisdiction to hear the lawsuit, where the judgment - in this case - prevents the proceeding of the lawsuit, and therefore the contested judgment may be appealed by way of cassation. Whereas, the litigation procedures and the rules relating to jurisdiction in criminal matters were based on public order and the street based its report on general considerations related to the proper administration of justice, and the Code of Pleadings was considered a general law in relation to the Code of Criminal Procedure and must be referred to to to fill the deficiency in the latter law or to help implement the rules stipulated therein, and the Code of Criminal Procedure was devoid of a rule specifying the methods of appeal against the cancellation of the decision of the Attorney General to include one of the accused on the travel ban lists, In this regard, it is necessary to refer to the general rules contained in the Code of Procedure for the filing and registration of the lawsuit and to say otherwise, which leads to immunizing the decision of the Attorney General from being challenged, as the law did not draw a way to do so, which is contrary to justice, but this does not prevent the legislator from taking over with original legislation - regulating freedom of movement and travel inside or outside the country, balancing the freedom of movement - including the right to leave and return to the homeland - and the rights of the state and members of society, without prejudice to the provisions of the Islamic Sharia and the provisions of Article 2. The Constitution affirms that the principles of Islamic law - peremptory proof and significance - are the main source of legislation. Whereas, the constitutional legislator has made personal freedom a natural right that is protected by its texts and protected by its principles. Article (41) of the Constitution stipulates that "Personal freedom is a natural right and is inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned, have their freedom restricted in any way, or be prevented from moving except by an order necessitated by the need to investigate and maintain the security of society. This order shall be issued by the competent judge or the Public Prosecution, in accordance with the provisions of the law." It was decided that the citizen's right to move reflects one of the tributaries of his personal freedom, which was enshrined in the Constitution, indicating that the freedom of movement engages in the ranks of public freedoms and that

3- Grievance against inclusion in the travel ban lists

For those whose names have been included or who are legally acting on their behalf, grievances against their inclusion shall be submitted to the Lists Department of the Department of Travel Documents and Nationality Immigration.

These grievances shall be adjudicated by a committee formed of:

Senior Assistant Minister of Interior for Security as President

State Advisor to the Fatwa Department of the Ministry of Interior

Director General of the Department of Travel Documents and Nationality Immigration

A representative of the entity that requested the inclusion of members

The secretariat of this committee shall be assumed by the director of the lists department at the Department of Travel, Immigration and Nationality Documents at the headquarters of the aforementioned department at the dates specified by the chairman of the committee. Its

---

restricting it without a legitimate requirement strips personal freedom of some of its characteristics and undermines its structure. The Constitution entrusted this text to the legislative authority exclusively to assess this requirement. This is necessary because the principle of freedom of movement and exception is prevention and that the prohibition of movement is only owned by a judge or a member of the Public Prosecution to whom the law entrusts it without interference. Article 50 of the Constitution prohibits obliging a citizen to reside in a certain place or preventing him from residing in a certain place except in the cases specified by law. Article 51 followed to prevent the citizen from being deported from the country or prevented from returning to it. Article 52 affirms the citizen's right to emigrate and leave the country. This stipulates that the Constitution does not confer on the executive authority any competence to regulate anything that affects the rights guaranteed by the Constitution above and that this regulation must be It shall be vested in the Legislature by the laws it promulgates. The Supreme Constitutional Court ruled that if the Constitution assigns the regulation of a right to the legislative authority, it may not disavow its jurisdiction and refer the entire matter to the executive authority without restricting it to general controls and foundations within which it is committed to work. If the legislature deviates from this, and the executive authority delegates the regulation of the right from its foundation, it shall be relinquished from its original jurisdiction stipulated in Article 86 of the Constitution, falling – accordingly - in violation of the law. Whereas, the legislator has elevated the freedom of movement and travel inside or outside the country to the level of public freedoms and constitutional rights, and the legislator has decided for this a formal guarantee represented in stipulating exclusively on two parties only, which have been entrusted with the competence to issue decisions prohibiting movement and travel, namely the competent judge and the Public Prosecution, if this requires the necessity of investigation and the security of society. Whereas the Public Prosecution is the custodian of the criminal case, a division of the ordinary judiciary that undertakes judicial work, the most important of which is the investigation function and the accusatory function, which issues on its own initiative a decision to include one of the accused on the travel ban lists on the occasion of investigations it conducts in a specific criminal incident, this is under its state authority because of its dominance over the progress of the investigation, targeting its good management, deriving its right to the authority to issue this listing from the Constitution, and that the completion of such listing by the Department of Travel, Immigration and Nationality Documents is only the implementation of the decision of the Attorney General, This consideration is supported by the fact that the decision of the Ministry of Interior No. 2214/1994 was issued regarding the "regulation of the lists of travel bans" - at the request of, inter alia, the Attorney General and the courts in their enforceable judgments and orders -, and this decision of the Minister of Interior does not take away the right to grant these two parties from its pillar, and does not change the text of Article 7 of the aforementioned decision, which clarified who has the right to file a grievance against that listing and how, as the respondent filed his lawsuit initially was only a request to cancel it The decision to include it from the lists of travel bans issued against it and not to file a grievance against it, and therefore the substantive dispute in that decision is outside the scope of the legitimacy control that the administrative judiciary is competent to exercise over administrative decisions, and falls within the jurisdiction of the ordinary judiciary, which is assumed by its courts in accordance with the rules governing its jurisdiction, and if the respondent has filed his case before the administrative judiciary by depositing the newspaper and announcing it in accordance with the Code of Procedure - the general law governing litigation systems - the Supreme Administrative Court ruled not to have jurisdiction, and the case was referred to a court of appeal .. ... Whereas the Criminal Court considered it as a lawsuit before it and ruled that it lacks state jurisdiction, what the Criminal Court ruled was a judgment issued by it that can be challenged before the cassation. The contested judgment, if it is considered - erroneously - that the decision of the Public Prosecutor to include the Appellee on the lists of the banned from travel is an administrative decision that the ordinary courts do not have the competence to consider its cancellation, is incorrect. If the error on which the judgment was based has prevented the court from considering the subject matter of the lawsuit for him, the cassation must be accompanied by a return.] Appeal No. 48117 of 74 BC issued at the hearing of 14 June 2010 and published in the book of the Technical Office No. 61 page No. 442 rule No. 58.

decisions shall be issued by a majority of votes, and in case of a tie, the side from which the chairman is from shall prevail [463].

Fifth: Prohibiting Disposition Order

1- Cases of issuing a restraining order

In cases where there is sufficient evidence from the investigation on the seriousness of the accusation in any of the crimes stipulated in Part Four of Book Two of the Penal Code, and other crimes committed against property owned by the state or public bodies and establishments and their subordinate units or other public legal persons, as well as in crimes in which the law requires the court to rule - on its own initiative - to refund the amounts or value of the objects subject of the crime or to compensate the victim. If the Public Prosecution determines that the matter requires taking precautionary measures on the property of the accused, including preventing him from disposing of or managing it, it shall submit the matter to the competent criminal court requesting a ruling to that effect in order to ensure the implementation of the fine, restitution, or compensation that may be imposed. The public prosecutor may, when necessary or in case of urgency, temporarily order the prevention of the accused, his spouse, or his minor children from disposing of their property or its administrations. The prevention order from the administration must include the appointment of the person who manages the seized property. The public prosecutor shall, in all cases, submit the prevention order to the competent criminal court within seven days at most from the date of its issuance, by requesting a ruling prohibiting the disposition or administration, otherwise the matter shall be considered null and void. The competent criminal court shall issue its judgment in the previous cases after hearing the statements of the concerned parties within a period not exceeding fifteen days from the date of presenting the matter to it. The court shall decide on the extent to which the temporary order referred to in the previous paragraph continues to operate whenever it deems it necessary to postpone the consideration of the application. The judgment must include the reasons on which it is based, and the prohibition from the administration shall include the appointment of a person who manages the funds seized after taking the opinion of the Public Prosecution. The court may, at the request of the Public Prosecution, include in its judgment any property of the husband of the accused or his minor children if there is sufficient evidence that it is derived from the crime under investigation and transferred to them from the accused, after they are included in the application. Whoever is appointed to the administration shall receive the seized property and take the initiative to inventory it in the presence of the concerned parties, a representative of the Public Prosecution, or an expert delegated by the court. The provisions of articles 965 and 989 of the Civil and Commercial Procedures Law shall be followed concerning the inventory. Whoever is appointed to the administration is obligated to preserve the funds and improve their management and return them with their received yield under the provisions stipulated in the Civil Code regarding agency in the work of administration, deposit and custody, in the manner regulated by a decision issued by the Minister of Justice[464].

The investigating authorities may, in cases where sufficient evidence of the accusation of committing any terrorist crime emerges from the inference or investigation, take the necessary precautionary measures, including freezing funds or other assets, preventing their disposal or management, or banning travel, provided that they comply with the provisions and procedures stipulated in the Criminal Procedure Law [465].

The members of the prosecution must take care to investigate the reports received by them regarding the crimes of trespassing on state property or one of the bodies whose funds are

---

([463]) Article 7 of the decision of the Minister of Interior regarding the organization of the prohibited lists.
([464]) Article 208 bis (a) of the Criminal Procedure Code.
([465]) Article 47 of the Anti-Terrorism Law.

considered public property and stipulated in Articles 115 bis, 372 bis of the Penal Code or any other law to invoke the elements of the crime and take measures to seize the funds - if necessary - per the text of Article 208 bis (a) of the Code of Criminal Procedure, and to dispose of them quickly and submit them to close sessions with the follow-up of the criminal case until it is finally ruled upon, and to verify the judgment of the original and supplementary penalties prescribed, and to appeal against the judgments issued in them contrary to the law [466].

The restrictions imposed by the legislator on the funds of some defendants, whether in the field of their management or disposal thereof, are vested in the Attorney General alone, and these restrictions may be extended from those interested to the funds of their wives and minor children unless the evidence of their regulation is established for them without the money of the accused. The Supreme Constitutional Court ruled that: [The restrictions imposed by the text of Article 208 bis of the Code of Criminal Procedure on the funds of some defendants, whether in the field of their management or disposal thereof, are vested in the Attorney General alone, as he is the one who orders them to be imposed as a guarantee to achieve the purposes specified by this text exclusively, and the Attorney General does not issue this order, except on the basis of an investigation under which there is sufficient evidence of the seriousness of the accusation in the crimes specified by the legislator only, but that these restrictions may extend from the defendants to the funds of their wives and minor children, unless the evidence of their establishment is based on them without the money of the accused][467] .

Grievance against the order prohibiting the disposition

Any person against whom a judgment prohibiting disposition or administration has been issued may file a grievance before the competent criminal court after the lapse of three months from the date of the judgment. If his grievance is rejected, he may file a new grievance whenever the lapse of three months from the date of the judgment rejecting the grievance. It is also permitted for the person against whom a judgment has been issued to be prohibited from acting or managing, and for any interested party to file a grievance against the procedures for its implementation. The grievance shall be obtained by a report in the registry of the clerks of the competent criminal court, and the president of the court shall set a session to consider the grievance in which the grievant shall be notified. The grievance shall be decided within a period not exceeding fifteen days from the date of the report. The competent court may, during the consideration of the lawsuit - on its own initiative or at the request of the Public Prosecution or those concerned - rule to terminate the prohibition from disposing of or administering the adjudicated act, or to amend its scope, or the procedures for its implementation. The order issued to dispose of the criminal case or the judgment issued in it must indicate what follows with regard to precautionary measures.

In all cases, the prohibition from acting or administering ends with the issuance of a decision that there is no need to file a criminal lawsuit, the issuance of a final judgment of acquittal, or the completion of the implementation of the financial penalties and compensation decided upon. Any act issued in violation of the order or the judgment shall not be invoked in the implementation of the fine, the refund of amounts, or the value of the objects subject of the crime, or the compensation of the victim, as the case may be, from the date of registering either of them in a special register organized by a decision issued by the Minister of Justice, and everyone concerned shall have the right to access this register[468].

([466]) Article 140 bis of the Judicial Instructions of the Public Prosecution.

([467]) The judgment of the Supreme Constitutional Court in Case No. 26 of 12 S issued at the session of October 5, 1996, the date of publication of October 17, 1996, published in the first part of the book of the Technical Office No. 8, page No. 124, rule No. 8.

([468]) Article 208 bis (b) of the Criminal Procedure Code.

The person against whom a prohibition order has been issued to act based on sufficient evidence of accusation of committing any terrorist crime may file a grievance in accordance with the previous rules [469].

2.1.2 Within the framework of international covenants

It is not permissible to deprive an individual of his liberty except on the grounds specified by law and in accordance with the procedures[470] prescribed therein.

National laws authorizing arrest and detention, and those establishing arrest and detention procedures, must be consistent with international standards [471].

Examples of arrests and detentions that are inconsistent with national laws include those committed for crimes based on which the law does not allow arrest[472].

Arrests made without issuing an arrest warrant in circumstances where national law requires this,[473].

Detention of individuals for periods longer than permitted by national law [474].

Arrests and detentions should not be based on discriminatory grounds and any policies and procedures allowing arrest and detention should be prohibited on racial or ethnic grounds, or on any other basis of stereotypical targeting [475].

The European Convention has set out the only circumstances in which States Parties to the Convention may deprive persons of their liberty and the list in Article 5 (1) covers all such situations and should be interpreted narrowly to protect the right to liberty [476].

One of the grounds on which a person may be arrested under the European Convention is to bring him before a competent legal authority on reasonable suspicion that he has committed a criminal act[477].

([469]) Article 47 of the Anti-Terrorism Law.

([470]) Article 9 (1) of the International Covenant, Article 17 (2) (a) of the Convention on Enforced Disappearances, Article 37 (b) of the Convention on the Rights of the Child, Article 16 (4) of the Migrant Workers Convention, Article 6 of the African Charter, Articles 7 (2) and 7 (3) of the American Convention, Article 14 (2) of the Arab Charter, Article 5 (1) of the European Convention, Principle 2 of the Body of Principles, Section M (1) (b) of the Principles for a Fair Trial in Africa, Article 25 of the American Declaration, and Principle 4 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

([471]) Principle 4 of the Principles Relating to Persons Deprived of Liberty in the Americas.

A v. Australia, Human Rights Commission, / UN Doc. CCPR 5/9§ (1997) C/59/D/560/1993; European Court: Bozano v. France 5/9§ (1986) ,(82/9990), Lukanov v. Bulgaria (21915/ 93), (1997) 41§, Baranowski v. Poland (28358/ 95), (52-50§ (2000), Medvedev et al. v. France (3394/03), Grand Chamber (80-79 § § (2010); Gangaram-Pandeh v. Suriname, Inter-American Court (47-46§ § (1994); Alfonso Martín del Campo Dodd v. Mexico (12. 228, Report 117/09), U.S. Commission 22§ (2009).

([472]) Latifin v. Kyrgyzstan, Human Rights Commission, . 2/§8 (2010) UN Doc. CCPR/C/98/D/1312/2004..

([473]) Tibi v. Ecuador, Inter-American Court §103 (2004).

([474]) Opinion No. 10/2009 of the Working Group on Arbitrary Detention (Venezuela), 2009) UN Doc. A/HRC/13/30/Add. 1) pp. 172-179 §52§ (b) 53-; Alfonso Martín Delcampo Dodd v. Mexico (12). 228, Report 117/90), U.S. Commission §25-§22 (2009).

([475]) General Recommendation No. 31 of the Committee on the Elimination of Racial Discrimination, §3§ (a) (20) and(23); Williams Lycraft v. Spain (1493/2006) of the Human Rights Committee, 8-2/§ 7§ (2009); General Policy Recommendation No. 11 of the European Commission against Racism and Intolerance on combating racism and racial discrimination in policing; Status of persons of African descent in the Americas, Inter-American Commission, §162- § 143 (2011); see Gillan and Quinton v. United Kingdom (05/4158), European Court, §85 (2010).

([476]) See European Court: Quinn v. France (18580 / 91), §42 (1995), Bitta v. Italy (26772 / 95), §170 (2000), Medvedev et al. v. France, (3394/03) Grand Chamber §78 (2010).

([477]) Article 5 (1) (c) of the European Convention.

The European Court has ruled that it can be said that there is a reasonable suspicion that justifies an arrest when there are "facts or information satisfactory to an objective observer that the person concerned may have committed the offence"[478].

Moreover, reasonable suspicion must be related to acts that constituted a crime by law at the time they were committed [479].

Where a person has been detained under a law permitting preventive detention, allegedly for being prevented from committing a criminal offence, and without having been investigated or charged, the European Court has concluded that the detention constituted a violation of the right to liberty [480].

1- The order to arrest and bring the accused

In a January 2010 joint UN report on secret detentions and international law, two UN Special Rapporteurs and two UN Working Groups wrote: The link between secret detention and torture and other forms of ill-treatment is twofold: secret detention in that it is secret in itself is considered torture or inhuman, cruel or degrading treatment, and then secret detention may be used to facilitate torture or cruel, inhuman or degrading treatment.

The application of exceptional laws and counter-terrorism laws for decades and the consequent broad and unsupervised powers of the law enforcement forces to deal with suspects as "threats to state security" have affected the conduct of the police in dealing with ordinary crimes, allowing the police to feel that they are above the law. This perception - which is also perceived by many citizens - is reinforced by the fact that successful prosecutions of ordinary police officers are still extremely rare.

Members of the Public Prosecution shall, in accordance with national law, give due consideration to the possibility of dismissing prosecution and discontinuing cases, with or without conditions, and of diverting criminal cases from the formal justice system, with full respect for the rights of suspects and victims. To this end, States should fully explore the possibility of adopting schemes to replace prosecution, not only to alleviate the excessive burdens of the courts, but also to spare the persons concerned the stigma of pretrial detention, indictment and conviction, as well as the detrimental effects of imprisonment.

In countries where the functions of prosecutors are discretionary with regard to the decision to prosecute or not prosecute a juvenile, special consideration should be given to the nature and gravity of the offence, to the protection of society and to the personality and background of the juvenile. In making this decision, prosecutors should consider in particular the alternatives to prosecution available under juvenile justice laws and procedures, and prosecutors should make every effort to refrain from taking judicial action against juveniles except when absolutely necessary [481].

2- Imprisonment of the accused if they cannot be interrogated

The Declaration on the Protection of All Persons from Enforced Disappearance stipulated that every person deprived of liberty must be in an officially recognized place of detention, and the

---

([478]) See European Court: Fox, Campbell and Hartley v. United Kingdom §32 (1990) ,(86/12383, 86/12245,86/12244), Marais v. United Kingdom (14310 / 88) Grand Chamber, §63- §50 (1994). See also Guideline 7(1) of the Council of Europe Guidelines on Human Rights and Counter-Terrorism; General Recommendation No. 11 of the European Commission against Racism and Intolerance, §3 (2007).

([479]) European Court: Fluch v. Poland (27785/ 95), (- §108§ (2000 109), Kandjov v. Bulgaria (68294 / 01), §62- §52 (2008)..

([480]) Gius v. Lithuania (34578 / 97), European Court (2000) . §52-§47..

([481]) Guidelines on the Role of Prosecutors, paras. 18, 19.

International Convention for the Protection of All Persons from Enforced Disappearance also prohibited the detention of any person in an unknown place [482].

The Convention defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law"[483].

The Declaration on the Protection of All Persons from Enforced Disappearance considered that any act of enforced disappearance is a crime against human dignity, and it is a serious and flagrant violation of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights. Enforced disappearance deprives the person subjected to it of legal protection, and inflicts severe suffering on him and his family, in violation of the rules of international law that guarantee everyone the right to liberty and security and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and violates their right to life or constitutes a serious threat to them [484].

Any act of enforced disappearance is considered a crime that must be punished with appropriate penalties, and any act of enforced disappearance is considered a continuous crime as the perpetrator continues to conceal the fate of the victim of disappearance and the place of his disappearance [485].

Criminal responsibility for the act of enforced disappearance shall be borne by anyone who commits, orders, recommends, conspires or participates in the commission of the crime himself, and no orders or instructions issued by public, civil, military or other authorities may be invoked to exempt from responsibility for the commission of that crime, with the possibility of providing in national legislation extenuating circumstances for anyone who, after participating in acts of enforced disappearance, facilitates the appearance of the victim alive, or voluntarily provides information on cases of enforced disappearance, and the perpetrators of the crime do not benefit from any special amnesty law or any similar procedure that may result in their exemption from any criminal trial or punishment [486].

In addition to the civil responsibility of the perpetrators of enforced disappearance, the state also bears civil responsibility for the authorities that organized, approved or condoned enforced disappearances, with the victims of enforced disappearance and their families being compensated with appropriate compensation, including the means for their rehabilitation to the fullest extent possible [487].

Each State shall investigate complaints that a person has been subjected to enforced disappearance, promptly and impartially examine that allegation and take appropriate measures to ensure the protection of the complainant, witnesses, relatives and defenders of the disappeared[488].

The [482]Declaration on the Protection of All Persons from Enforced Disappearance was adopted by the United Nations General Assembly in its resolution 47/133 of 18 December 1992. See article 10, paragraph 1, of the Declaration on the Protection of All Persons from Enforced Disappearance and article 17, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance.

([483]) Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([484]) Article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([485]) Article 17 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([486]) Articles 4, 6 and 18 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([487]) Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([488]) Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance, . Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance.

Each State is obliged to provide access to any person who proves that he has a legitimate interest in obtaining information about the authority that decided to deprive the person of his liberty, as well as the date, time and place of deprivation of liberty and entry to the place of deprivation of liberty; the authority that monitors the deprivation of liberty; the whereabouts of the person deprived of his liberty, including in the event of transfer to another place of detention, the place to which he was transferred and the authority responsible for his transfer; the date, time and place of release; data on the health status of the person deprived of his liberty; and access to the circumstances and causes of death and the destination of the remains of the deceased in the event of the death of the person deprived of his liberty, as well as to protect every person who proves a legitimate interest from any ill-treatment, intimidation or punishment due to the search for information about a person deprived of his liberty, and it is prohibited to restrict the right to obtain information about the person deprived of his liberty, while ensuring the right to a prompt and effective judicial appeal to obtain all the information prescribed at the earliest[489].

Each State shall take the necessary measures to prevent and punish the refusal to provide information on a case of deprivation of liberty, or the provision of incorrect information, at a time when the legal requirements for providing such information exist.

Any person who has been detained without observing the established rules must be released immediately, and the state must take the necessary measures to ensure that he has already been released, and to ensure his physical safety and his full ability to exercise his rights upon his release[490].

The SPT has found that a person who is incarcerated without anyone knowing where he or she is being held is at greater risk of ill-treatment. The right to notify a person outside the place where the detainee is held of the fact that he or she has been deprived of liberty is an important safeguard against ill-treatment; persons who otherwise resort to ill-treatment may be deterred by the knowledge that another person from abroad has been notified and may be attentive to the detainee's well-being. The SPT therefore recommended that the relevant authorities ensure that the right to inform a family member or other contact of the person deprived of liberty is also practically enforced within 24 hours. The SPT further recommended that detainees be regularly informed of this right and requested that a standard form regarding this right be signed indicating the name of the person to be notified. Police officials should be instructed to inform detainees of this right and enforce it by notifying the person indicated [491].

1.3 When is an Arrest or Detention Arbitrary?

1.3.1 Within the framework of international conventions

International standards prohibit the arbitrary arrest, detention or imprisonment of a person [492].

This prohibition is a necessary condition that arises automatically from the right to liberty and applies to deprivation of liberty in all contexts, and not only in relation to criminal charges as it applies to all forms of deprivation of liberty, including house arrest [493].

([489]) Articles 18 and 20 of the International Convention for the Protection of All Persons from Enforced Disappearance, and article 9 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([490]) Article 22 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([491]) (CAT/OP/MDV/1, 26 February 2009, §§101 - 102).

([492]) Article 9 of the Universal Declaration, article 9 (1) of the International Covenant, article 37 (b) of the Convention on the Rights of the Child, article 16 (4) of the Migrant Workers Convention, article 6 of the African Charter, article 7 (3) of the American Convention, article 14 (2) of the Arab Charter, article 5 (1) of the European Convention, article 55 (1) (d) of the Rome Statute; section M (1) (b) of the Principles of Fair Trial in Africa; and principle 3 (1) of the Principles Relating to Persons Deprived of Liberty in the Americas; see article 25 of the American Declaration.

The Working Group on Arbitrary Detention, the group of experts empowered to investigate cases of arbitrary deprivation of liberty, has clarified that deprivation of liberty is arbitrary, inter alia, in the following cases:[494].

Arrest or detention without legal basis. Furthermore, arrest or detention permitted by national law may be arbitrary under international standards. Examples include the law being vaguely worded or too broad [495].

or inconsistent with other human rights such as the right to freedom of expression, assembly or belief,[496].

or the right to be free from discrimination [497].

Detention can also become arbitrary as a result of a violation of the detainee's right to a fair trial[498].

Likewise, enforced disappearance and secret detention are arbitrary in themselves [499].

The United Nations General Assembly has noted with concern the detention of persons suspected of having committed terrorist acts without a legal basis or respect for due process guarantees and has opposed detention that results in depriving persons of the protection of the law [500].

The Working Group on Arbitrary Detention concluded that the detention of individuals arrested in different countries in the context of the CIA rendition program (following the attacks of September 11, 2001 in the United States of America) was arbitrary, as they were held incommunicado for prolonged periods in secret places that included various "black sites", without access to courts or lawyers, without being charged or prosecuted, and without informing their families of their whereabouts or allowing them to contact them (although some of them were later charged[501].

General [493]Comment 8 of the Human Rights Committee, §1, Yaklimova v. Turkmenistan, Human Rights Committee, 2006/2 / §7 (2009) UN Doc. CCPR/C/96/D/1460..

([494]) Fact Sheet No. 26 of the Working Group on Arbitrary Detention, Section 5(a)- (b).

[495]See Concluding Observations of the Human Rights Committee: Ethiopia,. UN Doc . §15 (2011) CCPR/C/ETH/CO/1..

([496]) Opinion No. 25/2004 of the Working Group on Arbitrary Detention (Al-Faleh et al. v. Saudi Arabia),UN Doc. E/CN. 4/2006/7/Add. 1 pp. 16 - §20- §13 ,20; Working Group on Arbitrary Detention, §94- §93 (2000) UN Doc. E/CN. 4/2001/14; Article 19 v. Eritrea (03/275), African Commission, Annual Report 22 § 108- §93 (2007); Concluding Observations of the Human Rights Committee: Canada, / UN Doc. CCPR/C/can §2 (2005) CO/5, Uzbekistan, §22 (2005) UN Doc. CCPR/CO/83/UZB; see Jung et al. v. Republic of Korea, Human Rights Committee,. UN Doc . 4/§7 (2010) CCPR/C/98/D/1593-1603/2007..

A [497]et al. v. United Kingdom (3455/05), Grand Chamber of the European Court § 190- §161 (2009) (Nationality); see Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, 18 / UN Doc. A/56 (Suppl.) §373 (2001, Ethiopia, 2007) UN Doc. CERD/C/ETH/CO/15) §19, Turkmenistan, §5 (2002) UN Doc. CERD/C/60/CO15 (Doctrine), India, §14 (2007) UN Doc. CERD/C/IND/CO/19 (Dismissed), General Recommendation 31 of the Committee on the Elimination of Racial Discrimination, §20.

([498]) Working Group on Arbitrary Detention: Circulation No. UN Doc. A/ ,9 §38 (2012) 44/HRC/22 (c), Opinion 14/2006 of the Working Group on Arbitrary Detention, §15- §9 (2006) UN Doc. A/HRC/4/40/Add. 1; Article 19 v. Eritrea (275/03) African Commission, Annual Report 22 § 108- §93 (2007)..

[499]See articles 2 and 17 (1) of the Convention on Enforced Disappearances.

Joint study of UN mechanisms on secret detention,. UN Doc §21- §18 (2010) 42/A/HRC/13; Opinion No./142009 of the Working Group on Arbitrary Detention (The Gambia), 2010) UN Doc. A/HRC/13/30/Add. 1) pp. 187- §22-§19 191; Salem Saad Ali Bashasha v. Libyan Arab Jamahiriya, Human Rights Committee, 2008/2010) UN Doc. CCPR/C/100/D/1776) 6/§7; European Court: Chitaev and Chitaev v. Russia (59334 / 00), §173-§172 (2007), Al-Masri v. The Former Yugoslav Republic of Macedonia (39630/ 09) Grand Chamber § 241- §230 (2012).

([500]) Resolution 63/185 of the United Nations General Assembly, Al-Dibaha §8 and Working Paragraph 13-14.

Opinion [501]No. 29/2006 of the Working Group on Secret Detention (USA), 2006) UN Doc. A/HRC/4/40/Add. 1) pp. 103 - 110 §12§ and 21 - 22..

The "preventive detention" of children and women who survived after being targeted with "honor crimes", domestic or other types of violence, or from being trafficked as human beings, without the consent of these children and women and without judicial supervision, is considered arbitrary detention and discrimination [502].

The Working Group on Arbitrary Detention has concluded that the detention of individuals under laws criminalizing private homosexual activities is arbitrary and that such laws constitute a violation of the right to private and family life, and of the prohibition on discrimination [503].

The Human Rights Committee has clarified that the term “arbitrariness ” in Article 9 (1) of the International Covenant on Civil and Political Rights must be interpreted broadly to include elements of inappropriateness, injustice and unpredictability of action [504].

The Inter-American Commission on Human Rights concluded that the arrest of one of the generals for allegedly planning a military coup, and under a memorandum issued by a military court in which no details or evidence of the alleged facts were provided, constituted an abuse of power [505].

The European Court also concluded that the arrest and detention of persons for political or commercial reasons, or to exert pressure on a person to withdraw an application submitted to the Court, constitute arbitrary detention [506].

The Working Group on Arbitrary Detention explained that the administrative detention of foreign nationals, as well as asylum seekers, due to their non-compliance with immigration legislation, is not per se prohibited in international law, but it can amount to arbitrary detention if it is not necessary in the circumstances of the individual case under consideration. The Working Group considers that the criminalization of illegal entry into a country “exceeds the legitimate interest of States in controlling and regulating migration and leads to unnecessary detention”[507].

Mass arrests are often arbitrary under international standards, including in the context of peaceful protest[508].

This also applies to prolonged detention without charge or trial[509].

as well as on the detention of relatives of a person suspected of having committed a criminal offense to put pressure on him [510].

([502]) See Rule 59 of the Bangkok Rules.
See the Special Rapporteur on the independence of judges and lawyers,. UN Doc §70 (2011) A/66/289; Special Rapporteur on violence against women, UN §123-§122 (2011) Doc. ECN. 4/1998/54 and/73/2001 / UN Doc. E/CN. 4 §27 (2001) Add. 2; Working Group on Secret Detention,. UN Doc §66-§65 (2002) E/CN. 4/2003/8; Concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW): Jordan, 2007) UN Doc. CEDAW/C/JOR/CO/4) §26; see Special Rapporteur on Torture, Jordan, 33 / UN Doc. A/HRC/4 . §39 (2007) Add. 3.

Opinion [503]No. 7/2002 of the Working Group on Secret Detention (Egypt), 2002) UN Doc. E/CN. 4/2003/Add. 1) pp. 68- §12§ 73, Opinion No. 2006/22 (Cameroon), 2007 (UN Doc. A/HRC/4/40/Add. 1) pp. 91-94.

([504]) Commission on Human Rights: Mukong v. Cameroon, / UN Doc. CCPR 8/§ 9 (1994) C/51/D/458/1991; Fongam Gorji-Dinka v. Cameroon, 1/§5 (1994) UN Doc. CCPR/C/83/D/1134/2002; Marinich v. Belarus, 2006/4/ §10 (2010) UN Doc. CCPR/C/99/D/1502; Article 19 v. Eritrea (275/03) African Commission, Annual Report 22 §93 (2007)..

([505]) Gallardo Rodriguez v. Mexico (11). 430 , 96 / Report 43), American Commission, §71-§64 (1997) and 115.

([506]) European Court: Kosinski v. Russia (70276 / 01), (2004) §78-§70, Sibutari v. Moldova (35615 / 06), §53-§46 (2007).

([507]) Working Group on Arbitrary Detention, 4/ UN Doc. A/HRC/7 §2008§46 (and 53; see Special Rapporteur on migrants,. UN Doc §14- §13 (2012) A/HRC/20/24 and 70.

Concluding [508]observations of the Human Rights Committee: Canada, / UN Doc. CCPR/C . §20 (2005) CAN/CO/5.

([509]) Decision No. 2/11 of the American Committee on the Situation of Detainees at Guantánamo Bay, United States, 02-MC 259; Jeddah v. United Kingdom (08/27021), Grand Chamber of the European Court §110-§97 (2011).

Concluding [510]observations of the Committee against Torture: Yemen,. UN Doc §14 (2010) CAT/C/YEM/CO/2/Rev/1; Special Rapporteur on human rights and counter-terrorism, 211 / §31§ (2009) UN Doc. A/64 and 53 (g).

Detention that begins lawfully can turn into illegal or arbitrary detention. For example, the detention of persons who were lawfully arrested but continued to be detained after the expiry of the period permitted by law, or after a judicial order for their release, is considered arbitrary [511].

The African Commission and other human rights bodies have concluded that the detention of individuals after they have been acquitted or pardoned, or have exceeded their sentence, constitutes arbitrary detention [512].

When the European Court, the Inter-American Court and the Commission examine the legality of an arrest or detention, they examine, inter alia, the applicability to them of the principles of necessity and proportionality [513].

The European Court found that the targeting of a human rights activist while traveling to follow an opposition march, on an exceptional basis, because of the presence of his name on a list of "potential extremists", and his detention for 45 minutes on suspicion of transporting extremist literature despite the fact that he was not carrying any luggage with him, constituted arbitrary detention [514].

The prohibition on arbitrary detention is a principle of customary international law and may not be made subject to treaty-specific reservations, and must be respected at all times, including in time of war and other public emergencies. The Working Group on Arbitrary Detention has confirmed that this prohibition constitutes a peremptory norm of international law [515].

1.4 Which Bodies Are Permitted by Law to Deprive a Persons of Their Liberty?

4.1.1 Within the framework of Egyptian law

1- Identification of judicial officers

Article 23 of the Code of Criminal Procedure, as amended by Law No. 26 of 1971, stipulates that:

Judicial officers in their jurisdictions shall be:

Members of the Public Prosecution and its assistants;

Police officers, secretaries, constables and auxiliaries;

Chiefs of police stations;

mayors, sheikhs of the country and sheikhs of the guards;

Principals and agents of government railway stations.

Opinion [511]No. 27/2008 of the Committee on Arbitrary Detention (Egypt), UN Doc. A/HRC/13/30/Add. 1 at 78 §83- §81 (2009), Fact Sheet No. 26 of the Committee on Arbitrary Detention, section 4(b) (a) and appendix §8 ,4 (a); Asanidze v. Georgia (71503 / 01), Grand Chamber of the European Court §173 (2004).

([512]) African Commission: Constitutional Rights Project and Civil Liberties Organization v. Nigeria (148/96), Annual Report 13 §16- § 12 (1999), Annette Bagnol (on behalf of Abdoulaye Mazou) v. Cameroon (39). 90), Annual Report 10 (1997); Concluding Observations of the Committee against Torture: Yemen:. UN Doc §6 (2004) 4/31/CAT/C/CR/3 (h); Committee on Arbitrary Detention Fact Sheet No. 26, section 4(b) (a) and annex 4, pp. 8 ,21 (a).

([513]) European Court, Saadi v. United Kingdom (13229 / 03), Grand Chamber §70- §67 (2008), Ladent v. Poland (11036 / 03), §55- §54 (2008); Cervilon-García et al. v. Honduras, Inter-American Court (2006) §96- §86 (special §90); Pirano Basso v. Uruguay (report 86/09), U.S. Commission §100- §93 (2009).

([514]) Shimovolos v. Russia (30194 / 09), European Court (2011) . §57-§56.

([515]) General Comment 24 of the Human Rights Committee, §8, General Comment 11 ,29; deliberation No. 9 of the Working Group on Arbitrary Detention, . §75-§37 (2012) UN Doc. A/HRC/22/44.

Provincial security directors and inspectors of the General Inspection Department of the Ministry of Interior may perform the work carried out by judicial officers in their areas of competence

Judicial officers throughout the Republic shall be:

Director and officers of the General Investigation Department at the Ministry of Interior and its branches in the Security Directorates;

Directors of departments and sections, heads of offices, inspectors, officers, police secretaries, constables, assistants and police researchers working in the Public Security Department and in the criminal investigation divisions of the security directorates;

Officers of the Prison Service;

The Director General of the Railway, Transport and Communications Police and the officers of this department;

Commander and officers of the basis of the police camel;

Inspectors of the Ministry of Tourism.

It is permitted by a decision by the Minister of Justice, in agreement with the competent minister, to authorize some employees with the status of judicial officers in relation to crimes that fall within their jurisdiction and are related to the work of their jobs.

The provisions contained in laws, decrees and other decisions regarding the assignment of some employees to the jurisdiction of judicial officers are considered as decisions issued by the Minister of Justice in agreement with the competent minister[516].

From the foregoing, it is clear that judicial officers are persons who have been granted this status by the legislator, according to them rights and imposing on them some duties related to criminal proceedings [517].

Judicial officers proceed to the procedural stage prior to the emergence of the criminal litigation, as it is the one who detects the occurrence of the crime and collect the necessary evidence to know the perpetrator, and submit it to the Public Prosecution, in light of which the criminal case is initiated, whether by investigation, or by submitting it directly to the court [518].

Therefore, the judicial control function is characterized by two elements:

It starts from the occurrence of the crime;

It is limited to making inferences about the crime, and then submitting its report to the Public Prosecution.

Control work means the set of work carried out by the public authority in order to achieve stability and public security, which is in essence the set of executive work of laws and regulations, and from this last meaning of control work, it is possible to distinguish between administrative control and judicial control.

Administrative control is carried out directly under the supervision of the administrative authority in order to prevent the occurrence of crimes, and this is achieved by orders and instructions issued to employees and other acts of preventive intervention to prevent the occurrence of

---

([516]) Article 23 of Law No. 150 of 1950 - on the issuance of the Code of Criminal Procedure.

([517]) See: Principles of Criminal Procedure - Dr. Hassan Sadiq Al-Marsafawi, Professor of Criminal Law, Faculty of Law, Alexandria University - Lawyer at the Court of Cassation - Maarif Establishment in Alexandria - Last edition in 1981, page 249.

([518]) See the authority of intermediary judicial control in the Code of Criminal Procedure - Dr. Ahmed Fathi Sorour - Dar Al-Nahda Al-Arabiya 1985, p. 468.

crime. They take various means to achieve this purpose, so they carry out various investigations using their agents from detectives, informants and guides and arrange patrols to monitor the security situation in the country day and night, and they monitor suspects for fear of comparing crimes. Article 206 of the 2014 Constitution stipulates that: "The police is a regular civil body, in the service of the people, and its loyalty to it, and guarantees citizens reassurance and security, and ensures the maintenance of public order and public morals, and adheres to the duties imposed on it by the Constitution and the law, and respects human rights and fundamental freedoms. The state guarantees the performance of police officers' duties, and the law regulates the guarantees thereof."[519].

The function of judicial seizure begins only when the administrative seizure fails to prevent the occurrence of the crime. Here, the judicial seizure begins to collect the evidence necessary to prove the crime and know the perpetrator to submit it to the authority charged with initiating the criminal case, which is the Public Prosecution. The function of judicial seizure is subject to the supervision of the judicial authority, unlike the function of administrative seizure, which is subject to the supervision of the administrative authority.

All members of the police force, including officers, soldiers and guards, are administrative officers. The legislator has explicitly considered some of them among the judicial officers, and may grant this status to non-police officers. The law does not grant all administrative officers the status of judicial officers because giving them powers that affect the personal rights of individuals, and this should be granted only to people with qualities and characteristics that reassure them of the proper use of these powers. Judicial officers are usually called the judicial police and administrative officers the administrative police.

Distinguishing between these two types of seizures is not easy, because judicial officers usually combine the two functions. For example, a traffic officer who tries to prevent traffic violations by instructing drivers and passers-by is the one who controls traffic violations. The law has entrusted all police officers with the function of administrative control. As for the function of judicial control, it is limited to some police officers and is also carried out by other categories of employees. Just because a person is a police officer is not enough to grant him the status of judicial control, because it is related to the job and not to the military degree, the Court of Cassation ruled that: [Arresting a person means restricting his freedom and subjecting him to arrest and detention, even for a short period, in preparation for taking some measures against him. Searching a person means searching and excavating his body and clothes with the intention of finding the thing to be seized. The law prohibits the arrest or search of any person except with his permission or with the permission of the competent investigating authority. It is not permissible for a policeman, who is not one of the judicial officers, to initiate either of these two procedures, and all that the law authorizes him, as a member of the public authority, to present the perpetrator in flagrante delicto crimes by applying the provisions of articles 37 and 38 of the Criminal Procedure Law and handing him over to the nearest judicial officer, and he is not entitled to conduct an arrest or search. Since the constant in the judgment indicates that the appellant was arrested only because the police officer suspected him of doing so, his arrest and search were invalid.] -[520].

The principle is that the status of judicial control is not acquired by all administrative officers, as the law has granted it exclusively to certain groups, and the judicial control officer is divided into two groups:

shall have the status of judicial police for all types of crimes, and shall be called judicial police officers with general jurisdiction;

([519]) Article 206 of the amended Constitution of the Arab Republic of Egypt of 2014.
([520]) Appeal No. 405 of 36 S issued on 16/5/1966 and published in Part 2 of the Technical Office's letter No. 17 page No. 613.

It shall have the status of judicial seizure for a specific type of crime, and it shall be called judicial seizure officers with special jurisdiction.

The status of judicial seizure with general jurisdiction is granted under the Criminal Procedure Law or its supplementary laws. As for the status of judicial seizure with special jurisdiction, it is granted by a decision by the Minister of Justice in agreement with the competent minister.

A. Judicial Officers with General Jurisdiction

Article 23: Procedures for Judicial Officers with General Jurisdiction. It distinguishes between two types of such officers: (the first) whose jurisdiction is limited to specific departments, and (the second) whose jurisdiction extends to all parts of the Republic.

These two types are as follows:

Type 1:

Members of the Public Prosecution and its assistants;

Police officers, secretaries, constables and auxiliaries;

Chiefs of police stations;

mayors, sheikhs of the country and sheikhs of the guards;

State railway station superintendents and agents;

Governorate security directors and inspectors of the General Inspection Department of the Ministry of Interior may perform the work carried out by judicial officers in their jurisdictions.

If the judicial officers with general jurisdiction are limited to specific departments, the jurisdiction of the judicial officers is limited to the authorities in which they perform their functions in accordance with Article 23 of the Code of Criminal Procedure. If the officer falls outside his jurisdiction, he is considered one of the men of public authority referred to by the street in Article 38 of the Code of Criminal Procedure, and it is not permissible for the judicial officer to exceed his spatial jurisdiction except for necessity [521].

However, if the officer initiates the procedure in his spatial jurisdiction and the officer authorized to search encounters what requires the tracking of the accused authorized to seize and search his person, as if he had tried to escape outside his spatial jurisdiction, this is a sudden emergency circumstance that makes him exceed his spatial competence to control the crime as long as there are no other means to implement the seizure and search warrant, as it is not justified with these circumstances and the state of necessity that the judicial control officer stands handcuffed in front of the accused who is entrusted with his search just because he went outside the limits of his spatial jurisdiction[522].

Type 2:

Director and officers of the General Investigation Department at the Ministry of Interior and its branches in the Security Directorates;

Directors of departments and sections, heads of offices, inspectors, officers, police secretaries, constables, assistants and police researchers working in the Public Security Department and in the criminal investigation divisions of the security directorates;

([521]) Appeal No. 1885 of 59 S issued on July 6, 1989 and published in the first part of the book of the Technical Office No. 40 page No. 672 rule No. 114.

([522]) Appeal No. 37227 for the year 73 S issued at the hearing of 16 December 2004 and published in the letter of the Technical Office No. 55 page No. 824 rule No. 124.

Prison Service Officers:

Article 76 of the Prisons Regulation Law No. 396 of 1956 stipulates that: "The directors and officers of prisons, their agents and the officers of the Prisons Authority shall have the status of judicial police officers, each in his jurisdiction." This requires that they have a duty, in accordance with the provisions of Articles 21, 24 and 29 of the Criminal Procedure Law, to search for crimes and their perpetrators in their jurisdiction, collect the evidence necessary for the investigation, hear the statements of those who have information in criminal facts and ask the defendants in them, and that they also have a duty to prove all the procedures they carry out in minutes signed by them [523].

The Director General of the Railway, Transport and Communications Police and the officers of this department;

Commander and officers of the basis of the police camel;

Inspectors of the Ministry of Tourism.

These categories have the power of judicial control for all types of crimes, even if they are not related to the work of the functions they perform.

The constitutional legislator has blocked the police as a civil statutory body competent to maintain public security and ensure the maintenance of order and morals. This has been confirmed in the meaning of the Police Authority Law and has made one of the most important competencies of this body to preserve lives, symptoms and funds, prevent and control crimes, and ensure tranquility and security throughout the country, which has an impact on the security of the citizen himself. To this end, the Code of Criminal Procedure has singled out in its provisions the means and methods by which men This body works with regard to the evidence-gathering stage. The legislator has singled out this stage with many characteristics, the most important of which is that the means and methods taken by the judicial officers in the field of maintaining the security of the citizen, and reaching the perpetrators of crimes are not mentioned exclusively, but that the Criminal Procedure Law mentioned the most important and most frequent of them in the work, and did not prohibit others, because the essence of the evidence-gathering process, which is the "information-gathering" stage, is reluctant to list, and every work that would collect this information in order to achieve the purpose of the evidence is permissible for the judicial officer as long as it is within the legal framework and the purpose of all this is to access confirmed information about the reported crimes, including It saves the money and lives of citizens, but the Court of Cassation has expanded in this sense in order to reach the judicial officers to the truth by saying that "there is no reproach on the officer of the arrest to fabricate within those limits of the means of ingenuity up to his intention to detect the crime and does not clash with the morals of the group" [524].

B. Judicial Officers with Special Jurisdiction

The competence of these persons is limited to crimes related to the work of their jobs, for example, organization engineers, provincial health inspectors and their assistants, departmental and center health inspectors, food inspectors, food inspectors, the director of the amusement park department and its inspectors, the director of the commercial registry department, the agent and inspectors of this department, the heads of commercial registry offices, and the

---

([523]) Appeal No. 370 of 31 S issued at the session of June 13, 1961 and published in the second part of the book of the Technical Office No. 12 page No. 698 rule No. 134.

([524]) Judgement of the Administrative Court in Case No. 16831 of 60 BC issued at the session of 27 February 2007, page No. 514.

employees appointed by the Minister of Social Affairs to verify the social status of the minor accused, coast guard men, some customs officials, and members of administrative control [525].

The Court of Cassation ruled that the legislator conferred on the members of the administrative control the status of judicial control for all crimes committed by workers or non-workers as long as those acts attributed to the accused aim to prejudice the proper performance of the duties of the public office [It is scheduled that Article 23 of the Code of Criminal Procedure after it appointed employees who are considered judicial control officers and authorized the Minister of Justice, in agreement with the competent minister, to authorize some employees with that capacity with regard to crimes that occur in their areas of competence and are related to the work of their jobs. In its last paragraph, the provisions contained in laws, decrees and other decisions regarding the assignment of some laws to the jurisdiction of judicial officers are considered as decisions issued by the Minister of Justice in agreement with the competent minister. Whereas Article 61 of the Presidential Decree by Law No. 54 of 1964 to reorganize administrative control, as amended by Law No. 71 of 1969, stipulates that "the head of administrative control, his deputy, other members of the control and those assigned to work as a member of the control shall have the authority of judicial control throughout the United Arab Republic, and in order to exercise their powers, they shall exercise all the powers granted to them. The judicial enforcement capacity prescribed for some employees in their areas of competence." The Supreme State Security Prosecution issued the order to record the conversations from the Supreme Judicial Council after it had contacted the investigation report and assessed its sufficiency to justify that procedure. It is an act of investigation, whether it subsequently carried out the order itself or by assigning any of the judicial enforcement officers to carry it out pursuant to the text of Article 200 of the Criminal Procedure Law, which allows each of the members of the Public Prosecution, in the event of conducting the investigation himself, to assign any of the judicial enforcement officers some work that is within his competence for the foregoing. Therefore, in the light of the aforementioned legal texts, the law has conferred on the members of the administrative control the status of judicial enforcement for all crimes committed by workers or non-workers, as long as those acts attributed to the accused aim to prejudice the safety of the performance of the duties of the public office, which has been achieved in the current situation of the appellant, and therefore what we call in this regard is not based on [526] .

C. Assistants of Judicial Officers

The judicial police officer may seek the assistance of whomever he deems necessary in conducting the seizure and search as long as he works under his supervision. However, police officers, such as soldiers, guards, and informants of judicial police officers, do not enjoy the status of judicial seizure. However, Article 24 of the Code of Criminal Procedure grants them a

---

([525]) The Court of Cassation ruled that: [Whereas it is clear from the minutes of the trial session that the appellant's defender pushed for the invalidity of his arrest because the judicial officer exceeded his territorial jurisdiction, and the contested judgment responded to this plea by saying: "It is nothing more than an objective argument that the court pays attention to, reassuring it of the evidence provided by the Public Prosecution in the lawsuit." Whereas, the principle is that the jurisdiction of judicial officers is limited to the parties in which they perform their functions in accordance with Article 23 of the Criminal Procedure Law, and if the sheriff falls outside his jurisdiction, he is considered one of the men of public authority referred to by the street in Article 38 of the Criminal Procedure Law, and that it is not permissible for the judicial officer to exceed his spatial jurisdiction except for necessity, and what was stated in the contested judgment in the foregoing does not face the appellant's defense in this regard, which is a fundamental defense that the court must present to him and respond to him with acceptance or rejection with justifiable reasons, the contested judgment is tainted with deficiencies, which must be overturned and returned without the need to examine the rest of the aspects of the appeal] Appeal No. 59283 of 73 Q issued at the session of February 21, 2010 and published in the Technical Office's book No. 61, page 155, rule No. 23..

([526]) Appeal No. 6202 of 79 s issued at the session of February 21, 2010 and published in the letter of the Technical Office No. 61 page No. 158 rule No. 24, Appeal No. 30639 of 72 s issued at the session of April 23, 2003 and published in the letter of the Technical Office No. 54 page No. 583 rule No. 74.

part of the power of inference, which is to obtain all clarifications and conduct the necessary inspections to facilitate the investigation of the facts that are reported to them, that is, they know of them in any way, and that they must take all necessary precautionary means to preserve the evidence of the crime [527].

In this regard, the Court of Cassation ruled that: [The requirements of work require the judicial officer, if he is absent from his place of work for doing another job, to issue a general order to assist him to take the necessary evidentiary measures in his absence, in order to preserve the freedoms of people that the law wanted to preserve][528] .

The absence of judicial control over them results in the following:

The Public Prosecution may not assign them for investigation;

They may not initiate the evidentiary procedures granted by law with the exception of judicial officers in the event of flagrante delicto, such as arrest and search, unless this is done under their supervision and control, otherwise the procedures are invalid and all they have is to bring the perpetrator of the flagrante delicto and hand him over to the nearest judicial officer [529].

In this regard, the Court of Cassation ruled that: [The judicial officer may seek the assistance of a superior officer in executing the search warrant issued by his subordinates, even if they are not judicial officers][530] .

The Court of Cassation also ruled that: [The judicial officer authorized to search, although he may use the permission of his subordinates, even if they are not judicial officers, but this is conditional on the seizure and inspection procedures being carried out under his control and supervision. If what was proven by the judgment is clear that the search and seizure carried out by the informant was not under the supervision of the officer authorized to search, then the conclusion of the judgment of accepting the nullity of the search that resulted in the officer "cannabis" is correct in the law.] In the same judgment, it ruled that: [The informant's illegal entry into the house of the accused is not corrected by the order issued to him by his superior officer authorized to search the house, under the pretext of seizing the person who is required to search for the purpose of this order to get out of the scope of the legally authorized acts due to his violation of the sanctity of homes, which calls this procedure nullity, which extends to the result of the seizure][531] .

It also ruled that: [The order issued by the officer to some members of the force accompanying him to seize the family members of the accused who are authorized to search his person, his house and those who are with them, is a procedure intended to settle the system in the place where the judicial officer entered until the task for which he came is completed, as this procedure is one of the organizational procedures required by the circumstances of the case to enable him to perform the task entrusted to him][532] .

It also ruled that: [The law includes judicial police officers in Article 23 of the Code of Criminal Procedure exclusively, and it does not include their subordinates such as police officers and informants. They are not considered judicial police officers and their performance of the work of

---

([527]) Appeal No. 6202 of 79 s issued at the session of February 21, 2010 and published in the letter of the Technical Office No. 61 page No. 158 rule No. 24, Appeal No. 30639 of 72 s issued at the session of April 23, 2003 and published in the letter of the Technical Office No. 54 page No. 583 rule No. 74.

([528]) Appeal No. 1881 of 29 S issued on 14/6/1960 and published in Part 2 of the Technical Office's letter No. 11 page No. 579.

([529]) Appeal No. 405 of 36 S issued on 16/5/1966 and published in Part 2 of the Technical Office's letter No. 17 page No. 613, rule No. 110.

([530]) Appeal No. 757 of 37 S issued on 19/6/1967 and published in Part 2 of the Technical Office's letter No. 18 page No. 838.

([531]) Appeal No. 1391 of 29 S issued in the session of 18/1/1960 and published in Part 1 of the Technical Office's letter No. 11 page No. 79.

([532]) Appeal No. 93 of 36 S issued on 21/2/1966 and published in Part 1 of the Technical Office's letter No. 17, page No. 175.

their superiors does not give them an authority that the law did not grant them. All they have, according to Article 24 of the Code of Criminal Procedure, is to obtain all the clarifications and conduct the necessary inspections to facilitate the investigation of the facts that are reported to them and to take the necessary precautionary means to preserve the evidence of the crime, not arrest and search. Therefore, bringing an accused to the police station does not entitle an assigned officer to arrest or search them] [533].

The law does not necessarily require that the judicial officer personally monitor the persons investigated, or have previous knowledge of them, but rather that he may use his investigations or research, or the means of inspection taken by their aides from the public authority, guides, and those who inform them of the crimes that have already occurred, as long as they are convinced of the validity of what they have transferred to them, and the truth of the information they have received, and the procedures are not defective that the personality of the guide remains unknown, and that the judicial officer who chose them do not disclose them to help them in their mission [534].

They are under the supervision of their superiors, and not under the supervision of the Attorney General, as is the case with judicial officers [535].

Officers working in national security have the capacity of judicial officers. Article 23 of the Code of Criminal Procedure, as amended by Law No. 26 of 1971, has granted officers working in the Public Security Department and in the criminal investigation divisions of the security directorates, including officers of the National Security Sector at their various ranks, the power of control in general and comprehensive, which means that it is within their jurisdiction to control all crimes as long as the Code of Criminal Procedure, when it confers on them the status of judicial control, does not want to restrict them in any way or limit the Their mandate is limited to a certain type of crimes for considerations of public interest, and the mandate of criminal investigation officers was a general jurisdiction sourced from the text of Article 23 of the Criminal Procedure Law, which ensured the enumeration of those considered among the judicial officers. This jurisdiction, by origin, applies to all crimes, even those that have been assigned to special offices, because it is decided that conferring the status of judicial control on an employee in relation to certain crimes does not mean in any way depriving that status in regard to these same crimes from the judicial officer with general jurisdiction[536].

Article 23 of the Code of Criminal Procedure also gave police secretaries the power to police in their areas of competence, which means that it is within their jurisdiction to control all crimes, as long as the Code of Criminal Procedure, when it gave them the status of judicial control, did not want to restrict it to them in any way except by spatial jurisdiction, so it did not limit their mandate to a specific type of crime for considerations of public interest. This jurisdiction, according to the original, extends to all types of crimes, even those that have been allocated special offices, because it is decided that conferring the status of judicial seizure on an employee in respect of certain crimes does not mean at all the deprivation of that status in respect of these crimes from judicial officers with general jurisdiction, and this consideration does not affect what was included in the decision of the Minister of the Interior to organize the Public Security Department and determine the jurisdiction of each department. It is purely an organizational decision that does not affect the provisions of the Code of Criminal Procedure and does not entitle the Minister of the Interior to issue decisions granting the status of judicial

---

([533]) Appeal No. 2 of 26 S issued on 24/4/1956 and published in Part 2 of the Technical Office's letter No. 7 page No. 659.

([534]) Appeal No. 41816 of 85 S issued at the 2nd session of May 2017 (unpublished).

([535]) Article 22 of the Criminal Procedure Law.

([536]) Appeal No. 61 of 88 S issued at the 25th session of November 2018 (unpublished), Appeal No. 41132 of 85 S issued at the 24th session of December 2016 (unpublished), Appeal No. 24908 of 84 S issued at the 10th session of October 2015 (unpublished).

seizure or depriving or restricting this status from any of what has been granted They have the law for a certain type or types of crimes [537].

The Court of Cassation ruled that: [It does not affect the integrity of the investigations that the person who conducted them is an officer of the National Security for lack of judicial enforcement status, as the explicit text of Article 23 of the Code of Criminal Procedure "shall be one of the judicial enforcement officers in their jurisdictions 1.... ... 2. Police officers and secretaries...... " The decision of the Minister of Interior No. 445 of 2011 stipulated that "Article (1) of the State Security Investigation Sector shall be abolished..... A new sector is being established under the name of the security sector...... It is competent to maintain national security and cooperate with the agencies of the concerned countries to protect and protect the integrity of the home front, collect information and combat terrorism in accordance with the provisions of the Constitution and the law ...... " It is indicated that the abolition of the State Security Investigation Service by the aforementioned decision of the Minister of Interior did not deprive the employees of the National Security Sector of their status as police officers, but was keen to explicitly stipulate this in accordance with the inability of Article 2 of the aforementioned decision to promote the work of the National Security Sector Officers selected from among the police officers based on the nomination of the sector and then the members of the sector are police officers who enjoy the status of judicial officers in Their jurisdictions according to the text of the second paragraph of Article 23 of the aforementioned Criminal Procedure Law, which provides them with the status of judicial bailiffs who are functionally competent in the departments of the governorate in which they work. In addition to the above, what was included in the aforementioned decision of the Minister of Interior regarding the establishment of the National Security Sector is a purely statutory decision that does not include anything that affects the provisions of the Criminal Procedure Law and does not authorize the Minister of Interior the right to issue decisions to grant judicial enforcement status or to deprive or restrict this status from a specific officer for a specific type or types of crimes. Article 3 of the articles of issue in Law No. 109 of 1971 regarding the system of the police authority has only empowered the Minister of Interior to issue the necessary decisions to implement its provisions, all of which are statutory provisions that have nothing to do with the provisions of judicial control that the Code of Criminal Procedure guarantees its organization, and then the investigations conducted by the National Security Officer and his seizure of the appellants and the rest of the accused and their search are valid, and the judgment is not defective after omitting the statement of the qualitative and spatial competence of the officer, as there is nothing in the law that requires mentioning this statement accompanied by his testimony because the origin is in the correct procedures and the judicial officer carries out his work within the limits of his jurisdiction, which the appellants did not deny or dispute before the trial court, and therefore the appellants in this regard are not valid][538] .

It also ruled that: [The mandate of officers of the Criminal Investigation Division is a general jurisdiction originating from the text of Article 23 of the Code of Criminal Procedure, which ensured the enumeration of those considered among the judicial officers. This jurisdiction, by origin, extends to all types of crimes, even those to which special offices have been allocated, because it is established that conferring the status of judicial control on an employee in respect of certain crimes does not mean in any way stripping that status in respect of these same crimes from the judicial officers with general jurisdiction.][539] .

([537]) Appeal No. 21347 of 73 S issued at the 26th session of May 2010 and published in the Technical Office's letter No. 61, page No. 423, rule No. 54, Appeal No. 1421 of 55 S issued at the 30th session of May 1985 and published in the first part of the Technical Office's letter No. 36, page No. 736, rule No. 129.

([538]) Appeal No. 21976 of 87 S issued at the session of 17 November 2018 (unpublished).

([539]) Appeal No. 52720 of 72 S issued at the session of 17 November 2009 and published in the letter of the Technical Office No. 60 page No. 463 rule No. 62.

The Court of Cassation also ruled that: [Officers working in the Public Security Department and in the Criminal Investigation Divisions of the Security Directorates have the power of control in general and comprehensive, and therefore it is within their jurisdiction to control all crimes as long as the Criminal Procedure Law, when it conferred on them the status of judicial control, did not want to restrict them to any restriction or limit their mandate, limiting them to a specific type of crimes for considerations estimated in the public interest and that jurisdiction according to origin, but applies to all types of crimes, even those that have been allocated special offices][540] .

The conferring of the status of judicial control on an employee with regard to certain crimes does not mean at all the deprivation of that status with regard to these same crimes from the police officers with general jurisdiction [541].

It also ruled that: [It is decided that it does not affect the integrity of the procedures for arresting and searching the appellant, which is a procedure for inferring that the person who carried it out is not a customs officer, because the Lieutenant Colonel ..... The detective officer of the Suez Port Police, who arrested and searched the appellant from the judicial officers who were granted by Article 23 of the Criminal Procedure Law, within the limits of their competencies, the power of control in general and comprehensive, which means that his jurisdiction extends to all types of crimes, including the crime of attempting to smuggle attributed to the appellant. This does not change the granting of special judicial enforcement status in respect of that crime to some customs officers in accordance with the provision of Article 25 of the Customs Law promulgated by Law No. 66 of 1963, as it is decided that conferring judicial control on an employee in respect of certain crimes does not mean at all the deprivation of that status in respect of these same crimes from the judicial officers with general jurisdiction][542] .

The decision of the Minister of Justice to confer judicial control on some employees for crimes that fall within their jurisdiction and are related to the work of their jobs is an administrative decision that is subject to appeal before the Council of State [543].

2- Subordination of judicial officers to the Attorney General

Article 22 of the Code of Criminal Procedure stipulates that: “Judicial officers shall be subordinate to the Attorney General and subject to his supervision in connection with the work of their office.

The Public Prosecutor may request the competent authority to consider the matter of anyone who violates his duties or fails in his work, and he may request the filing of a disciplinary lawsuit against him, and all this does not prevent the filing of a criminal lawsuit[544].

The mere supervision of the prosecution over the work of the judicial officers and the disposal of the evidence-gathering minutes that they conduct in accordance with their functions, without an

---

([540]) Appeal No. 4042 of 87 S issued at the session of January 20, 2018 (unpublished), Appeal No. 2510 of 61 S issued at the session of December 3, 1992 and published in the first part of the book of the Technical Office No. 43 page No. 1110 rule No. 173.

([541]) Appeal No. 1890 of 81 s issued at the session of May 3, 2012 (unpublished), Appeal No. 3934 of 58 s issued at the session of November 10, 1988 and published in the first part of the technical office book No. 39 page No. 1044 rule No. 157, Appeal No. 4437 of 56 s issued at the session of December 10, 1986 and published in the first part of the technical office book No. 37 page No. 1016 rule No. 195, Appeal No. 1740 of 55 s issued at the session of October 21, 1985 and published in the first part of the technical office book No. 36 page No. 909 rule No. 164..

([542]) Appeal No. 2552 of 59 S issued in the first session of October 1, 1989 and published in the first part of the book of the Technical Office No. 40 page No. 709 rule No. 119, Appeal No. 3955 of 57 S issued in the session of June 16, 1988 and published in the first part of the book of the Technical Office No. 39 page No. 816 rule No. 122.

([543]) The judgments issued by the Administrative Court in cases Nos. 46554, 46510, 46509, 46503, 46447, 46435, 46337, 46282, 46272, 46269, 46266 at the session of June 26, 2012 (unpublished).

([544]) Article 22 of the Criminal Procedure Law.

explicit mandate from the prosecution, does not change the status of these minutes as evidence-gathering minutes [545].

3- Duties of judicial officers

The political system in Egypt is based on political and party pluralism, the peaceful transfer of power, the separation and balance of powers, the concomitance of responsibility with power, and respect for human rights and freedoms [546].

The Constitution, pursuant to Article 59, is keen to make safe life a right for every human being, and obliges the state to provide security and tranquillity to its citizens, and to every resident on its territory, so each state has the responsibility to maintain security, order and stability within its territory, in accordance with the approach and method it deems appropriate for it [547].

The responsibility of the State in this regard includes: the duty to respect and protect human rights, thus ensuring that they are not violated for all people without discrimination.

The state assigns to the police the responsibility of maintaining security and order, confronting crimes, and serving and assisting members of society, which are the basic tasks entrusted to the police in most countries of the world, so the police guarantees citizens reassurance and security, and ensures the maintenance of public order and morals, and adheres to the duties imposed on them by the constitution and the law, and respects human rights and fundamental freedoms [548].

Egyptian law defines the police and defines its tasks and duties as follows: "The police is a regular civil body in the Ministry of Interior that performs its functions and exercises its competence under the chairmanship and leadership of the Minister of Interior, who issues decisions regulating all its affairs and work systems... »[549].

The Police Authority is competent to maintain order, public security and morals, to protect lives, symptoms and funds, and in particular to prevent and control crimes. It is also competent to ensure the tranquility and security of citizens in all fields, and to implement the duties imposed on it by laws and regulations [550].

The police is the guardian of the security of the homeland and the citizen in order to ensure safety and tranquility and achieve stability and prosperity. The Ministry of Interior, as the police body, is obligated to implement its constitutionally and legislatively prescribed role and perform it in the service of the people by preserving their lives, protecting their lives, symptoms, money and property from any tampering or aggression, and ensuring the maintenance of order and public morals, all within the framework of this ministry - like all state authorities - being subject to the law and respecting its rules and provisions and the duties and responsibilities imposed on it[551].

The officer shall abide by and implement the provisions of this law and shall also:

([545]) Appeal No. 1999 for the year 25 S issued at the session of March 19, 1956 and published in the first part of the book of the Technical Office No. 7 page No. 369 rule No. 109.

([546]) Article 5 of the amended Constitution of the Arab Republic of Egypt for the year 2014.

([547]) Article 59 of the amended Constitution of the Arab Republic of Egypt for the year 2014, and see: Judgement of the Administrative Court (First Circuit) No. 55989 of 68 S issued at the session of September 11, 2017 (unpublished).

([548]) Article 206 of the amended Constitution of the Arab Republic of Egypt of 2014.

([549]) Article 1 of Law No. 109 of 1971 regarding the Police Authority, as amended by Law No. 199 of 2014.

([550]) Article 3 of the Police Authority Law.

([551]) Administrative Judicial Court (First Circuit), Judgement No. 42103 of 58 Q issued at the session of March 13, 2007 (unpublished), Judgement No. 31340 of 58 Q issued at the session of March 13, 2007 (unpublished), Judgement No. 31339 of 58 Q issued at the session of January 16, 2007 (unpublished).

Respect for the Constitution, the law, and human rights standards in the use of power and force, and adherence to standards of integrity, transparency, and procedural legality;

To protect rights and freedoms, preserve human dignity and respect the democratic values of society in accordance with the Constitution and the law;

Providing the highest levels of security service and adopting creative ideas to serve citizens and their participation to solve societal problems that may lead to crimes;

Preserving the values of society, respecting its customs, traditions, cultures and customs, and equal provision of security service for all without discrimination;

Guaranteeing constitutional and legal rights and human rights standards in dealing with defendants and suspects of crimes;

To perform the work entrusted to him himself accurately and honestly and to allocate the official working time to perform the duties of his job, and he may be assigned to work outside the official working hours in addition to the appointed time if the interest of the work so requires;

Cooperate with his colleagues in the performance of urgent duties necessary to ensure the conduct of work and the implementation of public service;

Execute the orders issued to him accurately and honestly, within the limits of the laws, regulations and systems in force, and each president bears the responsibility for the orders issued by him and is responsible for the proper functioning of the work within the limits of his competence;

To preserve the dignity of his job and to conduct himself in a manner consistent with the respect due to it in accordance with the instructions and the prevailing custom of the police force;

To reside in the entity where his job is located, and it is not permissible for him to reside away from it except for necessary reasons approved by the head of the department.

To show restraint in dealing with citizens and act in a balanced manner commensurate with the nature of different security situations [552].

Article 21 of the Criminal Procedure Law stipulates that: "The judicial officer shall search for crimes and their perpetrators, and collect the evidence necessary for investigation and lawsuit."

The Constitution has confined to the police as a civil statutory body the competence to maintain public security and ensure the maintenance of order and morals. This meaning has been confirmed by the Police Authority Law, which made one of the most important competencies of this body to preserve lives, symptoms and funds, prevent and control crimes, and ensure tranquillity and security throughout the country, which has an impact on the security of the citizen himself. To this end, the Code of Criminal Procedure has singled out in its provisions the means and methods by which the men of this body practice Their work regarding the evidence-gathering stage. The legislator has singled out this stage with many characteristics, the most important of which is that the means and methods taken by the judicial officers in the field of maintaining the security of the citizen, and reaching the perpetrators of crimes are not mentioned exclusively, but that the Code of Criminal Procedure mentioned the most important and most frequent in the work, and did not prohibit others, because the essence of the evidence-gathering process, which is the "information-gathering" stage, is reluctant to list, and every work that would collect this information in order to achieve the purpose of evidence is permissible for the judicial officer as long as it is within the legal framework and the purpose of all this is to reach confirmed information about the reported crimes in a manner that preserves

---

([552]) Article 41 of the Police Authority Law amended by Law No. 64 of 2016.

Citizens' money and lives, but the Court of Cassation has expanded in this sense in order to reach the judicial officers to the truth by saying that "there is no reproach on the officer of the police to fabricate in those limits of the means of ingenuity up to his intention to detect the crime and does not clash with the morals of the group" [553].

Judicial officers and their subordinates must obtain all clarifications and conduct all necessary investigations to facilitate the investigation of the criminal facts reported to them or announced by any means whatsoever, and they may take all precautionary means to be able to prove those facts, and every action taken in this way is considered correct and productive of its effect as long as it does not interfere with the creation of the crime or incitement to its corruption and as long as the will of the appellant remains free [554].

There is no reproach on the police officer to fabricate within these limits of the ingenious means that are smooth for his intention in detecting the crime and do not clash with the morals of the group and the traditions of society, as long as there is no incitement from them to commit this crime, including concealment, impersonation of qualities and fabrication of guides, even if their matter is kept an anonymous secret[555].

([553]) Judgement of the Administrative Court in Case No. 16831 of 60 BC issued at the session of 27 February 2007, page No. 514.

([554]) Appeal No. 21459 of 67 s issued at the session of November 9, 1999 and published in the first part of the Technical Office book No. 50 page No. 559 rule No. 126, Appeal No. 1902 of 62 s issued at the session of January 2, 1994 and published in the first part of the Technical Office book No. 45 page No. 37 rule No. 1, Appeal No. 696 of 58 s issued at the session of December 1, 1988 and published in the second part of the Technical Office book No. 39 page No. 1159 rule No. 181, Appeal No. 3536 of 52 s issued at the session of December 8, 1982 and published in the first part of the Technical Office book No. 33 page No. 962 rule No. 199.

In this regard, the Court of Cassation ruled that : [If it is established from the judgment that the appellant nodded to the officer from the beginning what he should have approached him directly without the interference of the other accused who delivered him and guided him to him - to overcome the obstacles to the passage of the car, which the court rightly interpreted as a gesture by the appellant that he was willing to overlook the customs violation in exchange for the money he was given, and then bargaining over the amount of the bribe and actually arresting him and seizing some of it in his pocket, and that all this happened at a time when the appellant's will was free, and his slide to compare the crime was born of a full will, so it is true that the judgment concluded that incitement to commit the crime was not committed by the two judicial officers] Appeal No. 984 of 29 Q issued at the session of 1 December 1959 and published in the third part of the Technical Office's book No. 10, page 970, rule No. 199.

It also ruled that [when it is established from the records of the contested judgment that the officer has moved with the policeman ...... To the place appointed by the first appellee to receive the drug from the second appellee, in implementation of the agreement concluded between them, and the latter actually provided the drug to the policeman mentioned, and the officer then arrested him, and then the officer and the policeman moved the jailer to the prison and the drug was handed over to the first appellee, and it was the task of the seizure officer under Article 21 of the Criminal Procedure Law to uncover the crimes and reach a punishment for their perpetrators, as every action he takes in this way is considered correct and productive of its effect, as long as he did not interfere with his act in creating the crime or inciting its dissolution, and as long as the will of the perpetrator remained free and not nonexistent, and the judgment when he ruled to accept the payment and nullify the search had omitted exposure to this evidence independent of the procedures that he ruled invalidated, it, it is flawed, which necessitates its reversal] Appeal No. 1830 of the year 39 issued in the session of March 2, 1970 and published in the first part of the Technical Office's book No. 21 page 334 rule No. 83..

([555]) See Appeal No. 7290 of 79 S issued at the 7th session of July 2011 (unpublished), Appeal No. 11971 of 59 S issued at the 19th session of April 1990 and published in Part 1 of Technical Office Letter No. 41 Page 640 Rule No. 110, Appeal No. 3385 of 56 S issued at the 15th session of October 1986 and published in Part 1 of Technical Office Letter No. 37 Page 769 Rule No. 147, Appeal No. 365 of 56 S issued at the hearing of April 16, 1986 and published in the first part of the Technical Office letter No. 37 page 483 rule No. 98, Appeal No. 4188 of 54 S issued at the hearing of February 26, 1985 and published in the first part of the Technical Office letter No. 36 page 306 rule No. 52, Appeal No. 111 of 39 S issued at the hearing of March 17, 1969 and published in the first part of the Technical Office letter No. 20 page 335 rule No. 73, Appeal No. 310 of 38 S issued at the hearing of April 15, 1968 and published in the part Second of Technical Office Book No. 19 Page No. 438 Rule No. 83

The Court of Cassation also ruled that [since it was established from the papers that the incident officer went to the whereabouts of the accused after his confidential source informed him that the accused wanted to sell a quantity of cannabis plant Once he knew the accused, he voluntarily brought the latter to him and chose two rolls of sticky paper open from the middle and containing the cannabis plant. Therefore, the appearance of the drug in the possession of the accused in this way is considered a flagrante delicto for the crime of acquiring the drug in circumstances other than those authorized by law,

The investigation by the Public Prosecution does not require the failure of the judicial officers to carry out their duties at the time the prosecution begins its work, and it is limited at that time that the minutes due to those officers to be edited by what their research reached are sent to the prosecution to be an element of the lawsuit that the prosecution achieves what it deems necessary to achieve from it, and the court may base the judgment on what is stated in these minutes as long as it has been presented with the rest of the lawsuit papers to the examination and investigation before it in the session [556].

4- The main principles governing the work of judicial officers

Respect for international human rights law requires observance of a number of key principles governing the state and its agencies, foremost of which are the police and security services, in carrying out their tasks in maintaining security and order and combating crime, and these principles are:

A. Principle of legality

The principle of legality means that all actions of the State and its organs shall be based on the law, and that all powers and authorities shall be exercised in accordance with the procedures

---

justifying the arrest, seizure and search procedures taken by the incident officer with the accused, which provides the case of flagrante delicto by watching the crime as it is committed in the text of Article 30 of the Code of Criminal Procedure. Therefore, there is no need or necessity to obtain a permit from the Public Prosecution to arrest and search the accused as long as he was caught and the crime is legally flagrante delicto, with which the payment is not supported by reality or the law worthy of rejection. "The response of the judgment to the appellant's defense in this regard was sufficient and the conclusion of his dismissal is correct. The appellant in this regard is misplaced.] Appeal No. 1739 For the year 81 S issued in the session of April 10, 2013 (unpublished).

The Court of Cassation also ruled that: [Since the role of the judicial officer in the contested judgment is what makes his action a legitimate action, it is valid to take the accused as a result when the court is assured of its occurrence, because the arresting officer's pretence of his desire to buy foreign currency from the respondent does not create or incite to the crime, and therefore the contested judgment, as the evidence derived from what the respondent voluntarily disclosed from his dealings in foreign exchange contrary to the terms and conditions prescribed by law, is unsupported by reality or the basis of the law, which is defective] Appeal No. 3679 of 56 S issued at the session of November 2, 1986 and published in the first part of the Technical Office's book No. 37 page No. 812 rule No. 157.

The Court of Cassation ruled that: [If the judgment had clarified, within the limits of its discretion, in response to the plea that the bringing of the drug was instigated by the police officers, that the role played by the police officer did not exceed the transfer of information regarding the date of sailing of the boat with the shipment of the drug and its arrival with the signs of delivery and receipt in order to reveal the crime that occurred at the will and choice of the appellants, then preventing them from ruling regarding his rejection of this plea would be misplaced.] Appeal No. 211 of 46 s issued at the session of 23 May 1976 and published in the first part of the Technical Office's letter No. 27 page No. 527 rule No. 117.

It also ruled that: [It is the task of the police to uncover the crimes and reach the punishment of the perpetrators. Every action taken by his men in this way is considered correct as long as they did not interfere in the creation of the crime by fraud, deception or incitement to its falsification. It is not correct to blame the police for the actions taken after reporting it to the father of the kidnapped child, handing him over to the amount under police supervision and observation, and developing a seizure plan. [Appeal No. 561 of 29 S issued on April 27, 1959 and published in the second part of the Technical Office's letter No. 10, page No. 487, rule No. 106

It ruled that: [Whereas, the image of the incident as stated in the judgment in its blogs was that the seizure of the drug that was in the possession of the appellant was carried out following his voluntary abandonment of the bag containing the scrolls and the capture of the first witness, and it became clear to him and the other witness that the heroin inside it followed the accused and his arrest and what was proven by the judgment in this way provides the case of flagrante delicto for the crime of obtaining a drug by the presence of external manifestations that predict the occurrence of the crime, which legally justifies the arrest of the appellant, and the contested judgment violated the previous consideration and invalidated the evidence derived from the seizure of the drug in the event of his possession and ruled the acquittal on the basis of saying that the absence of the state of flagrant delicto based on the fact that it was not proven from the testimony of the two witnesses that either of them had been found to be the seized drug while inside the bag that was thrown by the appellant contrary to what he had mentioned above, he had violated the fixed in the papers and involved corruption in the inference of the reasoning] Appeal No. 58 of the year 66 issued in session of November 17, 2005 and published in Technical Book No. 564 Rule No. 91.

([556]) Appeal No. 1629 of 28 S issued in the session of January 5, 1959 and published in the first part of the book of the Technical Office No. 10 page No. 5 rule No. 2.

established by the law and only by persons authorized by the law, and at the times and times specified by the law.

The legal state is the one that adheres in all aspects of its activity - whatever the nature of its powers - to legal rules that transcend it, and is itself a control of its actions and actions in their various forms, as the exercise of power is no longer a personal prerogative of anyone, but it is exercised on behalf of the group and for its benefit. Therefore, the principle of the state's submission to the law, coupled with the principle of the legitimacy of authority, has become the basis on which the legal state is based.[557].

B. The Principle of Necessity

The principle of necessity means that no human right shall be infringed except when compelled to do so, and to the extent necessary to maintain law and order in each individual case, noting that there are absolute human rights that may not be infringed under any circumstances and for any justification, such as the right to be presumed innocent, and the right not to be subjected to torture or enforced disappearance.

The rights and freedoms inherent in the person of the citizen are neither suspended nor derogated from, and no law regulating the exercise of rights and freedoms may restrict them in a way that affects their origin and essence [558].

C. Principle of Proportionality

The principle of proportionality means that there is proportionality between the actions taken against a particular person that by their nature affect his human rights, and the importance of the social or security interest that the police or other security agencies aim to achieve. In all cases, the action taken should be reasonably proportional to the legal purpose behind it, otherwise it is considered a form of abuse of power and violation of human rights.

D. The principle of accountability

The principle of accountability means that the police, and other employees of the security services and law enforcement officials, should be held accountable and punished for any violations of human rights protected under international and national law. It must be noted here that, in practice, the police exercise their functions in a sometimes very complex reality, which requires the police to make accurate balances between: the dictates of responsibility and the duty to maintain security and order and prevent crimes and violations, and the respect and protection of human rights required by national and international law. This means that the police, whether at the level of leaders or individuals, must have a wide and reasonable discretion to confront different situations depending on the circumstances on the ground in each case.

In light of the fact that policemen and security personnel are often exposed to difficult and dangerous situations due to their daily dealings with criminals and outlaws, policemen must have high moral qualities and standards to ensure that they act in accordance with the law at all times and in various circumstances, because the violation of the law by those responsible for guarding and enforcing it leads, in the end, to the loss of the credibility of the state and its organs and the confidence of citizens in them, and to devastating harm to society as a whole.

Therefore, police officers in command positions should formulate institutional ethics based on respect for the law and human rights, disseminate them to or through police officers and adhere

---

([557]) Supreme Constitutional Court, Case No. 15 of 18 S issued in the session of January 2, 1999, the date of publication, January 14, 1999, published in the first part of the book of the Technical Office No. 9, page No. 133, rule No. 18.
([558]) Article 92 of the amended Constitution of the Arab Republic of Egypt for the year 2014.

to them in various circumstances. In addition to the legal and ethical framework governing the work of the police, the orders and procedures should be very clear so that the individuals affiliated with this body do not leave any loophole that allows them to evade responsibility resulting from violating the law or violating human rights.

4.1.2 Within the framework of international covenants

No individual may be arrested, detained or imprisoned except by officials competent to perform those tasks [559].

This principle explicitly prohibits the common custom in some countries where some branches of the security forces carry out arrests and detentions of individuals; although they are not entitled to judicial enforcement authority [560].

This requirement also means that the law should clarify the nature of any powers delegated by the state to unofficial individuals or private security companies to deprive persons of their liberty [561].

Where the state that entrusts law enforcement functions to a private security company is jointly responsible for the actions of employees working in this company [562].

This applies to the actions of the private security company when it exceeds the scope of the authority entrusted to it or violates the instructions of the state [563].

Authorities that arrest, keep in custody or investigate individuals may not exceed the powers granted to them by law, and in the exercise of their powers they must be subject to control by the judiciary or other authority [564].

The Special Rapporteur on human rights and counter-terrorism has warned that the legal powers that allow intelligence services to arrest or detain persons should be limited to cases in which it is reasonably suspected that the individual to be arrested has committed or is about to commit a crime. Laws should not allow intelligence services to detain individuals for the purpose of gathering information only. Any person arrested by the security services has the right to request a legal review of the legality of his detention [565].

The identity of those who carry out arrests or deprive people of their freedom must be clearly visible, such as wearing badges bearing their names or numbers clearly [566].

([559]) Article 17 (2) (b) of the Convention on Enforced Disappearances, Principle 2 of the Body of Principles, Article 12 of the Declaration on Enforced Disappearances, and Section M (1) (c-d) and(g) of the Principles of Fair Trial in Africa.

([560]) Special Rapporteur on human rights and counter-terrorism,. UN Doc 2010) A/HRC/14/46) p. 24, practice 27; see Concluding Observations of the Committee against Torture: Yemen, 2010) UN Doc. CAT/C/YEM/CO/2/Rev. 1) §13, Uganda, §6§ ,(2005) CAT/C/CR/34/UGA (d) and 10 (h)..

[561]See UN Group of Experts on Civilian Private Security Services, §8§ (2011) UN Doc. UNODC/CCPCJ/EG. 5/2011/CPR. 1 (c), 16 and 18..

([562]) See Rule 88 of the European Prison Rules.

([563]) Cabal and Pasini Bertran v. Australia, Human Rights Commission,. UN Doc 2/§ 7 (2003) 2001/CCPR/C/D/1020; Articles 5 and 7 of the Decisions on Responsibility of States for Internationally Wrongful Acts, International Law Commission (2001) (recommended to Governments by UN General Assembly Resolution 19/65); Committee against Torture, Comment §15 ,2.

([564]) Principle 9 of the Set of Principles..

([565]) Special Rapporteur on human rights and counter-terrorism,. UN Doc 2010) A/HRC/14/46) p. 24, Practice 28.

([566]) Principle 4 of the Council of Europe Guidelines on the Eradication of Impunity.

Christofi v. Bulgaria (42697 / 05), European Court (2011) . §93-§92.

Chapter Two: The Right of the Detained Person to Access Information

Whoever is arrested or detained shall be informed immediately of the reasons for their arrest or detention, and their rights shall be read to them, including their right to have access to a lawyer to defend them, and they shall be promptly informed of any charges against them. This information is essential for them to be able to challenge the legality of the arrest or detention order against them and, if charged, to begin preparing their defense.

2.1 The Right to Know Immediately After Arrest or Detention the Reasons for Arrest or Detention

Any person arrested or detained must be informed, in a language he understands, of the reasons for his deprivation of liberty or of the charges against him, and this must be done immediately, or promptly depending on the circumstances of each case. This right must be respected at all times, including war or armed conflict, the declaration of a state of emergency, or any other exceptional circumstance. He must immediately inform anyone whose freedom is restricted of the reasons for this, be informed of his rights in writing, be able to contact his family and lawyers immediately, and be submitted to the investigating authority within twenty-four hours from the time of restriction of his freedom[567].

This right should apply at all times.

One of the main purposes of the requirement that a person must be informed of the reasons for his arrest or detention is to allow him to challenge the legality of this, if he believes that there is no basis for his arrest or detention.

Hence, the reasons given must be specific and must include a clear explanation of the legal basis for his arrest or detention and the facts on which he was based [568].

For example, the Human Rights Committee concluded that “it is not sufficient just to inform the detainee of his arrest under security measures without any reference to the crux of the complaint against him”[569].

The Special Rapporteur on human rights and counter-terrorism noted that military orders governing the arrest and detention of Palestinians in the West Bank require Israeli authorities to inform individuals of the reason for their detention at the time of their arrest. The Special Rapporteur further noted that Israel has declared its intention to derogate article 9 of the International Covenant on Civil and Political Rights.

([567]) Article 54 of the Amended Constitution of the Arab Republic of Egypt of 2014, the second paragraph of Article 9 of the International Covenant on Civil and Political Rights, Article 7 (4) of the American Convention, Article 14 (3) of the Arab Charter, Article 5 (2) of the European Convention, Principle 10 of the Body of Principles, Section M (2) (a) of the Principles of Fair Trial in Africa, and Principle 5 of the Principles Relating to the Deprivation of Liberty of Persons in the Americas; see Articles 55 (2) and 60 (1) of the Rome Statute, Rule 117 (1) of the Rules of Procedure and Evidence of the International Criminal Court, Rule 53 bis of the Rwanda Rules, and Rule 59 bis (b) of the Yugoslav Rules.

([568]) European Court: Chamayev et al. v. Georgia (36378 / 02), §413 (2005), Cortesis v. Greece (60593/ 10), §62-§58 (2012), Nichiboruk and Yunkalu v. Ukraine (42310 / 04), (- § 209§ (2011 211); Kelly v. Jamaica (1987/253), Human Rights Committee,. UN Doc . 8/§5 (1991) CCPR/C/41/D/253/1987.

Adolfo [569]Drescher Caldas v. Uruguay (1979/43), Commission on Human Rights, 40 / UN Doc. A/38 Supplement 40 at 192 (2/§13 (1983); see Concluding Observations of the Human Rights Committee: Sudan, / UN Doc. CCPR/C/79 §13 (1997) Add. 85; Nichiboruk and Yuncalu v. Ukraine (04/42310), . §211-§209 (2011).

In his response, the Special Rapporteur stressed that derogations from the provisions of the Covenant must be necessary and proportionate, at the same time, and that "there is no good reason why no one should be informed of the reasons for his detention at the time of his arrest"[570].

The Inter-American Court clarified that the right of a person to be notified requires that both the accused and his counsel be informed [571].

The reasons for the arrest must be explained in a language that he understands. This means that interpreters should be provided to those who do not speak the language used by the authorities. As explained by the European Court, this also means that the arrested person should be "informed in simple language free from technical complications and able to understand the legal reasons for his arrest and the facts that justify it." However, the European Court considered that this does not require that the employee who executes the arrest read out all the charges attributed to the arrested person in detail at the moment of arrest[572].

If it is suspected that an individual has committed more than one criminal act, the authorities must then provide him with at least the minimum information on each crime being investigated that can form the basis for his detention [573].

Reviewing a case in which information was withheld from the detainee and his lawyer, allegedly to prevent the suspect from tampering with evidence, the European Court clarified that the necessary information to assess the lawfulness of the detention should be provided in the appropriate manner to the suspect and his lawyer [574].

If the reasons for the arrest or detention are communicated orally, this should be followed by the submission of this information in writing [575].

2.1.1 When should the individual be informed of the reasons for their arrest?

First: Within the framework of Egyptian law

When a person is arrested, he must be immediately informed of his legal rights, before being investigated or charged, so that he can exercise these rights and benefit from them in his ordeal. One of the most important legal rights that must be notified to the accused when he is arrested or detained:

The right to be informed immediately of the reasons for restricting his freedom and to be informed of his rights in writing;[576].

The right to notify a third person and contact his family and friends and not to isolate him from the outside world, it must enable contact with his family;[577].

([570]) Special Rapporteur on Human Rights and Counter-Terrorism, Israel and the Occupied Palestinian Territories, 2007) ,UN Doc. A/HRC/6/17/Add. 4) . §22.

([571]) Tibi v. Ecuador: Inter-American Court §109 (2004)..

([572]) European Court: Fox, Campbell and Hartley v. United Kingdom (86/12244, 12245/ 86 and 12383/ 86), §41- § 40 (1990), Dekme v. Turkey §57- § 53 (2000) ,(92/20869), e. B. Switzerland (26899 / 95), (2001) §50- § 47, Chamayev et al. v. Georgia (36378 / 02), §428- §413 (2005)..

([573]) Lusenko v. Ukraine (6492/11), European Court §77 (2012).

([574]) García Alva v. Germany (23541 / 94), European Court §42 (2001).

([575]) See: Concluding observations of the Human Rights Committee: Sudan,. UN Doc §13 (1997) CCPR/C/79/Add. 85; Boyle v. United Kingdom (55434 / 79), EC §38 (2008).

([576]) The second paragraph of Article 54 of the amended Constitution of the Arab Republic of Egypt of 2014, and item (a) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights.

([577]) The second paragraph of Article 54 of the amended Constitution of the Arab Republic of Egypt of 2014.

The right to be assisted by a lawyer of his own choosing or appointed to assist him, to be given adequate time and facilities to prepare his defense and to communicate with a defender assigned to him to defend him;[578].

The right to challenge the legality of the arrest or detention. Anyone whose freedom is restricted, and others, have the right to file a grievance before the judiciary against that procedure, and to decide on it within a week of that procedure, otherwise he must be released immediately;[579] .

The right to remain silent and not to confess or present evidence against himself. Every accused has the right to silence and every statement that proves that it was made by a detainee under the weight of something of the foregoing, or the threat of something of it, is wasted and unreliable;[580].

The right to seek medical assistance and to receive visits from his family and friends;

The right to complain about ill-treatment or poor conditions. Members of the Public Prosecution and the presidents and agents of the courts of first instance and appeal may visit the public and central prisons in their jurisdictions and ensure that there is no illegal detainee. They may view the prison books and arrest and detention orders, take copies of them, contact any detainee and hear from him any complaint he wants to make to them. The director and staff of prisons shall provide them with all assistance to obtain the information they request;[581].

Every prisoner also has the right to submit at any time to the prison warden a written or verbal complaint and ask him to report it to the Public Prosecution - and the warden must accept it and report it immediately after proving it in a record prepared for this in the prison.

Anyone who learns of the existence of an illegally detained person or in a place not designated for imprisonment may notify a member of the Public Prosecution - and as soon as he learns of this, he must immediately move to the place where the detainee is held and conduct the investigation and order the release of the illegally detained person - and he must draw up a report to that effect;[582].

The right of a person if he is a foreigner to contact the embassy of his country or a certain international organization.

Second: Within the framework of international conventions

The individual must be notified of the reasons for his arrest immediately [583].

Article 5 (2) of the European Convention and Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas require prompt notification of the reasons for arrest

The timeliness of the notice is generally assessed in light of the circumstances of the case. It is possible to tolerate some unavoidable delay, for example to find an interpreter, provided that the arrested person is sufficiently informed of the reasons for his arrest, and that no investigation is conducted with him before giving the reasons

---

([578]) The second paragraph of Article 54 of the amended Constitution of the Arab Republic of Egypt of 2014, and item (b) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights.

([579]) The third paragraph of Article 54 of the amended Constitution of the Arab Republic of Egypt of 2014, and item (c) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights.

([580]) The third paragraph of Article 55 of the amended Constitution of the Arab Republic of Egypt of 2014, and item (g) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights.

([581]) Article 42 of the Criminal Procedure Law.

([582]) Article 43 of the Criminal Procedure Law.

([583]) Article 9 (2) of the International Covenant, Article 14 (3) of the Arab Charter, Principle 10 of the Body of Principles, Section M (2) (a) of the Fair Trial Principles in Africa, and Principle 25 of the Robben Island Guidelines..

The Human Rights Committee did not find that there was an undue delay when two defendants who did not know the language used by the police were informed of the reasons for their arrest seven and eight hours after their arrest, as they were notified when the interpreter arrived, while the police suspended all official procedures against them until then[584].

In a case in Northern Ireland, in which persons were immediately informed of their arrest on suspicion of terrorism, under a special law, and were interrogated after about four hours about specific crimes, the European Court said that a period of a few hours "cannot be considered a departure from the time limits imposed by the idea of prompt notification, according to Article 5 (2)"[585].

However, the Human Rights Committee found a violation of article 9 (2) of the International Covenant on Civil and Political Rights in a case in which a lawyer was detained for 50 hours without being informed of the reasons for his arrest [586].

In another case in which the accused was not informed of the reasons for his arrest at the time, and was not informed of the charges until about two months after his arrest, the African Commission concluded that the rights of the accused to a fair trial had been violated [587].

The Human Rights Committee considered that: [Article 9, paragraph 2, of the Covenant entitles everyone who is arrested to know the reasons for his arrest and to be informed promptly of the charges against him. However, the petitioner states that he went to the police station of his own free will on 1 May 1983 and informed the officer in charge of his involvement in the murder of............. The author was detained and then transferred to another police station where he was arrested and formally charged three days later. In these circumstances, it must have become absolutely clear to the author that the reason for his detention and subsequent arrest was his murder .... The Committee cannot conclude that the author's right to be informed of the reasons for his detention has been violated. In addition, the author was formally charged with murder. .... Three days after his arrest, no doubt following a preliminary investigation. Notifying a person of the charges against him immediately, compared to the reason for his arrest, can only become a duty after those charges have been determined. In this case, the lapse of three days from the author's arrest until he was formally charged does not appear to constitute a violation of his right to be informed promptly of the charges against him [[588] .

The Human Rights Committee has expressed concern about the length of detention (72 hours) before detainees are informed of the charges against them. This period of detention before the detainees are informed of the charges against them is too long and is incompatible with article 9, paragraph 2, of the Covenant ... The State party should take urgent measures to bring the Code of Criminal Procedure into line with the Covenant, so that defendants are promptly informed of any charges against them and brought promptly before a judge [589].

([584]) Commission on Human Rights: Hill v. Spain, / UN Doc. CCPR 2/§ 12 (1997) C/59/D/526/1993; see Griffin v. Spain,. UN Doc . 2/§9 (1995) CCPR/C/53/D/493/1992.

([585]) Fox, Campbell and Hartley v. United Kingdom (12244 / 86, 12245/ 86, 12383/ 86), EC §42-§40 (1990).

([586]) Portorreal v. Dominican Republic, Human Rights Commission,. UN Doc 2/§ 9§ (1987) CCOR/C/31/D/188/1984 and 11..

([587]) Media Rights Agenda Against Nigeria (224/98), African Commission, Annual Report 14 §44-§42 (2000)..

Communication [588]No. 647/1995, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.

Concluding [589]observations of the Human Rights Committee on the initial report of Uzbekistan.

2.2 The Right to be Informed of One's Rights Immediately after Arrest or Detention

In order to exercise one's rights, one must know that they exist, and every person arrested or detained has the right to be informed of his rights and to have these rights interpreted to him in order to benefit from them [590].

These standards require, in various ways, that a person be informed of their rights, including:

the right to notify a third person;

the right to a lawyer;

the right to medical assistance;

the right to challenge the lawfulness of detention;

the right not to incriminate oneself, including the right to remain silent;

Right to Complaint and Remedy for Abuse or Poor Conditions

Furthermore, international standards require that foreign nationals be informed of their rights to contact their country's consular staff or a relevant international organization.

The Inter-American Court has made it clear that a detained person should be notified of his rights, including the right to a lawyer, before making his initial statement to the authorities [591].

The Human Rights Committee and the Subcommittee on Prevention of Torture have declared that the right to be informed of rights under the law should be guaranteed [592].

Some States have provided persons who have been arrested or detained with written material on their rights.

However, such written information should not be considered as a substitute for oral notification of rights. Written materials should be available in all places where persons are deprived of their liberty, in all languages spoken by detained persons. Interpreters should be provided to persons who do not understand or read the language used by the authorities. Information should be provided in a manner that meets the needs of persons who do not read, individuals with disabilities and children[593].

Furthermore, laws guaranteeing the right to notification, as well as information provided to detainees orally and in writing, should include the full spectrum of rights guaranteed in international standards[594].

The Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture have recommended that the detained person be given a written copy of their rights and

---

Principles [590]13 and 14 of the Body of Principles, Guidelines 2§ 42 (c) and 3§43 (h) of the Principles on Legal Aid, Guideline 20 (d) of the Robben Island Guidelines, and Section M (2) (b) of the Fair Trial Principles in Africa; see Articles 55 (2) and 60 (1) of the Rome Statute.

CAT Comment No. 2, §13; SPT Standards, 21 (1992) CPT/Inf (92) 3 ,§16 (1996) CPT/Inf (96) § 37- § 36; see also Prosecution v. Ruto, Kuge and Sang, (- 09 / ICC-01 01/11-16), Decision of the Second Pre-Trial Chamber, Guaranteeing the Rights of the Defence for the Purposes of the First Appearance of the Accused, (30 March §5 ,(2011).

([591]) Tibi v. Ecuador: Inter-American Court §112 (2004)..

Concluding [592]observations of the Human Rights Committee: Algeria, / UN Doc. CCPR/C §18 (2007) DZA/CO/3; SPT: Maldives, §97 (2009) UN Doc. CAT/OP/MDV/1..

([593]) Principle 42§ 2 (d) of the Principles of Legal Aid..

[594]See Subcommittee on Prevention of Torture: Sweden, / UN Doc. CAT/OP §49- § 44)2008(SWE/1; SPT Concluding Observations: Germany, (1998) UN Doc. A/53/44 (Supp) pp. 195 ,21; Austria, §4 (2005) UN Doc. CAT/C/aut/CO/3 (b)..

that the individual should then be asked to sign a document stating that they have been informed of their rights [595].

Every prisoner has the right to inform his family immediately of his arrest or transfer to another prison[596].

First: Within the framework of Egyptian law

Personal liberty is a natural right, inviolable and inviolable. Except in the case of flagrante delicto, no one may be arrested, searched, imprisoned or have his liberty restricted in any way except by a reasoned judicial order necessitated by the investigation.

Anyone whose freedom is restricted must be informed immediately of the reasons for this, and their rights must be informed in writing [597].

Whoever is arrested or remanded in custody shall be informed immediately of the reasons for his arrest or detention, and he shall have the right to contact whomever he deems appropriate to inform him of what has happened and to seek the assistance of a lawyer. He must be promptly notified of the charges against him [598].

If the investigation requires the arrest or pretrial detention of a government employee, its employees, or public sector workers, the prosecution must notify its affiliate immediately after the issuance of the arrest or detention order [599].

It is decided that the presumption of innocence of the accused and the preservation of personal freedom from every aggression against them are guaranteed by the amended Constitution of the Arab Republic of Egypt issued in 2014 in Articles 54 and 96 thereof. There is no way to refute the origin of innocence without the evidence established by the Public Prosecution and its persuasive power reaches the amount of certainty and certainty proven by the crime that it attributed to the accused in each of its pillars and for every incident necessary for its existence. Otherwise, the origin of innocence is not destroyed as it is one of the pillars on which the concept of a fair trial and this judiciary is based in line with what is stipulated in the first paragraph of Article 96 of the Constitution that "the accused is innocent until proven guilty in a legal trial in which he is guaranteed the guarantees of defending himself. According to this constitutional provision, the origin of the accused is innocence and that proving the charge before him is the responsibility of the Public Prosecution, which alone has the burden of providing evidence and does not oblige the accused to provide any evidence of his innocence, nor does the street have the power to impose legal evidence to prove the charge or to transfer the burden of proof to the accused [600].

It is prohibited to place any person in the reform center without a written order signed by the competent authorities. Article 5 of the Egyptian Law on the Organization of Community Reform and Rehabilitation Centers affirmed the need for a written order signed by the competent authorities to place the person in the reform centers designated for that purpose. It is also prohibited to place any person in the labor institution of recidivists except by a written order signed by the legally competent authorities and remains in it until the Minister of Justice orders his release based on the proposal of the institution's management and the approval of the

---

([595]) Subcommittee on Prevention of Torture: Maldives, / UN Doc. Cat §98- §95 (2009) OP/MDV/1; CPT Standards, General Report 6, §16 ,CPT/Inf)96(21).

([596]) Paragraph No. 3 of rule No. 44 of the Standard Minimum Rules for the Treatment of Prisoners.

([597]) Article 54 of the Constitution of the Arab Republic of Egypt.

([598]) The second paragraph of Article 9 of the International Covenant on Civil and Political Rights, Article 139 of the Criminal Procedure Code, and Article 393 of the Judicial Instructions of the Public Prosecution.

([599]) Article 406 of the Judicial Instructions of the Public Prosecution.

([600]) Appeal No. 61 of 88 S issued at the 25th session of November 2018 (unpublished).

Public Prosecution. The court enforcement clerk must send adult convicts with their implementation forms to the reform centers specified for the implementation of the penalty according to the different type and degree of punishment[601].

The director of the correction centre or the employee appointed for this purpose shall receive a copy of the committal order, after signing the original receipt, provided that the original is returned to those who brought the inmate and a signed copy of the person who issued the imprisonment order is kept.

The competent prosecution officer shall, upon placing the accused in the reform center on the basis of an order issued for his detention, hand over a copy of the detention order to the director of the reform center or the competent employee appointed for this purpose after signing the original receipt, and it shall be taken into account that such copy shall be signed by the person who issued the order and stamped with the seal of the emblem of the Republic [602].

The Attorney General and his agents in their jurisdictions have the right to enter all places of correction centers at any time to verify that there is no illegal inmate [603].

As for the places designated for the detention of detainees specified by a decision of the Minister of Interior, it is not permissible to enter them except for those assigned by the Public Prosecutor, such as public attorneys, heads of partial prosecutors' offices in them, or their director, to notify the Public Prosecutor through public attorneys or heads of total prosecutors' offices of what is in their departments from these places [604].

The Public Prosecution shall, when inspecting the reform centers, whether they are public or geographical, confirm that the orders of the prosecution and the investigating judge in the cases that he is assigned to investigate and the decisions of the courts are being implemented in the manner indicated therein, and that no inmate is unlawfully, and this is done by reviewing the detention or arrest orders or written orders to deposit in relation to the detainee or the execution forms, and confirming that there is a summary of them in the records of the reform center and requesting copies of the detention order to show his absence. If the member of the prosecution is found imprisoned or detained unlawfully, he shall order his release immediately after writing a report in which the incident is recorded and explained in the report the hour and date of the procedure and the person and signature of the recipient of the order for release. If the member of the prosecution is found imprisoned or detained in a place other than the place designated for him, he shall immediately write a report of the incident and order its deposit in the place designated for him with proof of this in the report explaining the hour and date of the procedure and the person and signature of the recipient of the order for the deposit. He may complete the inspection report upon his return to the headquarters of the prosecution and include the crimes and violations he has observed, provided that he takes the initiative to notify the Attorney General of the Public Prosecution of these matters. Violations and crimes and sending the inspection report to him, provided that the Attorney General entrusts one of the members of the Public Prosecution to conduct an investigation into the crimes and violations included in the

---

([601]) Articles No. 5 and 6 of the Law Regulating Community Correction and Rehabilitation Centers, Article No. 2 of the Internal Regulations of Community Correction and Rehabilitation Centers, Article No. 3 of the Internal Regulations of Geographical Community Correction and Rehabilitation Centers, Article No. 3 of the Internal Regulations of Military Prisons, Article No. 1047 of the Written, Financial and Administrative Instructions of the Public Prosecution, and Articles No. 2 and 3 of Presidential Decree No. 82 of 1984.

([602]) Article 1044 of the written, financial and administrative instructions of the Public Prosecution.

([603]) Article 85 of the Prisons Regulation Law, as amended by Law No. 106 of 2015.

([604]) Article 1750 of the Judicial Instructions of the Public Prosecution.

inspection report, and sends the case with the opinion to the Assistant Attorney General through the First Attorney General of the Appeals Prosecution [605].

A penalty of imprisonment or a fine not exceeding two hundred Egyptian pounds shall be imposed on anyone who arrests, imprisons or detains any person without the order of one of the competent rulers and in cases other than those authorized, and the punishment shall be imprisonment in the event that the arrest is made by a person who unlawfully dresses as a government employee or is characterized by a false status or presents a forged order claiming to be issued by the government, he shall be punished by imprisonment [606].

In all cases, whoever unlawfully arrests a person and threatens him with death or tortures him with physical torture shall be punished with rigorous imprisonment [607].

Any person who lends a place of confinement or detention that is not permitted shall be punished by imprisonment for a period not exceeding two years with knowledge[608] of this.

In Egypt, enforced disappearance is carried out by denying that the authorities have arrested or that they have information about the whereabouts of the detainee. Therefore, Egyptian law prohibits detention in national security headquarters, which are not recognized by law as legitimate places of detention. It follows that it is outside the authority of the prosecution, while the risk of torture is greater.

Special Rapporteur Martin Scheinin revealed serious concerns about the national security practice of incommunicado detention in his report on his mission to Egypt in 2010: there is a worrying lack of judicial oversight of national security headquarters, which are not subject to any inspection of the kind mentioned above. With this in mind, it becomes difficult to completely ignore reports of terrorism suspects being arrested and then referred to and held incommunicado in secret underground national security cells. This practice is said to take place long before their detention is recorded on official papers. Such practices lead to situations in which the detainee has no protection of the law, and in some cases amount to enforced disappearance.

If the situation in Egypt is that any person is arrested, and the reasons or place of detention are not indicated, whether for the person himself or any of his family members or his legal representative, and if this is not permissible in accordance with the Constitution, which stipulates that no one may be arrested, searched, detained, or restricted in any way except by a reasoned judicial order required by the investigation, as well as the provisions of the Supreme Constitutional Court of the right of anyone who is arrested or detained to communicate with others to inform him of what happened or to use it in the manner regulated by law, which means guaranteeing his right to obtain legal advice requested by the lawyers of his choice, it stipulates that: [The Constitution authorizes... Whoever is arrested or detained has the right to contact others to inform him of what has happened or to use it in the manner regulated by law, which means guaranteeing his right to obtain the legal advice requested by the lawyers of his choice, which is necessary advice that provides a fence of confidence and reassurance, and provides him with the effective assistance required to remove suspicions pending against him, and to face the consequences of the restrictions imposed by the public authority on his personal

---

([605]) Articles 1748, 1749 and 1749 bis of the Judicial Instructions of the Public Prosecution.
([606]) Article 280 of the Penal Code, as amended by Law No. 29 of 1982.
([607]) Article 282 of the Penal Code.
([608]) Article 281 of the Penal Code.

freedom, with which it is not permissible to separate him from his lawyer in a way that offends his position, whether during the preliminary investigation or before it] [609].

However, the Egyptian legislator uses many terms to justify the restriction of freedom such as detention, detention, pre-trial detention or imprisonment, justifying this by law to protect public peace and security. The law does not provide for the right of a prisoner, a detainee, a detainee or a person against whom a pre-trial detention order is issued to view the detention order issued against him. Moreover, no matter how different those names that the legislator gives to detention without a reasoned judicial order, everything that restricts a person's freedom of movement and detention in an unknown place to him, his family members or his legal representative is only a form of enforced disappearance that is internationally criminalized. The legal justification in Egypt is to harm public peace and security, which may not be invoked in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance, as well as in accordance with the Declaration on the Protection of All Persons from Enforced Disappearance. [610]

Second: Within the framework of international conventions

A. Notification of the right to use lawyers

One of the most important rights that every person arrested or detained should be informed of is his right to a lawyer: either a lawyer of his own choosing, or a lawyer appointed to assist him [611].

He must be notified of this immediately after his arrest or detention, and before he initiates any investigation with him, or charges him [612].

Principle 17 (1) of the former Body of Principles provides that he shall be promptly informed of such information following his arrest.

The European Court ruled that the failure to inform a 17-year-old young man, or his father, following his arrest for murder of his right to receive legal assistance prior to his interrogation (without the presence of his father or a lawyer) constituted a violation of his rights to defense [613].

The person should be repeatedly notified of his right to legal assistance before being interrogated on suspicion of committing a criminal offence, if his lawyer is not present [614].

([609]) Article 54 of the Constitution, and see: The judgment of the Supreme Constitutional Court in Case No. 6 of 13 S, issued at the session of May 16, 1992, and published in the first part of the book of the Technical Office No. 5, rule No. 37, page No. 344.

([610]) Article 6 of the Declaration on the Protection of All Persons from Enforced Disappearance, and Article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([611]) Principle 5 of the Basic Principles on the Role of Lawyers, Principle 17 (1) of the Body of Principles, Guidelines 3§43 (a) and 2§42 (c-d) of the Principles of Legal Aid, Guideline 20 (c) of the Robben Island Guidelines, Section M (2) (b) of the Principles of Fair Trial in Africa, and Article 55 (2) (c) of the Rome Statute; see Rule 98/1 of the European Prison Rules (applicable to persons detained on remand), Article 60 of the Rome Statute, and Rule 42 of the Yugoslavia Rules.

General Comment 2 of the Committee against Torture, §13; Recommendation of the Committee of Ministers of the Council of Europe (12) Rec (2012), Annex 1/§ 21.

([612]) General Comment 2 of the Committee against Torture, §13; Recommendation of the Committee of Ministers of the Council of Europe (12) Rec (2012), Annex 1/§ 21.

Principle 5 of the Basic Principles on the Role of Lawyers, Principle 8 of the Principles of Legal Aid, Article 55 (2) (c) of the Rome Statute, Rule 42 of the Rwanda Rules, Rule 42 of the Yugoslavia Rules..

([613]) European Court: Banović v. Cyprus (4268/04), §73 (2008), see also Talat Tunc v. Turkey (32432 / 96), §61 (2007) (notification should include right to legal aid).

([614]) Principle 8 and Guideline 43§3 (a) of the Principles of Legal Aid, Article 55 (2) of the Rome Statute, Rule 42 of the Rwanda Rules, and Rule 42 of the Yugoslavia Rules..

B. Notifying the suspect of thier right to remain silent

Any person suspected of having committed a criminal act should be informed of his right not to incriminate himself or to confess his guilt, including his right to remain silent during investigation by the police or judicial authorities [615].

This information should be given to individuals upon arrest and before they are interrogated [616].

2.3 The Right to Be Promptly Informed of Charges

Within the framework of international covenants

Everyone who is arrested or detained has the right to be promptly informed of any charges brought against them[617].

The requirement to provide immediate information about the criminal charges against an arrested or detained person is crucial for the effective exercise of their right to challenge the legality of their detention. By being provided with this information, the individual can challenge the charges at this stage and seek their dismissal.

It is not necessary for the information regarding the charges given promptly after the arrest to be as detailed as that required when the charges are officially filed against the individual.

The standards applicable to this later stage require providing the accused with sufficient details about the charges to enable them to prepare their defense adequately[618].

2.4 Informing the Person in a Language They Understand

Within the framework of international covenants

The person arrested must be informed of the information regarding the reasons for his arrest, the charges against him, and his rights in a language he understands [619].

A number of international standards explicitly stipulate that the detainee must be notified of the reasons for his arrest as well as the charges against him in a language he understands [620].

Written records should also be[621] kept.

Concluding [615]observations of the Human Rights Committee: France, / UN Doc. CCPR/C §14 (2008) FRA/CO/4; Netherlands, 2009) UN Doc. CCPR/C/NLD/CO/4 §11; CAT: Mexico, 2003) UN Doc. CAT/C/75) §220 (e).

Guideline [616]3§43 (a) of the Guidelines on Legal Assistance, article 55 (2) of the Rome Statute, rule 42 (a) (3) of the Rwanda Rules, and rule 42 (a) (3) of the Yugoslavia Rules.

([617]) Article 9 (2) of the International Covenant, Article 16 (5) of the Migrant Workers Convention, Article 7 (4) of the American Convention, Article 14 (3) of the Arab Charter, Article 5 (2) of the European Convention, Principle 10 of the Set of Principles, Section M (2) (a) of the Principles for a Fair Trial in Africa, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Article 60 (1) of the Rome Statute, Article 117 (1) of the Rules of Procedure and Evidence of the International Criminal Court, Article 20 (4) (a) of the Statute of the Rwanda Tribunal, and Article 20/2 of the Statute of the Yugoslavia Tribunal.

([618]) Kelly v. Jamaica (253/1987), Commission on Human Rights,. UN Doc . 8/§5 (1991) CCPR/C/41/D/253/1987.

([619]) See Guiding Principle 42§ 2 (d) of the Principles of Legal Aid, Principle 14 of the Body of Principles, Guiding Principle 20 (d) of the Robben Island Guidelines, and Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

([620]) Article 16 (5) of the Migrant Workers Convention, Article 5 (2) of the European Convention, Principle 14 of the Body of Principles, Section M (2) (a) of the Principles for a Fair Trial in Africa and Principle 5 of the Principles relating to Persons Deprived of their Liberty in the Americas; see Article 14(3) of the Arab Charter..

It should include:

Reason for arrest;

The time and date of arrest and transfer to the place of detention;

The time and date of bringing the individual or a judge or other authority;

The party who carried out the arrest or detention;

The place where the individual is being held

Such records should be made available to the detained person and his counsel, and the information they contain should be made available to relatives.

2.5 Additional Notification Rights of Foreign Nationals

Within the framework of international covenants

Foreign nationals who are detained or arrested (regardless of their immigration status) shall be promptly informed of their right to contact the embassy of their country or a consular post of their country. If a person is a refugee or a stateless person, or is under the protection of an intergovernmental organization, he shall be promptly notified of his right to contact the appropriate international organization or a representative of the State in which he resides [622].

The Vienna Convention on Consular Relations, the Migrant Workers Convention, the Principles on Legal Assistance, the Principles on Persons Deprived of their Liberty in the Americas, and the European Prison Rules require that a person arrested, detained or imprisoned be informed of this right without delay. The Set of Principles and Principles for a Fair Trial in Africa (Section M (2) (d)) requires that such information be provided without delay[623].

The Inter-American Court ruled that notification of the right to contact an official consular officer must be made at the time of arrest, and in any case before the individual makes his or her initial statement to the authorities [624].

This is now reflected in Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

The International Court of Justice has clarified that the arresting authorities have a duty to inform the individual of this right as soon as they know that the person is a national of a foreign State, or as soon as there are grounds to believe that the person may be a foreign national [625].

([621]) Articles 18-19 of the Convention on Enforced Disappearances, Principle 12 of the Body of Principles, and Section M (6) of the Principles on Fair Trial in Africa; see Article 11 of the American Convention on Disappearance, Guideline 30 of the Robben Island Guidelines, and Principle 11 of the Principles Relating to Persons Deprived of their Liberty in the Americas.
United [622]Nations General Assembly resolution 65/212, §4 (g); Human Rights Council resolution 12/6, §4 (b).
Article 36 (1) (b) of the Vienna Convention on Consular Relations, Article 16 (7) of the Migrant Workers Convention, Principle 16 (2) of the Body of Principles, Guideline 3§43 (c) of the Guidelines on Legal Assistance, Section M (2) (d) of the Principles on Fair Trial in Africa, Principle 5 of the Principles relating to Persons Deprived of their Liberty in the Americas, and Rule 27 of the Council of Europe Rules on Pre-trial Detention (Pretrial Detention) .
See Recommendation 12 (Rec)2012 of the Committee of Ministers of the Council of Europe, Annex 2/15-1/§ 15§ and 25/1-25 / 2.

([623]) ICJ: LaGrand Case (Germany v. United States of America), §77§ (2001) and 89 (Article 36/1 of the Vienna Convention creates rights for detained foreign nationals), Ahmadou Diallo (Republic of Guinea v. Democratic Republic of the Congo) §95 (2010).

([624]) Inter-American Court: Chaparro Álvarez and Labo Inoguez v. Ecuador, §164 (2007), Acosta-Calderón v. Ecuador, §125 (2005), Tibi v. Ecuador, §112§ (2004 and 195), Advisory Opinion No. 99/1999) ,OC-16 §106; see Avena and Other Mexican Nationals, (Mexico v. United States of America), ICJ §87 (2004).

([625]) Avena and Other Mexican Nationals, (Mexico v. United States of America), ICJ §88 (2004).

This right should include individuals with dual nationality of the country initiating the arrest or detention and another country [626].

If a person holding the nationality of another country requests the authorities to contact official consular officials, the authorities shall, at that time, do so without delay but shall only do so at the request of the same person [627].

Amnesty International is of the view that, in cases where an individual holds the nationality of two foreign States, that individual should be granted the right to communicate with and receive visits from representatives of both States, if he or she so chooses.

Chapter Three: The Right to a Pre-Trial Lawyer

Every person who is detained, or who is likely to be charged, has the right to the assistance of a lawyer of his choice to protect his rights and to assist him in defending himself and if he is unable to pay the expenses necessary to appoint a lawyer, he shall be entitled to be assigned a competent and qualified lawyer to defend him when the interest of justice so requires.

Detainees should be able to communicate with a lawyer from the outset of their detention, including during interrogation and should be given adequate time and facilities to communicate with their lawyer, in an atmosphere of confidentiality and privacy.

3.1 Right to a Lawyer at the Pre-trial Stages

Within the framework of international covenants

Every person arrested or detained (whether on a criminal or non-criminal charge), and every person facing a criminal charge (whether detained or not) has the right to a lawyer [628].

A range of non-treaty treaties and conventions have affirmed the right of a person to be assisted by a lawyer during pre-trial proceedings [629].

Although there is no explicit provision referring to a person's right to a lawyer during detention, interrogation and preliminary investigation in the International Covenant, the African Charter, the American Convention or the European Convention, the monitoring mechanisms of this treaty have made it clear that it is a prerequisite for the meaningful exercise of the right to a fair trial[630].

(626) See Rule 27 (2) of the Council of Europe Rules on Detention Pending Trial..
(627) Article 36 (1) (b) of the Vienna Convention on Consular Relations, and Article 16(7) (a) of the Migrant Workers Convention.
(628) See General Comment 32 of the Human Rights Committee, §34 .
(629) Article 17(2) (d) of the Convention on Enforced Disappearances, Article 37 (d) of the Convention on the Rights of the Child, Article 16 (4) of the Arab Charter, Principle 1 of the Basic Principles on the Role of Lawyers, Article 17 of the Body of Principles, Principle 3 and Guideline 4 of the Principles of Legal Aid, Guideline 20 (c) of the Robben Island Guidelines, Sections A (2) (f) and M (2) (f) of the Principles of Fair Trial in Africa, Guideline 4 (1) of the Council of Europe Guidelines on the Eradication of Impunity, Rule 25 of the Council of Europe Rules on Pre-trial Detention, Rule 98/2 of the European Prison Rules, Articles 55 (2) (c) and 67 (1) (d) of the Rome Statute, Rules 117 (2) and 12 (2) (a) of the Rules of Procedure and Evidence of the International Criminal Court, Article 17 (3) of the Statute of the Rwanda Tribunal, Rule 42 of the Rwanda Rules, Article 18 (3) of the Statute of the Yugoslavia Tribunal, Rule 42 of the Yugoslavia Tribunal Rules..
(630) For example, concluding observations of the Human Rights Committee: Georgia, §27 (1997) UN Doc. CCPR/C/79/Add. 75, Netherlands, / UN Doc. CCPR/C §11 (2009) NLD/CO/4; Lisbeth Siegfeld and Moses Ephrem v. Eritrea (250). 2002), African Commission, Annual Report 17 §55 (2003); Pareto Leyva v. Venezuela, Inter-American Court §62 (2009); Salduz v. Turkey (02/36391), Grand Chamber of the European Court §55- §54 (2008).

Therefore, the provisions relating to the right to be assisted by counsel under these treaties also apply to the pre-trial stage [631].

The lawyer's legal advice at the pre-trial stage enables the person suspected or accused of committing a criminal offence to protect his rights and to start preparing his defense. This assistance for detainees is important in terms of enabling them to challenge the legality of their detention. It also provides them with important protection from torture and other forms of ill-treatment, from being forced to make "confessions " condemning them, and from being subjected to enforced disappearance and other human rights violations [632].

The right to a pre-trial lawyer includes the following rights:

the use of a lawyer;

have adequate time to consult a lawyer in an atmosphere of privacy;

The presence of the lawyer during the investigation sessions, and the ability to consult the lawyer during the interrogation

As for those who are not represented by a lawyer of their choice, they should usually appoint a lawyer assigned to represent them without pay, if they are unable to pay [633].

Individuals should receive an effective remedy if public officials undermine their right to counsel, or unduly delay or deny their enjoyment of this right [634].

The European Court has made it clear that the deliberate and systematic refusal to allow a detained person access to a defense lawyer - particularly when the person in question is detained in a foreign country - amounts to an outright denial of the right to a fair trial [635].

3.2 When Does a Detained Person Have the Right to Contact a Lawyer?

Within the framework of international covenants

All suspects and accused persons, whether detained or not, have the right to contact a lawyer and seek his advice from the very outset of the criminal investigation against them. The person who is arrested or detained should be able to contact a lawyer as soon as his deprivation of liberty begins [636].

([631]) Article 14 (3) (d) of the International Covenant, Article 7 of the African Charter, Article 8 (2) (d) of the American Convention, and Article 6 (3) (c) of the European Convention..

([632]) General Comment 20 of the Human Rights Committee, §11; United Nations Special Rapporteur on Torture, 17/1992 / §284 (1991) UN Doc. E/CN. 4; Salduz v. Turkey (36391/ 02), Grand Chamber of the European Court §54 (2008)..

([633]) Article 16 (4) of the Arab Charter, Principle 17 (2) of the Body of Principles, Principle 3 and Guideline 3§ 43 (b) of the Guidelines on Legal Assistance, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas…

([634]) Principle 16 of the Basic Principles on the Role of Lawyers, Principles 2§16and 12 of the Principles on Legal Aid, Sections i(b) and h(e) (3) of the Principles on Fair Trial in Africa, and Principle 5 of the Principles on Persons Deprived of their Liberty in the Americas.

Human Rights Committee General Comment 32, §34 .

([635]) In favour v. Germany (32865 / 03), (Inadmissibility) Decision of the European Court §101 (2007), Osman v. United Kingdom (8139 / 09), European Court §259 (2012).

([636]) Article 37 (d) of the Convention on the Rights of the Child, Principle 17 of the Body of Principles, Principle 3 and Guidelines 3§43 (b) and(d) and 4§44 (a) of the Principles on Legal Aid, Guideline 20 (c) of the Robben Island Guidelines, and Principle 5 of the Principles on Persons Deprived of their Liberty in the Americas.

Resolution 13/19 of the Human Rights Council, 19 / UN Doc. A/HRC/RES/13 §6 (2010), Concluding observations of the Human Rights Committee: Georgia,. UN Doc §27 (1997) CCPR/C/79/Add. 75, Jordan, UN Doc. CCPR/C/JOR/CO/4 §9 (2010); Concluding observations of the Committee against Torture: Latvia,. UN Doc §6§2004(CAT/C/CR/31/3 (h) and 7(c)); Dayanan v. Turkey (7377/03), ECtHR §33- §30 (2009); CPT General Report 12, §40§ ,15 (2002) CPT/Inf 41-..

They should be assisted by a lawyer during their investigation by the police and the investigating judge, even if they are exercising their right to remain silent [637].

The Committee against Torture raised particular concerns that the detainee's exercise of his right to a lawyer, under the Cambodian Code of Criminal Procedure, did not begin until 24 hours after his arrest[638].

The Inter-American Court declared that the suspect or accused must receive legal assistance from the moment the order is issued to start the investigation against him, and in particular when the accused makes his statement [639].

The European Court considers that the right to a fair trial requires, as a general rule, that the accused person be allowed to obtain legal assistance as soon as he is placed in detention, including during the initial stages of the police investigation against him [640].

It also ruled that the suspect should have access to a lawyer from the first interrogation conducted by the police, unless there are coercive reasons that are identified and prevent this in the case under consideration, and warned that irreparable harm will be caused to the rights of the defense if statements made by the accused during the police investigation are used and incriminated by himself, without allowing him to have the assistance of a lawyer, in supporting his conviction [641].

The presence of a lawyer during a police investigation can act as a deterrent to individuals intentionally obtaining information or confessions by coercing persons in their custody. If the detainee has the right to consult with a lawyer in private from the outset of detention, the detainee is also able to report any ill-treatment. Upon reaching the detainee's request to the lawyer, the latter may file a complaint. If this information is expressed in confidence, it can be used anonymously to prevent abusive practices in the future. The presence of a lawyer during police questioning can be used as a safeguard for police officers in the event that they face unfounded allegations of ill-treatment. The right to a lawyer from the very outset of deprivation of liberty is therefore an important tool for the prevention of ill-treatment as well as a guarantee of fair trials.

On the other hand, the protective value associated with access to a lawyer depends on whether or not the right to that lawyer is exercised in practice. If persons deprived of their liberty are unable to afford a lawyer and this lawyer is not provided for them, the right to a lawyer and its impact on the prevention of ill-treatment becomes theoretical. The SPT emphasizes that all persons deprived of their liberty must have access to a lawyer at the earliest possible stage of such detention, including the first moments when the person is questioned by the police.

Guiding [637]Principle 3§43 (b) of the Principles on Legal Aid, Principle 5 of the Principles on Persons Deprived of their Liberty in the Americas, Article 55 (2) (c) and(d) of the Rome Statute, Rule 42 (a) (1) of the Rwanda Rules, and Rule 42 (a) (1) of the Yugoslavia Rules.
Resolution 13/19 of the Human Rights Council, 19 / UN Doc. A/HRC/RES/13 §6 (2010); Concluding observations of the Human Rights Committee: Japan,. UN Doc §18 (2008) CCPR/C/JPN/CO/5, Netherlands, UN Doc. CCPR/C/NLD/CO/4 §11 (2009), SPT: Maldives,. UN Doc §107- §105)2009(CAT/OP/MDV/1; European Court: Dayanan v. Turkey (7377/03), §33-§30 (2009); Simmons v. Belgium (71407/ 10), (Inadmissibility) Decision §31 (2012, Turkan v. Turkey (33). 86/04), §42 (2008), Salduz v. Turkey (36391/ 02), Grand Chamber §55-§54 (2008), John Marie v. United Kingdom (18731 / 91), Grand Chamber §66 (1996).

([638]) Concluding observations of the Committee against Torture: Cambodia,. UN Doc . §14 (2010) CCPR/C/KHM/CO/2.

([639]) Pareto Leyva v. Venezuela, Inter-American Court §62 (2009). See Salduz v. Turkey (36391 / 02), Grand Chamber §54§ (2008)..

([640]) European Court: Dayanan v. Turkey (7377/03), §32-§30 (2009);

([641]) European Court: Salduz v. Turkey (36391 / 02), Grand Chamber §55§ (2008), Nichiboruk and Yuncalu v. Ukraine (423310 / 04), (2011) § 263- §262, John Marie v. United Kingdom (18731 / 91), Grand Chamber. §66 (1996).

The SPT therefore recommended that the authorities ensure the right of all persons deprived of their liberty to be assisted by a lawyer from the very outset of their deprivation of liberty. They should be regularly informed of this right by the police and provided with reasonable facilities to consult with a lawyer without the presence of a witness. Moreover, if the detained person does not have a lawyer of his choice, he has the right to a lawyer appointed for him and should enjoy legal assistance if he does not have sufficient resources to pay [642].

Persons should also receive legal assistance during their interrogation by the investigating judge [643].

The European Court has found that a law prohibiting the use of a lawyer by a detainee in police custody constitutes a violation of the European Convention, although the accused, suspected of being a member of an illegal armed organization (Hezbollah), remained silent during police interrogation [644].

The European Committee for the Prevention of Torture clarified that the right to counsel should apply even before a person is declared a suspect, including when summoned to a police station as a witness or for the purpose of his or her discussion and recommended that persons summoned for cross-examination as witnesses, in which case they are legally obliged to appear and remain at the disposal of their convener, should have the right to counsel[645].

The International Criminal Court has ruled that statements made by an accused during his initial interrogation by national authorities, without the presence of a lawyer, and where he has been fully informed of the reasons for his detention, shall not be admissible as evidence to be admissible in court[646].

Even international standards that allow the delay in allowing a detained person to have access to a lawyer make it clear that this is only allowed in exceptional cases and these circumstances must be clearly defined in the law and limited to cases where it is considered indispensable, in the case under consideration, to maintain security and good order. The decision in this regard should be taken by a judicial or other authority, but the use of a lawyer, even in such cases, should begin no more than 48 hours after the arrest or detention of the person [647].

The Special Rapporteur on Torture recommended that anyone arrested should be allowed “to contact a lawyer within no more than 24 hours of his arrest”[648].

To minimize the negative effects of any delay in allowing the detainee to have access to a lawyer of his choice, upon judicial order, the Special Rapporteur on torture, as well as the European Committee for the Prevention of Torture, recommended that, in such exceptional cases, the suspect should be allowed to have the assistance of an independent lawyer of his

---

([642]) See the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment A/RES/43/173, (9 December 1988) Principle 17, (CAT/OP/MDV/1, 26 February 2009, § §106 - 107).

Simmons [643]v. Belgium (71407/ 10), Decision (Inadmissibility) (2012) §31; see Quaranta v. Switzerland (12744 / 87), European Court (1991) . §38-§32.

([644]) Dayanan v. Turkey (7377/03), European Court, §33-§32 (2009); see John Marie v. United Kingdom (18731 / 91), Grand Chamber (1996) . §66.

([645]) General Report of the European Committee for the Prevention of Torture, §19 ,28(2011) CPT/Inf, General Report 12 of the Committee for the Prevention of Torture, §41 ,12(2002) CPT/Inf..

([646]) Prosecution v. Katanga and Ngodtolo, (2635-07/01-04/ICC-01), Trial Chamber 2, Decision on Objections by Prosecution (17 December §65-§62 (2010); see also Prosecution v. Delalic, Trial Chamber of the ICTY, Decision on Objection to Exclusion of Evidence (2 September §55-§38 (1997).

Principle [647]7 of the Basic Principles on the Role of Lawyers and Principle 18 (3) of the Body of Principles; see Principle 15 of the Body of Principles.

([648]) Special Rapporteur on Torture, 17/1990/ UN Doc. E/CN. 4 §1989272 (c); see Special Rapporteur on Torture: / UN Doc. E §926 (1995) CN. 4/1995/34 (d), 156 / §39 (2010) UN Doc. A/56 (f)..

choice, for example, from a pre-approved list of lawyers, as an alternative to his late use of a lawyer of his choice[649].

Any delay in accessing counsel shall be decided, with justification, on a case-by-case basis.

There should be no systematic delays in the use of a lawyer for a specific category of crimes, whether misdemeanors or serious crimes, even for those covered by counter-terrorism legislation. Persons suspected of serious cases, in particular, may be most at risk of torture or other ill-treatment, and most in need of a lawyer [650].

A number of bodies have expressed concerns about laws and practices that lead to delays in the use of lawyers by persons suspected of being linked to terrorist crimes [651].

For example, the Committee against Torture has expressed concern that persons arrested under Turkey's anti-terrorism law are denied access to a lawyer for a period of 24 hours[652].

The Human Rights Committee recommended that "anyone arrested or detained on a criminal charge, including persons suspected of having links to terrorism, should have immediate access to a lawyer"[653].

In a case in which an individual was arrested under the anti-terrorism legislation of Northern Ireland, he requested to see a lawyer upon his arrival at the police station, but the authorities delayed the response to his request for more than 48 hours, and interrogated him repeatedly during this period, and the European Court considered this a violation of his rights [654].

Individuals also have the right to have access to a lawyer when brought before a judge to decide whether they should be placed in pretrial detention.

3.3 Right to Choose a Lawyer

Within the framework of international covenants

The right to choose a lawyer, in general, including at the pre-trial stage, means the right to appoint a lawyer of one's own choosing [655].

International standards explicitly stipulate the right of the suspect to receive assistance from a lawyer of his choice at the pre-trial stage [656].

As stated in Chapter 3/1, it was considered that other standards related to the right to a lawyer also apply to the pre-trial stage [657].

([649]) Special Rapporteur on Torture, 156/UN Doc. A/56 (2010) §39 (f); CPT General Report 12, §41 ,15 (2002) CPT/Inf..

([650]) General Report 21 of the Committee for the Prevention of Torture, 28) §21 ,CPT/Inf)2011; Salduz v. Turkey (36391/ 02), Grand Chamber of the European Court §54 (2008).

([651]) Concluding observations of the Human Rights Committee: United Kingdom, UN §19 (2008) Doc. CCPR/C/GBR/CO/6, Australia, / UN Doc. CCPR/C/§11 (2009) aus/CO/5; Special Rapporteur on human rights and counter-terrorism: Spain, §15§ , (2008) UN Doc. A/HRC/10/3/، Add. 2 and 22 (on security laws and practices); see Concluding Observations of the Committee against Torture: Israel, §15 , (2009) UN Doc. CAT/C/ISR/CO/4, Jordan, §12 ,(2010) UN Doc. CAT/C/JOR/CO/2, China,. UN Doc §16 , (2008) CAT/C/CHN/CO/4 (d).

Concluding [652]observations of the Committee against Torture: Turkey, / UN Doc. CAT/C . §11 (2010) TUR/CO/3.

([653]) Concluding observations of the Committee against Torture: United Kingdom, UN §19 , (2008) Doc. CAT/C/GBR/CO/6..

([654]) Maggie v. United Kingdom (28135 / 95), European Court (2000) . §46-§42.

([655]) Concluding observations of the Committee against Torture: Spain,. UN Doc §14 ،)2008(CAT/C/ESP/CO/5..

([656]) Principles 1 and 5 of the Basic Principles on the Role of Lawyers, sections G(b), H(d) and M (2) (e) - (f) of the Fair Trial Principles in Africa, and article 55 (2) (c) of the Rome Statute; see Principle 17 of the Body of Principles..

([657]) Article 14 (3) (d) of the International Covenant, Article 7 of the African Charter, Article 8 (2) (d) of the American Convention, and Article 6 (3) (c) of the European Convention..

However, a person does not have the absolute right to choose a lawyer to represent him if the court appoints a lawyer for him.

3.4 The Right to assign a Lawyer Free of Charge

Within the framework of international covenants

If a person is arrested, charged or detained, and does not have a lawyer of his choice, he has the right to assign a lawyer to defend him when the interest of justice so requires, and when one is unable to pay the expenses of the lawyer, he must be assigned a lawyer to defend him free of charge [658].

The following criteria apply explicitly to the pre-trial stage, in addition to the criteria that apply during all stages of criminal proceedings [659].

The principle of providing legal assistance to persons who do not have sufficient financial resources applies at all times, under Article 13 of the Arab Charter, including during states of emergency.

Whether the interest of justice requires the appointment of a lawyer in the first place depends on the seriousness of the crime, the complexity of the case and the severity of the possible punishment [660].

It can also depend on a person's particular vulnerabilities, such as those related to age, health or disability [661].

The Committee against Torture expressed concern that lawyers are appointed in Japan only in cases of criminal offences and that Turkish law denies suspects of charges punishable by less than five years in prison access to legal aid [662].

Governments should allocate sufficient funds and other resources for the assignment of lawyers to defend those in need of legal assistance throughout the country, including those who cannot pay expenses, as well as persons under the jurisdiction of the State elsewhere [663].

The legal aid system must be designed to provide free assistance to individuals who cannot pay expenses immediately after arrest[664].

([658]) Concluding observations of the Committee against Torture: Tajikistan,. UN Doc §19 (2005) CAT/CO/84/TJK, Slovenia: UN Doc. CAT/CO/84/SVN §9 (2005); CPT General Report 12, 15) §41 ,CPT/Inf)2002.

([659]) Articles 13 (1) and 16 (4) of the Arab Charter, Principle 6 of the Basic Principles on the Role of Lawyers, Principle 17 (2) of the Body of Principles, Principle 3 and Principles 4 and 55§ 11 (a) of the Principles of Legal Aid, Article 55 (2) (c) of the Rome Statute, Rule 42 (a) (1) of the Rwanda Rules, and Rule 42 (a) (1) of the Yugoslav Rules; see Chapter (h) (a) of the Principles of Fair Trial in Africa.

Principle [660]3 of the Principles of Legal Aid, and Section H(b) - (c) of the Principles of Fair Trial in Africa.

General Comment 32 of the Human Rights Committee, §38; Quaranta v. Switzerland (87/12744), ECtHR §34- §32 (1991)..

([661]) Principles 3§23 and 10 of the Principles of Legal Aid..

([662]) Concluding observations of the Committee against Torture: Japan,. UN Doc §15 (2007) CAT/C/JPN/CO/1 (g), Turkey, Concluding observations of the Committee against Torture: United Kingdom, §11 (2010) UN Doc. CAT/C/TUR/CO/3..

([663]) Principle 3 of the Basic Principles on the Role of Lawyers, Principle 10§33 and Guidelines 11 and 12 of the Principles of Legal Aid.

CERD General Recommendation 31 §30 (2005); Human Rights Committee General Comment 32, §10- § 7; Special Rapporteur on the independence of the judiciary, 289 / §78 (2011) UN Doc. A/66; see Concluding observations of the Human Rights Committee: Rwanda, / UN Doc. CCPR/C/§18 (2009) RWA/CO/3; see also Concluding Observations of the Committee against Torture: Burundi, §9 (2006) UN Doc. CAT/C/BDI/CO/1, Bulgaria, §5§ (2004) UN Doc. CAT/CR/32/6 (d) and 6(d); Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America,. UN Doc §22 (2008) CERD/C/USA/CO/6; Inter-American Commission, Report on Terrorism and Human Rights (2002), section 3(d) (1) (d) §236; Advisory Opinion OC-11/90 of the Inter-American Commission §27- §22 ,(1990).

If a disclosure procedure is applied to financial capabilities, initial legal assistance should be ensured for individuals who urgently need it pending the results of the disclosure of capabilities [665].

Effective guarantee of the right to a fair trial and to a lawyer, without discrimination, also requires that governments appoint interpreters who provide their services free of charge, during the pre-trial stages, to those who do not understand or speak the language used in the proceedings [666].

3.5 The Right to Receive Advice from a Competent Specialized Lawyer

Within the framework of international covenants

Any person who is arrested, detained or accused of committing a criminal act has the right to be defended by an experienced and competent lawyer in dealing with crimes of the same nature as the crime attributed to them [667].

Defense attorneys, including assigned attorneys, shall act freely and with due diligence in accordance with the law and recognized professional standards and ethics of the legal profession and shall advise their clients on their legal rights and duties, and the legal system.

They must also assist their clients in every appropriate way, and take all measures necessitated by the need to protect the rights and interests of their clients. Lawyers, while protecting the rights of their clients and promoting justice, must respect human rights recognized in national and international law[668].

The authorities, in particular the courts, shall ensure that lawyers, in particular those assigned to them, effectively represent suspects and accused persons.

3.6 The Right to Adequate Time and Facilities to Contact the Lawyer

The rights of a person accused of a criminal act to adequate time and facilities to prepare his/her defense and defend himself require that suspects and defendants have opportunities to communicate with their lawyers in an atmosphere of confidentiality and privacy [669].

This right applies to all stages of the proceedings and is particularly relevant to persons in pretrial detention.

Concluding [664]observations of the Human Rights Committee: Azerbaijan,. UN Doc §8 (2009) CCPR/C/AZE/CO/3, San Marino, / UN Doc. CCPR/C/SMR §12 (2008) CO/2, Austria, §15 (2007) UN Doc. CCPR/C/aut/CO/4, Panama, §13 (2008) UN Doc. CCPR/C/PAN/CO/3..

([665]) Guideline 1§41 (c) of the Principles of Legal Aid..

([666]) Diallo v. Sweden (13205 / 07), (Inadmissibility) Decision of the European Court §25- § 24 (2010); Recommendation 12) Rec)2012 of the Committee of Ministers of the Council of Europe, Annex 3/§21.

([667]) Principle 6 of the Basic Principles on the Role of Lawyers, Principle 13 and Guidelines 5§45 (c), 13§64 and 15§69 of the Principles of Legal Aid; and Guiding Principles 9§52 (b) and 11§58 (a) of the Principles of Legal Aid.

([668]) Principles 13-14 of the Basic Principles on the Role of Lawyers, and Section I (1) of the Fair Trial Principles in Africa.

([669]) Principle 8 of the Basic Principles on the Role of Lawyers, Principle 18 of the Body of Principles, Principle 7 and Guidelines 43§ 3 (d), 44§ 4 (g) and 45§ 5 (b) of the Principles of Legal Aid, Rule 93 of the Standard Minimum Rules, Sections M(2) (e) and N(3) (e) (1-2) of the Principles of Fair Trial in Africa, Rules 2/98 and 23/4 of the European Prison Rules; see Article 14 (3) (b) of the International Covenant, Article 18 (3) (b) of the Migrant Workers Convention, Articles 8(2) (c) and 8(2) (d) of the American Convention, Article 16 (3) of the Arab Charter, Article 67 (1) (b) of the Rome Statute, Article 20 (4) (b) of the Statute of the Rwanda Tribunal, Article 21 (4) (b) of the Statute of the Yugoslavia Tribunal; see also Article 7(1) of the African Charter, Article 6(3) (c) of the European Convention.

Human Rights Committee General Comment 32, §34- §32; HRC Resolution 15/18, §4 (f); see Castillo Petruzzi et al. v. Peru, Inter-American Court §139 (1999).

3.6.1 Right to confidential communication with lawyers

Within the framework of international covenants

The authorities must respect the confidentiality of communications and consultations, within the framework of the professional relationship between lawyers and their clients [670].

The right to communicate with a lawyer in an atmosphere of confidentiality applies to all persons, including those arrested, detained or charged with a criminal offence[671].

Governments should ensure that detainees are able to consult and communicate with their lawyers without delay, hindrance or oversight [672].

For this purpose, police stations and places of detention, including those located in rural areas thereof, shall provide adequate facilities for individuals arrested or detained to meet and communicate with their lawyers in private (including by telephone[673].

The necessary facilities should be organized in such a way as to ensure the confidentiality of oral and written communications between individuals and their lawyers [674].

Detainees should be guaranteed the right to keep documents related to their cases themselves[675].

The European Court ruled that the rights of the defense were violated in a case in which the detention center facilities related to it required detainees to speak to their lawyers from behind glass barriers covered with holes in the net, which did not allow the passage of documents between the detainee and their lawyer. The court found that these barriers created real obstacles to communication in private between the detainee and their lawyer [676].

Laws and practices that routinely allow the police or others to monitor the content of communications between suspects and their lawyers are inconsistent with the rights of the defense[677].

The Human Rights Committee has expressed concern about allowing prosecutors in Poland to attend suspects' meetings with their lawyers, and about allowing the suspect's correspondence with their lawyer to be inspected on the order of a member of the Public Prosecution [678].

([670]) Principle 22 of the Basic Principles on the Role of Lawyers, and Section I(c) of the Fair Trial Principles in Africa.

([671]) Article 8 (2) (d) of the American Convention, Article 16 (3) of the Arab Charter, Principle 8 of the Basic Principles on the Role of Lawyers, Principle 18 of the Body of Principles, Principles 7, 12 and Guidelines 43§ 3 (d), 44 § 4 (g) and 45§ 5 (b) of the Principles of Legal Aid, Section N (3) (e) (1-2) of the Principles of Fair Trial in Africa, Rule 23/4 of the European Prison Rules, Article 67/1 (b) of the Rome Statute, and Guideline 97 (2) of the Guidelines of the International Criminal Court; see Article 14 (3) (b) and(d) of the International Covenant, and Article 6 (3) (b) and(c) of the European Convention.

([672]) Principle 8 of the Basic Principles on the Role of Lawyers, Principle 18 (3) of the Body of Principles, Principles 7, 12 and Guidelines 43§ 3 (d), 44§ 4 (g) and 45§ 5 (b) of the Principles on Legal Aid, Rule 93 of the Standard Minimum Rules, Section n (3) (e) of the Principles on Fair Trial in Africa, and Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas; see Rules 98/2 and 23/4 of the European Prison Rules, and Article 67 (1) (b) of the Rome Statute.
See Human Rights Committee Comment 32, §34 .

([673]) See the concluding observations of the Committee against Torture: Latvia,. UN Doc . §7 (2008) CAT/C/LVA/CO/2.

([674]) See the concluding observations of the Committee against Torture: Jordan,. UN Doc §12 (2010) CAT/C/JOR/CO/2; see Mudarka v. Moldova (14437 / 05), EC §99- §84 (2007).

([675]) See Principle 28§ 7 of the Principles of Legal Aid.

([676]) Mudarka v. Moldova (14437 / 05), European Court (2007) . §99-§84.

([677]) Concluding observations of the Committee against Torture: Austria,. UN Doc §9 (2010) 5-CAT/C/aut/CO/4; see also Opinion 33/2006 of the Working Group on Arbitrary Detention (Iraq and USA) on Tariq Aziz, 2008) UN Doc. A/HRC/7/4/Add. 1) pp. 4- §19 9; Moiseev v. Russia (62936/ 00), European Court §210 (2008); see Concluding Observations of the Committee against Torture: Netherlands, / UN Doc. CAT/C . §14 (2009) NLD/CO/4.

The Special Rapporteur on human rights and counter-terrorism expressed concern that persons accused of terrorism-related offences in Egypt are not allowed to communicate with their lawyers in private before, or even during, the trial[679].

To ensure confidentiality, taking into account security imperatives, international standards specifically stipulate that consultation processes can take place under the eyes, but not under the hearing, of law enforcement officials [680].

The European Court determined that, under exceptional circumstances, the confidentiality of communications may be lawfully restricted

However, it clarified that the restrictions that can be imposed must be stipulated in law, imposed on the basis of a judicial order, and must be commensurate with a legitimate purpose - for example, to prevent the occurrence of a serious crime that could lead to death or injury - and that its imposition must be accompanied by the existence of sufficient guarantees to prevent its misuse [681].

Council of Europe standards relevant to conventions that are not treaties, including those related to European prison rules, include such jurisprudence [682].

Communications between a detained or imprisoned person and his lawyer shall not be admissible as evidence against their, unless they are related to the commission of an ongoing or planned crime [683].

3.7 Renunciation of the Right to a Lawyer

Within the framework of international covenants

Accused individuals may, consistent with a person's right to represent themselves, decide that they do not need to be represented by a lawyer during the investigation and pre-trial stages, and represent themselves instead [684].

A person's renunciation of their right to legal representation, including during an investigation, must be decided unequivocally and should be accompanied by adequate safeguards [685].

For example, to consent to the waiver of the right to the presence of a lawyer during an investigation, the ICC requires that this be requested in writing and, if possible, recorded on audio or video tape[686].

Concluding [678]observations of the Human Rights Committee: Poland, / UN Doc. CCPR/C §20 (2010) Pol/CO/6; see also Austria, / UN Doc. CCPR/C/aut §16 (2007) CO/4, Gridin v. Russian Federation, / UN Doc. CCPR . 5/§8 (2000) C/69/D/770/1997.

Special [679]Rapporteur on human rights and counter-terrorism, Egypt, UN §36 (2009) Doc. A/HRC/13/37/Add. 2; see 223/2008) UN Doc. A/63) §39; see alsoCantoral-Benavides v. Peru, Inter-American Court. §128-§127 (2000).

Principle [680]8 of the Basic Principles on the Role of Lawyers, Principle 18 (4) of the Body of Principles, and Rule 93 of the Standard Minimum Rules.

European Court, Öcalan v. Turkey, (46221 / 99) Grand Chamber §133- § 132 (2005), Brennan v. United Kingdom (3986/98), (2001) §63- §58; see Rapacki v. Poland (52479/79/99), European Court. §62-§53 (2009).

([681]) Erdem v. Germany (38321 / 97), ECtHR §69- § 65 (2001), Lanz v. Austria (24430 / 94), ECtHR §53- § 46 (2002); see Guideline 9(3) (1) and(4) of the Council of Europe Guidelines on Human Rights and Counter-Terrorism.

([682]) Rule 23/5 of the European Prison Rules..

Principle 18[683] (5) of the Set of Principles..

([684]) Article 14 (3) (d) of the International Covenant, Article 7 of the African Charter, Article 8 (2) (d) of the American Convention, Article 16 (3) of the Arab Charter, and Article 6 (3) (c) of the European Convention.

See Article 55 (2) (d) of the Rome Statute.

([685]) See Principle 28§ 8 of the Principles of Legal Aid.

([686]) Rule 112 (1) (b) of the Rules of Procedure and Evidence of the International Criminal Court..

It should be shown that the person concerned has a reasonable ability to assess the possible consequences of his/her renunciation of this right [687].

The Committee against Torture has expressed concern about reports that police detainees in Azerbaijan have been forced to renounce their right to a lawyer [688].

A person who has waived his right to a lawyer has the right to reverse this decision.

The right to represent oneself, including during pre-trial proceedings, may be subject to restrictions, in the interest of justice [689].

Chapter Four: The Right to Contact the Outside World

Detainees have the right to promptly notify a third person that they have been arrested or detained, and their place of detention. Detainees have the right to promptly communicate with their families, lawyers and doctors and to be brought before a judicial official. If the detainee is a foreigner, he has the right to communicate with a consular officer representing his country, or with a competent international organization.

4.1 Right to Contact and Receive Visits

4.1.1 Within the framework of Egyptian law

Without prejudice to the right of the accused to always communicate with a lawyer in private, the prosecution may prevent the communication of the detainee with other detainees or the visit of anyone to them. In this case, the prosecution must authorize this interview in writing, whether at the request of the accused, the lawyer representing them, or the lawyer assigned by the court to defend them. [690]

4.1.2 Within the framework of international covenants

The rights of detainees to communicate with the outside world, and to receive visits, are basic guarantees that protect them from human rights violations such as torture and other forms of ill-treatment and enforced disappearance, and also affect the ability of the accused to prepare his defense, which is a necessary requirement to protect the right to private and family life, and the right to health, and detained and imprisoned persons have a right to communicate with the outside world, and this right is subject only to reasonable conditions and restrictions commensurate with a legitimate purpose[691].

The Human Rights Committee has stated that the rights of persons in police custody and pre-trial detention to contact doctors, their families and their lawyers should be enshrined in law [692].

While the Committee against Torture calls for detainees to be allowed to contact a lawyer, a doctor and their families immediately after their detention, including while in police custody [693].

([687]) European Court: Beshchalnikov v. Russia (7025/04), §80 (2009), Galstian v. Armenia (26986 / 03), §92-§90 (2007); see Sidovich v. Italy (56581 / 00), Grand Chamber §87-§86 (2006).

Concluding [688]observations of the Committee against Torture: Azerbaijan,. UN Doc §6 (2003) 1/CAT/C/CR/30 (c)..

([689]) Rule 45 bis 2 of the rules of Yugoslavia..

([690]) Article 141 of the Criminal Procedure Code, Article 404 of the Judicial Instructions of the Public Prosecution.

([691]) Article 17 (2) (d) of the Convention on Enforced Disappearances, Rule 26 of the Bangkok Rules, Principle 19 of the Body of Principles, and Guidelines 20 and 31 of the Robben Island Guidelines; see Rule 38 of the Council of Europe Rules for Pre-Trial Detention, and Rules 99 and 24 of the European Prison Rules.

Concluding [692]observations of the Human Rights Committee: Central African Republic, UN Doc. CCPR/C/CAF/CO/2) §200614, Sweden,. UN Doc . CCPR/C/SWE/CO/6)§200913.

4.2 Right to Inform a Third Person of Arrest and Detention

4.2.1 Within the framework of international covenants

Any person who is arrested, detained or imprisoned has the right to inform a person in the outside world that he has been detained, the place of his detention, or to be notified by the authorities on his behalf [694].

He is also entitled to inform a third person if he is transferred from the place where he is detained [695].

The right to notify a third party of detention should be ensured, in principle, as soon as they begin to police custody, and the third person should be informed immediately, or at least promptly [696].

In exceptional cases, notification procedures may be delayed, if the necessities of the investigation so require on an exceptional basis [697].

However, any such exceptions should be clearly defined in the law, absolutely necessary to ensure the effectiveness of the investigation, and for a strictly defined period of time. In any case, such delay should not last more than a few days [698].

Any delay should be accompanied by guarantees that include the written reasons for the delay, and the approval of a senior police officer unrelated to the case, a member of the Public Prosecution or a judge [699].

The Human Rights Committee has made it clear that the deliberate failure of the authorities to disclose the fate of any person arrested for a prolonged period places the person, in fact, outside the protection of the law.

In cases of enforced disappearance (where the State refuses to recognize the detention or conceals the fate and whereabouts of the person), the Committee has concluded that such practices constitute a violation of rights, including the right to be recognized as a person before the law [700].

The European Court declared that unacknowledged detention "is a complete negation" and a "most serious violation" of the right to liberty [701].

Concluding [693]observations of the Committee against Torture: Russian Federation, §8 (2002) UN Doc. CAT/C/CR/28/4b, Uzbekistan, / UN Doc. CAT/C §6 (2002) 7/CR/28 (f), Morocco, 2/ §6 (2004) UN Doc. CAT/C/CR/31 (c); see SPT Standards, 3) CPT/ ,§36 ,CPT/Inf/) 92 §40 ,Inf (2002)15; UNGA Resolution 65/205, §20.

([694]) General Comment 2 of the Committee against Torture, §13; Recommendation Rec (2012) 12 of the Committee of Ministers of the Council of Europe, Annex 2/§ 15.

([695]) Article 14 (3) of the Arab Charter, Rule 2(1) of the Bangkok Rules, Principle 16 (1) of the Body of Principles, Guideline 43§ 3 (c) of the Principles of Legal Aid, Guideline 20 (a) of the Robben Island Guidelines, Rule 92 of the Standard Minimum Rules, Section M(2) (e) of the Principles of Fair Trial in Africa, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 24/9 of the European Prison Rules; see Articles 17 (2) (d) and 18 of the Convention on Enforced Disappearance, and Article 10 (2) of the Declaration on Disappearance.

Concluding [696]observations of the Human Rights Committee: Thailand, / UN Doc. CCPR.

Principles [697]15, 16 (1) and 16 (4) of the Body of Principles, and Guideline 3 43§ (e) of the Principles of Legal Aid.

([698]) Special Rapporteur on Torture, / 39 / UN Doc. A/HRC/13 . §82 (2010) Add. 5.

([699]) General Report 12 of the Committee for the Prevention of Torture, 15) §43 ,CPT/Inf)2002 ..

([700]) Commission on Human Rights: Griouh v. Algeria, / UN Doc. CCPR 9/7-8/§ 7 (2007) C/90/D/1327/2004, Gebrouni v. Algeria,. UN Doc 9/§8 (2011) CCPR/C/103/D/1871/2008; see General Comment 11 of the Working Group on Enforced Disappearances on the right to recognition before the law . §42.

([701]) Kurt v. Turkey (24276 / 94), European Court §124 (1998).

It also concluded that the State's failure to enact legislation guaranteeing the right of persons detained by the police to notify their families or others of their detention constitutes a violation of the right to private and family life [702].

Detainee registers are an additional safeguard against ill-treatment of persons deprived of their liberty.

Information on such records should be accessible to persons with a legitimate interest in accessing them, including families of detainees, lawyers and judges [703].

4.3 Incommunicado Detention

4.3.1 Under Egyptian law

When the accused is placed in prison on the basis of the detention order, a copy of this order must be delivered to the prison warden after he signs the original receipt [704].

Detainees shall reside in separate places from the places of other inmates. Pre-trial detainees may be permitted to reside in a furnished room for the amount specified in the Law Regulating Correction Centers, within the limits permitted by the places and tasks of the correction centers. They also have the right to wear their own clothes, unless the administration of the correction center decides to consider health, hygiene, or the interest of security that they wear the clothes prescribed for other inmates.

They may also bring the necessary food from outside the reform center or buy it from the reform center at the price specified for it, if they do not wish to do so or if they are unable to provide them with the prescribed food [705].

Articles 134 to 143 of Chapter Nine of Chapter Three of Book One of the Code of Criminal Procedure, Law No. 396 of 1956 regarding the organization of community correction and rehabilitation centers, or Minister of Interior Resolution No. 79 of 1961 on the internal regulations of correction and rehabilitation centers, do not require the implementation of a pretrial detention order against persons accused of one crime in one correctional center [706].

If the accused is remanded in custody in a case and is required to be remanded in custody in another case or cases, the member of the prosecution shall also order his detention in this case or cases, provided that the detention order issued in it shall be executed as of the date of his release in the first case for which he was detained, and he shall clearly indicate the file of each of these cases with the numbers of the other cases in which he was decided to be remanded in custody, with notification to the Reform Center of that [707].

If the convict is remanded in custody in one of the cases and is sentenced in another case to a financial penalty or simple imprisonment and the convict chooses to work, please implement this choice until the pretrial detention ends or he is executed with the penalty restricting his freedom that he may be sentenced to in the case for which he was remanded in custody.

However, if he chooses to execute the judgment in the other case by physical coercion or simple imprisonment without operation, his pretrial detention shall be terminated and then returned to him after the end of the execution.

([702]) Surrey and Chulak v. Turkey (92596 / 98 and 42603/ 98), European Court §37-§32 (2006).
([703]) See the concluding observations of the Human Rights Committee: Algeria,. UN Doc . §11 (2007) CCPR/C/DZA/CO/3..
([704]) Article 138 of the Criminal Procedure Law.
([705]) Article 398 of the Judicial Instructions of the Public Prosecution.
([706]) See Appeal No. 2096 of 35 S issued on March 14, 1966 and published in the first part of the Technical Office's letter No. 17 page No. 286 rule No. 56.
([707]) Article 402 of the Judicial Instructions of the Public Prosecution.

In the event that, during the execution by operation in one of the cases, an order is issued to detain the convict on remand in another case, the execution shall be suspended by operation until the pretrial detention ends and then the effect of this is restarted [708].

It is prohibited to place any person in reform centers without a written order signed by the competent authorities. Article 5 of the Egyptian Law on the Organization of Reform and Community Rehabilitation Centers affirmed the need for a written order signed by the competent authorities to place the person in the reform centers designated for that purpose. It is also prohibited to place any person in the labor institution of recidivists except by a written order signed by the legally competent authorities and remains in it until the Minister of Justice orders his release based on the proposal of the institution's management and the approval of the Public Prosecution. The court enforcement clerk must send adult convicts with their implementation forms to the reform centers specified for the implementation of the penalty according to the different type and degree of punishment[709].

The director of the correction center or the employee appointed for this purpose shall receive a copy of the committal order, after signing the original receipt, provided that the original is returned to those who brought the inmate and a signed copy of the person who issued the imprisonment order is kept.

The competent prosecution officer shall, upon placing the accused in the reform center on the basis of an order issued for his detention, hand over a copy of the detention order to the director of the reform center or the competent employee appointed for this purpose after signing the original receipt, and it shall be taken into account that such copy shall be signed by the person who issued the order and stamped with the seal of the emblem of the Republic [710].

The Attorney General and his agents in their jurisdictions have the right to enter all places of correction centers at any time to verify that there is no illegal inmate [711].

As for the places designated for the detention of detainees specified by a decision of the Minister of Interior, it is not permissible to enter them except for those assigned by the Public Prosecutor, such as public attorneys, heads of partial prosecutors' offices in them, or their director, to notify the Public Prosecutor through public attorneys or heads of total prosecutors' offices of what is in their departments from these places [712].

The Public Prosecution shall, when inspecting the reform centers, whether they are public or geographical, ensure that the orders of the Public Prosecution and the investigating judge in the cases that it is assigned to investigate and the decisions of the courts are implemented in the manner indicated therein, and that there is no illegal inmate [713].

This is done by reviewing the detention or arrest orders or the written orders to deposit for the detainee or the execution forms, and confirming that there is a summary of them in the prison records and requesting his copies of the detention order to show that he is not present. If the prosecution member is found detained or detained without a right, he orders his release immediately after writing a report proving the incident and explaining the record of the hour and

---

([708]) Article 403 of the Judicial Instructions of the Public Prosecution.
([709]) Articles No. 5 and 6 of the Law on the Organization of Correction Centers, Article No. 2 of the Internal Regulations of Correction Centers, Article No. 3 of the Internal Regulations of Geographical Correction Centers, Article No. 3 of the Internal Regulations of Military Prisons, and Article No. 1047 of the written, financial and administrative instructions of the Public Prosecution. Articles 2 and 3 of Presidential Decree No. 82 of 1984.
([710]) Article 1044 of the written, financial and administrative instructions of the Public Prosecution.
([711]) Article 85 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015.
([712]) Article 1750 of the Judicial Instructions of the Public Prosecution.
([713]) Article 1748 of the Judicial Instructions of the Public Prosecution.

date of the procedure and the person and signature of the recipient of the release order. If the prosecution member is found detained or detained in a place other than the place designated for him, he shall immediately write a report of the incident and order his deposit in the place designated for him with proof of this in the record explaining the hour and date of the procedure and the person and signature of the recipient of the deposit order. He may complete the inspection report upon his return to the headquarters of the prosecution and include the crimes and irregularities he observed, provided that he notifies the Attorney General of the Public Prosecution of the Appeals[714].

A penalty of imprisonment or a fine not exceeding two hundred Egyptian pounds shall be imposed on anyone who arrests, imprisons or detains any person without the order of one of the competent rulers and in cases other than those authorized, and the punishment shall be imprisonment in the event that the arrest is made by a person who unlawfully dresses as a government employee or is characterized by a false status or presents a forged order claiming to be issued by the government, he shall be punished by imprisonment [715].

In all cases, whoever unlawfully arrests a person and threatens him with death or tortures him with physical torture shall be punished with rigorous imprisonment [716].

Any person who lends a place of confinement or detention that is not permitted shall be punished by imprisonment for a period not exceeding two years with knowledge of this[717].

On the other hand, all international conventions have prohibited the admission of any person to prison without a legitimate detention order, and it is prohibited to keep any person detained pending investigation or trial except on the basis of a written order issued by a competent authority [718].

It is also prohibited to receive any juvenile in a detention institution without a valid detention order issued by a judicial, administrative or any other public authority, provided that the details of the detention order are recorded in the records of the institution immediately, and no juvenile may be detained in any institution or facility without records [719].

The SPT has considered that adequate recording of deprivation of liberty, including movements of detainees, possible complaints, requests and subsequent follow-up, constitutes one of the fundamental safeguards against ill-treatment, as well as an indispensable condition for the effective exercise of legally prescribed rights, such as the right to challenge the legality of the deprivation of liberty. Furthermore, proper recording of detention is a tool that enables proper and effective oversight by staff entrusted with oversight functions and serves as a safeguard for police personnel against false allegations of ill-treatment or omissions.

The SPT therefore recommended that the Police Service develop a standardised and standardised register for the timely and comprehensive recording of all key information relating to the deprivation of liberty of individuals and that police officers be trained to use this appropriately and consistently. The Sub-Committee recommends that records include at least the following information:

([714]) Articles 1749 and 1749 bis of the Judicial Instructions of the Public Prosecution.

([715]) Article 280 of the Penal Code, as amended by Law No. 29 of 1982.

([716]) Article 282 of the Penal Code.

([717]) Article 281 of the Penal Code.

([718]) Paragraph 1 of Rule 7 of the Nelson Mandela Rules, Principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle No. 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle No. 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([719]) Rule No. 20 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

the reasons for the deprivation of liberty, the exact time when it began and the length of time it lasted;

the person responsible for authorizing the deprivation of liberty and the person who entered the deprivation in the register;

Accurate information regarding the place where the person is detained for that period, including any movements within and between facilities;

the date on which the person first appeared before a judge or other authority;

Requests and complaints;

the time at which the person was informed of his or her rights and the time at which he or she was notified of the detention and the identity of the person notified as well as the identity of the officer making that notification;

The time when the person was seen by a doctor for examination or received a visit from a member of his family or a visit from a lawyer or any other person.

Furthermore, the Sub-Committee recommended that supervising officials exercise strict control over recordkeeping in order to ensure the regular recording of all relevant information [720].

First: Separating pre-trial detainees from the rest of the prisoners

The Egyptian legislator approved the principle of separating pre-trial detainees from the rest of the inmates, providing for their separation and residence in separate places from the places of other inmates [721].

Second: The right of the pre-trial detainee to continue thier education during the period of thier imprisonment

It is noteworthy that the Law on the Organization of Correction and Community Rehabilitation Centers allowed inmates to take examinations for studying at the headquarters of the committees. This applies to all inmates, whether they are held in pretrial detention or imprisoned in the implementation of sentences issued to them. It stipulated that: «The administration of public correction and rehabilitation centers shall encourage inmates to see and learn and facilitate studying for those who have the desire to complete the study.

The educational institutions in which inmates are enrolled shall hold special committees for them within the detention center to enable them to perform the examinations prescribed for them unless the head of the educational institution requests the transfer of inmates to perform practical or oral examinations outside the centers in which they are placed in cases that require this unless there is a risk of their transfer estimated by the Minister of Interior or whoever he authorizes[722].

If the principle is to preserve the dignity and humanity of the imprisoned person, regardless of his crime, it is not permissible to harm him physically or morally or to derogate from his constitutionally and legally established rights. There is no doubt that one of those rights is the right of the prisoner to education like the rest of society, which is urged by prison laws and internal regulations. The legislator considered education a right guaranteed to all, and the prison administration was obliged to encourage prisoners to do so, and that the imprisonment of the

---

([720]) (CAT/OP/MDV/1, 26 February 2009, §§116 - 118).

([721]) Article 14 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015, and Article 11 of the Internal Regulations of Geographical Reform Centers.

([722]) Article 31 of the Law Regulating Correction and Community Rehabilitation Centers, and Article 405 of the Judicial Instructions of the Public Prosecution.

citizen does not forfeit his right to education and does not absolve the state of guaranteeing this right, and its commitment to it remains in a manner that does not conflict with the duties of imprisonment[723].

Therefore, the legislator obligated the administration to educate the inmates of the reform centers and encourage them to do so, and to facilitate their means of studying and taking examinations. The contribution of the Department of Reform and Community Rehabilitation Centers to the education and education of the inmate contributes to the eradication of illiteracy on the one hand and to the improvement of the educational level of the inmate, which is one of the main entry points for changing concepts and changing the cognitive and intellectual reference of the inmate. This ultimately leads to the refinement of the inmate and changing his hostile view of society, as stipulated in the articles of the Reform Centers Law, which stipulate the need to encourage inmates to be informed and educated, facilitate the means and means of studying for them, allow the performance of special examinations in the headquarters of the committees, as well as the establishment of a library in all reform centers containing religious, scientific and ethical books, and allow inmates to bring books, newspapers and magazines at their expense per the internal regulations of the reform centers.

The Community Protection Sector shall facilitate the ways and means of educating inmates at different stages of education in accordance with the available means, and in a manner that does not conflict with the provisions of punitive implementation and the requirements of public security. It is permitted to hold special committees for them within the Correction and Rehabilitation Center in order to enable them to perform the examinations prescribed for them in coordination with the educational authorities in which they are enrolled.

If it is required for inmates to move to perform practical or oral examinations outside the centers where they are placed at the request of the head of the educational institution, the opinion of the relevant security authorities shall be consulted to consider the request and express an opinion. If it is found that there is a risk of their transfer, the educational institution shall be notified that they cannot move without giving reasons [724].

The prison administration shall teach prisoners educational, social and religious lessons aimed at evaluating any deviation in them and preparing them to return to service in a better manner and in accordance with the program prepared by the Training Authority for this purpose. It shall encourage prisoners to learn and facilitate studying for those who have the desire to continue studying and allow them to take examinations according to what is followed for ordinary prisoners, with a special focus on combating illiteracy among the uneducated among them[725].

The Administrative Court ruled that the decision to dismiss the student from school due to his arrest or imprisonment violates the law, and is tainted by the abuse of power. : [Education is a right guaranteed by the state to every citizen, whether free, imprisoned or detained a fortiori, considering that the detention of a citizen, whether pretrial detention pending a case or detention, does not criminalize the right to citizenship and does not lose the right to education. On this basis, Article 31 of the Prisons Regulation Law became, after its amendment by Law No. 87 of 1973, affirming this right for prisoners, obliging the prison administration to enable the prisoner to perform his examinations at the headquarters of the committees. Hence, it was inevitable for that administration to fulfill this duty, which is part of its mission to reform and discipline the prisoner before its role in enjoining and disciplining them.

([723]) Rules No. 58, 59 of the Standard Minimum Rules for the Treatment of Prisoners, and rule No. 4 of the Nelson Mandela Rules.

([724]) Article 15 bis of the Internal Regulations of the Reform and Community Rehabilitation Centers, added by Minister of Interior Decision No. 3320 of 2014.

([725]) Article 11 of the Internal Regulations of Military Prisons.

Whereas, it is established from the papers that the plaintiff was enrolled in the first secondary grade in the Directorate of Isna Industrial Secondary Boys in the academic year 1988 and was denied entry to the exam because he did not meet the percentage of practical training, then he took the exam again in the academic year 89/1990 and failed and on 15/8/1991 he was arrested and remained in this situation until now. The administrative authority Directorate of Education, Qena, in its response to the lawsuit) considered that the aforementioned can take the exam in the homes system, but after his release.

It is clear from this that the administration represented by the Directorate of Education in Qena, as well as the Ministry of Interior, is reluctant to enable the plaintiff to take the exams of the first grade of industrial secondary school, saying that the aforementioned is still detained and has not yet been released.

Whereas, the findings of the administrative authority contradict the letter and spirit of Article 31 of the Prisons Law, which stressed the need to hold the exam of prisoners at the headquarters of the committees, and if the plaintiff is in prison and has not met the percentage of practical lessons, the reference to this is the circumstances of his detention, which are beyond his control as force majeure circumstances, which means that the contested decision is contrary to the law and he is free to cancel it and say otherwise, assigning the plaintiff what he cannot tolerate and empty the aforementioned excuse of its content, and equating the student who interrupts his studies without an excuse with the one who has made this excuse against him, which is not acceptable to common sense] [726].

The fact that the administration prevents inmates of correctional centers and detainees from performing examinations in the headquarters of their committees, and approves their examinations in their prisons only, violates the law and contradicts it: [The legislator has considered education a right guaranteed to all, and the prison administration is obligated to encourage prisoners to do so, and that the imprisonment of the citizen does not forfeit his right to education and does not absolve the state from ensuring this right, and its commitment to it remains in a manner that does not conflict with the duties of imprisonment. Therefore, the legislator obligated the administration to educate prisoners and encourage them to do so, and to facilitate the means of studying and performing examinations in the headquarters of their committees and not in their prisons, and thus the approval of the Minister of the Interior on the performance of detainees and prisoners of examinations in their prisons only is contrary to the aforementioned law and contradicts it.

Whereas, it is clear from the appearance of the papers that the Appellee is detained in Wadi Al-Natrun detention center and that he is enrolled in the First Division of the Faculty of Education, Minya University, in the academic year 2001/2002, and submitted to the Appellant Administrative Authority to allow him to perform the examinations of that division this year, but it refrained from answering his request despite several requests for this purpose, which constitutes a negative administrative decision contrary to the law, likely to be canceled when deciding on the request for cancellation, which provides the corner of seriousness in requesting the suspension of the implementation of this decision, as well as the availability of the corner of urgency of the consequent effects of the implementation of this decision and its continued implementation, including depriving him of continuing his education as well as depriving him of a legitimate source of livelihood in the future, and the availability of a request to suspend the implementation of the contested decision, the corner of seriousness and urgency, which must be ruled to stop the implementation of this decision with the consequences[727] of this.

([726]) The judgment of the Administrative Court in Case No. 2927 of 12 issued at the session of 24 November 2005.
([727]) The judgment of the Supreme Administrative Court in Appeal No. 13238 of 48 Session of 28 January 2009 Technical Office 54 Page 240 Rule No. 28.

The Administrative Court of Justice also ruled that: [The legislator considered education a right prescribed for every citizen, and the state must ensure that it does not prevent him from benefiting from this right by detaining or detaining him. The legislator obligated the prison administration to facilitate for prisoners wishing to complete education the means of studying and to enable them to perform examinations at the headquarters of the committees where the exam is held.

Whereas, by applying the foregoing to the facts of the present dispute and since it is clear from the appearance of the papers and to the extent necessary to adjudicate the urgent part and without penetrating the subject, the son of the plaintiff is a student of the third year of Al-Azhar Secondary School (Al-Azhar Secondary School Certificate) - the literary department. He was sentenced to imprisonment for a period of one year in the session of 3/5/2009 in the felony No. 16713 of 2007, Beni Suef Department, registered under No. 2103 of 2007, Beni Suef. The administrative authority refused to enter the student's exam. He committed the first for the academic year 2008/2009. Therefore, the behavior of this administrative authority was contrary to the provisions of the law and thus the corner of seriousness required by the law to rule the suspension of execution without prejudice to the fact that the administrative authority had invoked the provisions contained in the decision of Sheikh Al-Azhar No. 337 of 1998 regarding the rules for students' affairs, as it was contrary to the a provision of the aforementioned prison law, which is similar to the general principle in this case.

As for the element of urgency, the examinations of the first commitment to the colleges that the plaintiff's son may join on 16/1/2010, and therefore the behavior of the administration authority by not announcing his result will result in irreparable damages if the subject is ruled to cancel that decision. Therefore, the two pillars of the suspension of execution are available in the present case, and therefore the court responds to his request to stop the implementation of the contested decision in its guarantee of depriving the plaintiff's son from performing the exam in the role of May 2009 for the academic year 2008/2009 in the Azhar Secondary Certificate and the consequent effects of this, most notably the announcement of the student's result in this exam, which enabled him to perform the court session of 26/5/2009 with the consequent right in the event of his success - in submitting his papers to the competent coordination office to join the college that qualifies him in this exam, and that the judgment exceeds his draft without announcing the provisions of Article 286 of the Code of Procedure][728].

It is not permissible for the administration authority to invoke the denial of the inmate of the reform center from performing his examinations at the headquarters of the committees, and it is not permissible to allow the inmate to be deported to the headquarters of the committee - according to what the administration authority claims - that the process of his deportation is surrounded by very serious security caveats, and the administration also may not invoke the inmate's failure to meet the attendance rate in its entirety: [Education is a right guaranteed by the state to every citizen, whether he is free, imprisoned or detained a fortiori, considering that the detention of the citizen, whether it is pretrial detention pending a case or an arrest, does not deprive him of citizenship and does not forfeit his right to education. On this basis, Article (31) of the Prisons Regulation Law came after it was amended by Law No. 87 of 1973, affirming this right for prisoners, so the prison administration was obliged to enable the prisoner to take his examinations at the headquarters of the committees. Hence, it was inevitable for the administration to fulfil this duty, which is part of its mission in reforming and torturing prisoners before its role in ignoring and disciplining them...

([728]) The judgment of the Sixteenth Circuit (Beni Suef, Fayoum) of the Administrative Court No. 4940 of 9 Q issued at the session of January 5, 2010.

Whereas, the Ministry of Interior, in its letter issued by the Assistant Minister for the Prisons Sector, dated 27/11/2001 and attached to the portfolio of documents of the defendant university, stated that it is not possible to allow the plaintiff to deport him to the headquarters of the college to take the exam because of the very serious security precautions surrounding the process of his deportation related to the attendance of the same. The Ministry also reported in the same letter of the Assistant Minister for the Prisons Sector that the plaintiff did not meet the attendance rate in its entirety.

Whereas, the conclusions of the Ministry of Interior contradict the letter and spirit of Article (31) of Law No. 396 of 1956 referred to after its amendment by Law No. 87 of 1973, which stressed the need to hold examinations of prisoners at the headquarters of the committees, and that if there is a fear of the plaintiff's escape during his deportation to the headquarters of the committees or during the performance of the exam, all these things were in the sight of the legislator when he decided to detain this right, but if there are security considerations that require precaution to prevent the plaintiff from deporting him to perform the exam at the headquarters of the committees, these considerations do not entitle the aforementioned administrative authority to prevent a right guaranteed by the legislator. In addition, the police, which is the security fortress of the country, is always able to provide the security requirements for the performance of the detainee of the exam at the headquarters of the committees.

That being the case, the contested decision not to enable the plaintiff to take the third-year exams in college. .... Basson, which is affiliated with the defendant university, inside the headquarters of the committees in the college, is a decision that is contrary to the law, which requires a ruling to cancel it and the consequent effects.

This does not change what was raised by the Ministry that the plaintiff did not meet the attendance rate of the college in which he is enrolled in such a way that he cannot be enabled to perform the exam, in addition to the fact that the failure of the aforementioned to meet the legally prescribed attendance rate is due to the circumstances of his detention, which are beyond his control as force majeure circumstances, the constant of the university's response to the lawsuit from the University Council decided at its session No. 85 dated 31/5/2003 to allow detained students who do not meet the attendance rate to perform the examinations][729] .

The Administrative Court also ruled that: [Education is a right guaranteed by the state to every citizen, whether he is free, imprisoned, or detained a fortiori, considering that the detention of a citizen, whether pretrial detention pending a case or his arrest, does not deprive him of citizenship status, and therefore does not deprive him or forfeit his right to education. On this basis, Article (31) of the Prisons Regulation Law, as amended by Law No. 87 of 1973, affirms this right for prisoners. The prison administration must enable the prisoner to perform his examinations at the headquarters of the committees. Hence, it was inevitable for that administration to fulfill this duty, which is part of its mission to reform and discipline the prisoner before its role in enjoining and disciplining them.

Whereas the Ministry of Interior stated in its response to the lawsuit that it had addressed the management of the Higher Institute for Social Service in Aswan by enabling the plaintiff to perform the examinations inside their prison, and the institute refused to do so on the basis that it does not hold special examination committees outside the institute on the instructions of the Minister of Education, and it is clear from the response of the administrative authority that it does not authorize the plaintiff to perform their examinations in the fourth division of the aforementioned institute except inside the prison in which they are placed.

([729]) The judgment of the Administrative Court in Case No. 1197 of 12 S issued at the session of December 29, 2005.

Whereas, what the Ministry of Interior went to contradicts the letter and spirit of Article (31) of Law No. 396 of 1956 referred to after amending it by Law No. (87) of 1973, which confirmed the holding of the examinations of prisoners at the headquarters of the committees and that if there is a fear of the escape of the detainee or the detainee during the performance of the exam at the headquarters of the committees, this consideration was under the eyes of the legislator when the detainee decided this right, but if there are security considerations that require precaution to prevent the detainee from taking the exam at the headquarters of the committees, these considerations do not entitle that body to prevent them from a right decided by the legislator, in addition to the fact that the police is always able to provide the security requirements for the detainee to perform the exam at the headquarters of the committees, and since this is the case, the contested decision not to enable the plaintiff to perform the exam of the Fourth Division of the Higher Institute of Social Service in Aswan within the headquarters of the committees of the Institute is contrary to the law and the plaintiff's request to cancel it based on a sound basis of the law is free to accept] [730].

And that the decision to deprive the detainee or prisoner of continuing their studies and performing his examinations on time at the headquarters of the committees is a mistake that makes the administration responsible for compensating them for the damages he has suffered as a result of this decision: [As the responsibility of the administration for the decisions issued by it is based on the existence of an error on its part, that the decision is illegal for one or more of the defects stipulated in the Law of the Council of State, and that the person concerned is harmed, and that the causal relationship between error and harm is established.

Whereas, as for the element of error, it is decided that detention as stipulated in Article (3) of Law No. 162 of 1958 regarding the state of emergency is limited to suspects and dangerous to security and public order, and therefore the authority of the ruler is not to arrest citizens except for those whose detention is authorized by the Emergency Law, who are suspects and dangerous to security and public order, and who are attributed to them a specific activity that proves that the detainee has actually committed it and represents a danger to security and public order, which constitutes the element of the reason for the detention decision, and if the detention decision is free of a specific percentage of activity and facts in themselves for the detainee, the detention decision becomes missing its legally justified reason, and then the element of error is available. (Judgment of the Supreme Administrative Court in the session of 9/2/2002 in Appeal No. 2894 of 45 Supreme Court, Group of the year 47, p. 426.

Whereas the papers did not justify the arrest of the plaintiff in December 1992, except for the response of the administrative authority that the arrest was made for security reasons, which does not serve as a reason to carry the arrest decision, and then becomes devoid of its reason, in addition to the fact that the administrative authority, after arresting the appellant and restricting him spatially and depriving them of the legally prescribed rights of prisoners in Article 31 of Law No. 396 of 1956 on Prisons, as amended by Law No. 87 of 1973, to allow them to take examinations, Rather, it persisted in wasting the right of the appellant by refraining from implementing the judgment issued in his favor in this regard by the Administrative Court in the session of 30/11/1994 in the urgent part of the lawsuit No. 288 of 2Q, and then in the substantive part of it in the session of 26/6/1997 according to the appellant's appeal report and the administrative authority did not deny it, and the continuation of this abstention until the second round of the academic year 2003 in implementation of the judgment issued in the urgent part of the lawsuit whose judgment is challenged in the current appeal, and therefore the decision of illegal arrest and unjustified deprivation of the examination and the continuation of the study constitutes the corner of error in On the side of the administrative body.

([730]) The judgment of the Administrative Court in Case No. 2138 of 11 S issued at the session of 24 November 2005.

Whereas, from the corner of the damage, the detention decision issued regarding the appellant represents a violation of two freedoms and a derogation from two constitutional rights that are equal in magnitude as general constitutional freedoms and rights, and if they are differentiated and independent of each of them in terms of provisions and organization, the statement that the detention decision arranges a material reality that occurs in restricting the freedom of the citizen. If the illegality of the decision is proven, the decision becomes inconsistent with the principle established in Articles 41 and 50 of the Constitution, which state that personal freedom is a natural right, it is not permissible to restrict the freedom of the citizen, prevent him from moving, or oblige them to reside in a specific place Except for the conditions, circumstances and controls stipulated in these two articles, the detention decision, whether as a material incident or as a consideration, determines the legal status of the person concerned, which may, in addition to the above, prejudice and override another constitutional right represented in the right to education and the continuation of his educational studies and the development of their talents and mental faculties, and then include him in the specialized educational studies in order to prepare himself to earn a living and serve his homeland as stipulated in Article (18) of the Constitution, and each of the two constitutional rights affected by the illegal decision to arrest requires individual compensation; due to the different nature of Damages resulting from the infringement of each of them. (In this sense, the judgment of the Supreme Administrative Court at the hearing of 24/3/2001 in Appeal No. 2894 of 43 Supreme Court, published as a set of judgments issued by the First Circuit of the Supreme Administrative Court from October 1, 2000 until the end of March 2001, Part 1, p. 619)

Whereas, according to the foregoing, and since it is established from the papers that the appellant was enrolled in the third grade agricultural secondary school at Qena Agricultural Secondary School in the academic year 1992/1993, and he was arrested in December 1992, and was prevented from continuing his education in a normal study environment and performing the prescribed examinations until 2003, where they was deprived of the examinations of the second round of the third grade agricultural secondary school despite the judgment issued at the session of 29/5/2003 by the Administrative Court, we stayed in the urgent part of the lawsuit whose judgment was challenged by the present appeal, Hence, the deprivation of his constitutional right to continue his education was due to his illegal detention, which lasted for nearly eleven years, and that the damage resulting from the deprivation of their constitutional right to continue their education and perform the prescribed examinations requires individual compensation for the damages resulting from the detention decision, especially since the papers were devoid of any compensation to the plaintiff from the administrative authority for the decision to arrest them, which requires the court to oblige the appellee administrative authority (the Ministry of Interior) to pay the appellant an amount of ten thousand pounds as compensation for the material and moral damages suffered by them as a result of depriving them of continuing their education and taking the prescribed exams [731] .

The commitment of the administration to allow the inmates or detainees to continue their studies and perform the examinations depends on the desire and will of the inmate or detainee, and that the administration's failure to respond to the requests of the detainee or detainee to allow them to perform the examinations is a negative decision contrary to the law, which may be challenged before the Administrative Court. The Supreme Administrative Court ruled that: [The legislator has considered education a right guaranteed to all, and the prison administration must encourage prisoners to do so, and that the imprisonment of the citizen does not forfeit his right to education and does not absolve the state from guaranteeing this right, and its commitment to it remains in a manner that does not conflict with the duties of imprisonment. Therefore, the

---

([731]) The judgment of the Supreme Administrative Court in Appeal No. 17753 of 52 S, issued at the session of December 28, 2011, Technical Office 57 Part I, page 326, rule No. 41.

legislator obligated the administration to educate prisoners and encourage them to do so, and to facilitate them to study and perform examinations in the headquarters of their committees and not in their prisons, and therefore the approval of the Minister of the Interior on the performance of detainees and prisoners of examinations in their prisons only is contrary to the aforementioned law and contradicts it.

Whereas, it is clear from the appearance of the papers that the Appellee is detained in Wadi Al-Natrun detention center and that he is enrolled in the First Division of the Faculty of Education, Minya University, in the academic year 2001/2002, and submitted to the Appellant Administrative Authority to allow them to perform the examinations of that division this year, but it refrained from answering his request despite several requests for this purpose, which constitutes a negative administrative decision contrary to the law, likely to be canceled when deciding on the request for cancellation, which provides the corner of seriousness in requesting the suspension of the implementation of this decision, as well as the availability of the corner of urgency of the consequent effects of the implementation of this decision and its continued implementation, including depriving them of continuing their education as well as depriving him of a legitimate source of livelihood in the future, and the availability of a request to suspend the implementation of the contested decision, the corner of seriousness and urgency, which must be ruled to stop the implementation of this decision with the consequences of this[732].

The court also ruled that: [The State guarantees equal opportunities for all citizens without discrimination. It also guarantees the right to education for all as a constitutional right. The prison administration must encourage prisoners to this education by facilitating them to study, continue their studies and take the exam.

As this is such as examining the personality of convicts and methods of rehabilitation in respect of their constitutional rights and dignity by linking the prison to society by providing possibilities and opportunities that help them to social life and respond to society instead of separating, isolating, challenging and colliding with it. It comes only if the prisoner is allowed to complete their studies and facilitate the performance of the exam to obtain a greater share of education and scientific qualifications.

In terms of the application of the foregoing, the Appellee, as he was enrolled in the First Division of the Faculty of Advertising, Cairo University, and was arrested and wanted to perform the exam to complete his studies at the college, refraining from enabling him to perform the exam constitutes a negative decision in violation of the provisions of the law and a violation of the principles of the Constitution in equal opportunities and ensuring the right of education for citizens is available in the request to stop its implementation, the basis of seriousness and urgency, as this refraining from harming the scientific future of the Appellee and missing the opportunity to perform the exam, which is already irreversible and must therefore be suspended][733] .

The inmate or detainee, in order to oblige the administration to allow him to continue his studies and perform the examinations, must notify it of his desire to do so. Not every detainee or detainee is ready and has the desire to take the exam: [The legislator has obligated the prison administration to create the appropriate atmosphere in the prison to learn and facilitate the study books and continue to study for the students, and even to enable them to perform the examinations that lead to their studies, and to allow them to perform the examinations in the headquarters of the committees in which their colleagues take these examinations, and is not

---

([732]) The judgment of the Supreme Administrative Court in Appeal No. 13238 of 48 BC issued at the session of January 28, 2009, Technical Office 54 page 240, Rule No. 28.

([733]) The judgment of the Supreme Administrative Court in Appeal No. 7956 of 47 issued at the session of June 28, 2006, Technical Office 51 Part No. 2, page 1006, rule No. 142.

afraid of the ordinary acumen that the expressions of this text have come to indicate clearly in its intentions that the beginning is entrusted to the will of the prisoner himself. The prison administration must encourage those who want to be informed to facilitate a suitable place for them, books, newspapers and media that they can read in a psychological state that enables them to do so, as well as it must teach them when they want to learn, and if he asks to study, he must supply him with what he wishes and wants to study it, otherwise, for the legislator to use [the memorization that indicates the study request], who have the desire to continue studying...] It is categorical that the prisoner must have the desire to continue their studies. Otherwise, the administration party must research the intentions of the prisoners and trace their desires that they did not express. The desire to perform the exam is not expressed except by a request submitted by the prisoner to the prison administration explicitly informing it of their desire to perform the examinations that they wishe. Otherwise, there is no imposition on the administration authority to leave the prisoner for his desire that was not expressly expressed. All of them state that the prisoner must apply to the prison administration requesting that it be obligated by law to enable him to perform the examinations. Without this request, there is no obligation on the administration authority to enable them to perform them.

Whereas, the basis of the responsibility of the administration for its actions - as established by the judgments of this court - consists of providing three pillars, namely, that there is a mistake, that the person concerned is harmed, and that the causal relationship between this error and that harm is linked.

Whereas, it is established from the foregoing that no error can be attributed to the administration, but its behavior and behavior came according to what the appellant wanted, who did not apply to it requesting to enable him to perform his examinations, and thus its tort liability in its conduct[734] collapses.

The Administrative Court also ruled that: [The legislator obligated the prison administration to encourage prisoners to education and to facilitate those who wish to continue their studies the necessary means to achieve that end, and the legislator obligated the administration to allow them to perform examinations at the headquarters of the committees.

Since the obligation of the Ministry of Interior to allow the prisoner or detainee to continue his studies and take the exam depends on the desire and will of the prisoner or detainee, if they notifies the administration of their desire to continue studying and take the exam, it may not prevent them from doing so.

In light of the above, and according to the established papers, the plaintiff was arrested on 16/11/1994 and was enrolled in the first division of the Faculty of Sharia and Law, Al-Azhar University for the academic year 1996/1997, and he was released on 28/5/2002. He stated in his lawsuit that the defendant administrative authority was preventing him from taking the exams during the period of his detention, and he claims his right to receive appropriate compensation for the material and moral damages he suffered as a result of depriving him of taking the exams during the period of detention.

Whenever this is the case, and the papers have been devoid of stating that the plaintiff has submitted a request to the administrative authority notifying it of his desire to continue studying and take the exam in each academic year during the period of his detention and that it did not respond to his request, not every detainee or freedom-restricted person is ready and has the desire to take the exam, and this matter is not assumed by the administrative authority, and it cannot be said that the administrative authority is responsible for proving that it did not object to

---

([734]) The judgment of the Supreme Administrative Court in Appeal No. 32293 of 54 S issued at the 26th session of October 2011, Technical Office 57 Part No. 1, page 125, rule No. 14.

the plaintiff's taking the exam, as this statement transfers the burden of proof from the plaintiff to the defendant, which violates the rules of evidence, and the arrest itself cannot be considered a presumption of deprivation of it, as it is not required for the detainee to apply himself to take the exam, it is possible to submit it through his legal agent or one of his relatives to the defendant administrative authority.

Whereas the plaintiff, who is charged with proving his lawsuit, has failed to prove the validity of his claim, as he did not provide evidence that he submitted any request to perform the exam during the period of his arrest and the administrative authority rejected it, in addition to the fact that it is established in the letter of the Director General of the Faculty of Sharia and Law at Al-Azhar University in Assiut that the plaintiff has performed the examinations within the Prison Committee in Assiut during the years 2000/2001, 2001/2002, and then the element of error on the part of the defendant administrative authority is one of the pillars of responsibility, and with its absence that responsibility collapses, without the need to discuss the other pillars, which must be with him, and the case is also the judiciary to reject the lawsuit.

The Administrative Court of Justice also ruled that [The legislator considered education a right prescribed for every citizen that deliberation must ensure for him and does not prevent the benefit of this right from his imprisonment or detention. The legislator obligated the prison administration to facilitate for prisoners wishing to complete their education the means of study and to enable them to perform examinations at the headquarters of the committees where the exam is held.

As it does not preclude the implementation of the foregoing, the administration invokes any security precautions or other excuses for violating them in the same as the constitutional right of the detainee or the person whose freedom is restricted.

In terms of applying the foregoing to the facts of the present dispute, and since it is established from the papers that the plaintiff is registered with the First Division of the Faculty of Dar Al Uloom, Cairo University, and that he has been detained since 1994 and the administrative authority has not enabled him to perform his prescribed examinations, and in this regard, its decision is flawed by the illegality of what must be ruled to cancel with the consequent effects.

As for the request for compensation for appropriate compensation, it is established that the liability for compensation, it must have three elements, one of which is the element of error, because it was established from the papers in the light of the foregoing that the plaintiff did not submit an application for the performance of the examinations, so this element has been denied the right of the administration, so it is not necessary to reject the request for compensation][735] .

4.3.2 Within the framework of international covenants

Detention without access to the outside world - that is, incommunicado detention - facilitates torture and other ill-treatment, enforced disappearance and, depending on the circumstances, can in itself constitute torture or cruel, inhuman or degrading treatment

The Inter-American Court considers that prolonged isolation and incommunicado detention constitute, in themselves, cruel and inhuman treatment and ruled that the incommunicado detention of two persons - one for four days and the other for five days - constituted a violation of their right to humane treatment [736].

([735]) The judgment of the Administrative Court in Case No. 2781 of 57 S issued at the session of 30 October 2005.

([736]) Inter-American Court: Cantoral-Benavides v.Peru (83§ §)2000; Chaparro Alvarez and Labo Iñiguez v. Ecuador (172-166§ §)2007.

The Committee against Torture expressed concern about a law allowing incommunicado detention for 48 hours before bringing a person before a judge in Cambodia[737] .

Some international standards and several human rights bodies and mechanisms explicitly affirm that incommunicado detention should be categorically prevented [738].

While other international standards and expert bodies do not categorically prohibit incommunicado detention, they only allow some limitations and delays in granting detainees access to the outside world in exceptional circumstances, and for a very short period of time

As the length of incommunicado detention increases, so does the risk of additional human rights violations. Prolonged incommunicado detention is incompatible with the right of all detainees to be treated with respect for their human dignity and with the duty to prohibit torture or other ill-treatment or punishment [739].

Incommunicado detention may also constitute a violation of the rights of family members [740].

The African Commission concluded that detaining an individual without allowing him any contact with his family and refusing to inform the family whether this individual is detained or not, and the place of his detention, constitutes inhuman treatment of both the detainee himself and his family members [741].

The Inter-American Court ruled that detaining a woman accused of acts related to terrorism for one month in isolation from the outside world, followed by restricting the visits she receives, constituted a violation not only of her human rights, but also of her immediate relatives, including her children [742].

The Fair Trial Principles in Africa state that a confession or confession obtained under duress while in incommunicado detention should not be considered and should therefore be excluded from the list of evidence in the case at hand [743].

The International Convention for the Protection of All Persons from Enforced Disappearance defines it as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by

---

([737]) Concluding observations of the Committee against Torture: Cambodia,. UN Doc 6§ (2003)CAT/C/CR/31/7 (j)..

([738]) Guiding Principle 24 of the Robben Island Guiding Principles, and Principle 3 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

CHR General Comment 20 § 11; Special Rapporteur on Torture: 156/39 § 2001)UN Doc. A/56); Concluding observations of the Committee against Torture: Yemen, 2010)UN Doc. CAT/C/YEM/CO. 2/Rev. 1) 12§, El Salvador 20§)2009)UN Doc. CAT/C/SLV/CO/2; UN Special Rapporteur on Human Rights and Counter-Terrorism: Spain, UN 32§ § (2008)Doc. A/HRC/10/2/Add. 2 and 62; Concluding Observations of the Human Rights Committee: Syria, 9§ (2005)UN Doc. CCPR/CO/84/SYR, Spain, . 14§)2009)UN Doc. CCPR/C/ESP/CO/5..

([739]) Inter-American Court: Chaparro Álvarez and Labo Iñiguez v. Ecuador (171§)2007, Maritza Urrutia v. Guatemala (87§)2003, Cantoral-Benavidesv. Peru (84-83 §§)2000; see Human Rights Committee: Concluding Observations: Chile, 11§ (2007)UN Doc. CCPR/C/CHL/CO/5, Womah Mukong v. Cameroon, 1991/1994)UN Doc. CCPR/C/51/D/458) 4/9§, Al-Megreisi v. Libyan Arab Jamahiriya, / UN Doc. CCPR 4/5§ 1994)C/50/D/440/1990, Polay Campos v. Peru,. UN Doc 4/8§ 1997) CCPR/C/61/D/577/1994; see also, UN GA Resolution 65/205, 21§; HRC Resolution 8/8 7§ (c); OHCHR Resolution 38/1997 (20§)1997..

([740]) Commission on Human Rights: Bashasha v. United Arab Jamahiriya, UN 5/7-4/7 § (2010)Doc. CCPR/C/100/D/1776/2008, Concluding Observations: United States of America, 2006)UN Doc. CAT/C/USA/CO. 3/Rev. 1) . 12§..

([741]) Amnesty International and Others v. Sudan (48/90, 50/91, 52/91 and 89/93), African Commission, Annual Report 13 (54§)1999 .

([742]) De la Cruz-Flores v. Peru, Inter-American Court (2004) . 136-125§§..

([743]) Section N(6) (d) (1)of the Principles of Fair Trial in Africa..

concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law"[744].

The Declaration on the Protection of All Persons from Enforced Disappearance considered that any act of enforced disappearance is a crime against human dignity, and it is a serious and flagrant violation of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights. Enforced disappearance deprives the person subjected to it of legal protection, and inflicts severe suffering on him and his family, in violation of the rules of international law that guarantee everyone the right to liberty and security and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and violates his right to life or constitutes a serious threat to him [745].

Any act of enforced disappearance is considered a crime that must be punished with appropriate penalties. Criminal responsibility for the act of enforced disappearance shall be borne by whoever commits the crime himself, orders, recommends, conspires, or participates in its commission. No orders or instructions issued by public, civil, military, or other authorities may be invoked to exempt from responsibility for the commission of that crime, with the possibility of providing in national legislation extenuating circumstances for anyone who, after participating in acts of enforced disappearance, facilitates the appearance of the victim alive, or voluntarily provides information on cases of enforced disappearance, taking into account that the perpetrators of the crime do not benefit from any special amnesty law or any similar procedure that may result in their exemption from any criminal trial or punishment.

Every act of enforced disappearance is an ongoing crime whose perpetrator continues to conceal the fate and whereabouts of the victim of disappearance [746].

In addition to the civil responsibility of the perpetrators of enforced disappearance, the State also bears civil responsibility for the authorities that organized, approved or condoned enforced disappearances, with the victims of enforced disappearance and their families being compensated appropriately, including the means for their rehabilitation to the fullest extent possible [747].

Each State shall investigate complaints that a person has been subjected to enforced disappearance, promptly and impartially examine that allegation and take appropriate measures to ensure the protection of the complainant, witnesses, relatives and defenders of the disappeared[748].

Each state must provide access to every person who is proven to have a legitimate interest in obtaining information about the authority that decided to deprive the person of his liberty, as well as the date, time and place of deprivation of liberty and entry to the place of deprivation of liberty; the authority that monitors the deprivation of liberty; the whereabouts of the person deprived of liberty, including in the event of transfer to another place of detention, the place to which he was transferred and the authority responsible for his transfer; the date, time and place of release; data on the health status of the person deprived of liberty; and access to the circumstances and causes of death and the destination of the remains of the deceased in the event of the death of the person deprived of liberty, as well as the protection of every person

---

([744]) Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([745]) Article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([746]) Articles 4, 17 and 18 of the Declaration on the Protection of All Persons from Enforced Disappearance, and article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([747]) Articles 5 and 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([748]) Articles 12, 17 of the International Convention for the Protection of All Persons from Enforced Disappearance, and articles 13, 12 of the Declaration on the Protection of All Persons from Enforced Disappearance.

proven to have a legitimate interest from any ill-treatment, intimidation or punishment for seeking information about a person deprived of liberty[749].

It is prohibited to restrict the right to obtain information related to the person deprived of his liberty, while guaranteeing the right to a prompt and effective judicial appeal to obtain all the prescribed information at the earliest [750].

The United Nations human rights bodies have considered that incommunicado detention, in general, can lead to gross violations of human rights and that this practice should be prohibited, and the United Nations Human Rights Committee has reiterated this position several times, and it has adopted the view that: Prolonged incommunicado detention may facilitate the commission of torture and can itself be considered a form of cruel, inhuman or degrading treatment, or even a form of torture[751] .

First: Separating pre-trial detainees from the rest of the prisoners

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that any person detained on suspicion of, or charged with, a criminal offence shall be presumed innocent until proved guilty according to law in a public trial in which he or she has all the guarantees necessary for his or her defense. It is prohibited to impose restrictions on this person that are not strictly required for the purposes of detention or for reasons of preventing obstruction of the investigation process, the administration of justice, or the maintenance of security and good order in the place of detention. Therefore, detained persons shall be separated from other prisoners whenever possible[752].

The Standard Minimum Rules for the Treatment of Prisoners, as well as the Nelson Mandela Rules, also recognized that pre-trial detainees (untried prisoners) must be separated from the rest of the prisoners, and also stipulated that juveniles in pre-trial detention must be separated from adults [753].

The International Covenant on Civil and Political Rights also obligated the separation of defendants (pre-trial detainees) from convicts, provided that they are treated independently consistent with their being unconvinced persons [754].

The Arab Charter on Human Rights also stipulated that defendants should be separated from convicts and that they should be treated in a manner consistent with their being unconvicted [755].

For children, children should be appropriately separated in detention centres, including but not limited to children in need of care from children in conflict with the law, children awaiting trial from convicted children, boys from girls, younger children from older children, and physically and mentally disabled children from children who are not physically and mentally disabled. Children detained under criminal legislation should never be placed with adult detainees. The Special Rapporteur also notes that the permissible exception to the separation of children from adults contained in article 37 (c) of the Convention on the Rights of the Child should be interpreted restrictively. The best interests of the child should not be known as required by the

---

(749) Article 18 of the International Convention for the Protection of All Persons from Enforced Disappearance.

(750) Article 20 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article 9 of the Declaration on the Protection of All Persons from Enforced Disappearance.

(751) United Nations Commission on Human Rights, Resolution No. 32/2003, para. 14 and notes that the Commission on Human Rights was replaced by the Human Rights Council in 2006.

(752) Issued by the United Nations by Resolution No. 43/173 of 9 December 1988, Principles No. 8, 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(753) Rules No. 8, 85 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule No. 112 of the Nelson Mandela Rules.

(754) Article 10 of the International Covenant on Civil and Political Rights.

(755) Article 20 of the Arab Charter on Human Rights.

interest of the State. Children in conflict with the law should be placed in detention centres specifically designed for persons under the age of 18, with a non-custodial environment and tailored systems, and run by specialized staff trained in dealing with children. They should enable exposure to natural light and adequate ventilation, with access to sanitary facilities and respect for privacy, and accommodation initially in individual bedrooms. Large sleeping quarters should be avoided[756].

Second: The right of the pre-trial detainee to continue thier education during the period of their imprisonment

The principle is to preserve the dignity and humanity of the imprisoned person, regardless of his crime. It is not permissible to harm him physically or morally or to derogate from his constitutionally and legally established rights. There is no doubt that one of those rights is the right of the prisoner to education, just like the rest of society. International covenants considered education a right guaranteed to all, and the prison administration was obliged to encourage prisoners to do so, and that the imprisonment of the citizen does not forfeit his right to education and does not absolve the state of guaranteeing this right, and its commitment to it remains in a manner that does not conflict with the duties of imprisonment [757].

4.4 Right to Contact Family

4.4.1 Within the framework of international covenants

Detainees, including those in police custody or awaiting trial, should be provided with all reasonable facilities to contact and receive visits from their families and friends [758].

Restrictions or supervision of visits are permitted only in the interest of justice or the necessities of security and good order in the institution [759].

The right to receive visits applies to all detainees, regardless of the nature of the offence they were suspected of having committed or the charge against them [760].

The denial of visits may amount to inhuman treatment. Furthermore, the European Court, the African Commission and the Inter-American Commission have made it clear that the circumstances or procedures relating to visits must not infringe on other rights, including the right to private and family life.

The European Court has affirmed that laws or regulations that lack sufficient precision, so as to allow unreasonable restrictions on family visits, violate the right to private and family life

Restrictions shall be imposed only in accordance with the law and shall be necessary and proportionate to the national security or public safety, the prevention of crime, the prevention of

---

([756]) (A/HRC/28/68، §76).

([757]) Rules No. 58, 59 of the Standard Minimum Rules for the Treatment of Prisoners, and rule No. 4 of the Nelson Mandela Rules.

([758]) Article 17 (2) (d) of the Convention on Enforced Disappearances, Article 17 (5) of the Migrant Workers Convention, Article 16 (2) of the Arab Charter, Rules 28-26 of the Bangkok Rules, Guideline 31 of the Robben Island Guidelines, Rule 92 of the Standard Minimum Rules, Section M (2) (e) of the Principles for a Fair Trial in Africa, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Rules 24 and 99 of the European Prison Rules, and Guideline 100 (1) of the ICC Guidelines.

Second General Report of the Committee for the Prevention of Torture, CPT/Inf (92) 3, §51; Nuri Özen et al. v. Turkey (15672/08 et al.), ECtHR 59§ (2011).

([759]) Principle 19 of the Body of Principles, Rule 92 of the Standard Minimum Rules, Section M[2] [g] of the Fair Trial Principles in Africa, Rule 24 of the European Prison Rules, and Guideline 100 [3] of the ICC Guidelines.

([760]) See Mark Romulus v. Haiti [Case 1992], American Commission [1977].

disturbance of public order, the protection of public health or morals, the protection of the rights and freedoms of others, or the safeguarding of the economic integrity of the country[761] .

The European Court found that allowing two short visits per month in a room where the detainee, his wife and child were separated by a glass barrier, constituted a violation of the right to private and family life, and the Court, in making its rulings, took into account whether other alternatives, including supervised visits, were considered as more appropriate [762].

The Inter-American Court declared that the imposition of severe restrictions on family visits has resulted in a violation of the rights of family members [763].

It also pointed out that it is the duty of the State to pay special attention to ensuring that women in detention or imprisonment are allowed to receive visits from their children [764].

The Bangkok Rules require authorities to encourage women's contact with their families, including children, and to take measures to rebalance the situation faced by women held in institutions far from their homes [765].

However, the limited number of detention facilities for women in most countries has raised concerns about the obstacles created by long distance travel and the expenses incurred by family members when visiting their detained female relatives

The duty to facilitate family visits requires the authorities to ensure that there are adequate facilities for such visits in places of detention [766].

The Bangkok Rules also require States to ensure that visits involving children are organized in such a way as to provide an environment that leaves children with positive impressions and allows direct communication between the mother and her child. They also require prison staff who inspect children visiting detention facilities to treat them with respect and the necessary sensitivity [767].

4.5 The Right to Use Doctors and Health Care in Police Custody

4.5.1 Within the framework of international covenants

Persons deprived of their liberty have the right to be examined by a doctor as soon as possible and, if necessary, to receive free health care and treatment [768].

This right is an integral part of the duty of the authorities to respect the right to health and to ensure respect for human dignity [769].

([761]) Civil Rights Organization v. Nigeria [151/96], African Commission, Annual Report 13 [27§ [1999.
African Assembly of Malawi et al. v. Mauritania [54/91, 61/91, 93/98, 97/164 to 196/97 and 210/98], 13th Annual Report of the African Commission. 124-123§§ [2000].
X and Y v Argentina, American Commission (1996) § § 99-98.
European Court: Gradec v. Poland [39631/ 06], [2010] 48-45§ §, Anubrio v. Cyprus [24407/ 04], [97-91§ § § [2010, Kucera v. Slovakia [48666 / 99], [134-125 § §§ [2007, Baginski v. Poland 99-86 §§ § [2005] ,[97/37444]..
([762]) European Court: Moiseev v. Russia [62936 / 00], [2009] 247-246§ § and 252-259, cf. Messina v. Italy [No. 2] [25498 / 94], . 74-61§§ [2000]..
([763]) De la Cruz-Flores v. Peru, Inter-American Court [2004] . 136-135§§..
([764]) Miguel Castro - Castro Prison v. Peru, Inter-American Court. 330§ [2006]..
([765]) Rule 26 of the Bangkok Rules..
([766]) Rule 92 of the Standard Minimum Rules..
([767]) Rules 28 and 21 of the Bangkok Rules.
([768]) Article 14 (4) of the Arab Charter, Principle 24 of the Body of Principles, Rule 24 of the Standard Minimum Rules, Guidelines 20 (d) and 31 of the Robben Island Guidelines, Principles 9(3) and 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 42 of the European Prison Rules.
Concluding observations of the Committee against Torture: Cameroon,. UN Doc 4§ § (2003) CAT/C/CR/31/6 (b) and 8(d)..

The Human Rights Committee has stated that the protection of detainees requires that every detainee be allowed to have prompt and regular access to doctors [770].

The United Nations General Assembly and its Human Rights Council have also stressed the importance of detainees receiving prompt and regular medical care to prevent torture and other forms of ill-treatment[771] .

Those in police custody should be informed of their right to be seen by a doctor [772].

Police officers should not scrutinize requests to see a doctor [773].

The Committee against Torture and the Subcommittee on Prevention of Torture have stressed that doctors who order mandatory medical examinations in police stations should be independent of the police authorities, or the detained person should choose the doctor who examines him himself [774].

Women have the right to be examined or treated by a female doctor at their request, wherever possible, except in cases requiring urgent medical intervention; and a female staff member must be present if the examination of the detained woman is carried out by a male doctor or nurse against her will [775].

The Special Rapporteur on torture explained that doctors should not examine detainees to determine their "eligibility for interrogation"[776].

To ensure confidentiality, medical examinations should not, as a rule, be conducted under the hearing or sight of police officers. However, in exceptional cases, and if requested by the doctor, special security arrangements may be considered, such as having a police officer nearby who can see what is happening without hearing, except when called by the doctor. The doctor must indicate any such arrangements made in the medical examination record[777].

Law enforcement officials must ensure the protection of the health of the persons they detain and to provide assistance and medical aid to any injured or injured person wherever necessary[778].

In this context, the European Court ruled that a state had violated the right to life of a man who had been shot in the head before being arrested and died 24 hours after being taken into police custody without being seen by a doctor, as the authorities assumed that he was drunk [779].

([769]) See Congo v. Ecuador (11. 427 (American Commission) -47§ § (1998) 48 and 63-68.
([770]) General Comment 20 of the Human Rights Committee 11§..
([771]) For example, Resolution 65/205 of the United Nations General Assembly, 20§; Resolution 13/19 of the Human Rights Council, 5§ (2010).
([772]) Section M(2) (b) of the Fair Trial Principles in Africa, and Guideline 20 of the Robben Island Guidelines; see Principles 13 and 24 of the Set of Principles..
([773]) Subcommittee on Prevention of Torture: Sweden, / UN Doc. CAT/OP . 64§)2008(SWE/1..
([774]) General Comment 2 of the Committee against Torture, 13§, and the Concluding Observations of the Committee against Torture: Hungary, 8§ (2006) UN Doc. CAT/C/gun/CO/4, Argentina, 1/ 6§ § (2004) UN Doc. CAT/C/CR/33 (m) and 7(m), Article 20 Report: Mexico, 219§ § (2003) UN Doc. CAT/C/75 (i) and 220 (j); see also Second Annual Report of the Subcommittee on Prevention, UN . 24§ (2009) Doc. CAT/C/42/2..
([775]) Rule 10 (2) of the Bangkok Rules.
([776]) See Principle 4 of the Principles of Medical Ethics.
Special Rapporteur on Torture, 156/2001) UN Doc. A/56) . (1)39§..
([777]) Concluding observations of the Committee against Torture: Austria,. UN Doc 13§ (2005) CAT/C/aut/Co. 3, Turkey, UN Doc. CAT/C/TUR/Co. 3 11§ (2010); SPT: Maldives, UN 111 §) 2009(Doc. CAT/OP/BDV/1; Committee for the Prevention of Torture: General Report 12, 42§ ,CPT/Inf/)2000(15, Lithuania, 22) 20-19§ ,CPT/Inf/)2009.
([778]) Article 6 of the United Nations Code of Conduct for Law Enforcement Officials.
([779]) Yasinskis v. Latvia (45744 / 08) European Court (67§ (2010)..

Detainees have the right to access medical records and to request the opinion of a second doctor on their condition [780].

Individuals who allege that they have been subjected to torture or ill-treatment should be examined by an independent doctor, in a manner consistent with the provisions of the Istanbul Protocol [781].

4.6 Rights of Foreign Nationals

4.6.1 Within the framework of international covenants

Foreign nationals detained in connection with cases shall be accorded all reasonable facilities to communicate with and receive visits from representatives of their Government and, if they are refugees under the protection of a competent intergovernmental organization, shall be entitled to communicate with and receive visits from its representatives or those of the State in which they reside [782].

This right is also enshrined in treaties that establish duties for States to investigate and prosecute crimes under international law [783].

Such communication shall take place only upon the consent of the detained person, and consular representatives may assist the detained person through various measures of defense, such as providing, maintaining or monitoring legal representation, obtaining evidence from the country of origin, and monitoring the conditions of detention of the accused person [784].

Given the assistance and protection that such representatives can provide, the right of detained individuals to communicate with and receive visits from representatives of their consular countries should be available to persons who are nationals of the State that arrested or detained them and the foreign State of which they are nationals [785].

If a person holds the nationality of two foreign countries, Amnesty International considers that he should be granted facilities to communicate with and receive visits from representatives of both countries, if he chooses to do so, and the Inter-American Court and the Inter-American Commission have concluded that failure to respect the rights of a detained foreign national to consular assistance amounts to a serious violation of fair trial rights. In cases where the defendants are likely to be sentenced to death, this constitutes a violation of the right to life [786].

([780]) Principles 25 and 26 of the Set of Principles..

Concluding [781]observations of the Human Rights Committee: Hungary, / UN Doc. CCPR/C/14§ (2010) Hun/CO/5; Report of the Committee against Torture under article 20 : Mexico, 220§ (2003) UN Doc. CAT/C/75..

([782]) Article 36 of the Vienna Convention on Consular Relations, Article 17 (2) (d) of the Convention on Enforced Disappearances, Article 16 (7) of the Migrant Workers Convention, Article 10 of the Declaration on Non-Citizens, Rule 38 of the Standard Minimum Rules, Rule 2(1) of the Bangkok Rules, Section M(2) (e) of the Fair Trial Rules in Africa, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 37 of the European Prison Rules (applicable to persons detained pending trial and to prisoners).

See International Court of Justice: LaGrand (Germany v. United States of America) (77§ ,(2001), Avena and Other Mexican Nationals (Mexico v. United States of America) (50§ (2004).

([783]) For example: Article 6(3) of the Convention on Enforced Disappearances, Article 15 (3) of the Council of Europe Convention on the Prevention of Terrorism..

([784]) Advisory Opinion 99 / OC-16, Inter-American Court (86§ (1999).

([785]) See Rule 27 (2) of the Council of Europe Rules for Pre-Trial Detention.

([786]) Advisory Opinion 99 / OC-16, Inter-American Court (137§ (1999); Fierro v. United States (11. 331), American Commission (37§ § (2003, 40.

Chapter Five: The Right to be Brought Promptly Before A Judge or Other Judicial Officer

Pre-trial detention is an investigation procedure aimed at ensuring the safety of the preliminary investigation by placing the accused at the disposal of the investigator, facilitating his interrogation or confronting him whenever the investigation requires it, and preventing him from escaping, tampering with the evidence of the case, influencing witnesses or threatening the victim, as well as protecting the accused from the possibility of retaliation against him and calming the public feeling revolted by the gravity of the crime [787].

Any person arrested or detained in connection with a criminal charge must be brought promptly before a judge or other judicial officer to ensure that his or her rights are protected; the judge must rule on the lawfulness of his or her arrest or detention, and whether he or she should be released or detained pending trial; in general, there is a presumption that persons detained pending the commencement of their trial will be released; the State bears the burden of proving that the initiation of the arrest or detention of the person was lawful, and that his or her continued detention, if so requested, is necessary and proportionate.

5.1 The Right to be Brought Promptly Before a Judge or Other Judicial Officer

5-1-1 Within the framework of Egyptian law

First: Investigation by the investigating judge

The legislator considered that there are some circumstances that may require placing the investigation in a hand other than the Public Prosecution or placing it in a more neutral and more secure hand, as if the accused is a member of the Public Prosecution or a judge, or if a certain position has been issued by the Public Prosecution in the lawsuit that reveals its trends, or if the circumstances of the lawsuit necessitate reassurance that the investigator will not be subject to any external influence, no matter how serious it is, or if the investigation requires special expertise for other circumstances.

The assignment shall be made by a decision of the general assembly of the competent court of first instance or whoever it authorizes at the beginning of each judicial year.

The assignment decision shall be issued at the request of the Public Prosecution, the accused, or the plaintiff of the civil right. If the request is submitted by the Public Prosecution, the president of the court shall respond to its request, unless the local jurisdiction is to investigate the crime for another court.

If the request is submitted by the accused or by the plaintiff of civil rights, the investigation must not concern an employee or public employee or one of the policemen for a crime committed by him during the performance of his job or because of it. In this case, the response to this request is subject to the discretion of the general assembly of the court or whoever it authorizes, after hearing the statements of the Public Prosecution. The decision issued in this regard is not subject to appeal, whether by the accused or the plaintiff of the civil right or the Public Prosecution. The submission of the request does not result in depriving the mandate of the Public Prosecution in the conduct of the investigation until the case enters the possession of the investigating judge.

([787]) Article 381 of the Judicial Instructions of the Public Prosecution.

Article 64 of the Code of Criminal Procedure stipulates that: "If the Public Prosecution considers in the articles of felonies and misdemeanors that the investigation of the case by the investigating judge is more appropriate in view of its special circumstances, it may, in any case, request the competent court of first instance to assign one of its judges to carry out this investigation. The assignment shall be by a decision of the general assembly of the court or whoever it authorizes at the beginning of each judicial year. In this case, the delegated judge shall be exclusively competent to conduct the investigation from the time he initiates it. The accused or the plaintiff of civil rights may, if the lawsuit is not directed against an employee, a public employee, or one of the policemen for a crime committed by him during the performance of his job or because of it, request the court of first instance to issue a decision on this assignment. The general assembly of the court or whoever it authorizes shall issue the decision if the reasons set out in the preceding paragraph are fulfilled after hearing the statements of the public prosecution. The Public Prosecution shall continue the investigation until the delegated judge proceeds with it in the event that a decision is issued to do so."

The investigating judge may not initiate an investigation into a specific crime except at the request of the Public Prosecution or upon its referral to it by the other bodies stipulated in the law [788].

If the member of the prosecution sees in any felony or misdemeanor, and in any case where the lawsuit is pending, that its investigation by the investigating judge is more appropriate in view of its special circumstances, he must notify the Attorney General of the General Prosecution of this and send him a detailed memorandum on the incident, its circumstances, and circumstances, and continue the investigation until the delegated judge proceeds with it in the event of a decision to that effect.

The Public Defender shall take the initiative to notify the Technical Office of the Public Prosecutor through the Senior Public Defender of the Appeal Prosecution with a memorandum of his opinion containing a statement of the incident, its circumstances and circumstances that require such assignment. If the Public Defender agrees, the Public Defender shall address the President of the Court of First Instance in writing with a request to assign one of the judges of the Court to proceed with this investigation, provided that the request indicates the incident or facts to be investigated and the data of the accused if known [789].

The accused or the plaintiff of civil rights may, if the lawsuit is not directed against an employee, public employee, or an officer for a crime committed by him during the performance of his job or because of it, request the president of the court of first instance to issue a decision to assign a judge to the investigation. The president of the court shall issue this decision after hearing the statements of the prosecution [790].

If the accused or the plaintiff of civil rights requests the President of the Court of First Instance to assign an investigative judge, the Public Defender shall notify the Technical Office of the Public Prosecutor, through the First Public Defender of the Appeals Prosecution, of his opinion and entrust one of the heads of the Public Prosecution to express the view of the Public Prosecution before the President of the Court when considering the request [791].

The Minister of Justice may also request the Court of Appeal to assign a judge to investigate a specific crime or crimes of a specific type. The assignment shall be by a decision of the general assembly of the court or whoever it authorizes at the beginning of each judicial year. In this

---

([788]) Article 67 of the Criminal Procedure Law.
([789]) Article 629 of the Judicial Instructions of the Public Prosecution.
([790]) Article 630 of the Judicial Instructions of the Public Prosecution.
([791]) Article 632 of the Judicial Instructions of the Public Prosecution.

case, the delegated judge shall be exclusively competent to conduct the investigation from the time he initiates it.

Article 65 of the Criminal Procedure Law stipulates that: "The Minister of Justice may request the Court of Appeal to assign a judge to investigate a specific crime or crimes of a specific type. The assignment shall be by a decision of the general assembly of the court or whoever it authorizes at the beginning of each judicial year. In this case, the delegated judge shall be only competent to conduct the investigation from the time he initiates it."

It is clear from the wording of Article 65 "... to investigate a particular crime or crimes of a particular kind... »In this assignment, it is not required that the crime delegated to achieve it be a felony, but it is equal that it be a misdemeanor or a felony, taking into account that some cases may need unusual guarantees or special expertise.

The Minister of Justice may request the Court of Appeal to assign an advisor to investigate a certain crime or crimes of a certain type, and the assignment shall be by a decision of the General Assembly, in which case the delegated advisor shall be the only one competent to conduct the investigation from the time he commences work [792].

Whenever the lawsuit is referred to the investigating judge, he is exclusively competent to investigate it [793].

The original principle is that the investigating judge has a specific mandate (in rem), so he may not initiate the investigation except within the scope of the specific crime that he was asked to investigate without going beyond that to other facts unless those facts are indivisibly linked to the act entrusted to him to investigate [794].

The investigating judge may not initiate an investigation except within the scope of the specific crime that he was asked to investigate without going beyond this to other facts unless those facts are indivisibly linked to the act entrusted to him to investigate [795].

Whereas it is clear from the text of Article 199 of the Code of Criminal Procedure that the Public Prosecution has the original jurisdiction in the preliminary investigation of all crimes, and as an exception, it is permissible to assign a judge to investigate a specific crime or crimes of a special kind, and when the case is referred to him, he was exclusively competent in investigations [796].

Procedures for the Assignment of the Investigating Judge

The investigating judge shall be assigned by a decision of the President of the Court of First Instance and shall have the freedom to choose the delegated judge without a supervisor [797].

If a request is submitted to be assigned by an investigating judge from the prosecution, the president of the court must respond to its request, unless the local jurisdiction is to investigate

---

([792]) Article 631 of the Judicial Instructions of the Public Prosecution.

([793]) Article 69 of the Criminal Procedure Law, and see: Appeal No. 11229 of 88 S issued at the hearing of January 13, 2019 (unpublished), Appeal No. 14047 of 86 S issued at the hearing of July 22, 2018 (unpublished), Appeal No. 32783 of 85 S issued at the hearing of November 25, 2017 (unpublished), Appeal No. 31186 of 85 S issued at the hearing of February 25, 2017 (unpublished), Appeal No. 29963 of 86 S issued at the hearing of January 4, 2017 (unpublished), Appeal No. 5352 of 86 S issued at the hearing of December 26, 2016 (unpublished), Appeal No. 20242 of 84 S issued at the hearing of April 2, 2015 (unpublished), Appeal No. 5793 of 78 S issued at the hearing of November 3, 2010 (unpublished).

([794]) Appeal No. 1294 of 29 BC issued at the session of December 22, 1959 and published in the third part of the book of the Technical Office No. 10 page No. 1055 rule No. 218.

([795]) Article 637 bis of the Judicial Instructions of the Public Prosecution.

([796]) Appeal No. 31111 of 84 S issued at the session of November 7, 2015 and published in the letter of the Technical Office No. 66 page No. 729 rule No. 112.

([797]) Article 633 of the Judicial Instructions of the Public Prosecution.

the crime for another court. However, if the request is submitted by the accused or the plaintiff of civil rights, the response to this request is subject to the discretion of the president of the court after hearing the statements of the prosecution, and his decision is not subject to appeal, whether by the accused, the civil prosecutor, or the prosecution [798].

It is permitted to change the judge delegated to the investigation if there is an impediment that prevents him from continuing the investigation [799].

For each case referred to a judge for investigation, a special file shall be created, which shall always remain in the prosecution. The number of the same case shall be given, in which the date of commencement of the investigation, its sessions, the name of the member of the prosecution present therein shall be recorded, and copies of the requests, defenses and memoranda submitted by the prosecution to the judge[800] shall be deposited.

Second: Investigation by the Public Prosecution

The Public Prosecution shall undertake the investigation of misdemeanors and felonies in accordance with the provisions prescribed for the investigating judge, taking into account the provisions for investigation with the knowledge of the Public Prosecution, except for the crimes that the investigating judge is competent to investigate in accordance with the provisions of the law [801].

The members of the prosecution must themselves initiate the investigation of the felony articles and take the initiative to move to achieve what they report of their incidents. They may, when necessary, assign the arresting officers to initiate any of the investigation procedures except for interrogation and confrontation. They may also assign one of the assistants of the prosecution to investigate a case in its entirety.

Conducting a preliminary investigation into the articles of felonies before filing a lawsuit before the court is considered necessary for the validity of the judgment in them [802].

Prosecution assistants may be assigned to carry out one or more specific investigative work to achieve a case in its entirety, taking into account that their assignment in cases of low importance[803].

The Court of Cassation ruled that the investigation conducted by the assistant to the prosecution has the status of a judicial investigation carried out by other members of the Public Prosecution: [Article 22 of the Judicial Authority Law promulgated by Law No. 46 of 1972 has authorized the Public Prosecution, if necessary, to assign an assistant to the prosecution to investigate a whole case, making the investigation carried out by the assistant to the prosecution to achieve the status of a judicial investigation carried out by other members of the Public Prosecution within the limits of their competence and removing the distinction between the investigation carried out by the assistant to the prosecution and the investigation of other members. The investigation carried out by the assistant to the prosecution does not differ in its impact from that carried out by other colleagues] [804].

([798]) Article 634 of the Judicial Instructions of the Public Prosecution.
([799]) Article 636 of the Judicial Instructions of the Public Prosecution.
([800]) Article 639 of the Judicial Instructions of the Public Prosecution.
([801]) Article 199 of the Criminal Procedure Law.
([802]) Article 122 of the Judicial Instructions of the Public Prosecution.
([803]) Article 241 of the Judicial Instructions of the Public Prosecution.
([804]) Appeal No. 2840 of 65 s issued at the session of March 13, 1997 and published in the first part of the Technical Office book No. 48 page No. 354 rule No. 49, Appeal No. 25649 of 64 s issued at the session of December 17, 1996 and published in the first part of the Technical Office book No. 47 page No. 1362 rule No. 196, Appeal No. 9672 of 63 s issued at the session of December 7, 1994 and published in the first part of the Technical Office book No. 45 page No. 1102 rule No. 174, Appeal No.

1- Investigative Lawsuits

The law does not require an investigation by the prosecution into misdemeanors and violations, but prosecutors must investigate important misdemeanors in view of their gravity, the persons of the accused or the victims of them, or other circumstances they assess [805].

The public attorneys of the public prosecution shall undertake the investigation of felonies and misdemeanors that are of special importance. When necessary, they may only supervise the investigation conducted by the competent prosecutors, or assign the most senior members of the public prosecution to conduct this investigation. It is not permitted to assign any member of the public prosecution to supervise an investigation conducted by others because this supervision is entrusted to the public defender or the head of the public[806] prosecution alone.

Prosecutors should promptly investigate and dispose of vessel intrusion crimes in Egyptian territorial waters.

The public defender must also be informed of the content of the records of these crimes immediately after they are presented to them and everything that would disrupt the investigations and dispose of them to work to overcome them.

The Technical Office of the Attorney General shall be notified - through the Attorney General - of what is required to be reported about these cases [807].

Prosecutors must personally investigate all that is attributed to police officers, whenever they are accused of committing a felony or a misdemeanor, whether it is in the performance of their job or because of it or not related to the work of their job [808].

The investigation shall be carried out by the members of the Public Prosecution in cases in which the officers of the armed forces are accused of committing crimes not related to the performance of their duties and have a partner or shareholder who is not subject to the Military Provisions Law, which the Public Prosecution is competent to investigate [809].

The members of the prosecution shall investigate all accidents that occur in the reform centers except those that are of little importance. They may then assign the director of the reform center to investigate them unless the complaint is against one of the employees of the reform center. The members of the prosecution must investigate them themselves on the day specified for this without delay, and it is better to move to the reform center for investigation, especially if the matter calls for asking a number of its employees or inmates [810].

Prosecutors shall initiate an investigation into crimes of assault on the symptoms of male and female students in which teachers are accused, and proceed to investigate them thoroughly, carefully, and without complacency in taking precautionary measures against the persons of the perpetrators, following up their cases before the judiciary, and challenging the judgments issued in them that are contrary to the law [811].

Prosecutors shall move to investigate and initiate suicide cases, a full investigation to reveal their truth, and send the investigation after its completion to the Attorney General of the Public

---

1410 of 53 s issued at the session of October 23, 1983 and published in the first part of the Technical Office book No. 34 page No. 851 rule No. 168, Appeal No. 397 of 50 s issued at the session of June 8, 1980 and published in the first part of the Technical Office book No. 31 page No. 731 rule No. 141.

([805]) Article 123 of the Judicial Instructions of the Public Prosecution.

([806]) Article 124 of the Judicial Instructions of the Public Prosecution.

([807]) Article 124 bis of the Judicial Instructions of the Public Prosecution.

([808]) Article 125 of the Judicial Instructions of the Public Prosecution.

([809]) Article 126 of the Judicial Instructions of the Public Prosecution.

([810]) Article 128 of the Judicial Instructions of the Public Prosecution.

([811]) Article 129 of the Judicial Instructions of the Public Prosecution.

Prosecution with an opinion note to dispose of it, provided that a book is allocated in the Public Prosecution to record the actual suicides and attempted suicides - without those in which the suspicion of suicide is excluded - in order to use this book for statistical purposes with the registration of these cases with complaint numbers [812].

Prosecutors must themselves investigate serious incidents of manslaughter or negligent injury, as well as those of special importance, such as those in which there are many dead or injured, and not hesitate to investigate those incidents whenever necessary [813].

Prosecutors shall initiate the investigation of crimes of forgery of securities and banknotes and crimes of using them as soon as they are notified of them [814].

The First Public Lawyers of the Appeals Prosecutions and the Public Lawyers of the Public Prosecutions shall personally supervise the investigation of the crimes of sit-in and strike of factory and company workers, the crimes of sabotage and destruction of installations, and terrorism crimes, and notify the Technical Office of the Attorney General of these incidents as soon as they occur, and provide the Supreme State Security Prosecution of the Public Prosecutor's Office with detailed reports the day following their occurrence at the latest [815].

Prosecutors must expedite the investigation of cases of government workers and the public business sector and dispose of them so as not to prolong their suspension or remain pending for a long time, in the interest of the public interest and to prevent the disruption of the work of the bodies they follow[816].

Prosecutors must investigate cases in which pharmacists are accused with the utmost care, and act quickly to prevent the disruption and closure of pharmacies and harm the interests of the public accordingly [817].

Prosecutors must personally investigate the crimes of forgery in official papers [818].

Prosecutors shall personally investigate incidents of aggression against public funds as soon as they are reported to them [819].

The members of the prosecution must take care to investigate the reports received by them regarding the crimes of trespassing on state property or one of the bodies whose funds are considered public property and stipulated in Articles 115 bis, 372 bis of the Penal Code or any other law in order to invoke the elements of the crime, and take measures to seize the funds - when necessary - in accordance with the text of Article 208 bis (a) of the Code of Criminal Procedure, and to quickly dispose of them and submit them to close sessions with the follow-up of the criminal case until it is finally ruled upon, and to verify the judgment of the original and supplementary penalties prescribed, and to appeal against the judgments issued in them contrary to the law [820].

Prosecutors must initiate an investigation into the crimes of embezzlement of incompetent and incompetent funds and dispose of them expeditiously if the embezzled funds are not returned within a period specified for the accused within a period not exceeding fifteen days [821].

([812]) Article 130 of the Judicial Instructions of the Public Prosecution.
([813]) Article 131 of the Judicial Instructions of the Public Prosecution.
([814]) Article 132 of the Judicial Instructions of the Public Prosecution.
([815]) Article 134 of the Judicial Instructions of the Public Prosecution.
([816]) Article 135 of the Judicial Instructions of the Public Prosecution.
([817]) Article 136 of the Judicial Instructions of the Public Prosecution.
([818]) Article 139 of the Judicial Instructions of the Public Prosecution.
([819]) Article 140 of the Judicial Instructions of the Public Prosecution.
([820]) Article 140 bis of the Judicial Instructions of the Public Prosecution.
([821]) Article 141 of the Judicial Instructions of the Public Prosecution.

The crimes of killing newborn infants committed to conceal shame require the same level of attention as other murder cases. Therefore, public prosecutors must personally conduct the investigations into these cases and not leave them to the police [822].

In cases of sudden death that occur after the injection of the deceased or after his total or local anesthesia by the treating doctor or the hospital doctor, the members of the prosecution must not authorize the burial of the body before the accident investigation with their knowledge and they must conduct this investigation immediately after being notified of the accident [823].

Prosecutors must initiate the transition to achieve the incidents of disruption of railway trains and the interruption of telegraph and telephone correspondence, due to the seriousness of the consequent breach of security and harm to the public interest [824].

The most senior acting member shall undertake the investigation of election crimes, and he shall initiate this investigation, with the Attorney General of the Department of Public Prosecutions immediately being notified of its importance to undertake his investigation himself, supervise his investigation, or delegate any of his prosecutors to conduct this investigation [825].

2. Notification of Criminal Incidents

The members of the prosecution shall notify the general attorneys of the general prosecution by telephone of the incidents of felonies and misdemeanors that are of importance to themselves or to those related to them. They shall notify the first general attorney of the prosecution of the appeal by telephone or by fax of the incidents that they believe must be notified of the reason for the circumstances of their commission or their serious breach of public security or the personality of the accused or the victims in them, such as cases of murder in which there are multiple victims and serious assault on public property, crowds and cases of religious and political activity, as well as cases in which students of higher groups and institutes are accused, and they shall, if necessary, contact the public prosecutor directly by telephone in this regard.

The First Attorney General of the Appeals Prosecution shall notify the Attorney General by telephone[826].

The Supreme State Security Prosecution must be notified of the crimes it is competent to investigate in the district of the governorates of Cairo and Giza, as soon as they occur. Members of the prosecution outside these two governorates must notify that prosecution of these crimes within their areas of competence as soon as they are notified of them to take what it deems appropriate. In all cases, the technical office of the Attorney General in important cases shall be notified as soon as the notification is received by the Supreme State Security Prosecution [827].

In all cases, the notification must include a brief statement of the subject of the accident and the time and place of its occurrence, highlighting the important aspect that required the notification [828].

Every incident that has been notified in the aforementioned manner or that was significant and has not been notified, the member of the prosecution who has investigated it or has seen the investigation that has been conducted in its regard must write an accurate and comprehensive summary report of all the facts that should be noted, the evidence, testimonies or confessions

---

([822]) Article 142 of the Judicial Instructions of the Public Prosecution.
([823]) Article 143 of the Judicial Instructions of the Public Prosecution.
([824]) Article 144 of the Judicial Instructions of the Public Prosecution.
([825]) Article 145 of the Judicial Instructions of the Public Prosecution.
([826]) Article 172 of the Judicial Instructions of the Public Prosecution.
([827]) Article 173 of the Judicial Instructions of the Public Prosecution.
([828]) Article 174 of the Judicial Instructions of the Public Prosecution.

included in the investigation, the type of crime and the motive for it, whether the investigation has been revealed, the articles of the law applicable to it, the time of its occurrence, the time of informing the prosecution of the incident, the name and industry of the accused, the imprisonment or release of the accused, the procedures taken in the investigation and intended to be taken in it, the name of the investigator, and the time of his transfer and return.

The report shall be sent as soon as possible to the First Attorney General of the Appeals Prosecution and the Attorney General of the Public Prosecution, as well as to the Director of the Judicial Inspection Department of the Public Prosecution [829].

If there are important matters in the investigation after sending the report, it shall be accompanied by a supplementary report [830].

When the final disposition of the case notified is made, it shall be written to the party to which the notification was sent [831].

If the prosecution receives inquiries or observations regarding one of the aforementioned matters, the correspondence related to this shall not be attached to the case files but shall be returned to its source with the responses to which it was written [832].

If one of the government or public sector employees, one of the officers referred to the court, one of the country's mayors or sheikhs, one of the students of Egyptian universities, one of the students of religious institutes, or one of the students of the Amiri schools is accused of committing a felony or a misdemeanor, the prosecution, which has recorded the incident in its schedules, must notify the entity to which they belong of the charge assigned to them and the result of the final disposal thereof, whether by keeping the papers or by filing the criminal case, as well as the judgment issued in this case so that the aforementioned entities can follow up the behavior of their employees outside the Labor Department.

The notification shall be for the employees of the government, the public sector, or the public business sector to the heads of their subordinate entities, for the officers referred to the Ministry of Defense, and for the mayors, sheikhs, and bankers of the country who are princes to the director of security subordinate to him.

The notification shall be for the students of the Egyptian universities to the dean of the college they follow, for the students of the religious institutes to the sheikh of the institute, and for the students of the Emiri schools to the principals of their schools [833].

Such notices shall also be required even if the criminal case has been filed directly by those who claim that they have suffered harm from the crime in cases where the law allows the use of this license when a conviction is issued[834].

3- Evening Prosecution Work

The work of the prosecution extends to an evening period starting daily from 6 pm to 10 pm in the winter, and from 7 pm to 11 pm in the summer, in order to consider the minutes of flagrante delicto and urgent papers that need to be presented to the prosecution outside the official working hours, and the completion of the late work of the morning period [835].

([829]) Article 175 of the Judicial Instructions of the Public Prosecution.
([830]) Article 176 of the Judicial Instructions of the Public Prosecution.
([831]) Article 177 of the Judicial Instructions of the Public Prosecution.
([832]) Article 178 of the Judicial Instructions of the Public Prosecution.
([833]) Article 179 of the Judicial Instructions of the Public Prosecution.
([834]) Article 180 of the Judicial Instructions of the Public Prosecution.
([835]) Article 198 of the Judicial Instructions of the Public Prosecution.

In each prosecution, a sufficient number of prosecutors and their employees shall be allocated to work daily during the evening period [836].

A register shall be prepared for each prosecution in which complete data are recorded on a daily basis on the minutes and papers presented during the evening work period and the procedures followed therein [837].

Third: The qualities that must be present in the investigator

Prosecutors, as essential parties in the administration of justice, should always maintain the honor and dignity of their profession. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment or improper interference, and without being unjustifiably exposed to civil, criminal or other responsibilities. The authorities shall also ensure the physical protection of prosecutors and their families when their personal safety is threatened by their performance of prosecutorial functions. They shall determine, by law or by published rules or regulations, decent conditions for the service of prosecutors and their adequate remuneration and, where applicable, for the duration of their tenure, pension and retirement age, provided that the promotion of prosecutors, wherever a system exists, is based on objective factors, including, in particular, professional qualifications, ability, integrity and experience, and shall be decided upon in accordance with fair and impartial procedures[838] .

The positions of prosecutors shall be completely separate from judicial functions, and prosecutors shall play an active role in criminal proceedings, including the initiation of prosecution, undertaking, within the limits permitted by law or consistent with local practice, the investigation of offences, supervising the legality of investigations, supervising the execution of court decisions, and exercising their other functions as representatives of the public interest.

Therefore, members of the Public Prosecution must perform their duties in accordance with the law, fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, so as to contribute to ensuring the integrity of the procedures and the proper functioning of the criminal justice system.

In the performance of their duties, prosecutors shall:

perform their functions impartially, avoiding all political, social, religious, racial, cultural, sexual or any other type of discrimination,

protect the public interest, act objectively, take due account of the position of both the accused and the victim, and take care of all relevant circumstances, whether for or against the accused,

maintain the confidentiality of matters entrusted to them, unless the performance of their duty or the cause of justice requires otherwise,

Examine the views and concerns of victims in the event that their personal interests are affected, and ensure that victims are informed of their rights pursuant to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Prosecutors shall refrain from commencing or continuing prosecution or shall use their best efforts to discontinue the proceeding if an impartial investigation shows that the charge is unfounded.

([836]) Article 199 of the Judicial Instructions of the Public Prosecution.
([837]) Article 200 of the Judicial Instructions of the Public Prosecution.
([838]) Guidelines on the Role of Prosecutors, paragraphs 3-7.

Prosecutors shall pay due attention to the prosecution of crimes committed by public officials, in particular, corruption, abuse of power, gross violations of human rights and other crimes under international law, and to the investigation of such crimes if permitted by law or consistent with domestic practice.

If prosecutors become in possession of evidence against suspects and know or believe, on reasonable grounds, that it was obtained by unlawful methods that constitute a serious violation of the human rights of the suspect, in particular by the use of torture or cruel, inhuman or degrading treatment or punishment, or by other human rights violations, they must refuse to use such evidence against anyone other than those who used the said methods or notify the court thereof, and take all necessary measures to ensure that those responsible for the use of these methods are brought to justice [839].

The investigator must be faithful to his mission to memorize the truth, take all means to reveal it, and believe that reaching the truth and achieving justice is theirdesired goal [840].

The member of the prosecution shall wear the clothes of the judge when initiating the investigation, so he shall be impartial in order to investigate the right wherever it may be, whether it leads to the establishment of evidence before the accused or to the denial of the accusation against him [841].

Objectivity, impartiality and fairness are crucial elements of interrogation in investigations, and require that interrogation officers have a broad horizon, even if the evidence against the person in question is strong. When the interrogation process is objective, impartial and fair, it reduces the risk of resorting to methods directed at obtaining confessions or coercion, and the risk of obtaining false statements or false information. In criminal investigations, a fair policing process forms the preparatory basis for a fair trial. Interrogation staff must maintain their professionalism and not allow their prejudices, preconceptions, or emotions to influence their performance during interrogations [842].

The member of the prosecution must deprive himself of all influence on him on the occasion of the incident he is investigating, and initiate the investigation on the basis that he is free of any previous knowledge of it, and it is not permissible for him to listen to a story about the incident in a non-investigation session, or to make what the media publish or broadcast about the incident any impact on the perception of its course, or the direction of the investigation in a certain direction in service of this perception [843].

The investigator must be characterized by beauty of creation, self-esteem, strength of character, good appearance, and high sense and perception, in order to gain the confidence of opponents and consolidate people's belief in the integrity of the investigation procedures [844].

The member of the prosecution must be fair in the treatment of the litigants, upon initiation of the investigation, not to differentiate between them in treatment, regardless of their varying social status or personal manifestations, in order to avoid the suspicion of inclination or favoritism [845].

The member of the prosecution "upon initiating the investigation" must adhere to self-control, and not surrender to anger or anger or to the control of tendencies and instincts, and to be

---

Guidelines [839]on the Role of Prosecutors, paras.
([840]) Article 147 of the Judicial Instructions of the Public Prosecution.
([841]) Article 148 of the Judicial Instructions of the Public Prosecution.
([842]) (A/71/298, 5 August 2016, §50), see European Code of Police Ethics.
([843]) Article 149 of the Judicial Instructions of the Public Prosecution.
([844]) Article 150 of the Judicial Instructions of the Public Prosecution.
([845]) Article 151 of the Judicial Instructions of the Public Prosecution.

patient and persevering in revealing what beats or obscures the matters of the investigation, and to be careful in judging the value of the evidence, turning the opinion on its various faces until he is sure of its conformity to the situation without commitment to the first impact that comes to his mind about the incident [846].

The investigator must be characterized by the power of observation, so he focuses his attention on everything related to the investigation of people and facts, and notes the location of the crime during the inspection to discover some material traces that are useful in recalling how the crime occurred and knowing the truth [847].

The investigator must be quick to think and be strong in memory so that he can connect the different events, down to the truth [848].

The prosecutor must be quick to act, without prejudice to justice, in order to stabilize the positions of the litigants [849].

The investigator shall be discreet in the course of the investigation, in order to ensure that it proceeds in its normal way and that the interests of the litigants are not unduly prejudiced, as well as to avoid preparing the defense - based on the information that is broadcast - in a way that leads to the loss of the truth [850].

The investigator must be fully aware of the provisions of the criminal law, criminology, and punishment science, and must be familiar with the principles of forensic medicine and criminal psychology, and must be familiar with the various circumstances surrounding society, and with the general information that relates to the facts that he investigates, and must be on a large part of the general culture with diverse knowledge and knowledge that relate to human life in its various forms and nature [851].

The investigator must set a good example for the investigative writer, in order to complete the work, respect its deadlines, and follow the provisions of the law [852].

The investigator must have a relationship with the arresting officers with whom the reasons for the investigation are based on affection and good understanding, without establishing with them relations of a special kind that affect the interest of the investigation, or being affected by a specific depiction of the incident provided by the arresting officer in his other capacity as one of those responsible for security, that would lead to justice or injustice to the innocent [853].

To ensure the fairness and effectiveness of prosecution, prosecutors strive to cooperate with the police, courts, legal professionals, public defense bodies, and other government agencies or institutions [854].

Fourth: Duration of the investigation

The Special Rapporteur on torture considers that prolonged or suggestive interrogations, in which people are interrogated for extended periods without adequate rest, or are asked confusing, vague, or leading questions too intensively, are likely to become coercive

(846) Article 152 of the Judicial Instructions of the Public Prosecution.
(847) Article 153 of the Judicial Instructions of the Public Prosecution.
(848) Article 154 of the Judicial Instructions of the Public Prosecution.
(849) Article 157 of the Judicial Instructions of the Public Prosecution.
(850) Article 158 of the Judicial Instructions of the Public Prosecution.
(851) Article 159 of the Judicial Instructions of the Public Prosecution.
(852) Article 165 of the Judicial Instructions of the Public Prosecution.
(853) Article 166 of the Judicial Instructions of the Public Prosecution.
(854) Guidelines on the Role of Prosecutors, paragraph 20.

interrogations, constitute ill-treatment, and can cause sleep deprivation, impaired decision-making, and a willingness to confess to anything in order to put an end to the interrogation [855].

The Special Rapporteur on torture is also of the view that strict domestic regulations must ensure that persons detained for more than two hours without interruption are not interrogated, that adequate breaks for refreshments are provided, and that periods of at least eight continuous hours of rest - free from interrogation or any activity related to the investigation - are provided every 24 hours. Except for compelling circumstances, no interrogation should be conducted at night [856].

The delegated investigative judge shall complete the investigation within a period not exceeding six months from the time of its commencement unless this is prevented by a requirement necessitated by the necessities of the investigation. If the requirement arises, he must present it to the General Assembly or its authorized representative in issuing the assignment decision, as the case may be, to renew it for a period not exceeding six months. If the requirement is absent or the investigating judge violates the procedures for presenting the case in accordance with the provisions of the preceding paragraph of this article, the General Assembly or whoever it delegates shall be assigned to another judge to complete the investigation [857].

The member of the prosecution shall take into account that the investigation procedures shall proceed with due speed to complete one payment, or in successive near sessions, without prejudice to the rights of the litigants or violating the requirements of the defense [858].

The prosecutor must be not slow in collecting evidence and not hesitate to proceed with the action he deems proper, so that the benefit of taking it in his time is not lost [859].

Dealing with the staff of the Acting Registry must be imbued with a spirit of understanding in the interest of work, with the necessary firmness in monitoring and supervising their work, taking care of the interest of the investigation and the safety and speed of implementing its decisions[860].

The members of the prosecution shall promptly investigate and complete cases that affect the interests of the public sector and shall not seize the documents needed for the conduct of work in public bodies and their economic units except in cases of necessity necessitated by the investigation. Otherwise, they shall be satisfied with proving access to them or copies of them that are identical to the original and handing over their assets to an official in the institution or economic unit who is not related to the investigation to preserve them and hand them over to the prosecution when necessary.

It shall be taken into account not to reserve materials and tools related to the progress of work except in the narrowest scope and for the period necessary to examine them within the limits required by the interest of the investigation [861].

Fifth: Administrative supervision of the investigation

([855]) (A/71/298، 5 August 2016، §41)، (E/CN. 4/813), for example, Christian Meissner, Christopher E. Kelly and Skye A. Woestehoff, "Improving the effectiveness of suspect interrogations", Annual Review of Law and Social Science, vol. 11 (2015).

([856]) (A/71/298, 5 August 2016, §89), see the report to the Turkish Government on the visit to Turkey of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 17 June 2009 (CPT/Inf (2011) 13).

([857]) Article 66 of the Criminal Procedure Law.

([858]) Article 155 of the Judicial Instructions of the Public Prosecution.

([859]) Article 156 of the Judicial Instructions of the Public Prosecution.

([860]) Article 164 of the Judicial Instructions of the Public Prosecution.

([861]) Article 258 of the Judicial Instructions of the Public Prosecution.

The general assembly of the court or its administrative delegate shall supervise the judges who are assigned to achieve certain facts to carry out their work with the necessary speed and to observe the dates prescribed in the law [862].

Sixth: Investigation of incidents

If a report is submitted in a felony that has been investigated, the members of the prosecution must investigate the new report immediately, unless they believe that the investigation is unproductive or that the report was intended to raise doubt in the evidence of the case without justification, in which case it must not be paid attention to and attached to the case file[863].

If the prosecution receives a report against a government employee for an order signed by him during the performance of his job or because of it, it shall take the initiative to hear the statements of the complainant and his witnesses, then send the papers to the public defender or the head of the public prosecution to seek an opinion on the complainant's question and continue the investigation in accordance with what is indicated by the seriousness of the complaint. If necessary, it may seek the opinion of the public defender or the head of the public prosecution by telephone, then the telephone call shall be attached to a letter to him to issue his permission in writing.

In the event that he agrees to question the complaining employee, the department of this employee must be notified of the charge against him, the day on which he was questioned, and the outcome of the investigation.

It shall also be taken into account to notify this body of other charges against the employee that are not related to the work of his job and what is done in this regard.

However, if the communication relates to one of the crimes referred to in Article 123 of the Penal Code and the judgment to be executed is issued in an administrative dispute, no action may be taken in it, but it must be sent directly to the Public Prosecutor's Office to order what it deems appropriate[864].

Prosecutors must pay full attention to complaints related to labor laws, investigate and dispose of them, and determine the closest possible session to consider their cases, so that they can be adjudicated in a manner that achieves their desired purpose [865].

Seventh: Notifying the Public Prosecution of the other parties of the accidents

The investigating prosecutor shall notify the police at the beginning of the investigation of the registration of the case with a felony, misdemeanor or violation number, as the case may be, and shall describe the incident and mention the legal article applicable to it to the extent permitted by the stage in which the investigation has been completed, provided that the registration and description are subsequently amended in the light of the outcome of the investigation. If the description of the case is initially requested, it shall be temporarily recorded in the Administrative Complaints Book [866].

The member of the prosecution shall notify the Technical Office of the Attorney General with a brief memorandum on the facts relating to the Secretariat of the Presidency of the Republic and its employees in general, in particular vehicle accidents, and the disposal of individuals in their relationship, immediately upon referral to them, accompanied by a copy of the minutes and the

---

([862]) Article 74 of the Criminal Procedure Law.
([863]) Article 251 of the Judicial Instructions of the Public Prosecution.
([864]) Article 254 of the Judicial Instructions of the Public Prosecution.
([865]) Article 256 of the Judicial Instructions of the Public Prosecution.
([866]) Article 244 of the Judicial Instructions of the Public Prosecution.

decisions issued in this regard to be sent - unless there is a legal objection - to the said Secretariat "General Directorate of Investigations and Cases at the Palace of the Dome" [867].

The Prosecution shall notify the Illicit Gain Department of the incidents of embezzlement and other manifestations of deviation attributed to one of those subject to the provisions of the Illicit Gain Law, immediately after its formation, provided that the notification includes the number of the special case, the name and description of the accused, and a complete summary of the incident and the procedures taken in it, so that the said department may present the matter to the competent committees to carry out its mission in a meaningful and timely manner [868].

A member of the Public Prosecution who initiates an investigation of a railway accident shall notify the Public Authority for Railway Affairs to provide what may help clarify the aforementioned matters required by the investigation, and he shall request the administrative investigations that the Public Authority for Railway Affairs has conducted to be used in the investigation, and he may seek clarification from those who conducted these investigations about their information if he deems it necessary.

If it is decided to file a criminal case, the administrative investigations must be kept in the case file until the case is finally decided[869].

The control of government accounts must be notified of theft crimes from the princely warehouses if the value of the stolen items is more than one pound [870].

The Labor Department shall be notified of all accidents of workers' injuries, provided that the notification indicates the name of the injured worker, the description of his injury, its cause, and the result of his treatment therefrom, with the name of the factory in which he was injured.

The prosecution offices shall allow the representatives of the Labor Department to view the investigations of work injuries whenever they request to do so [871].

The members of the prosecution shall complete the investigations relating to work injuries as required by the Social Insurance Law, and a copy of it shall be notified to the offices of the Public Authority for Social Insurance immediately upon completion of the investigation.

The member of the prosecution has the right to prove what he deems necessary to prove before the presence of the investigation clerk[872].

Prosecutions shall notify the competent tax offices of every statement related to their work that would lead them to believe in the commission of fraud or fraudulent methods whose purpose or result is to eliminate the performance of the tax or expose them to the risk of non-performance, whether this knowledge is on the occasion of a criminal, civil or commercial case [873].

Eighth: Access to papers and records in government agencies

The Public Prosecution may request from the security directorates whatever papers it may have necessary to reach the truth in the incident, indicating the reasons for this request.

The Public Prosecution may not request judicial books or papers from the courts, but the members of the Public Prosecution must go to the court where these books and papers are

---

([867]) Article 255 of the Judicial Instructions of the Public Prosecution.
([868]) Article 261 of the Judicial Instructions of the Public Prosecution.
([869]) Article 268 of the Judicial Instructions of the Public Prosecution.
([870]) Article 277 of the Judicial Instructions of the Public Prosecution.
([871]) Article 285 of the Judicial Instructions of the Public Prosecution.
([872]) Article 286 of the Judicial Instructions of the Public Prosecution.
([873]) Article 289 of the Judicial Instructions of the Public Prosecution.

located and view them, or only request copies of these papers if access to their originals is not necessary in the investigation.

It also takes into account the provisions of the Executive Regulations of the Real Estate Registration Law that it is not permissible to include the assets of the notarized documents, as the real estate registry offices keep these assets according to their successive numbers [874].

If the investigation requires access to the books of registration of births and deceased persons in the civil register, they must be accessed at the place where they are located, unless forgery has occurred in them, and they are seized pending the investigation of the forgery.

However, if it is necessary to know the date of birth of a person or the date of his death or so, it is sufficient to request an official extract of the birth certificate or death certificate. In this regard, the prosecution must specify in its request the period during which this date is to be searched, provided that it is as short as possible.

The copies extracted from the documents and papers kept by the civil registry offices and the Civil Status Authority shall be considered an argument for the validity of the data contained therein unless proven otherwise [875].

If the Public Prosecution deems it necessary to review papers in one of the government departments that cannot be transferred from their place, the member of the Public Prosecution shall move to the competent department and carry out this review with its permission.

If the interest in another prosecution department sends the case to that prosecution with a memorandum indicating the subject matter and the papers or data required to be reviewed for the required review, unless the investigation requires that the member of the prosecution himself review the papers, in which case he must present the matter to the general advocate or the head of the general prosecution in order to authorize the transfer [876].

If the investigation requires obtaining data from one of the post offices or accessing the remittances and books in them, this shall be requested from the postal authority directly by the general advocate or the competent head of the total prosecution. Such papers may not be requested from the post offices directly, and the member of the prosecution may, in case of urgency, go to the competent post office to obtain the required data with a written request to the aforementioned office regarding access to them. It is noted that the required papers are examined and returned to the postal authority as soon as possible[877].

If the interest of the investigation requires a request for an original telegram, the member of the prosecution must request it before the expiry of the period prescribed for its filing, noting that the Telecommunications Authority keeps the originals of the exchanged telegrams inside Egypt for a period of three months from the date of sending them, while the telegrams sent by the Delta Railway offices are kept for a period of four months [878].

5-1-2 Within the framework of international covenants

All forms of detention or imprisonment must be ordered by a judicial authority or be under the effective control of a judicial authority [879].

([874]) Article 263 of the Judicial Instructions of the Public Prosecution.
([875]) Article 264 of the Judicial Instructions of the Public Prosecution.
([876]) Article 265 of the Judicial Instructions of the Public Prosecution.
([877]) Article 266 of the Judicial Instructions of the Public Prosecution.
([878]) Article 267 of the Judicial Instructions of the Public Prosecution.
([879]) Principle 4 of the Body of Principles, and Principle 5 of the Principles concerning Persons Deprived of their Liberty in the Americas.

The purpose of judicial supervision of detention is to protect the right to liberty and, in criminal cases, the presumption of innocence. It also aims to prevent human rights violations, including torture or other ill-treatment, arbitrary detention and enforced disappearance. It also ensures that detainees do not remain at the mercy of the authorities that detain them [880].

International standards require that any person arrested or detained be brought promptly before a judge or other officer authorized by law to exercise judicial[881] power.

The purposes of bringing a detained person promptly before a judge or other judicial authority include: [882]

Assess whether there are sufficient legal grounds for the person's arrest or detention and whether release or continued detention should be ordered,

Ensuring the safety of the detained person,

Preventing the violation of the rights of the detained person,

If detention or arrest of a person of his or her origin is lawful, to estimate:

whether the detained person should be released and whether any conditions should be imposed on him, or

In criminal cases, whether detention pending trial is necessary and proportionate.

Hearings with a different purpose do not satisfy this right. For example, the Inter-American Court has held that when the purpose of a hearing is for a detained person to make an initial statement, without addressing the question of the lawfulness of his detention, that hearing does not satisfy the requirements of Article 7(5) of the American Convention [883].

The European Court clarified that the legality of the detention and the issue of the release or pre-trial detention of the detained person must be decided urgently and said that it was "very desirable" that these issues be considered at the same hearing by a judicial official with jurisdiction to decide on these two matters, but it did not find that there was a violation of the American Convention when these issues were considered in two separate sessions by different courts, since the two hearings were held within the necessary time frame[884].

It is the duty of the State to ensure that persons who are arrested or detained are brought promptly before a court regardless of whether the detained person has challenged the validity of his detention or not. This procedure is not related to the procedures initiated by or on behalf of

---

Resolution 65/205 of the United Nations General Assembly, 20§; HRC Reserve Resolution 15/18, 4§ § (c); Commission on Human Rights Resolution 2005/27, 4§ § (c); see Grand Chamber of the European Court: McKay v. United Kingdom, 32-30§ (2006) ,(03/543), Medvedev et al. v. France (3394/03), 118-117 § § (2010); Inter-American Court: Tibi v. Ecuador, (2004) 115 § § -114, Chaparro Alvarez and Labo Iniguez v. Ecuador (81§ (2007), Piare v. Argentina, (63§ (2008).

([880]) Ferrer-Mazoraet al. v. United States (9903) Inter-American Commission, Report 51/01 (332§ (2001); European Court: Rigopoulos v. Spain, (37388/ 97) Decision (1999), Ladent v. Poland (11036 / 03) . 72§ (2008)..

([881]) Applicable exclusively to criminal cases: Article 9(3) of the International Covenant, Article 16 (6) of the Migrant Workers Convention, Article 14 (5) of the Arab Charter, Article 5(3) of the European Convention, Section M(3) of the Principles Relating to a Fair Trial in Africa, and Article 59 (2) of the Rome Statute. The following applies to all persons deprived of their liberty: Article 7(5) of the American Convention, Article 11 of the American Convention on Disappearance, Principles 4 and 11 (1) of the Body of Principles, and Guideline 27 of the Robben Island Guidelines.

Principle M(3) of the Fair Trial Principles in Africa, and Rule 14 (1) of the Council of Europe Rules on Arrest..

([882]) Resolution 21/4 of the Commission on Human Rights 18§ (2008) (a)..

([883]) Piari v. Argentina, (67§ (2008); see Molins v. France (06/37104), European Court (51-47§ § (2010).

([884]) McKee v. United Kingdom (543/03), Grand Chamber of the European Court (47§ (2006)..

the detained person, as is the case in the request for a subpoena or a temporary protection measure, nor is it related to the regular periodic review of detention [885].

The issuance of a subpoena or other similar procedure does not relieve the State of its responsibility if the detained person is not brought promptly before a judicial authority [886].

Concerns have been repeatedly expressed about practices that have deprived persons linked to crimes such as terrorism and drug trafficking from being brought promptly and automatically before a judicial authority to decide on the legality of their detention. The European Court has clarified that the dangers of terrorism and drug trafficking on the high seas do not allow the authorities to arrest individuals for questioning away from effective control by national courts [887].

The adherence of the State to this right is of particular importance in cases where security matters are handled by military forces [888].

For persons arrested in connection with a criminal offence, their first appearance before a judge or an authorized judicial officer should mean the end of their detention in police custody. If they are not released, they should be transferred to a remand centre that is not under the control of the investigating authorities, under conditions that meet the provisions of international standards [889].

5-1-1 Personnel Entitled to Exercise Judicial Power

If a detainee is brought before an officer, and not a judge, that officer must be entitled to exercise judicial power, and must be objective, impartial and independent of the executive and of all parties.

The judicial officer must be empowered to review the legality of the arrest or detention, assess whether there is reasonable doubt against the suspect in a criminal case, and have the authority to order his release if he deems that his arrest or detention lacks legitimacy [890].

Prosecutors, in general, do not have the capacity to act as an officer authorized to exercise judicial power in this regard, as they have repeatedly been considered to lack the objectivity and institutional impartiality necessary to act as judicial officials in order to determine the legality of the detention [891].

([885]) European Court: McKee v. United Kingdom (543/03), Grand Chamber (34§ (2006), De Jong, Paget and Van den Brink v. The Netherlands (79/8805, 8806/79 and 9242/81), (51§ § (1984 and 57); Geckos v. Lithuania (34578 / 1997), (84§ (2000).

([886]) De Jong, Paget and Van den Brink v. The Netherlands (8805/79, 8806/79 and 9242/81), European Court (51§ § (1984 and 57; see Perry v. Jamaica, Commission on Human Rights, 1988/1/11§ (1994) U* Doc. CCPR/C/50/D/330..

([887]) For example, Resolution 63/185 of the United Nations General Assembly, 13 § § and 14; Concluding observations of the Human Rights Committee: Uzbekistan, 15§ (2010) U* Doc. CCPR/C/UZB/CO/3; see Guideline 7(2) of the Council of Europe Guidelines on Human Rights and Counter-Terrorism; Medvedev v. France (3394/03), (2010), Grand Chamber of the European Court 126§..

Cabrera [888]García and Montel Flois v. Mexico, Inter-American Court (102§ (2010);Concluding Observations of the Human Rights Committee: Kosovo (Serbia), 17§ (2006) U* Doc. CCPR/C/U*K/CO/1..

Concluding [889]observations of the Human Rights Committee: Azerbaijan,. U* Doc 8§ (2009) CCPR/C/AZE/CO/3, El Salvador, U* Doc. CCPR/C/SLV/CO/6 14§ (2010); Special Rapporteur on Torture, 68/2003 / U* Doc. E/C*. 4 26§ (2002) (g), 273/75 § (2010) A/65; Committee on the Prevention of Torture, General Report 46§ ,CPT/I*f)2002(15 ,12; see Concluding Observations of the Committee against Torture: Japan, 15§ (2007) U* Doc. CAT/C/JAP/CO/1..

([890]) European Court: Schisser v. Switzerland (7710/76), (1979) 38-25§ §, Aseneuve et al. v. Bulgaria (24760/94), (140 § § § (1998 150), McKee v. United Kingdom (543/03), Grand Chamber (40§ (2006), Medvedev v. France (3394/03), Grand Chamber (125-124§ § (2010); see Joint Report of the United Nations Mechanisms on Guantánamo Bay Detainees, 28§ (2006) UN Doc. E/CN. 4/2006/120; Biarri v. Argentina, Inter-American Court (63§ (2008.

([891]) Commission on Human Rights: Kolomin v. Hungary, / UN Doc. CCPR 3/11§ (1996) C/50/D/521/1992, Reshetnikov v. Russian Federation, 3/8§ (2009) UN Doc. CCPR/C/95/D/726/1996, Geludkova v. Ukraine, 3/8§ (2002) UN Doc. CCPR/C/75/D/726/1996, Concluding observations of the Human Rights Committee: Tajikistan, 2005) UN Doc.

The European Commission considered that prosecutors, investigators, army officers and investigating judges lack sufficient independence to exercise judicial power for this purpose, since they are empowered to intervene in subsequent proceedings, as representatives of the prosecuting authority [892].

In cases where the judge holding the preliminary hearing, within 36 hours of the arrest of the detained person, has the authority to release when he is convinced that the detention lacks legality, but without having the authority to rule on bail, the European Court ruled that there was no violation of Article 5 (3) of the European Convention, taking into account that a bail hearing was held the following day [893].

5-1-2 What is meant by the phrase "urgently?"

First: Within the framework of Egyptian law

Pre-trial detention shall expire after the lapse of fifteen days from the detention of the accused. However, before the lapse of that period, and after hearing the statements of the Public Prosecution and the accused, the investigating judge may issue an order extending the detention for similar periods so that the total period of detention does not exceed forty-five days. However, in misdemeanor matters, the arrested accused must inevitably be released after the lapse of eight days from the date of his interrogation if he has a known place of residence in Egypt, and the maximum penalty prescribed by law does not exceed one year, and he was not returned and was previously sentenced to imprisonment for more than one year [894].

If the Public Prosecution deems it necessary to extend the pretrial detention, before the expiry of the period of four days, on the last day on which the detention order applies or on the day preceding it if the day is on Friday or an official holiday, it must present the papers to the partial judge to issue an order as he deems appropriate after hearing the statements of the Public Prosecution and the accused. The judge may extend the pretrial detention for a period or consecutive periods not exceeding fifteen days each, so that the period of pretrial detention does not exceed a total of forty-five days[895] .

The members of the prosecution must take care of the request to renew the pretrial detention of the accused on the prescribed legal dates in order to avoid the fall of imprisonment, as well as taking into account the presence of themselves in the important cases that they are investigating to explain the justifications for the request to extend the detention before the competent court and not rely on the presence of any other prosecution member unrelated to the investigations that require the extension of detention, and they must also attend when presenting requests for release to the judiciary. The papers must be presented to the investigating prosecution member whenever necessary to extend the detention of the accused or consider the request for his release, whether in the investigation or trial, in order to personally sign the request to summon the accused from prison and give the opinion of the prosecution in this regard before the judiciary.

If it is not possible for the investigating member to sign the referendum request, this must be referred to the public defender or the competent head of the public prosecution, who must

---

CCPR/CO/84/TJK) 12§; see WGEID, China, / UN Doc. E 32§§ (2004) CN. 4/2005/6/Add. 4 (c) and 78 (a); Inter-American Court: Acosta-Calderón v. Ecuador, (81-79 § § (2005), Chaparro Álvarez and Labo Iniguez v. Ecuador, (86-84 §§ (2007).

([892]) European Court: Brinkett v. Italy (13867/88), (1992) 22-20§ §, Asinov et al. v. Bulgaria (24760 / 94), (150-146§ § (1998), Nikolova v. Bulgaria (31195/96) Grand Chamber (53-49§ § § (1999), De Jong, Baljet and Van den Brink v. The Netherlands (8805/79, 8806/79 and 9242/81), 49§ (1984), Hood v. United Kingdom (2726/95), (58-57 § § (1999), Huber v. Switzerland (12794/87), (43-42§ § (1990, e. B. Switzerland 64-62 §§ (2001) ,(95/26899)..

([893]) McKee v. United Kingdom (543/03), Grand Chamber of the European Court (51-41 § § (2006).

([894]) Article 142 of the Criminal Procedure Law.

([895]) Article 202 of the Criminal Procedure Law, and Article 390 of the Judicial Instructions of the Public Prosecution.

contact the investigator to notify him of the attendance whenever possible to represent the prosecution at the session specified for considering the extension of imprisonment or release or assigning others to do so when necessary.

The Public Defenders or the Chief Prosecutors and the Prosecutors of the District Prosecutions shall supervise the implementation of this with accuracy [896].

If the investigation is not completed and the judge decides to extend the pretrial detention beyond what is prescribed, before the expiry of the aforementioned period, the papers must be referred to the appellate misdemeanor court sitting in the counseling chamber to issue its order after hearing the statements of the Public Prosecution and the accused to extend the detention for successive periods not exceeding forty-five days if the interest of the investigation so requires or release the accused on bail or without bail. However, the matter must be presented to the Attorney General if the accused has been detained for three months in pretrial detention in order to take the measures he deems necessary to complete the investigation [897].

The period of preventive detention may not exceed three months unless the accused has been notified of his referral to the competent court before the end of this period. In this case, the Public Prosecution must submit the detention order within five days at most from the date of the notification of the referral to the competent court, otherwise, the accused must be released [898].

If the investigation is not completed after the expiry of the period of pretrial detention - forty-five days - the Public Prosecution shall submit the papers to the Appellate Misdemeanors Court sitting in the Consultation Chamber to issue an order as it deems fit [899].

When considering the extension of pretrial detention in terrorism crimes, the member of the prosecution shall hear each time the statements of the accused and the defense of his lawyer in the event of his presence, and this shall be recorded in the investigation report without setting an independent record, and he shall ask him whether he has a new statement or a defense to make, then he shall issue an order to release him on bail or without bail, or extend his detention for a period specified by him [900].

Suppose the charge against him is a felony. In that case, it is not permitted for the period of pretrial detention to exceed five months except after obtaining, before its expiry, an order from the competent court to extend the detention for a period not exceeding forty-five days, renewable for a similar period or periods. Otherwise, the accused must be released. [901].

Suppose the magistrate or the appellate misdemeanor court sitting in the counseling room responds to the request to extend the pretrial detention of the accused. In that case, it is not permissible to present the requests for release submitted after that, during the validity of the pretrial detention period, to the judge or the court except on the date specified for the renewal of the detention. The accused may not be summoned from prison for this purpose before that.

Some members of the prosecution mark any of these requests, whether to them or to the judge or the aforementioned court, by presenting them with the accused to the judge or the court on the date specified for the renewal of the detention [902].

([896]) Article 397 of the Judicial Instructions of the Public Prosecution.
([897]) Article 143 of the Criminal Procedure Law.
([898]) Article 143 of the Criminal Procedure Law.
([899]) Article 203 of the Criminal Procedure Law.
([900]) Article 392 bis (a) of the Judicial Instructions of the Public Prosecution.
([901]) Article 143 of the Criminal Procedure Law.
([902]) Article 391 of the Judicial Instructions of the Public Prosecution.

Second: Within the framework of international conventions

International standards require that individuals be brought promptly before a judge after arrest or detention. While the speeding order was left to be determined based on the concrete circumstances of each case, the European Court has clarified that the time constraints required by the issue of speed "leave little flexibility for interpretation", while the Human Rights Committee said that "delays may not exceed a few days"[903].

In most cases, delay of more than 48 hours, after arrest or detention, was considered excessive[904].

The Human Rights Committee has expressed concerns about laws in a number of countries that allow people to be held in police custody for more than 72 hours or more without appearing before a judicial officer [905].

In one country, where torture of detainees was found to be systematic, the Committee against Torture recommended that the law be amended to require that detainees be brought before a court within 24 hours, and that judges be present at all times for this purpose [906].

Problems that adversely affect the criminal justice system shall not, at any time, be considered an excuse for non-compliance with the requirement of speedy habeas[907] corpus.

However, the requirement of the speed of habeas corpus allows for some flexibility in light of the circumstances of the macroscopic case. Flexibility may be required, for example, when persons are arrested at sea [908].

While some flexibility has been facilitated in relation to factors such as the complexities that investigations can face, for example in terrorism-related cases, a number of bodies have criticized delays in such cases.[909]

The judgment of the European Court, in 1988, in the case of Brogan et al. v. United Kingdom, in which it found that a delay of four days and six hours before bringing terrorism suspects before a judge was excessive, remains a notable judicial precedent [910].

The Special Rapporteur on human rights and Counter-terrorism stressed that every person detained must be allowed to have the legality of his detention reviewed by a judge or other judicial officer within 48 hours [911].

([903]) Aquilina v. Malta (25642 / 94), Grand Chamber of the European Court 51-48§ § (1999); General Comment 8 of the Human Rights Committee, 2§ §.
([904]) Rule 14 (2) of the European Rules for Pre-Trial Detention.
Concluding observations of the Human Rights Committee: El Salvador, UN Doc 14§ (2010) CCPR/C/SLV/CO/6; Special Rapporteur on Torture, 26§ (2002) UN Doc. E/CN. 4/2003/68c; 273 / UN Doc. A/65 (2010) 75§; see Concluding Observations of the Committee against Torture: Venezuela, UN Doc CAT/C/CR/29/2 (2002) 6§ (f); Kandjov v. Bulgaria (68294/ 01), EC 67-66§ ,(2008)..
([905]) Concluding observations of the Human Rights Committee: Uzbekistan, UN doc. CCPR/CO/83/UZB (2005) § 14, Ukraine, UN doc. CCPR/C/UKR/CO/6 (2006) §8, Moldova UN doc. CCPR/C/MDA/CO/2 (2009) 195.
([906]) Report of the Committee against Torture under Article 20: Mexico, UN Doc. CAT/C/75 (2003) §220 (b).
([907]) See Koster v. The Netherlands (12843 / 87), European Court (1991) 24§ § and 25.
([908]) European Court: Medvedev et al. v. France, (3394/03) Grand Chamber (134-127§ § (2010, but see Vasys v. France, 62-55§ § (2013) ,(09/62736).
[909]See, for example, the concluding observations of the Human Rights Committee: France, 14§ (2008) UN Doc. CCPR/C/FRA/CO/4; Inter-American Commission, Report on Terrorism and Human Rights (2002), section 3(b) (122-121§§ (1.
([910]) European Court: Brogan et al. v. United Kingdom (11209 / 84, 11234/ 84, 11266 / 84, 11386 / 62-55§ § ,(85, but see Epic et al. v. Turkey (17019/ 02, 300070 / 02), (38-32 §§ (2009).
Special [911]Rapporteur on human rights and counter-terrorism, UN Doc 45§ (2008) A/63/223 (a).

In reference to the Human Rights Committee, the Committee stressed that the right to be brought promptly before a judge should not be restricted in states of emergency [912].

The jurisprudence of the European Court and the Inter-American Court also indicates that while some delay may be allowed before a person appears before the court, this should not be prolonged. The European Court requires adequate safeguards against ill-treatment during this period, such as access to a lawyer, doctor and family, and activating the right to obtain a subpoena from the court [913].

5.2 Rights During Hearings and Scope of Review

The burden of proving that the arrest or detention of persons is lawful, and that their continued detention, if so ordered, remains both necessary and proportionate, remains the responsibility of the State - represented either by the Public Prosecution, or by the investigating judge, in some civil justice systems [914].

It must establish the argument that the release of the detainee would cause substantial risks that cannot be mitigated by other means [915].

International standards guarantee individuals the following procedural rights during hearings: [916].

Bringing the person before a judicial officer authorized with the powers of the judicial authority. Judicial control over any decision to extend the period of pretrial detention, in the sense that the person deprived of his liberty appears before the court and can appeal against the detention decision and submit a report on any ill-treatment, is an important guarantee for the rights of the detainee in general and a safeguard against ill-treatment in particular. The SPT emphasizes that a person may not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

The SPT has recommended that detainees should not only be present at the court hearing devoted to detention and its continuation but should have a real opportunity to speak up and report any ill-treatment they have been subjected to. There should always be an opportunity before the court to request medical examinations if there are grounds to believe that ill-treatment may have occurred and to take steps to ensure that any allegations of ill-treatment are promptly investigated by a competent authority [917].

([912]) Report of the Commission on Human Rights 40 / UN Doc. A/49, Vol. 1, Supplement 11, p. 2§ ,119 (also referred to in footnote 9 of Comment 29 of the Human Rights Committee); see Concluding Observations of the Human Rights Committee: Israel, UN Doc 7§ (2010) CCPR/C/ISR/CO/3 (c); see also Human Rights Committee Concluding Observations: Thailand: 13§ § (2005) UN Doc. CCPR/CO/84/tha and 15.

([913]) European Court: Brannigan and McBride v. United Kingdom 66-61§ § (1993) ,(89/14554,89/14553), Aksoy v. Turkey (21987 / 93), 84-83§ § (1996); Castello-Petrosiet al. v. Peru, Inter-American Court (112-104 § § (1999).

Ilyzhkov [914]v. Bulgaria (33977/ 96) European Court (85-84 § § (2001); Special Rapporteur on Human Rights and Counter-Terrorism, Australia,. UN Doc 34§ (2006) A/HRC/4/26/Add. 3; see Working Group on Enforced Disappearances, South Africa, 65§ (2005) UN Doc E/CN. 4/2006/7/Add. 3..

([915]) Rules 7-8of the European Rules for Pre-Trial Detention, Patsouria v. Georgia (30779/ 04) (2007) (77-73 § §).

([916]) Rules 28, 25 (2) - (4), 26, 29, 21, 18, 27 and 32 of the European Rules for Preventive Detention.

([917]) See: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment A/RES/43/173, (9 December 1988) Principle 11.

European Court: Molins v. France (37104/ 06), European Court (118§ (2010), Öcalan v. Turkey (26221 / 99) Grand Chamber (2005) 103§, Medvedev v. France, (3394/03) Grand Chamber (118§ (2010); Inter-American Court: Piari v. Argentina, (65§ (2008), Acosta-Calderón v. Ecuador, (78§ (2005); Working Group on Enforced Disappearances, China, 32§ (2004) UN Doc E/CN. 4/2005/6/Add. 3 (b). Rule 28 of the European Rules for Pre-Trial Detention states that video-linkage may sometimes be acceptable, but the CPT has raised concerns about this in the UK in relation to persons detained under terrorism legislation, and has called for detainees to be brought before a judge in person. 27) 9§ ‹CPT/Inf)2009(30 ‹10-6§§ ‹CPT/Inf)2008..

Assistance by a lawyer, including a delegated lawyer, without incurring any expenses when necessary [918].

Access to relevant documents [919].

Free interpretation services if the person does not speak or understand the language used by the court [920].

Allowing the person to make a statement on all relevant matters [921].

The decision issued must be of sufficient and specific merits [922].

Right to appeal.

The right to consular or other appropriate assistance for foreign nationals.

Inform the family of the date and place of the hearing (unless it poses a serious risk to the administration of justice or national security).

If a detention (continuation) order is issued, the person has the right to challenge the legality of his detention during the regular periodic review of the necessity of continued detention, and to commence his trial within a reasonable period.

5-3 Presumption of Release Pending Trial

5-3-1 Within the framework of Egyptian law

The release of the accused is his release for lack of justification for pretrial detention or for its disappearance, and release is mandatory in cases and permissible in other cases [923].

A. Obligatory release of the accused

In the articles of misdemeanors, the law requires the inevitable release of the arrested accused under the following conditions:

Eight days have passed from the date of his interrogation;

Have a known domicile in Egypt;

The maximum legally prescribed penalty shall not exceed one year;

The accused is not a returnee;

He has not been sentenced to imprisonment for more than one year[924].

If the investigating authority in the incident assigned to him and he is remanded in custody, issues an order not to file a criminal case, unless he is detained for another reason [925].

([918]) Principle 3 and Guideline 4 44§ (c) of the Principles of Legal Aid, Principle 27 of the Robben Island Guidelines, and Rule 25 of the European Rules of Pre-trial Detention..
([919]) Lebedev v. Russia (4403/04), European Court (77§ (2007)..
([920]) Guideline 43§ 3 (f) of the Principles of Legal Aid, and section n (4) (c) of the Principles Relating to a Fair Trial in Africa.. European [921]Court: Asinov et al. v. Bulgaria (24760 / 94), 146§ § (1998), McKee v. United Kingdom (543/03), Grand Chamber 35§ (2006); Working Group on Enforced Disappearances, China, UN Doc 32§ (2004) E/CN. 4/2005/6/Add. 4 (b); Inter-American Court: Piare v. Argentina, (68-65§ § (2008), Chaparro Álvarez and Labo Inuguez v. Ecuador, . 85§ (2007)..
([922]) Circulation No. 9 of the Working Group on Enforced Disappearances, / UN Doc. A HRC/22/44 (2012) §67; European Court:, McKee v. United Kingdom (03/543), Grand Chamber (43§ (2006); Batsouria v. Georgia (30779/ 04), 62§ (2007), Nikoliashvili v. Georgia (30748/ 04), 76§ (2009); see Chaparro Alvarez and Labo Inoguez v. Ecuador, Inter-American Court, (2007) 107-102§ § and 116-119.
([923]) Article 409 of the Judicial Instructions of the Public Prosecution.
([924]) Article 142 of the Criminal Procedure Code, and Article 410 of the Judicial Instructions of the Public Prosecution.

If after the order is issued that there is no face to file the lawsuit and despite the existence of a judgment on its subject, this judgment is invalid even if the court that issued the judgment did not receive the issuance of the order, but the order must be issued that there is no face to file the criminal lawsuit before the accused is released if he is imprisoned pursuant to Article 154 of the Criminal Procedure Law unless he is imprisoned for another reason, to the effect that with the issuance of the order that there is no face to file the criminal lawsuit before the accused, the previous arrest warrant for him, which was not executed, has been invalid, and the evidence derived from it and the testimony of his conduct is invalid, and this invalidity is not valid if the bona fide officer believes that the previous arrest warrant is still valid [926].

If the period of pretrial detention reaches three months, without the accused being notified of his referral to the competent court before the expiry of this period or if there is no order from the competent court (if the charge is a felony) to extend the pretrial detention, provided that it is presented to this court before the expiry of the period of three months [927].

If the acquittal of the accused is ruled, he must be released immediately, even if the Public Prosecution challenges the acquittal ruling, whether on appeal or cassation, as the case may be. If the accused is banned from traveling during the trial and his innocence is ruled, this restriction must be immediately removed, even if the Public Prosecution challenges the judgment, all of this unless the accused is detained or banned from traveling for another reason[928].

B. Permissible release of the accused

First: Temporary release of the accused by personal guarantee

If the Public Prosecution proceeds with the investigation, it may release the accused at any time on bail or without bail [929].

The release of the accused at any time on bail or without bail is permissible for the Public Prosecution and does not restrict this right in any way [930].

The Public Prosecution has the power to release the accused, even if it has requested the extension of the detention of the accused on remand and responded to its request. Its authority to issue a provisional release does not respond to any time limit, unless the Public Prosecution has referred the case to the court. Here, the authority to release is in the hands of the party referred to it. In the case of a referral to the Criminal Court, the matter is not within the jurisdiction of the Appellate Misdemeanors Court, sitting in the counseling room.

In the event of a ruling of lack of jurisdiction, the Court of Appeal of Misdemeanors shall sit in the Consultation Chamber and shall be competent to consider the request for release or imprisonment until the lawsuit is submitted to the competent court [931].

The prosecution may release the accused at any time on bail or without bail, but it is required to release the accused on bail for questioning in accordance with what is stipulated in the second paragraph of Article 36 of the Criminal Procedure Law, and it may release the accused even if it has requested the extension of his pretrial detention and responded to its request, if there are

(925) Article 154 of the Criminal Procedure Code, and Article 410 of the Judicial Instructions of the Public Prosecution.
(926) Appeal No. 23607 for the year 67 S issued in the session of June 1, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 348 rule No. 82.
(927) Article 143 of the Criminal Procedure Code, and Article 410 of the Judicial Instructions of the Public Prosecution.
(928) Articles 304, 465 of the Criminal Procedure Code, and Article 410 of the Judicial Instructions of the Public Prosecution.
(929) Article 204 of the Criminal Procedure Law.
(930) Civil Cassation, Requests of Judges, Appeal No. 134 of 67 S issued at the session of July 7, 1998 and published in the first part of the Technical Office's letter No. 49, page No. 45, rule No. 8.
(931) Article 151 of the Criminal Procedure Code.

reasons after imprisonment that require release and it remains this right as long as the investigation is in its possession. The prosecution may not release the accused if the pretrial detention order was issued by the appellate misdemeanor court sitting in the counseling room based on the prosecution's appeal of the previous release order issued by the investigating judge, and it may not release the accused on the date specified for presenting him to the judge to renew his detention if he does not find new papers[932].

The magistrate or the appellate misdemeanour court sitting in the counselling chamber, as the case may be, may, when presented with the order to detain the accused, order their provisional release. [933].

If the prosecution decides not to suspend the release on the submission of bail, it is sufficient to release him with personal or family cards or documents indicating his identity and place of residence[934].

If the prosecution deems it necessary to release the employees of the economic units of the supply sector accused of supply crimes, this release should not be suspended on financial guarantees, but only to verify their places of residence or to ensure their jobs [935].

The members of the prosecution must unify the treatment between private sector traders and public sector employees who commit similar supply violations, with regard to releasing them without being detained pending their presentation to the prosecution the next day, if it is decided to start releasing them in the aforementioned violations [936].

Second: Temporary release of the accused with their pledge to attend

If the investigating authority is the investigating judge, his provisional release shall be either on his own initiative or at the request of the accused, after hearing the statements of the Public Prosecution, provided that the released accused appoints a place for him in the entity where the court is located if he is not resident, and undertakes to appear whenever he requests and not to flee from the execution of the judgment that may be issued against him [937].

If the investigating authority is the Public Prosecution, then the temporary release from the Public Prosecution shall be under the same conditions previously presented.

Third: Temporary release of the accused on bail

It is permitted to suspend the permissible temporary release on the submission of a bail. The order issued to estimate the amount of the bail shall allocate a certain part of the bail estimated for the release of the accused to be a sufficient penalty for the failure of the accused to appear in all investigation and lawsuit procedures to apply for the execution of the judgment and carry out all other duties imposed on him. The other part shall be allocated to pay the following in its order:

expenses paid by the CCR Claimant;

Expenses disbursed by the Government;

Financial penalties that may be imposed on the accused.

---

(932) Article 411 of the Judicial Instructions of the Public Prosecution.
(933) Article 415 of the Judicial Instructions of the Public Prosecution.
(934) Article 417 of the Judicial Instructions of the Public Prosecution.
(935) Article 412 of the Judicial Instructions of the Public Prosecution.
(936) Article 413 of the Judicial Instructions of the Public Prosecution.
(937) Articles 144, 145 of the Criminal Procedure Code, and Article 416 of the Judicial Instructions of the Public Prosecution.

However, if the guarantee is determined without allocation, it shall be considered as a guarantee for the accused to perform the duty of attendance and other duties imposed on him and not to evade execution. The first part of the guarantee shall be confiscated if the released person fails to perform all the duties imposed on him. In the event of any violation of any of these duties, the expenses incurred by the government and the financial penalties imposed on the accused may be met from this part of the guarantee if the second part of the guarantee is not sufficient to meet them [938].

The amount of the bond shall be paid by the beneficiary or others, and this shall be by depositing the estimated amount in the treasury of the court in cash or government bonds or guaranteed by the government, and it may be accepted by any person who is full of the pledge to pay the estimated amount of the bond if the accused violates one of the conditions of release, and the pledge shall be taken from him in the minutes of the investigation or in a report in the clerk's office, and the record or report shall have the force of the enforceable bond[939].

If the accused, without an acceptable excuse, does not perform one of the obligations imposed on him, the first part of the bail becomes the property of the government without the need for a ruling, and the second part is mentioned to the accused if a decision is issued in the case that there is no face, or a judgment of acquittal [940].

The magistrate may issue a bail for the release of the accused whenever the Public Prosecution requests the extension of the detention [941].

The members of the prosecution must only release the accused after interrogation in the crimes of foreign fishing boats in the territorial waters or their presence in them in violation of the provision of (Article 25) of Law No. 124 of 1983 on fishing and aquaculture with a financial guarantee equivalent to the maximum fine prescribed for the crime stipulated in Article (53) of the aforementioned law (ten thousand pounds) in addition to criminal expenses, provided that the fine imposed thereafter is settled from the amount of the financial guarantee [942].

The following provisions shall be followed with regard to decisions to secure release with financial security, its implementation, the writing of release letters and the allocation of bail [943].

If it is decided to release a defendant with a financial guarantee and the defendant or others are ready to pay it, the investigation clerk must immediately present the papers to the head of the criminal registry to supply the amount of the guarantee in the treasury of the court (secretariats)on the first page of the prosecution's investigation report or on an independent paper attached to the case after it is received from the treasury and attached to its file.

The investigation clerk shall then write the release letter from the original and a copy and put the fingerprint of the seal of the Republic logo on it and its copy and send the original after exporting it to the police authority if the accused is not detained on remand or to the prison in which he is held on remand - to release him and keep the copy in the case file - and the competent clerk shall follow up the receipt of the answer to this and expedite it in case it is not received within ten days. The answer shall be attached to the case and shall be attached to the file; taking into account the marking on the case file and the margin of the investigation record and the schedule and book for that purpose, and the guarantee of release or bail may be cash or government bonds or guaranteed by the government - and any person pledging to pay the

---

([938]) Article 146 of the Criminal Procedure Law, Article 419 of the Judicial Instructions of the Public Prosecution, and Article 116 of the written, financial and administrative instructions of the Public Prosecution.

([939]) Article 147 of the Criminal Procedure Code, and Article 418 of the Judicial Instructions of the Public Prosecution.

([940]) Article 148 of the Criminal Procedure Law.

([941]) Article 205 of the Criminal Procedure Law.

([942]) Article 411 bis of the Judicial Instructions of the Public Prosecution.

([943]) Article 425 of the Judicial Instructions of the Public Prosecution.

estimated amount of the guarantee or bail may be accepted if the accused breaches the condition of release - and the matter is presented to the prosecutor; if he agrees - the pledge shall be taken in the investigation record or a report in the clerk's registry - and the record or report shall have the force of the bond to be executed[944].

Fourth: Temporary release of the accused with the obligation to present theirselves to the police office at the specified times

The investigating authority may, if it deems that the condition of the accused does not allow the provision of bail, impose a specific measure to prevent his escape, which is to oblige the accused to present himself to the police office at the times specified for him in the order of release, taking into account his special circumstances. He may also request him to choose a place of residence other than the place where the crime occurred. He may also prohibit him from visiting a specific place, such as prohibiting him from visiting certain places such as bars, suspected shops, markets, births and crowded streets[945].

C. Cancellation of Temporary Release

An order for provisional release does not prevent the investigator from issuing a new warrant for the arrest or imprisonment of the accused for one of the following three reasons:

If new evidence emerges against him;

Violates the conditions imposed on him; or

Circumstances have arisen that require taking this measure, provided that these circumstances are related to the integrity of the investigation itself, and these reasons are subject to the control of the competent authority to extend the detention or the court to which the accused has been referred in custody.

If the accused is remanded in custody, he shall be subject, in determining and renewing his period, to the same procedures that govern the order to remand the accused initially [946].

The request to detain the accused shall not be accepted by the victim or the civil rights plaintiff, and no statements shall be heard from him in discussions related to his release [947].

D. Enforcement of the order for provisional release

The order issued for the provisional release of the accused in pre-trial detention shall be executed unless the Public Prosecution appeals against it within the legally prescribed time limit of twenty-four hours. The court competent to hear the appeal may order the extension of the detention of the accused in accordance with what is legally prescribed. If the appeal is not decided within three days from the date of its report, the order issued for release must be implemented immediately [948].

The members of the prosecution must supervise the implementation of the orders for the release of the accused and assign the clerks entrusted with this to follow up the release letters sent to the police and prison departments and centers, which must be edited from the original and a copy kept in the case file, provided that they are recorded in the issued books and the minutes of the cases related to the dates and numbers of the aforementioned release letters, with the statements received by the prosecution attached to the actual release files. If there is

---

([944]) Article 115 of the written, financial and administrative instructions of the Public Prosecution.

([945]) Article 149 of the Criminal Procedure Code, and Article 424 of the Judicial Instructions of the Public Prosecution.

([946]) Article 150 of the Criminal Procedure Law, and Article 422 of the Judicial Instructions of the Public Prosecution.

([947]) Article 152 of the Criminal Procedure Code.

([948]) Articles 143, 166, 168 of the Criminal Procedure Code, and Article 648 of the Judicial Instructions of the Public Prosecution.

no response from the police or prison within ten days from the date of the decision to release what indicates its implementation, this must be inquired immediately, and the case file must be marked with the result[949].

Letters of release issued by the Public Prosecution of the Correction and Rehabilitation Centre must be stamped with the stamp of the Prosecution and signed by the members of the Prosecution.

The heads of criminal registries review the said letters before sending them to prisons to ensure that they are stamped and signed, and they are followed by a violation of this [950].

5.3.2 Within the framework of international covenants

Consistent with the right to liberty and to the presumption of innocence, there is an assumption that persons against whom criminal charges have been brought will not be detained while they are awaiting the commencement of their trial [951].

Some international standards explicitly state that, as a general rule, persons facing criminal charges should not be detained while awaiting the commencement of their trial [952].

However, standards that include the presumption of innocence, and others, expressly recognize that:

The decision to release a person may be subject to guarantees that he will be present when the trial is held, such as bail or the requirement to review the authorities at specified dates;

There are circumstances in which the accused may be detained pending trial, exceptionally, when necessary and proportionate [953].

The burden of proving that deprivation of liberty is necessary and proportionate, including pending trial, remains the responsibility of the State, which must argue that release will create a substantial risk that the person will abscond, harm others, or tamper with evidence or investigation in a way that cannot be avoided by other means [954].

5.4 Alternatives to pre-trial Detention

5-4-1 Within the framework of Egyptian law

The competent authority for pre-trial detention may issue in his place an order for one of the following measures:1- Obliging the accused not to leave his home or domicile;2- Obliging the accused to present himself to the police headquarters at specific times;3- Prohibiting the accused from visiting specific places. If the accused violates the obligations imposed by the measure, he may be remanded in custody. The period of the measure, its extension, its maximum limit, and its appeal shall be subject to the same rules prescribed in relation to pretrial detention. Seizure and habeas corpus orders and detention orders issued by the Public

(949) Article 421 of the Judicial Instructions of the Public Prosecution.

(950) Article 420 of the Judicial Instructions of the Public Prosecution.

(951) Pirano Basso v. Uruguay (12. 533), AC 69§ (2009).

(952) Article 9(3) of the International Covenant, Article 37 (b) of the Convention on the Rights of the Child, Article 16 (6) of the Migrant Workers Convention, Article 14 (5) of the Arab Charter, Principle 39 of the Body of Principles, Rule 6 of the Tokyo Rules, Section M(1) (e) of the Fair Trial Principles in Africa, Principle 3(2) of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 3 of the European Rules of Pre-trial Detention.

(953) Article 7(5) of the American Convention, Article 5 of the European Convention, Principle 3(2) of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rules 6 and 7 of the European Rules for Pre-Trial Detention; see Article 9(3) of the International Covenant, and Article 16 (6) of the Migrant Workers Convention.

(954) Rule 8(2) of the European Rules for Pre-Trial Detention, Marinich v. Belarus, Commission on Human Rights,. UN Doc. CCPR/C/99/D/1502/2006.

Prosecution may not be executed after the lapse of six months from the date of their issuance unless approved by the Public Prosecution for another period [955].

Under these measures, the accused shall be left free during the period of the preliminary investigation, subject to certain obligations that ensure his placement at the disposal of the investigator and the good conduct of the accused.

The investigating judge may release the accused remanded in custody, obliging him to present himself to the police office at the times specified by him in the release order, taking into account his own circumstances. The accused may request the investigating judge to choose a place of residence other than the place where the crime occurred, and he may also prohibit him from visiting a specific place.

Prosecutors must take into account the circumstances of the cases presented to them and carefully consider the assessment of the necessity of remanding the accused in custody, and they must in particular take into account the social circumstances of the accused, family and financial ties and the seriousness of the crime, and this is up to their discretion and good judgment [956].

If the investigation of a felony or misdemeanor requires the task of examining the mental state of the accused and he is being held in pretrial detention, the prosecution must obtain from the magistrate an order to place him under observation in one of the government shops designated for this purpose for a period or periods not exceeding forty-five days in total.

The period of probation shall be renewed until it reaches the maximum referred to in the preceding paragraph, as well as the removal of the accused from the place of residence and his imprisonment before the expiry of that period by order of the summary judge at the request of the prosecution.

The prosecution shall order the removal of the accused from the premises where he is placed immediately after the expiry of the maximum period of placement under observation, and it may order his release in accordance with the general rules.

If the accused is not remanded in custody, the magistrate may, at the request of the prosecution, order his placement under observation in any other place where the observation can be made for the previous period or periods.

If it is referred to the court, the order to place it under observation shall be the jurisdiction of the court referred to it in accordance with the foregoing [957].

The execution of the order under observation referred to in the preceding article shall be in accordance with the procedures and in the places indicated in Articles 555 and 556 of the written, financial and administrative instructions issued in 1979.

Upon the implementation of that order, a certified photocopy with the stamp of the prosecution must be sent from the case file to the Office of the Assistant Attorney General and the original of the case must be kept at the headquarters of the prosecution to complete the investigation and take measures to extend the pretrial detention [958].

([955]) Article 201 of the Criminal Procedure Law.
([956]) Article 387 of the Judicial Instructions of the Public Prosecution.
([957]) Article 1314 of the Judicial Instructions of the Public Prosecution.
([958]) Article 1315 of the Judicial Instructions of the Public Prosecution.

Prosecutors shall, if the accused under observation is under preventive detention, take into account and take measures to extend his detention while he is in the premises, in accordance with the general rules and to avoid the fall of imprisonment [959].

It is not permissible at all to delegate the forensic doctor to examine the mental state of the accused in a case of important felonies and misdemeanors [960].

If the investigation requires examining the mental state of the accused in a case of an insignificant misdemeanor or in a violation, the prosecution must assign the forensic doctor to conduct that examination and report on its result. If the forensic doctor decides that the accused has a mental illness that requires attention, it must act in the case based on what is evident from the aforementioned doctor's report, and contact the administrative authority to send the accused to one of the aforementioned roles as a patient and not an accused after the competent health doctor issues him form No. "5 Mental Illness Health". The prosecution then has nothing to do with the admission or discharge of the accused from the hospital, as he is subject to the procedures stipulated in Law No. 141 of 1944 regarding the detention of the mentally ill.

However, if the forensic doctor does not express an opinion in the case of the mental defendant and indicates that he is under observation, the prosecution must refer him to the competent health doctor to write the form "No. 29 Hospital Health" with the defendant to be placed in the local public hospital for observation by his doctors and to submit a report on his condition. If it appears from their report that he has a mental illness and that his condition requires care and treatment in the aforementioned hospitalization homes, the prosecution must act in the case accordingly and instruct the administrative authorities to send the defendant to one of these homes after the release of the form "5 Mental Health" in accordance with the above [961].

Prosecutions must request the antecedents of defendants suspected of mental strength and attach them to special cases before sending them to the Office of the First Public Defender. If it is necessary to expedite sending the case pending the antecedents as if the defendant was in a state of severe agitation, the prosecution must immediately send the case to the Office of the First Public Defender and ask the Criminal Evidence Investigation Department to issue the criminal case sheet of the defendant as a matter of urgency, provided that the request indicates the date and number of sending the case and that the defendant is suspected of his mental condition, with warning the aforementioned authority that the criminal case sheet must be submitted directly to the Office of the First Public Defender the next day at the latest. It is noted that this is mentioned in the letter in which the case is sent to the aforementioned office [962].

Prosecutors shall order an investigation into the past of defendants suspected of their mental powers and their tendency to harm and investigate the crimes they have previously committed and the actions taken in it and other information that helps to determine their condition when examining their mental powers or when they are taken out of the hospitalization period provided that this is indicated in the memoranda sent with the cases to the Office of the First Public Defender whenever possible or in subsequent memoranda if the cases have already been sent to him [963].

If he suspects that an injury to a person who is not accused of a mental illness is likely to disturb security or public order or that he fears for the safety of the patient or the safety of others, the member of the prosecution or the police judicial officer may place him under custody to be presented to the competent health doctor for examination, within a maximum period of twenty-

---

([959]) Article 1315 bis of the Judicial Instructions of the Public Prosecution.

([960]) Article 1316 of the Judicial Instructions of the Public Prosecution.

([961]) Article 1317 of the Judicial Instructions of the Public Prosecution.

([962]) Article 1318 of the Judicial Instructions of the Public Prosecution.

([963]) Article 1319 of the Judicial Instructions of the Public Prosecution.

four hours from the time of his arrest. If it becomes clear to the doctor after examining him that he is not sick with mental illness, he must be released immediately.

However, if the doctor suspects his condition without being able to conclude an opinion on it, he orders that he be placed under observation for a period not exceeding eight days in a government hospital not intended for mental illnesses, provided that he is medically examined every day. At the end of the observation period, the doctor decides either to release him or to detain him. In all cases, the doctor shall write a report of the result of the examination he conducted.

The patient shall be detained in the cases where it is decided to do so in one of the government hospitalization centers for mental and psychological health unless the patient's relatives or those who carry out his affairs deem him to be placed in one of the private hospitals prepared for the aforementioned diseases [964].

5.4.2 Within the framework of international covenants

Since pre-trial detention should be exceptional, international standards put forward perceptions of alternative measures that are less restrictive than pre-trial detention, and recourse to such measures should be considered if the court believes that it is necessary to take some steps to ensure that the accused appears before the court [965].

A wide variety of disposition measures is available to the competent authority, providing it with the flexibility to avoid, to the maximum extent possible, the use of institutionalization. Such measures, which are possible for everyone among some of them, include the following:

ordering care, direction and supervision;

Probation;

Ordering service in the community;

financial penalties, exposure and restitution;

order intermediate methods of processing and resort to other methods of processing;

Order participation in group counselling and similar activities;

Order care at a foster family, group living centres or other educational institution;

Other appropriate orders.

No juvenile may be isolated from parental supervision, either partially or completely, unless his special circumstances require it [966].

Such measures include bail or appropriate insurance, a ban on the accused leaving the country, house arrest, and movement restriction orders [967].

Such measures shall be prescribed by law, necessary and proportionate [968].

([964]) Article 1332 of the Judicial Instructions of the Public Prosecution.

([965]) Rules 57, 58 and 62 of the Bangkok Rules, see Kaczynik v. Poland (59526/ 00), European Court (2007) 57§; Resolution 65/229 of the United Nations General Assembly, 5§.

([966]) Rule No. 18 of the Beijing Rules.

([967]) Canis v. Paraguay, Inter-American Court §113- §135 (2004).

([968]) See Article 9(3) of the International Covenant, Article 7(5) of the American Convention, Article 14 (5) of the Arab Charter, Article 5(3) of the European Convention, the Tokyo Rules (in particular Rules 3/2 and 6/2), Section M(1) (e) of the Principles of Fair Trial in Africa, and Principle 3(4) of the European Rules of Pretrial Detention.

Decisions determining the value of bail or other alternatives to detention, in each case, should be based on an assessment of the material risk applicable to the case, and to the condition of the accused person [969].

Non-custodial measures should be preferred for persons caring for children alone or mainly, and for pregnant or breastfeeding women [970].

Deprivation of liberty of children should be used only as a measure of last resort and for the shortest possible period of time, as made clear by the Committee on the Rights of the Child in its general comment No. 10, and enshrined in article 37 of the Convention on the Rights of the Child, which states: “States Parties shall ensure that:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment shall be imposed for offences committed by persons under eighteen years of age without the possibility of release.

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be carried out in accordance with the law and may only be exercised as a measure of last resort and for the shortest appropriate period of time.

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults, unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family by correspondence and visits, except in exceptional circumstances.

Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Similarly, the Havana Rules provide for the use of deprivation of liberty only in exceptional cases. The Beijing Rules and the Riyadh Guidelines also affirm that principle. In addition, the best interests of the child must be a primary consideration in every decision to initiate or continue the deprivation of liberty of a child [971].

If deprivation of liberty can be justified as necessary, in a limited manner and consistent with the best interests of the child, the child must be treated with humanity and with respect for his or her inherent dignity, considering the needs of persons of his or her age and level of maturity. The Convention on the Rights of the Child provides that the right to age-appropriate restraint includes, in particular, the right to be separated from adults, unless it is considered in the child's best interests not to be separated, and the right to maintain contact with his or her family through correspondence and visits, except in exceptional cases. Paragraph (1) of Article 40 of the Convention affirms this principle concerning children in conflict with the law by adding the desirability of encouraging the child's reintegration and assuming a constructive role in society, stating that: «1. States Parties recognize the right of every child who alleges, is accused of, or is recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and to promote the child's respect for the human rights and fundamental freedoms of others, taking into account the age of the child and

---

([969]) European Court: Mangoras v. Spain (12050 / 04), Grand Chamber (93-78§ § (2010), Hristova v. Bulgaria (60859 / 00), (111§ (2006).

([970]) Rules 57 - 60 and 62 of the Bangkok Rules, Section M 1(f) of the Principles for a Fair Trial in Africa, Rule 10 of the European Rules for Pre-Trial Detention, Resolution 65/229 of the United Nations General Assembly, 9§; Resolution 63/241 of the United Nations General Assembly, 47§; Special Rapporteur on Torture, 41§ (2008) UN Doc. A/HRC/7/3.

([971]) (CRC/C/GC/10)، (A/HRC/28/68، §25).

the desirability of promoting the child's reintegration and the child's assuming a constructive role in society... "Article 10 [2] [b] of the International Covenant on Civil and Political Rights stipulates that:" (b) Juvenile defendants shall be separated from adults and referred as soon as possible to the judiciary for adjudication of their cases... »[972].

Article 40, paragraphs 3(b) and(4), of the Convention on the Rights of the Child stipulates that alternative measures to detention should be envisaged first, such as care, guidance and supervision orders, counselling; probation, foster care, education and vocational training programs or other alternatives, to ensure that children are treated in a manner appropriate to their well-being and proportionate to their circumstances and the crimes committed, stating that: “States Parties shall endeavor to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the penal law, and in particular: ... (b) The desirability of taking measures where appropriate to treat such children without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected.

4. Various arrangements, such as care, guidance and supervision orders, counselling, testing, foster care, vocational education and training programs and other alternatives to institutional care, are available to ensure that children are treated in a manner appropriate to their well-being and proportionate to both their circumstances and[973] their offence.

Finally, regardless of the form of deprivation of liberty, whether criminal, institutional or administrative, article 37 (d) of the Convention on the Rights of the Child stipulates that any decision to deprive a child of liberty must be subject to periodic review in terms of its continuing need and appropriateness, stating that: “(d) Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and that any such action shall be decided upon expeditiously.” The Human Rights Committee explained in its general comment No. 35 that a child has the right to be heard, either directly or through legal or other appropriate assistance, with regard to any decision to deprive of liberty, and that the procedures followed should be child-friendly[974].

Chapter Six: The Right to Challenge the Legality of Detention

Any person deprived of liberty shall have the right to challenge the legality of his detention before a court, and persons unlawfully detained shall have the right to reparation, including compensation.

6.1 Right to challenge legality of detention

6-1-1 Within the framework of Egyptian law

The law regulated the procedures for controlling the orders issued by the investigating authority, so it allowed the appeal by appeal within certain limits before the Court of Appeal Misdemeanors - sitting in the Chamber of Counsel or before the Criminal Court sitting in the

International [972]Covenant on Civil and Political Rights, Article 10; Convention on the Rights of the Child, Article 40; (A/HRC/28/68, §26).

([973]) (A/HRC/28/68، §30).

([974]) (CCPR/C/GC/35، §62)، (A/HRC/28/68، §31).

Chamber of Counsel - and accordingly, these two bodies are considered second degree for the investigation judiciary

As for the investigation procedures in the narrow sense, such as inspection, search and interrogation, it is not permissible to appeal the decision issued to proceed independently, all of this without prejudice to the right of the litigants to challenge them before the trial court.

The law does not equal litigants in the right to appeal investigation orders but rather distinguishes the Public Prosecution from the rights of the accused and the civil prosecutor.

Who has the right to challenge orders issued during the investigation

Orders that the Public Prosecution may appeal

The Public Prosecution may appeal, even in the interest of the accused, all orders issued by the investigating judge, whether on its initiative or at the request of the litigants[975].

The prosecution may appeal - even if in the interest of the accused - all orders issued by the investigating judge, whether on its own or at the request of the litigants. The appeal shall be obtained by the report of the Registry, and Form No. 5 (S) of the Prosecution shall be used for[976] that purpose.

Accordingly, the Public Prosecution may appeal all orders issued by the investigating judge, for example, those issued regarding jurisdiction or the lack of a face to file a case, or the temporary release of the accused in a felony, and if the legislator has appealed the order for the temporary release of the accused in a felony, this requires that the temporary release of the accused in a misdemeanor may not be appealed[977].

The member of the prosecution who decides to appeal the order issued by the investigating judge must attach to the appeal report a full memorandum signed by him, and he must take the initiative to send the case file to the overall prosecution. This prosecution must, as soon as the case reaches it, notify the litigants to appear before the Appeal Misdemeanors Court sitting in the Chamber of Counsel to consider the appeal as soon as possible or before the Criminal Court sitting in the Chamber of Counsel on the day specified by him to consider the appeal [978].

The Public Prosecution may, if the necessity of the investigation requires, appeal the order issued by the Magistrate Judge or the Appellate Misdemeanor Court in the Counseling Chamber to release the accused remanded in custody. It alone may appeal the order issued in a felony for the provisional release of the accused remanded in custody [979].

The deputy may appeal the order issued by the investigating judge to refer to the Magistrate Court as a misdemeanor or violation, to prevent the lawsuit from being considered by a court that is not competent [980].

Orders that the civil rights plaintiff may appeal

The civil rights plaintiff may appeal the orders issued by the investigating judge that there is no reason to file a lawsuit unless the order is issued in a charge against an employee, public employee, or an officer for a crime committed by him during the performance of his job or because of it unless it is one of the crimes referred to in Article 123 of the Penal Code [981].

([975]) Article 161 of the Criminal Procedure Code.
([976]) Article 653 of the Judicial Instructions of the Public Prosecution.
([977]) The first paragraph of Article 164 of the Criminal Procedure Code.
([978]) Article 657 of the Judicial Instructions of the Public Prosecution.
([979]) Articles 164, 205 of the Criminal Procedure Code.
([980]) The second paragraph of Article 164 of the Criminal Procedure Code.
([981]) Articles 162, 210 of the Criminal Procedure Code

If the civil plaintiff challenges an order issued in a charge against an employee for committing it during or because of his job, the court of cassation shall rule the inadmissibility of the appeal, and the Court of Cassation shall rule that: [The street was deprived by Law No. 121 of 1956, which amended Article 210 of the Criminal Procedure Law by preventing him from taking action against employees, employees, or officers for crimes committed by them during the performance of their job or because of it, the right to appeal the orders issued by the investigating judge or the Public Prosecution that there is no basis for filing a lawsuit for one of these crimes, The right to file a lawsuit directly has also been suspended, and it does not meet with this prohibition that the right of appeal in cassation remains the original of its permissibility in relation to the orders issued by the indictment chamber related to the decisions that there is no face to file a lawsuit, but that this prohibition must extend to the same reason disclosed by the street in the explanatory memorandum to Law No. 121 of 1956 - namely, "to provide employees with special protection that protects them against individuals and their natural tendency to complain about them " - to appeal by way of cassation as well, as long as the street has intended to block the way to object to orders that do not Filing a lawsuit for public officials and within the scope of the crimes referred to in the text and as long as the appeal in the ordinary way and in the extraordinary way meet when responding to that cause envisaged by the street in this amendment to immunize public officials from excessive litigation[982] .

It is not permitted to appeal against the orders issued by the Public Prosecution that there is no face to file a lawsuit for lack of importance or that the administrative penalty is sufficient. Because it is only a suspension of the investigation at a certain stage.

The civil rights plaintiff may appeal the order issued by the Public Prosecution refusing to accept his civil claim, unlike the order issued by the investigating judge, which may not be appealed. It is noted that the civil plaintiff, as long as he fulfills the procedures of the civil prosecution, has the right to appeal the order issued to refuse to accept this civil claim - and under this capacity, he has all the rights of the litigants during the appeal process [983].

As for the other investigation orders that the law allowed the civil prosecutor to appeal, it is not permissible for him to appeal them except for those whose civil claim was acceptable before the investigation authority because this depends on the acceptance of his civil claim.

Orders that the defendant and the civil rights officer may appeal

This right shall not be established except for the accused, that is, the one before whom the criminal case was initiated. However, if the person is still a suspect and has not yet been charged, he is not entitled to file this appeal, otherwise, the lack of capacity is unacceptable.

The law did not allow the accused and the person responsible for civil rights to appeal only one type of investigation order, which is the order related to matters of jurisdiction. It is equal that the investigation order is issued with jurisdiction or lack of jurisdiction. If the investigator is not competent to investigate, all the procedures he initiates imply an order of jurisdiction that may be challenged. Article 163 of the Code of Criminal Procedure stipulates that: "All litigants may appeal orders related to matters of jurisdiction, and the appeal does not stop the progress of the

---

The Supreme Constitutional Court ruled in its judgment issued on 2/12/2007 in Appeal No. 163 of 26 BC. The constitutionality of the unconstitutionality of the first paragraph of Article 210 of the Criminal Procedure Law, including the limitation of the right to appeal to the order issued by the Public Prosecution that there is no basis for filing a lawsuit for lack of importance, to the civil rights claimant, without the accused.

([982]) Appeal No. 1186 of 27 S issued at the session of June 24, 1958 and published in the second part of the book of the Technical Office No. 9 page No. 710 rule No. 179.

([983]) Article 199 bis of the Criminal Procedure Law.

investigation. The lack of jurisdiction shall not result in the invalidity of the investigation procedures[984].

Jurisdictional matters in this regard shall mean all matters relating to functional, specific, personal or local jurisdiction. Other defenses relating to the lapse of a criminal action by statute of limitations, a final judgment, or otherwise, do not relate to jurisdiction.

Otherwise, the accused may not appeal investigation orders, such as ordering the temporary refusal of his release, ordering the return of seized items, refusing the use of an expert, or ordering referral to trial.

However, if the accused is referred to a court that is not competent, it is not permissible for the latter to challenge the referral order because it was issued in one of the issues of jurisdiction, because what is meant by these issues is what relates to the jurisdiction of the investigator himself to investigate, not the jurisdiction of the entity to which the lawsuit is referred.

The Supreme Constitutional Court ruled that granting the right to appeal against the order without the right to file a lawsuit to the plaintiff of the civil right, without the accused, is a violation of the principle of equality: [The plaintiff of the civil right and the accused are parties to one criminal dispute - whatever the opinion on the nature of that dispute - with which the two are in a similar legal position in this regard. If the legislator claiming the civil right to challenge the decision without a face, and the accused is deprived of it - this is a violation of the principle of equality contrary to the text of Article (40) of the Constitution, and depriving the accused of challenging the decision that there is no face to file the lawsuit confiscates his constitutional right to appear before his natural judge and his right to litigate to obtain fair judicial satisfaction...

Confiscation of the right of the accused to challenge the decision without grounds for filing a lawsuit for lack of importance would make him - in certain cases - threaten to cancel it and re-investigate it at any time, which would involve a realistic change - and not just a theoretical change - in the legal status under which he loses the guarantees of defending himself, and he is unable to resort to his natural judge, in addition to the fact that the accused has the right to fight to clear his name and defend his reputation and be considered. The way and means of a fair trial in which a final judicial ruling is issued[985].

6.1.2 Within the framework of international covenants

Every person deprived of his liberty has the right to take proceedings to challenge the legality of his detention before a court of law, and the court must decide on the matter without delay and order the release of the arrested person if the detention is not lawful[986].

While the African Charter does not explicitly enshrine this right, the jurisprudence of the African Commission notes that this right is contained in Article 7(1) of the African Charter[987].

This right provides guarantees for the right to liberty and security of person, as well as protection from other human rights violations, including torture and other ill-treatment, arbitrary detention and enforced disappearance [988].

([984]) Article 163 of the Criminal Procedure Code.

([985]) The judgment of the Supreme Constitutional Court in Case No. 163 of 26 S issued at the session of December 2, 2007 and published in the first part of the book of the Technical Office No. 12 page No. 749 rule No. 74.

([986]) Article 9(4) of the International Covenant, Article 17 (2) (f) of the Convention on Enforced Disappearances, Article 37 (d) of the Convention on the Rights of the Child, Article 16 (8) of the Migrant Workers Convention, Article 7(6) of the American Convention, Article 14 (6) of the Arab Charter, Article 5(4) of the European Convention, Principle 32 of the Set of Principles, Guideline 32 of the Robben Island Guidelines, Section M(4) and(5) of the Fair Trial Principles in Africa, Article 25 of the American Declaration, and Guideline 7(3) of the Council of Europe Guidelines on Human Rights and the Fight against Terrorism; see Article 8 of the Universal Declaration.

([987]) Constitutional Rights Project v. Nigeria (153/96), African Commission, Annual Report 13 (17§ (1999)..

This right is guaranteed to all persons deprived of their liberty, whatever the reasons [989].

It also applies to all forms of deprivation of liberty, including house arrest and administrative detention (including detention based on national security imperatives[990].

In general, the detained person or his lawyer files an appeal against the detention decision to ensure judicial protection, but some standards explicitly stipulate that other persons can file such appeals on behalf of the detained person [991].

The right to challenge the legality of detention differs from the right to be brought before a judge mainly because the initiation of proceedings for an appeal comes from or on behalf of the detained person, not from the authorities

In countries where the authorities detain individuals secretly or in undisclosed places of detention, this right becomes a means of determining the whereabouts and safety of the detainee, and who is responsible for his detention [992].

In many legal systems, the right to challenge the legality of detention and seek redress is exercised through a request for provisional relief or the issuance of a writ of habeas corpus before a judge.

The United Nations General Assembly has repeatedly called on States to ensure that counter-terrorism measures comply with international law, including the right to challenge the lawfulness of detention.[993]

The Working Group on Arbitrary Detention stressed the importance of ensuring that all persons deprived of their liberty in connection with activities related to terrorism have the right to an effective subpoena[994].

Several human rights bodies have raised concerns about the denial of this right to individuals detained at Guantánamo Bay for a number of years [995].

The Committee against Torture has criticized the denial of this right to individuals detained in Australia for investigation by intelligence agents based on a law that empowers authorities to repeatedly renew a detention period of seven days for persons held in preventive detention and those detained under surveillance orders issued under counter-terrorism legislation [996].

([988]) Inter-American Court: Emergency Subpoenas, Advisory Opinion 87/35 § (1987), OC-8, Urrutia v. Guatemala, (111§ (2003); Kurt v. Turkey (24276/ 94), European Court (123§ (1998).

([989]) General Comment 2 of the Committee against Torture, 13§; see, e.g., European Court: Ismoilov v. Russia (2947/06), (152-145 § § (2008 (detention in connection with an extradition request), Varbanov v. Bulgaria (31365/96), (2000) 61-58§ § (detention in connection with confinement proceedings in a psychiatric institution); see also Benjamin and Wilson v. United Kingdom (28212 / 95), (33 § § § (2002 38 (hospitalization following a discretionary sentence of life imprisonment)); A v. Australia, Human Rights Committee, 1993/97) UN Doc. CCPR/C/59/D/560) 5/9-4/9 § § (Detention of an Asylum Seeker), Barretosio v. Uruguay, HRC 40 / UN Doc. A/37 (Suppl. 40) (13§ (1982) (security detention)..

([990]) Abbassi Madani v. Algeria, Commission on Human Rights, UN Doc. 5/8§ (2007) CCPR/C/89/D/1172/2003.
Resolution 15/18 of the Human Rights Council, 4§ (d) - (e).

([991]) Article 17 (2) (f) of the Convention on Enforced Disappearances, Article 7(6) of the American Convention, and Section M (5) (b) of the Principles for a Fair Trial in Africa; see Principle 32 of the Body of Principles.
Suárez-Roserov. Ecuador, Inter-American Court (60-59§ § (1997).

([992]) Article 9 of the Declaration of Enforced Disappearance, Article 10 of the American Convention on Disappearance, and Section M (5) (b) of the Principles of Fair Trial in Africa.

([993]) Article 27 (2) of the American Convention, Article 10 of the American Convention on Disappearances, Article 4(2) of the Arab Charter, and Section M (5) (e) of the Principles of Fair Trial in Africa.

([994]) Resolution 65/221 of the United Nations General Assembly, 6§ (b) - (c), and 64/168 6§ (b) - (c); see also Resolution 13/26 of the Human Rights Council, 9§.
Working [995]Group on Enforced Disappearances, 21 / UN Doc. A/HRC/10 53§ § (2009) and 54 (e) - (f).

([996]) See the joint report of the United Nations mechanisms on detainees at Guantánamo Bay, 120/2006 /. 29-17§§ (2006) UN Doc. E/CN4 ...

Persons detained incommunicado or in solitary confinement must also be allowed to address the court to challenge the legality of their detention and their incommunicado or solitary confinement [997].

Detaining persons incommunicado in the context of enforced disappearance without enabling them to exercise their right to challenge the legality of their detention violates not only the right to liberty but also other rights, including the right to recognition before the law [998].

The right to challenge the legality of detention applies in all circumstances, even during states of emergency. Such challenges serve as a safeguard for the right to liberty and other rights, including non-derogable rights such as the right to be free from torture and other forms of ill-treatment [999].

In its legal consideration of a decree issued by the Nigerian government prohibiting courts from issuing habeas corpus orders against individuals detained on charges related to state security, the African Commission said the following: "While the Commission sympathizes with all sincere attempts to maintain public peace, it must point out that excessive measures restricting rights often lead to more severe disturbances and it is dangerous for the protection of human rights for the executive branch of government to act without those controls that the judiciary can exercise."[1000].

The European Court said that the failure to provide an opportunity for a person detained on suspicion that he is planning a criminal offence, or that he has committed such an offence, to appear before an independent and impartial court to decide whether his detention is lawful, and to release him if these suspicions prove to be unfounded, constitutes an explicit denial of a fair trial[1001].

The Convention on Enforced Disappearances requires penalties for those who delay or obstruct procedures to challenge the legality of detention [1002].

Similarly, UN human rights mechanisms have recommended that laws should include sanctions for officials who refuse to disclose relevant information within the procedures for issuing[1003] subpoenas.

---

(997) Concluding observations of the Committee against Torture: Australia,. UN Doc . 10§ (2008) CAT/C/AUS/CO/3..

(998) Inter-American Court: Suárez-Rosero v.Ecuador, 59 § § (1997 60), Sisti-Hortadov. Peru, 123§ (1999); see Concluding Observations of the Committee against Torture: Iceland, 3/ . §10 (2008) UN Doc. CAT/C/CR/30..

(999) See, for example, Grewe v. Algeria, Commission on Human Rights,. UN Doc 5/7§ § (2007) CCPR/C/90/D/1327/2004, 7/8 and 7/9; and General Comment 11 of the Working Group on Enforced or Involuntary Disappearances on the right to recognition before the law.

General Comment 29 of the Commission on Human Rights, 16§; Inter-American Court: Advisory Opinion 87/42 § (1987) OC-8, Advisory Opinion 41§ (1987) OC-9/87 (1); Resolution 1992/35 of the Office of the High Commissioner for Human Rights, 2§; Joint Report of the United Nations Mechanisms on Secret Detention,. UN Doc 47-46§ § ,(2010) A/HRC/13/42; Working Group on Enforced Disappearances, 4/47-46 § § (2008) UN Doc. A/HRC/7; SPT: Honduras, 282§ (2010) UN Doc. CAT/OP/HND/1 (a)- (b)..

(1000) Constitutional Rights Project and Civil Liberties Organization v. Nigeria (95/153 and 150/96), African Commission, Annual Report 13 (33§ (1999).

(1001) European Court: In favour v. Germany (35865/ 03), (Inadmissibility) Decision (101§ (2007); Othman v. United Kingdom (8139/09), (259§ (2012)..

(1002) Joint Report of the United Nations Mechanisms on Secret Detention, 292§ ,(2010) UN Doc. A/HRC/13/42 (b)...

(1003) Article 22 of the Convention on Enforced Disappearances..

6-2 Procedures to Challenge the Legality of Detention

6.2.1 Under Egyptian law

A. Report of the appeal

The appeal shall be made by a report in the clerk's office [1004].

B. Appeal date

The deadline for appealing investigation orders shall be ten days unless the appealed order is the order issued in a felony for the temporary release of the pretrial detainee, in which case the appeal date shall be twenty-four hours, and in this case, the order shall be issued by the investigating judge, or by the partial judge in the case of investigation with the knowledge of the Public Prosecution[1005].

This period starts from the date of issuance of the order if the appellant is the Public Prosecution and starts from the date of its notification for the rest of the litigants [1006].

The Court of Cassation ruled that when the law requires a declaration to act or start a deadline, any other way does not take its place. Whereas, Article 210 of the Code of Criminal Procedure entitles the civil rights plaintiff to challenge the order that there is no face to file the criminal case within a period of ten days from the date of its notification, and the papers were empty, which indicates that the civil rights plaintiff has been notified of the aforementioned order until he decided to challenge it, the contested judgment, as it concluded that the civil rights plaintiff's challenge to the aforementioned order was made on time, has been correct in law [1007].

C. Jurisdiction to hear the appeal

The appeal shall be submitted to the Court of Appeal of Misdemeanors sitting in the counseling room unless the appealed order is issued that there is no right to file a case in a felony, and the appeal shall be submitted to the Criminal Court sitting in the counseling room [1008].

The point in determining the type of crime (felony or misdemeanor) is what the investigator concludes when disposing of the investigation under the supervision of the appellate authority, not what is included in the report of the crime.

It is noted that the Distance Misdemeanors Court, sitting in the Consultation Chamber, is the only competent authority entrusted by the legislator to appeal against the investigation orders, whether the investigator is the Public Prosecution or the investigating judge.

The second paragraph of Article 167 of the Code of Criminal Procedure stipulates that if the person who undertook the investigation is a consultant pursuant to Article 65, the appeal against it before the Criminal Court shall be held in the Chamber of Counsel [1009].

D. Effects of the Appeal

The Chamber of Counsel is considered a second instance for the investigation judiciary, that is, an appellate body for the orders it issues.

([1004]) Article 165 of the Criminal Procedure Law.

([1005]) Articles No. 166, 205 of the Criminal Procedure Code, and Article No. 655 of the Judicial Instructions of the Public Prosecution.

([1006]) Articles No. 166, 210 of the Criminal Procedure Code.

([1007]) Appeal No. 933 of 45 S issued at the session of June 22, 1975 and published in the first part of the book of the Technical Office No. 26 page No. 554 rule No. 124.

([1008]) Article 167 of the Criminal Procedure Code, Article 656 of the Judicial Instructions of the Public Prosecution.

([1009]) Article 167 of the Criminal Procedure Code.

The appeal jurisdiction of the counseling chamber includes orders that may be challenged before it, whether in misdemeanor or felony articles, noting that the order is not to file a criminal case in a felony, then its appeal shall be before the criminal court sitting in the counseling chamber.

This body must decide on the appeal as a matter of urgency, as it is part of the investigation judiciary - subject to the rules to which this judiciary is subject, and therefore its procedures are conducted in private and in the presence of the litigants

This body has absolute authority to assess the validity of the grounds of appeal, whether legal or substantive, and is not restricted by the reasons presented by the appellant opponent. Its appellate jurisdiction requires it to have the authority to conduct a supplementary investigation to ascertain the validity of the grounds of appeal, which is dictated by its function and nature as a second degree of investigation. Article 166 of the Criminal Procedure Law stipulates that: "The date of appeal shall be ten days from the date of issuance of the order for the Public Prosecution and from the date of its notification for the rest of the litigants, except in the cases stipulated in the second paragraph of Article (164) of this law. The date of the prosecution's appeal of the provisional release order shall be twenty-four hours, and the appeal must be adjudicated within forty-eight hours from the date of its submission. The accused's appeal shall be at any time. If a decision is issued rejecting his appeal, he may file a new appeal whenever a period of thirty days has elapsed from the date of issuance of the rejection decision."[1010].

The principle is that the criminal case before this appellate body shall be determined by its facts and litigants, without prejudice to the authority of this body, in adding the correct legal description and adding the complementary facts that give it the correct legal description.

If the appeal is limited to some of the charges for which there is no face to file the lawsuit, the appeal is limited to these charges alone and to the accused alone, and it does not extend to the rest of the charges or the other accused. In this case, this order becomes partially final for the accused who are not covered by the appeal, and this order can only be canceled by the Public Prosecutor if new evidence becomes available.

Upon the cancellation of the order to file a lawsuit, the Chamber of Counsel shall return the specific case of the crime constituting it and the acts committed in the text of the law applicable to it, in order to refer it to the competent court [1011].

Whenever the appellate body verifies that the form of the appeal is available and that it is legally permissible, it shall decide on it in the following manner:

In matters of jurisdiction:

If the Chamber of Counsel considers that the investigator is not competent, it shall rule that the jurisdiction is not competent. However, if it considers that the investigator is competent to consider the investigation, it rejects the appeal on the merits.

Since the rules of jurisdiction are of public order, it is permitted to plead that the investigator does not have jurisdiction to investigate during the consideration of the appeal filed against one of his other orders.

With regard to the absence of a face:

There is no difficulty if the appellate body (the Chamber of Counsel in Misdemeanors and Felonies) finds that the investigator did not make a mistake in issuing this order, in which case it rejects the appeal.

([1010]) Article 166 of the Criminal Procedure Code.
([1011]) Article 167 of the Criminal Procedure Code.

If the appellate body decides to cancel the order that there is no face of the issuer based on an objective reason, this means that there is sufficient evidence before the accused to bring him to trial.

According to Article 167, the Chamber shall return the case, specifying the crime it is sentenced for and the acts committed in the text of the law applicable to it, in order to refer it to the competent court. In this case, the prosecution can only issue a referral order in implementation of the ruling of the counseling chamber [1012].

The law stipulates that if the appeal filed by the civil plaintiff against the order issued for the absence of a face is rejected, the appellant may sentence him to the compensation arising from the filing of the appeal, if there is a place for it. Of course, it is imperative that the accused be civilly claimed for this compensation and that the abuse of the right of the civil plaintiff to appeal be proven [1013].

Release of the accused in a felony:

If the Chamber decides to cancel the release order, it may extend the detention of the accused for a period not exceeding forty-five days if the interest of the investigation so requires [1014].

Inadmissibility of civil prosecution:

If the Chamber considers that the Prosecution has erred in the inadmissibility of the civil prosecution, it shall decide to accept his claim, and the acceptance shall have its effect as soon as he makes a civil claim before the investigating authority and the necessary procedures are completed for him.

E. Adjudication of Appeal

The judgments issued by the counseling chamber are final in all cases [1015].

The principle is that the appeal of investigation orders does not affect the progress of the investigation or the implementation of these orders [1016].

As for the temporary release in a felony, the legislator exempted from that the order issued by the investigating judge in a felony for the temporary release of the accused in pre-trial detention. It stipulated that this order may not be executed before the expiry of the appeal deadline or before it is decided if it is filed within this deadline. If the appeal is not decided within three days from the date of its report, the order for release must be implemented immediately[1017].

In the latter case, the accused shall be deemed released by force of law unless an order for his provisional detention is issued by the party to which the order is appealed. This is without prejudice to the investigator's authority to re-imprison him on remand if the evidence against him is strengthened or if he violates the conditions imposed on him in the order of release, or if there are circumstances that require this remand [1018].

If the Chamber of Counsel, upon appealing the order for release, decides to cancel this order, it may order the extension of the detention of the accused for successive periods not exceeding forty-five days if the interest of the investigation so requires [1019].

([1012]) Article 167 of the Criminal Procedure Code.
([1013]) Article 169 of the Criminal Procedure Law.
([1014]) Article 143, 168 of the Criminal Procedure Code.
([1015]) Article 167 of the Criminal Procedure Code.
([1016]) Article 163 of the Criminal Procedure Code.
([1017]) The third paragraph of Article 168 of the Criminal Procedure Code.
([1018]) Article 150 of the Criminal Procedure Law.
([1019]) Articles 143, 168 of the Criminal Procedure Code.

This requires that the authority to extend pretrial detention shall be for the counseling chamber only in this case, even if the investigating judge has not exhausted his authority to extend the detention in accordance with the law, which is a period or periods not exceeding a total of forty-five days [1020].

It is noted that the assessment of whether the crime attributed to the accused is a felony or a misdemeanor depends on the incident as described by the investigator during the investigation, not on the reality of the reality.

Needless to say, this exception assumes that the criminal case is still ongoing. If it is decided to release the accused in a felony and then an order is issued that there is no face to file the criminal case, the appeal of the order issued for release does not entail the suspension of its implementation.

If the appeal filed by the civil rights plaintiff against the order issued that there is no basis for filing the lawsuit is rejected, the appellant may sentence the accused to damages arising from the filing of the appeal if there is a place for that.[1021]

The Court of Cassation ruled that what is issued by the Court of Appeal Misdemeanors sitting in the Advisory Chamber on the appeals submitted to it against the orders issued by the investigating judge and the Public Prosecution that there is no way to file a criminal case are final decisions and may not be appealed by way of cassation [1022].

It ruled that the lesson in determining whether the appeal is based on the judgment, a decision, or a matter related to the investigation or referral, is the reality, not what the issuing authority mentions about it or what it describes: [... It was clear from the papers that the appellant, as a civil rights plaintiff, had challenged the order of the Public Prosecution that there is no face to file a criminal case, issued on .... In a felony article before the Criminal Court, what is issued by that court in this case, is in fact a decision related to an act of investigation under Articles 167 and 210 of the Criminal Procedure Law, as amended by Law No. 170 of 1981 mentioned above, and not a judgment within the legal meaning of Article 30 of the Law of Cases and Procedures of Appeal before the Court of Cassation[1023] .

6.2.2 Within the framework of international covenants

International law requires governments to establish procedures to enable individuals to challenge the legality of their detention, to release them if their detention is unjust and these procedures must be applied throughout the period of detention, to be simple and quick, and to be done free of charge if the detainee is unable to pay expenses [1024].

([1020]) Article 202 of the Criminal Procedure Law.
([1021]) Article 169 of the Criminal Procedure Law.
([1022]) Appeal No. 2591 of 5S issued at the 18th session of October 2015 and published in the Technical Office's letter No. 66, page No. 692, rule No. 102, Appeal No. 34648 of 77S issued at the 15th session of November 2014 and published in the Technical Office's letter No. 65, page No. 838, rule No. 106.
([1023]) Appeal No. 3718 of 65 s issued at the session of March 9, 2005 and published in Technical Office Book No. 56 Page 190 Rule No. 27, Appeal No. 13325 of 60 s issued at the session of September 22, 1999 and published in Part I of Technical Office Book No. 50 Page 453 Rule No. 105, Appeal No. 45090 of 59 s issued at the session of May 17, 1998 and published in Part I of Technical Office Book No. 49 Page 713 Rule No. 91, Appeal No. 7276 of 54 s issued at the session of April 23, 1985 and published in Part I of Technical Office Book No. 36 Page 581 Rule No. 102, Appeal No. 7276 of 54 s issued at the session of April 23, 1985 and published in Part I of Technical Office Book No. 36 Page 581 Rule No. 102, Appeal No. 6840 of 53 s issued at the session of March 14, 1984 and published in Part I of Technical Office Book No. 35 Page 274 Rule No. 56.
Concluding [1024]observations of the Human Rights Committee: Panama, / UN Doc. CCPR/C. 13§ (2008) PAN/CO/3.
Principle 32 (2) of the Body of Principles.

While these appeals are usually handled by the detained person or his or her lawyer, certain standards expressly recognize the right of anyone with a legitimate interest, including relatives, their representatives or their lawyers, to do so.

The body reviewing the legality of detention must be a court independent of the executive authority and impartial [1025].

The court must have the authority to order the release of the detainee if it considers that the detention lacks legality [1026].

The European Court refused to consider an advisory committee that does not have decision-making authority, but merely makes non-binding recommendations to a minister in the UK government, eligible to serve as a "court " for this purpose [1027].

The Human Rights Committee and United Nations mechanisms raised concerns that the initial bodies that reviewed the detention of individuals in Guantánamo Bay did not meet the conditions of independence necessary for the idea of a "court", given their lack of independence from the executive branch and the army. Moreover, the release of the detainee was not guaranteed if these bodies decided that the individual concerned should not be detained further[1028].

Following a decision that United States courts were competent to hear habeas corpus petitions in relation to Guantánamo Bay detainees, the IACHR expressed concern that such petitions often did not appear to constitute an effective remedy, given that United States courts allegedly did not have the power to order the release of detainees found not to be wanted until the executive branch had made arrangements to transfer them to a country other than the United States of America[1029].

A review of the legality of detention must ensure that:

that the arrest and detention took place in accordance with the procedures established by national law;

that the grounds on which the detention was based are established in national law;

The detention is not arbitrary or unlawful according to international standards[1030].

The authorities must bring the detainee to court without undue delay [1031].

([1025]) Human Rights Committee: Vuolanne v. Finland, / UN Doc. CCPR 10-6/9 § § (1989) C/35/D/265/1987, Umarova v. Uzbekistan, UN 6/8§ (2010) Doc. CCPR/C/100/D/1449/2006; Kulov v. Kyrgyzstan, 5/8§ (2010) UN Doc. CCPR/C/99/D/1369/2005; Constitutional Rights Project v. Nigeria (153/96), African Commission, Annual Report 13 18-11§ § (1999); Inter-American Court, Chaparro Álvarez and Labo Inoguez v. Ecuador, (128§ (2007), Emergency Fetch Notes, Advisory Opinion 87/42 § (1987) ,OC-8; European Court: Rameshvili and Kochridze v. Georgia, (1704/06), (136-128 § § (2009); see Varbanov v. Bulgaria (31365/96), (61-58§ § (2000).

([1026]) Article 9(4) of the International Covenant, Article 17 (2) (f) of the Convention on Enforced Disappearances, Article 16 (8) of the Migrant Workers Convention, Article 7(6) of the American Convention, Article 14 (6) of the Arab Charter, and Article 5(4) of the European Convention.

European Court: A et al. v. United Kingdom (3455/05), Grand Chamber (202§ (2009), Chahal v. United Kingdom (22414 / 93), 130§ (1996); A v. Australia, Human Rights Committee, / UN Doc. CCPR. 5/9§ (1997) C/59/D/560/1993.

([1027]) Chahal v. United Kingdom (22414 / 93), Grand Chamber of the European Court (130§ (1996)..

([1028]) Joint Report of the United Nations Mechanisms on Detainees at Guantánamo Bay, 120/2006/29-27 §§ ,(2006) UN Doc. E/CN. 4; Concluding observations of the Human Rights Committee: United States of America,. UN Doc . 18§ (2006) CCPR/C/USA/CO/3/Rev. 1.

([1029]) Resolution 11/2 of the American Committee..

A [1030]et al. v. United Kingdom (3455/05), Grand Chamber of the European Court (202§ (2009); Human Rights Committee, A v. Australia, UN Doc 5/9§ (1997) CCPR/C/59/D/560/1993, Papan et al. v. Australia, . 2/7§ (2003) UN Doc. CCPR/C/78/D/1014/2001..

([1031]) See Chaparro Álvarez and Labo Inoguez v. Ecuador, Inter-American Court, (129§ (2007).

The court also must examine evidence of tangible value to the legality of detention under national and international law [1032].

Concerning individuals detained in the context of criminal cases, the procedure should be fair and disputable, and the principle of equal legal opportunities should be applied [1033].

The detainee has the right to be present at the hearing, and to be represented by a lawyer of his choice or a delegated lawyer appointed to him free of charge if he is unable to pay [1034].

An oral hearing is likely to be necessary and the detainee should have the opportunity to challenge the basis of the allegations he is facing, so it should be possible to hear witnesses who could have material affecting (the continuation of the lawfulness of the detention.

The detainee or his lawyer should have access to the documents that form the basis of the lawsuit, especially those related to information related to the reasons for arrest and detention[1035].

The defense and the prosecution should be able to comment on the evidence presented and the observations made by the other party. Where an independent and impartial court determines that measures impeding full disclosure of information are necessary and proportionate to take into account legitimate concerns about national security or the safety of others, the restrictions imposed on the detained person should be balanced in such a way that, despite the restrictions imposed, he can effectively challenge the allegations made against him[1036].

Courts examining the legality of detention must make their decision "promptly" or "without delay" and the speed of review is determined in the light of the circumstances of each individual case [1037].

The requirement to make the decision “expeditiously” applies to the preliminary decision and to any subsequent stages of appeal against the decision [1038].

The court must order the release of the detained person if the detention is unlawful and if the court orders the continuation of the detention, the court must state its reasons for deciding that the detention is necessary and reasonable in the specific case [1039].

Such orders should be subject to appeal and regular review.

([1032]) European Court: A et al. v. United Kingdom (3455/05), Grand Chamber (224-202 § § (2009 (particularly 202-204)), Nikolova v. Bulgaria (31195/96) Grand Chamber (1999), Fluch v. Poland (27785/ 95), 127-125 § (2000), García Alva v. Germany (23541 / 94), 39§ § (2001 and 42-43; see Baban et al. v. Australia, Human Rights Committee, UN Doc. 2/7§ (2003) CCPR/C/78/D/1014/2001.

([1033]) European Court: A et al. v. United Kingdom (3455/05), Grand Chamber (224-202 § (2009), Ramishvili and Kochridze v. Georgia, (1704/06), 136-128§ (2009), Campanis v. Greece (17977 / 91), 47§ (1995); Rafael Ferrer-Mazora et al. v. United States (9903) American Commission, Report 51/01 (213§ (2001).

([1034]) Principle 20§ § 3 and 23 of the Principles of Legal Aid; see Guiding Principles 44§ 4 (c-d) and 5 of the Principles of Legal Aid.

European Court, Campanis v. Greece (17977 / 91), (1995) 59-47§ §; see Winterwehrb v. The Netherlands (6301/73), (260§ (1979)..

([1035]) European Court: Fluch v. Poland (27785/ 95) (-125§ § (2000 131; A et al. v. United Kingdom (3455/05)), Grand Chamber (2009). 204-202§.

([1036]) a et al. v. United Kingdom (3455/05), Grand Chamber of the European Court (224-202 § (2009) (in particular 205 and 218-224); see also Principles 1, 2 and 14 of the Johannesburg Principles.

([1037]) See Suárez-Roserov. Ecuador, Inter-American Court (1997) 64-63 § §; Flush v. Poland (27785/ 95), European Court (2000) 136-133 § §; Sánchez-Reyas v. Switzerland (9862/95), European Court (61-55§ § § (1986); Amesian v. United States (08- , P-900), Inter-American Court, decision on admissibility (39§ § (2012).

([1038]) Navarre v. France (13190 / 87), European Court (28§ (1993).

([1039]) Principle 4 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

European Court: Batsouria v. Georgia (30779 / 04), (62§ (2007), Aleksanyan v. Russia (46468 / 06), (179§ (2008).

6-3 Right to Continuous Review of Detention

6.3.1 Within the framework of international covenants

Any person detained in connection with a criminal offence shall have the right to have the lawfulness of his detention reviewed at reasonable intervals by an independent and impartial tribunal, or by an authorized judicial authority [1040].

These audits fall under Article 5(4) of the European Convention [1041].

Detention that commences lawfully can become unlawful. Pretrial detention shall remain lawful as long as it is strictly necessary to prevent the risks recognized under international standards and specified in the detention order. (If it is claimed that another justification contained in international standards has arisen, a new hearing should be held and the applicability of the principles of necessity and proportionality to the case should be reassessed[1042].

Pre-trial detention, by its nature and in light of the right to be tried within a reasonable period, must be limited in terms of its length of time, and the longer the period of detention, the greater the need for strict scrutiny of its necessity and proportionality to the need for it [1043].

The burden of proving that detention is still necessary and proportionate, in these review procedures, remains the responsibility of the authorities, who must also show that they continue their investigations with special care [1044].

Unless all these conditions are met, the person must be released and if a further detention order is issued, the reasons should be stated [1045].

During reviews, basic guarantees of procedural fairness should be applied. The detainee has the right to be heard, to be assisted by a lawyer, to provide evidence and to have equal legal opportunities, including access to information necessary to challenge allegations raised by the authorities[1046].

The Working Group on Arbitrary Detention stressed that deprivation of liberty, even if lawful at the time of its initiation, is arbitrary if it is not periodically reviewed and the right to periodic review extends to all detained persons, including those detained on suspicion of association with a criminal offence, whether or not they have been charged with it. [1047]

([1040]) Principle 39 of the Body of Principles, Rule 17 of the European Rules for Pre-Trial Detention, Guideline 8 of the Council of Europe Guidelines on Human Rights and Counter-Terrorism, and Article 60 (3) of the Rome Statute.

([1041]) European Court: Asinov et al. v. Bulgaria (24760 / 94), (1998) 162§, Chitaev and Chitaev v. Russia (39334 / 00), (177§ (2007).

([1042]) See Rule 6/2 of the Tokyo Rules.

([1043]) See Rule 6/2 of the Tokyo Rules, and Article 60 (4) of the Rome Statute.

([1044]) European Court: Principe v. Monaco (43376/ 06) (2009) 88- § §73, Beata v. Italy (26772/ 95), (153- § §152 (2000); Jorge, José and Dante Pirano Basso v. Uruguay (12). 553, Report 86/09), U.S. Commission (105- § §104 (2009).

([1045]) Chaparro Álvarez and Labo Inoguez v. Ecuador, Inter-American Court, §117- §118 (2007); see Bronstein et al. v. Argentina (, et al. 205 U.S.C. § 19 (1997).

Guideline [1046]44§ 4 (c) of the Principles of Legal Aid.

Rafael Ferrer-Mazoraet al. v. United States (9903) American Commission, 213 § (2001); Asinov et al. v. Bulgaria (24760) / 94), (1998) 165- § §163, Mamedova v. Russia (7064) / 05), (93- § §89 (2006); Allen v. United Kingdom (18837) / 06), (48- § §38 (2010).

([1047]) Ali Saleh Kahleh Al-Marri v. United States of America (Opinion 3 2006/4), Working Group on Enforced Disappearances, UN Doc 2008) A/HRC/7/4/Add. 1) pp. 29- §36- §37 ,37; see A v. Australia, Human Rights Commission, 1993/4/ §9 (1997) UN Doc. CCPR/C/59/D/560.

6-4 The Right to Reparation when a Person is Unlawfully Arrested or Detained

6.4.1 Within the framework of international covenants

Every person unlawfully arrested or detained has an enforceable right to reparation, including compensation (the French and Spanish texts of the ICCPR use the broader term reparation; the term reparation used in the English text constitutes an element of reparation[1048].

Forms of compensation include but are not limited to rehabilitation, financial compensation, rehabilitation, satisfaction, and guarantee of non-repetition [1049].

In cases of unlawful detention, reparation includes the release of the detained person [1050].

Principle 39 of the Body of Principles "Except in special cases provided by law, a person detained on a criminal charge shall, unless otherwise decided by a judicial or other authority in the interests of the administration of justice, be entitled to be released pending trial subject to such conditions as may be imposed under law, and the necessity of such detention shall be reviewed by that authority."

The right to a remedy and reparation applies to persons whose detention or arrest constitutes a violation of national laws or procedures, international standards, or both [1051].

The crux of the matter in such cases is whether the detention itself is lawful, regardless of the person's subsequent conviction or acquittal [1052].

Legal aid should be available to individuals seeking redress on these grounds [1053].

Article 9(5) of the ICCPR "Every person who has been the victim of unlawful arrest or detention shall have the right to compensation."

Chapter Seven: The Right of Detainees to a Fair Trial within a Reasonable Time or their Release

Persons detained pending trial shall have the right to proceedings against them to proceed particularly expeditiously and to be expeditious and, unless the detained person is brought to trial within a reasonable period of time, to be released pending trial.

(1048) Article 9(5) of the International Covenant, Article 24 (4) of the Convention on Enforced Disappearances, Article 16 (9) of the Migrant Workers Convention, Article 14 (7) of the Arab Charter, Article 5(5) of the European Convention, and Section M(1) (h) of the Principles Relating to a Fair Trial in Africa; see Article 8 of the Universal Declaration, Article 7 of the African Charter, Article 25 of the American Convention, Principle 35 of the Set of Principles, and Article 85 (1) of the Rome Statute.

(1049) Articles 18-23 of the Basic Principles on Reparation for Injuries, and Guideline 16 of the Council of Europe Guidelines on the Eradication of Impunity.

European Court, Chitaev and Chitaev v. Russia (39334) / 00), §192 (2007), Hood v. United Kingdom (27267) / 95), 69 § (1999); see Rodrigues v. Honduras, Inter-American Court § § §166 (1988) and 174.

(1050) Principle 19 of the Basic Principles of Reparation.

(1051) European Court, Chitaev and Chitaev v. Russia (39334) / 00), § 192- §196 (2007), Stephen Jordan v. United Kingdom (30280) / 96), §33 (2000), Hill v. United Kingdom (19365) / 02), 27 § (2004). W. B. E. v The Netherlands.

(1052) Commission on Human Rights, / UN Doc. CCPR 5/ §6 (1992) C/46/D/432/1990; see Skanina v. Austria (13126) / 87 EC 25 § (1993).

(1053) Guideline 55§ 11 (b) of the Principles of Legal Aid..

7-1 Within the Framework of Egyptian Law

The preliminary investigation aims to verify the evidence based on the attribution of the crime to a specific perpetrator. When the investigator deems that there is sufficient evidence of the occurrence of the crime and its attribution to the accused, which is sufficient to file the criminal case, he issues an order to raise it to the competent court. If the incident is a felony and the prosecution decides to proceed with it, he refrains from referring it to the court based on evidence only, but it must undertake its investigation itself.

When filing a lawsuit, the following principles must be observed:

If the investigator considers that the evidence against the accused is sufficient to weight his conviction, he shall order the filing of the criminal case, and here he notes that while the conviction is conditional on the conviction reaching certainty, it is sufficient to file the lawsuit that the conviction reaches the point of weighting.

If there are multiple crimes dealt with in the investigation, reference must be made to the rules of jurisdiction regarding the determination of the competent court:

If the crimes are indivisibly linked, if the jurisdiction is limited to courts of one degree, the lawsuit shall be referred to the competent court in one of them [1054].

If the crimes are within the jurisdiction of courts of different degrees, they shall be referred to the higher court [1055].

If some of the crimes are within the jurisdiction of the ordinary courts and others are within the jurisdiction of the special courts, the lawsuit shall be filed before the ordinary courts unless the law stipulates otherwise [1056].

If the crimes are slightly related, the referral of all crimes to a single court is permissible according to the decision of the Court of Cassation: [What is meant by related crimes are those in which the conditions stipulated in Article 32 of the Penal Code are met that the same act is multiple crimes or several crimes occur for the same purpose and are linked to each other so that they are indivisible and the court must consider them all as one crime and rule the penalty prescribed for the most severe of those crimes, but in the funds of simple association where the conditions of Article 32 of the Penal Code are not met, combining multiple lawsuits is permissible for the trial court and if the basis is that the assessment of the association of crimes is within the discretionary power of the trial court][1057] .

([1054]) Article 214 of the Criminal Procedure Code.
([1055]) Article 214 of the Criminal Procedure Code.
([1056]) Article 214 of the Criminal Procedure Code.
([1057]) Appeal No. 32788 of 85 S issued at the session of November 25, 2017 (unpublished), Appeal No. 1976 of 49 S issued at the session of February 28, 1983 and published in the first part of the Technical Office letter No. 34, page No. 283, rule No. 55, Appeal No. 1309 of 45 S issued at the session of December 21, 1975 and published in the first part of the Technical Office letter No. 26, page No. 844, rule No. 186, Appeal No. 1904 of 35 S issued at the session of March 29, 1966 and published in the first part of the Technical Office letter No. 17, page No. 395, rule No. 78

The Court of Cassation ruled that: [If the accused was charged with two counts, namely that he beat a person and caused him injuries that led to his death and beat another with a simple beating, and the two incidents occurred at the same time and in the same place and for the same reason, and the prosecution separated them, so it submitted the felony to the referral judge, so he referred it to the Criminal and Misdemeanor Court to the Misdemeanor Court, where it issued a judgment, this is wrong, as long as the two crimes are linked to each other, this indivisible link because they were organized by one criminal thought and took place in one psychological revolution, which is not permissible to impose on them only one penalty, which is prescribed for the most severe crime, then it is obligatory, when each of the two cases has not been finally decided, to work on them to be decided by one court, which is the one that has the judgment of the crime whose punishment is the most severe.] Appeal No. 1687 of 18 Q issued in the session of 2 of March 1949 and published in the first part of the set of legal rules No. 7, page 782, rule No. 827.

The investigator must adjudicate all the charges dealt with in the investigation. If he refrains from disposing of one of them, the matter does not deviate from anyone concerned:

The criminal case for this charge is still before the investigator.

It issued an implicit order that there is no face to file a criminal case, and this meaning can only be reached if the circumstances of the case disclose this behavior in a way that cannot be interpreted otherwise.

Jurisdiction to file a criminal case against an employee, public employee or officer

The criminal case must be filed against an employee, public servant, or one of the officers in a felony or misdemeanor committed by him during the performance of his job or because of it by the Attorney General, the Attorney General, or the Chief Public Prosecutor [1058].

([1058]) Appeal No. 14376 of 64 S issued at the 25th session of October 2000 and published in Technical Office Letter No. 51, page No. 667, rule No. 132, Appeal No. 422 of 62 S issued at the 22nd session of January 1997 and published in Part I of Technical Office Letter No. 48, page No. 134, rule No. 19, Appeal No. 608 of 60 S issued at the 5th session of January 1997 and published in Part I of Technical Office Letter No. 48, page No. 19, rule No. 2, Appeal No. 5486 of 62 s issued at the 1st session of February 1995 and published in the first part of the Technical Office letter No. 46 page 291 rule No. 41, Appeal No. 3494 of 59 s issued at the 27th session of May 1991 and published in the first part of the Technical Office letter No. 42 page No. 897 rule No. 123, Appeal No. 1201 of 59 s issued at the 1st session of June 1989 and published in the first part of the Technical Office letter No. 40 page No. 602 rule No. 101, Appeal No. 2125 of 50 s Issued at the session of February 9, 1981 and published in the first part of the technical office letter No. 32 page No. 147 rule No. 21, Appeal No. 136 of 47 s issued at the session of June 6, 1977 and published in the first part of the technical office letter No. 28 page No. 706 rule No. 148, Appeal No. 712 of 40 s issued at the session of June 8, 1970 and published in the second part of the technical office letter No. 21 page No. 855 rule No. 201

The Court of Cassation ruled that: [Whereas the legislator did not allow the plaintiff of civil rights in Article 232 of the Code of Criminal Procedure to initiate criminal proceedings for the crimes committed by the employee during the performance of his job or because of it and the right to initiate them is limited to the Public Prosecution and provided that this is authorized by the Attorney General, the Attorney General or the Chief Prosecutor as required by the third paragraph of Article 63 of the same law], Appeal No. 7268 of 63 S issued at the session of January 15, 2003 and published in the letter of the Technical Office No. 54, page No. 91, rule No. 7, Appeal No. 1601 of 45 S issued at the session of February 2, 1976 and published in the first part of the letter of the Technical Office No. 27, page No. 152, rule No. 30

It also ruled that: [It is established that if the criminal case was filed against the accused who does not have the right to file it legally and contrary to the provisions of Article 63 of the Criminal Procedure Law, the court's communication in this case is legally non-existent and it is not entitled to be subjected to its subject matter. If it did, its judgment and the procedures based on it were null and void. The appellate court does not have the right to address the subject matter of the case when submitting the order to it, as the trial is closed without it, which is a matter of public order because it relates to the jurisdiction of the court and its connection with an original condition necessary to trigger the criminal case and the validity of the court's communication with the incident, which in this way may be raised for the first time before the Court of Cassation when its elements are clear from the contested judgment or the elements of this plea have been included in the papers without the need for an objective investigation. Whereas, it was established from the records of the preliminary judgment supporting the reasons for the contested judgment, and it is included in the vocabulary that the appellant is an employee of the local unit of the city of .... And that the crime attributed to him occurred during the performance of his job and because of it and that the criminal lawsuit was filed against him at the request of the Deputy Public Prosecutor without the permission of the Attorney General or the Attorney General or the Chief Prosecutor in accordance with the text of the third paragraph of Article 63 of the aforementioned Criminal Procedure Law, the obituary raised by the appellant for the first time before this court that the lawsuit may not be filed is acceptable and the contested judgment, if he ruled on the merits of the law, has erred in the application of the law by revoking and correcting the appealed judgment and not accepting the lawsuit], Appeal No. 2248 of 62 S issued at the session of 18 September 2001 and published in the letter of the Technical Office No. 52 page No. 636 rule No. 115

The Court of Cassation ruled that granting the judgment the protection prescribed by the text of Article 63 of the Code of Criminal Procedure to the accused without disclosing the name of the work he carries out is defective: [Since the contested judgment has launched the statement that the criminal case was moved before the appellee without following the procedures stipulated in Article 63 of the Code of Criminal Procedure and gave him the protection prescribed in the aforementioned article without disclosing the endeavor of the work he carries out, which is not sufficient to prove the availability of the status of public employee or employee of the appellee in order to protect him According to the text of the aforementioned article, the contested judgment shall be tainted by the deficiency that can be appealed against by the inability of the Court of Cassation to properly monitor the application of the law and to report an opinion on the lawsuit raised by the Public Prosecution for error in the application of the law. This deficiency has priority over the appeals related to the violation of the law], Appeal No. 14376 of 64 S issued at the 25th session of October 2000 and published in the letter of the Technical Office No. 51, page No. 667,

The third paragraph of Article 214 of the Code of Criminal Procedure stipulates that: «... In all cases, the provision of the last paragraph of Article 63 shall be taken into account... »The third paragraph of Article 63 stipulates that: «... Except the crimes referred to in Article 123 of the Penal Code, only the Attorney General, the Attorney General, or the Head of the Public Prosecution may file a criminal case against an employee, public servant, or one of the officers for a felony or misdemeanor committed by him during the performance of his job or because of it ... »[1059].

This means that it is not permitted to directly prosecute an employee, public employee, or one of the arrestees for a felony or misdemeanor committed by him during the performance of his job or because of it, except the crimes stipulated in Article 123 of the Penal Code, which is the use by the employee, public employee, or one of the arrestees of the authority of his job to suspend the execution of orders issued by the government or the provisions of laws and regulations, delay the collection of funds and fees, or suspend the execution of a judgment or order issued by the court or any competent authority.

As well as the crime of deliberately refraining from executing a judgment or order from the after the lapse of eight days from being warned by a bailiff if the execution of the judgment or order falls within the competence of the employee when these crimes occurred during or because of the performance of his job.

It is not permitted for the civil rights claimant to file a lawsuit with the court by directly assigning his opponent to appear before it if the lawsuit is directed against an employee, public employee, or an officer for a crime committed by him while performing his job or because of it. It is clear from this that the civil prosecutor does not have the right to initiate criminal proceedings directly in misdemeanors and violations concerning the crimes committed by the employee and the like during the performance of his job or because of it, and that the legislator has limited the right to initiate criminal proceedings in this case to the Public Prosecution only, provided that permission is issued by the Attorney General, the Attorney General, or the Chief Prosecutor per the provisions of Article 63 of the Criminal Procedure Law [1060].

The wisdom of this is that the legislator obligated to present the subject matter of the lawsuit before submitting it to a higher authority that can, with its experience, assess the matter and discuss it with more care and caution before filing a criminal lawsuit. These considerations are also valid in themselves to prevent direct prosecution against public officials for crimes committed by them during or because of the performance of their job [1061].

If the wisdom of the text - as mentioned above - is to establish special protection for employees in order to preserve the proper performance of their job to the fullest and taking into account the proper functioning of the work and the payment of damage for the public interest, it follows that this protection applies to all crimes, whether intentional or committed negligently [1062].

---

rule No. 132, Appeal No. 5486 of 62 S issued at the 1st session of February For the year 1995 and published in the first part of the book of the Technical Office No. 46, page No. 291, rule No. 41.

([1059]) Articles 63 and 214 of the Criminal Procedure Code.

([1060]) Appeal No. 19524 of 59 S issued at the session of October 12, 1993 and published in the first part of the Technical Office's book No. 44 page No. 782 rule No. 120, Appeal No. 7323 of 54 S issued at the session of January 29, 1985 and published in the first part of the Technical Office's book No. 36 page No. 186 rule No. 27, Appeal No. 1683 of 40 S issued at the session of March 1, 1971 and published in the first part of the Technical Office's book No. 22 page No. 178 rule No. 43.

([1061]) Appeal No. 19816 of 62 S issued at the session of February 13, 1997 and published in the first part of the technical office book No. 48 page No. 185 rule No. 26, Appeal No. 1899 of 34 S issued at the session of April 19, 1965 and published in the second part of the technical office book No. 16 page No. 368 rule No. 75.

([1062]) The Court of Cassation ruled that: [Saying that the provision of Article 63 of the Code of Criminal Procedure does not refer to crimes of negligence is rejected by two things: First - It is the generality of the text of the article, whether by the amendment made by Law No. 121 of 1956 when the street extended the protection it granted to employees, public employees

The restriction on filing a criminal case is fulfilled if the felony or misdemeanor was committed by the employee during the performance of his job or because of it, so that if one of these two circumstances is not met, there is no longer a place for compliance with that restriction [1063].

For this restriction to be enforced, it is required that the felony or misdemeanor was committed by the employee, employee or officer during and because of his job: [Since Article 63 of the Code of Criminal Procedure stipulates in its third paragraph that "except for the crimes referred to in Article 113 of the Penal Code, only the Attorney General, the Attorney General or the Chief Public Prosecutor may file a criminal case against an employee, public employee or one of the officers for a felony or misdemeanor committed by him during the performance of his job and because of it," it has explicitly indicated its words and its concept that the restriction on filing a criminal case is achieved if the felony or misdemeanor was committed by him during the

---

and policemen for all crimes such as felonies, misdemeanors and violations, or by the amendment made by Law No. 107 of 1962 when the violations were taken out of the list of those crimes, because when the law discloses the desire of the street, there is no place for allocation that does not explicitly have the text that carries it. The second thing - is that the wisdom of the text, which is - as disclosed in the explanatory memorandum accompanying Law 121 of 1956 - a special protection report for employees in order to preserve the proper performance of their job to the fullest and taking into account the proper functioning and payment of damage for the public interest, which does not justify limiting protection to the perpetrators of intentional crimes and their decline from those who negligently commit them], Appeal No. 1813 of 35 S issued at the session of February 15, 1966 and published in the first part of the Technical Office's book No. 17, page No. 152, rule No. 27.

([1063]) Appeal No. 16077 of 59 S issued at the session of January 17, 1991 and published in the first part of the Technical Office letter No. 42 page No. 98 rule No. 13, Appeal No. 943 of 44 S issued at the session of October 20, 1974 and published in the first part of the Technical Office letter No. 25 page No. 680 rule No. 146

In that judgment, the Court of Cassation ruled that: [Since the contested judgment has erred in the correctness of the law, as it was said that the administrative authority's pursuit of a business deprives its employees of the protection granted to them by the aforementioned article 63, it has arranged for the appellant's mere violation of the route specified for him by the affiliate to interrupt his relationship with the public service without invoking whether his violation of the route occurred from him during work or because of him, it is only a violation of the instructions of the affiliate, or what the appellant experienced was not during the performance of his work or because of his performance, and therefore the judgment is flawed by the deficiency that necessitates its revocation and referral]

It also ruled that: [It is established that the restriction on filing a criminal case in accordance with the provisions of Articles 63/3 and 232/3 of the Code of Criminal Procedure is fulfilled if the felony or misdemeanor was committed by the public official or his equivalent during the performance of his job or because of it, so that if one of these two circumstances is no longer available, there is no longer a place to abide by that restriction, and that the adjudication of this is one of the substantive matters that the trial court is independent to adjudicate without a penalty as long as its inference is sound based on a correct origin in the papers. Whereas, the primary judgment in support of his reasons was the contested judgment after he stated that the appellant works as a police officer in Cairo and went with a friend to the headquarters of the civil plaintiff in the district of.. ... Because of a dispute between the latter two regarding the possession of agricultural land, and then assaulted the civil plaintiff by insult, and then presented the judgment for the last two payments made by the appellant and put them forward by saying "... What is attributed to the accused is beyond suspicion that it did not occur from him during the performance of his job and it is not possible to imagine that a public official attributes to him the commission of a crime of slander or insulting another right in another city far from his place of work and then it is said that this accusation, if true, was committed by that employee because of the performance of his job, which all of it concludes that the aforementioned second plea is also misplaced from the fact or law and must be rejected, which is what the court stipulates - and for the same reasons for rejecting this plea, the court rejects the third plea of the accused not to accept the lawsuit to file it without the permission of the Chief Prosecutor in violation of the text of Article 63 of the Code of Criminal Procedure. " Whereas, and if what the judgment stated in the foregoing is correct in the law, the obituary against him for the error in the application of the law shall be on the basis of [Appeal No. 5194 of 56 S issued at the session of November 19, 1987, and published in the second part of the book of the Technical Office No. 38 page No. 1008 rule No. 183

It also ruled that: [The appellant prevented the inadmissibility of the lawsuit to be filed without capacity in violation of the provisions of Article 63 of the Criminal Procedure Law, even if it is related to public order, and it may be raised for the first time before the Court of Cassation. However, the condition for this is that the elements of the payment are clear from the records of the contested judgment or that the elements of this payment have been included in the papers without the need for an objective investigation that departs from its function. Whereas it is evident from the codes of the judgment and from the vocabulary included in order to achieve the face of the appeal that it has not shown the capacity of the appellant and that he is an employee who is required to enforce the restriction of Article 63 of the Code of Criminal Procedure in the filing of the criminal case for them, so it becomes prohibited in this regard on a basis that must be rejected] Appeal No. 667 of 49 S issued at the session of January 6, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 35 rule No. 6.

performance of his job and because of it, so that if one of these circumstances is not available, there is no longer full compliance with that restriction][1064] .

A public official is a person who is entrusted with permanent work in the service of a public facility managed by the State or a public law person by holding a position that falls within the administrative organization of that facility. For those working in the service of a public facility to acquire the status of a public official, the facility must be managed by the State through direct exploitation [1065].

([1064]) Appeal No. 13563 of 62 S issued at the 7th session of February 2002 and published in the Technical Office letter No. 53, page No. 265, rule No. 48, Appeal No. 30909 of 59 S issued at the 4th session of November 1997 and published in the first part of the Technical Office letter No. 48, page No. 1193, rule No. 179, Appeal No. 2814 of 56 S issued at the 9th session of October 1986 and published in the first part of the Technical Office letter No. 37, page No. 723, rule No. 137.

([1065]) Appeal No. 14376 of 64 S issued at the 25th session of October 2000 and published in the Technical Office letter No. 51, page No. 667, rule No. 132, Appeal No. 12898 of 64 S issued at the 14th session of June 2000 and published in the Technical Office letter No. 51, page No. 507, rule No. 99, Appeal No. 41037 of 59 S issued at the 11th session of January 1998 and published in the first part of the Technical Office letter No. 49, page No. 79, rule No. 10, Appeal No. 41037 of 59 S issued at the session of January 11, 1998 and published in the first part of the Technical Office letter No. 49 Page 79 Rule No. 10, Appeal No. 30909 of 59 S issued at the session of November 4, 1997 and published in the first part of the Technical Office letter No. 48 Page 1193 Rule No. 179, Appeal No. 608 of 60 S issued at the session of January 5, 1997 and published in the first part of the Technical Office letter No. 48 Page 19 Rule No. 2, Appeal No. 21484 of 59 S issued at the session of 21 From May 1992 and published in the first part of the Technical Office book No. 43 page No. 548 rule No. 80, Appeal No. 8951 of 59 s issued in the session of 29 March 1992 and published in the first part of the Technical Office book No. 43 page No. 344 rule No. 48, Appeal No. 3494 of 59 s issued in the session of 27 May 1991 and published in the first part of the Technical Office book No. 42 page No. 897 rule No. 123, Appeal No. 1201 of 59 s issued in the session of 1 June 1989 and published in the first part of the Technical Office book No. 40 page No. 602 rule No. 101, Appeal No. 2814 of 56 s issued in the session of 9 October 1986 and published in the first part of the Technical Office book No. 37 page No. 723 rule No. 137, Appeal No. 2506 of 53 s issued in the session of 11 January 1984 and published in the first part of the Technical Office book No. 35 page No. 39 rule No. 6

The Court of Cassation ruled that employees of press institutions are not considered public officials, so they are not affected by the protection prescribed for employees in Article No. 63 of the Criminal Procedure Law: [Since the contested judgment was presented to the appellant to not accept the lawsuit to file it other than in the manner prescribed by the law and put it on the basis that the editor-in-chief of the newspaper is not considered a public official in the provisions of Article 63 of the Criminal Procedure Law, and therefore the protection prescribed therein does not affect him. Whereas, the provisions of Articles 2 and 3 of Law No. 151 of 1964 regarding press institutions, and Article 6 of Law No. 156 of 1960 regarding the organization of the press, stated that press institutions are nothing more than private institutions, and the legislator considered that their establishment of joint stock companies necessary to carry out their activity and regulate their relationship with them should be in accordance with the rules prescribed for public institutions, as he considered them in the judgment of these institutions with regard to the responsibility of their managers and employees criminal and with regard to import and export. As for these matters, press institutions are considered persons of private law, and therefore their employees are not subject in their relationship to the provisions of the Labor Law and are not considered as public employees except for what Article 3 of Law No. 151 of 1964 referred to - an exception to that public asset. Whereas, the appellant is not considered a public official in the provisions of Article 63 of the Criminal Procedure Law, the protection prescribed therein, which is granted only to public officials, does not affect him. The contested judgment, if it reached this conclusion and rejected the plea of inadmissibility of the lawsuit with regard to the appellant, it shall be the correct one of the law] Appeal No. 20749 of 4Q issued at the session of January 17, 2015 and published in the Technical Office's letter No. 66, page No. 161, rule No. 15, Appeal No. 3164 of 55Q issued at the session of October 29, 1987 and published in the second part of the Technical Office's letter No. 38, page No. 908, rule No. 167

It also ruled that employees of the Electricity Distribution Company are not considered public employees: [Whereas the third paragraph of Article 63 of the Code of Criminal Procedure did not give the protection prescribed in regard to the inadmissibility of filing a criminal case except from the Attorney General, the Attorney General or the Chief Prosecutor except for employees or public employees and not others for the crimes they commit during the performance of the job or because of it, and it was decided that the public official, by holding a position that falls within the administrative organization of that facility, and the street whenever it deems that certain persons are considered as public officials in the domicile of what it states, such as in the case of crimes of bribery, embezzlement of princely funds and causing serious harm to funds and other crimes mentioned in Chapter III and IV of Book II of the Penal Code, when it states in the fifth paragraph of Article 119 bis thereof that the public official in the provision of this Part means heads and members of boards of directors, managers and other employees of entities whose funds were considered public property in accordance with the previous Article 119 of the same law, the previous paragraph of which stipulated that Public funds shall mean, in the application of the provisions of the aforementioned section, what is wholly or partly owned by companies, associations, economic units and establishments

The prohibition on initiating criminal proceedings against public officials, as stipulated in Article 63(3) of the Code of Criminal Procedure, applies only to the filing of criminal cases and not to their investigation, handling, or the pursuit of related procedures. These actions are not restricted to the officials listed in the article, such as the Public Prosecutor, the Chief Prosecutor, or the Head of the Public Prosecution, but are instead within the jurisdiction of all members of the Public Prosecution.

The contested judgment addressed the defense's plea of inadmissibility of the criminal case due to its initiation in violation of Article 63(3) of the Code of Criminal Procedure, dismissing it by stating: “Article 63(3) of the Code of Criminal Procedure does not permit anyone other than the Public Prosecutor, Attorney General, or the Head of the Public Prosecution to initiate criminal proceedings against a public servant, an employee, or a law enforcement officer for a felony or misdemeanor committed during or because of the performance of their duties. However, the prohibition applies solely to the initiation of proceedings, while the investigation, handling, and procedural actions related to the case are not restricted to those specified in the article but fall under the authority of all members of the Public Prosecution. Therefore, the plea raised by the first and second defendants in this regard lacks merit and is dismissed.”

Given this, and since the judgment’s reasoning aligns with the law, the claim of legal misapplication is unfounded [1066] .

---

contributed by one of the entities stipulated in the preceding paragraphs, making them public officials in this particular field only, so that it does not exceed the scope of the third paragraph of Article 63 of the Code of Criminal Procedure in the protection it grants to the employee or public servant.

Whereas it is established from the records of the contested judgment that the accused works as an employee of the Alexandria Electricity Company, the protection afforded by the third paragraph of the aforementioned article 63 to the public employee or public employee that it is not permissible to file a criminal case against him for a crime committed by him during the performance of his job or because of it except by the Attorney General, the Attorney General or the Chief Prosecutor does not apply to him] Appeal No. 11884 of 64 BC issued at the session of March 19, 2003 and published in the Technical Office's letter No. 54, page No. 474, rule No. 51

It ruled that the members of the Board of Directors of the Industrial Development Bank - a joint stock company according to the decision of its establishment - are not considered public officials: [Whereas the legislator, whenever he considers that certain persons are considered as public officials in a country, he included a text, such as in the crimes of bribery, embezzlement of princely funds and causing serious error in causing serious harm to funds and other crimes mentioned in chapters III and IV of Book II of the Penal Code, when he added by Law No. 120 of 1962 to Article 111 of the Penal Code a paragraph stipulating that users of companies in which the state or a public body contributes money in any capacity shall be considered as public officials in this field only, so that he does not exceed the scope of the third paragraph in Article 63 of the Code of Criminal Procedure in granting special protection to the employee or public employee. Whereas, it was established from the records of the contested judgment that the appellant works as a member of the Board of Directors of the Industrial Development Bank - a joint stock company as stated in Article 1 of the decision of the Minister of Finance No. 65 of 1975 - what was attributed to the appellant from committing the crimes of false communication and defamation against the appellee by virtue of her work does not fall under the protection prescribed in the third paragraph of Article 63 of the Code of Criminal Procedure, and the appellant's prohibition in this regard is not valid], Appeal No. 7268 of 63 s issued at the session of January 15, 2003 and published in the letter of the Technical Office No. 54 page 91 rule No. 7

The Court of Cassation also ruled that the protection of a public employee or employee does not apply to employees of public sector companies, Appeal No. 16243 of 63 S issued at the session of 25 May 1999 and published in the first part of the Technical Office's letter No. 50 page No. 332 rule No. 77

It also ruled that the conscript in the armed forces is not an employee or a public employee and does not meet the protection prescribed by law for them, Appeal No. 30909 of 59 S issued at the session of November 4, 1997 and published in the first part of the technical office book No. 48 page No. 1193 rule No. 179, Appeal No. 21484 of 59 S issued at the session of May 21, 1992 and published in the first part of the technical office book No. 43 page No. 548 rule No. 80

It also ruled that the assignment of the public employee to one of the investment companies and the occurrence of the crime in that company results in the employee not enjoying the protection prescribed by law, Appeal No. 608 of 60 S issued at the session of January 5, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 19 rule No. 2.

([1066]) Appeal No. 19478 of 70 S issued at the session of November 15, 2007 and published in the Technical Office's letter No. 58, page No. 700, rule No. 133, Appeal No. 1899 of 34 S issued at the session of April 19, 1965 and published in the second part of the Technical Office's letter No. 16, page No. 368, rule No. 75.

Requiring authorization from the Public Prosecutor, Attorney General, or Head of the Public Prosecution for initiating criminal proceedings is not a restriction on the Public Prosecution's authority to commence or file a case. Instead, it designates a functional jurisdiction specific to the Public Prosecutor, Chief Prosecutor, and Head of the Public Prosecution, which does not extend to other members of the Public Prosecution.

Procedural restrictions, including the requirement for authorization, are procedural barriers that designated authorities or individuals—who are not empowered to initiate or file cases—are responsible for removing. However, when the law specifies certain members of the Public Prosecution to carry out specific actions related to certain types of crimes, this pertains to functional jurisdiction rather than procedural restrictions on the Public Prosecution's freedom of action.

Therefore, all investigative actions, whether they directly affect the defendant or not, may be undertaken by any member of the Public Prosecution authorized to conduct the investigation, without the prior requirement of obtaining authorization from the Public Prosecutor, Chief Prosecutor, or Head of the Public Prosecution[1067].

If the criminal case is filed by a person who does not legally have the right to file, it - contrary to the provisions of Article 63 of the Criminal Procedure Law - the court's communication with this case is null and void and it is not entitled to be subjected to its subject matter. If it does, its judgment and the procedures on which it is based shall be null and void[1068].

([1067]) Appeal No. 22416 of 70 S issued in the session of February 19, 2001 and published in the letter of the Technical Office No. 52 page No. 292 rule No. 45

The Court of Cassation also ruled that: [It is not required in the filing of a criminal case against an employee, public employee, or an officer for a crime that occurred during or because of the performance of the job - as stipulated in Article 63/3 of the Criminal Procedure Law - to be initiated by the Attorney General, the Attorney General, or the Chief Prosecutor himself, but it is sufficient for one of them to authorize the filing of the case and assign one of his agents to implement it. Upon the issuance of the permission, the prosecution shall regain its full freedom with regard to the procedures for filing and initiating the lawsuit. Whenever it is clear from the review of the included vocabulary that the case papers were presented to the Chief Prosecutor of Giza and he authorized the filing of the criminal case against the appellant, there is no charge against the competent prosecutor if he then orders to determine the session in which the case is submitted to the court and initiates the procedures for summons to appear in person] Appeal No. 430 of 41 S issued at the hearing of June 13, 1971 and published in the second part of the Technical Office's book No. 22 page No. 467 rule No. 114, Appeal No. 1712 of 29 S issued at the hearing of March 21, 1960 and published in the first part of the Technical Office's book No. 11 page No. 273 rule No. 54.

([1068]) Appeal No. 25005 of 66 S issued at the 6th session of February 2006 and published in the Technical Office Letter No. 57 Page 194 Rule No. 23, Appeal No. 19816 of 62 S issued at the 13th session of February 1997 and published in the first part of the Technical Office Letter No. 48 Page 185 Rule No. 26, Appeal No. 19891 of 59 S issued at the 16th session of January 1994 and published in the first part of the Technical Office Letter No. 45 Page 98 Rule No. 13, Appeal No. 19524 of 59 S issued at the 12th session of October 1993 and published in the first part of the Technical Office letter No. 44 Page 782 Rule No. 120, Appeal No. 1842 of 58 S issued at the 6th session of July 1989 and published in the first part of the Technical Office letter No. 40 Page 657 Rule No. 111, Appeal No. 4522 of 57 S issued at the 22nd session of February 1988 and published in the first part of the Technical Office letter No. 39 Page No. 338 Rule No. 47, Appeal No. 3241 of 55 S Issued at the session of March 2, 1986 and published in the first part of the Technical Office letter No. 37 page No. 326 rule No. 67, Appeal No. 7322 of 54 s issued at the session of January 29, 1985 and published in the first part of the Technical Office letter No. 36 page No. 182 rule No. 26, Appeal No. 7323 of 54 s issued at the session of January 29, 1985 and published in the first part of the Technical Office letter No. 36 page No. 186 rule No. 27, Appeal No. 1817 of 51 s issued at the session of December 1, 1981 and published in the first part of the Technical Office letter No. 32 page No. 1009 rule No. 176, Appeal No. 58 of 46 s issued at the session of February 6, 1977 and published in the first part of the Technical Office letter No. 28 page No. 184 rule No. 40, Appeal No. 886 of 46 s issued at the session of December 27, 1976 and published in the first part of the Technical Office letter No. 27 page No. 1004 rule No. 225, Appeal No. 1190 of 42 s issued at the session of 7 From January 1973 and published in the first part of the Technical Office's book No. 24 page No. 36 rule No. 9, Appeal No. 93 of 42 s issued at the session of March 13, 1972 and published in the first part of the Technical Office's book No. 23 page No. 384 rule No. 85, Appeal No. 1683 of 40 s issued at the session of March 1, 1971 and published in the first part of the Technical Office's book No. 22 page No. 178 rule No. 43, Appeal No. 712 of 40 s issued at the session of June 8, 1970 and published in the second part of the Technical Office's book No. 21 page No. 855 rule No. 201.

The nullity of the judgment resulting from the filing of the criminal case against an accused who does not have the right to file it legally and contrary to the provisions of Articles 63 and 232 of the Code of Criminal Procedure is related to the public order of his communication with an original condition necessary for the initiation of the criminal case and for the validity of the court's communication with the incident, and he may be defended at any stage of the case, and the court must adjudicate it on its initiative[1069].

It also follows that the filing of the charge - in a felony or misdemeanor committed by him during the performance of his job or because of it - by the representative of the Public Prosecution of the accused in the hearing before the court of first instance and his non-objection to this does not correct the procedures because the lawsuit was originally sought in the court yard without the legal way, and it is not accompanied by the subsequent indication of the Chief Prosecutor to file the lawsuit because this subsequent leave does not correct the previous invalid procedures[1070].

Referral to the Magistrates' Court

If the Public Prosecution considers in the articles of violations and misdemeanors that the lawsuit is valid to be filed based on the evidence collected, it shall instruct the accused to appear directly before the competent court [1071].

If the Public Prosecution considers after investigation that the incident is a felony, misdemeanor, or violation, and that the evidence against the accused is sufficient, the lawsuit shall be submitted to the competent court, and this shall be in the articles of violations and misdemeanors by assigning the accused to appear before the District Court, unless the crime is a misdemeanor that occurs through newspapers or other means of publication - except for misdemeanors harmful to members of the public - the Public Prosecution shall refer it to the Criminal Court directly [1072].

If the investigation results in considering the incident a violation or a misdemeanor, the investigator submits it to the Magistrate's Court, provided that if the crime is a misdemeanor committed by newspapers or other means of publication - except for misdemeanors harmful to people - the lawsuit shall be submitted to the Criminal Court. Article 155 of the Code of Criminal Procedure stipulates that: "If the investigating judge considers that the incident is a violation, he shall refer the accused to the Magistrate's Court, and he shall be released if he is not imprisoned for another reason." Article 156 stipulates that: "If the investigating judge considers that the incident is a misdemeanor, he shall refer the accused to the Magistrate court unless the crime is a misdemeanor committed by newspapers or other means of publication - except for misdemeanors harmful to people, he shall refer it to the Criminal Court."[1073].

Upon the issuance of the decision to refer the case to the District Court, the Public Prosecution shall send all the papers to the clerk of the court within two days and shall notify the litigants to appear before the court at the earliest session and on the scheduled dates [1074].

Referral to the Misdemeanor Court

(1069) Appeal No. 1947 of 35 s issued at the session of March 15, 1966 and published in the first part of the Technical Office letter No. 17 page No. 317 rule No. 62, Appeal No. 1813 of 35 s issued at the session of February 15, 1966 and published in the first part of the Technical Office letter No. 17 page No. 152 rule No. 27, Appeal No. 1863 of 34 s issued at the session of March 1, 1965 and published in the first part of the Technical Office letter No. 16 page No. 179 rule No. 39.

(1070) Appeal No. 1863 of 34 S issued on March 1, 1965 and published in the first part of the book of the Technical Office No. 16 page No. 179 rule No. 39.

(1071) Article 63 of the Criminal Procedure Law.

(1072) Article 214 of the Criminal Procedure Code.

(1073) Articles 155 and 156 of the Criminal Procedure Code.

(1074) Article 157 of the Criminal Procedure Code, and Article 651 of the Judicial Instructions of the Public Prosecution.

If the Attorney General deems that the incident is, in fact, a misdemeanor, he shall order the referral of the accused to the District Court, unless the crime is a misdemeanor committed by newspapers or other means of publication - except for misdemeanors harmful to members of the public, he shall refer it to the Criminal Court [1075].

Taking into account that the Public Prosecutor or the Public Defender (at the Court of Appeal) has the authority to refer the case to the Misdemeanor Court to adjudicate in accordance with the provisions of Article 118 bis (a) of the Penal Code in the crimes stipulated in Chapter IV of the Penal Code regarding the crimes of embezzlement, aggression and treachery, according to the circumstances and circumstances of the crime, if the subject of the crime or the damage resulting from it does not exceed five hundred pounds, to adjudicate - instead of the penalties prescribed for it - the penalty of imprisonment or one or more of the measures stipulated in Article 118 bis of the Penal Code [1076].

It is noted that the referral of this type of felony to the Misdemeanor Court does not preclude the consideration of the incident as a felony. Article 160 bis of the Criminal Procedure Law stipulates that: The Public Prosecutor or the Public Defender may, in the cases indicated in the first paragraph of Article 118 bis (a) of the Penal Code, refer the case to the Misdemeanor Courts for adjudication per the provisions of the article [1077].

The referral of some felonies to the Misdemeanor Court in the cases set forth in the first paragraph of Article 118 bis (a) of the Penal Code pursuant to Article 116 bis of the Criminal Procedure Code does not change its nature from a felony to a misdemeanor, so its status as an existing felony remains [1078].

Referral to the Child Court

If the accused is a juvenile in a felony, Article 122 of the Child Law stipulates that: " The Child Court shall have exclusive jurisdiction to consider the matter of the child when accused of a crime or subject to delinquency. It shall also have jurisdiction to adjudicate the crimes stipulated in Articles 113 to 116 and Article 119 of this Law.

As an exception to the provision of the previous paragraph, the jurisdiction of the Criminal Court or the Supreme State Security Court, as the case may be, shall be to hear felony cases in which a child over the age of fifteen years is accused at the time of committing the crime when he contributed to the crime other than a child and it was necessary to file a criminal case against

---

([1075]) Article 156 of the Criminal Procedure Code.

([1076]) Article 118 bis of the Penal Code stipulates that: Without prejudice to the provisions of the previous article, it is permitted, in addition to the penalties prescribed for the crimes stipulated in this chapter, to sentence all or some of the following measures:

(1) Prohibition from practicing the profession for a period not exceeding three years.

(2) Prohibition of practicing the economic activity in which the crime occurred for a period not exceeding three years.

(3) Suspension of the employee from his work without salary or with a reduced salary for a period not exceeding six months.

(4) Dismissal for a period of not less than one year and not exceeding three years starting from the end of the execution of the penalty or its expiry for any other reason.

(5) Publishing the operative part of the judgment of conviction by appropriate means and at the expense of the convicted person."

Article 118 bis (a) of it stipulates that: "In the crimes stipulated in this chapter, the court may, according to the circumstances and circumstances of the crime, if the property subject of the crime or the damage resulting from it does not exceed five hundred pounds, impose - instead of the penalties prescribed for it - the penalty of imprisonment or one or more of the measures stipulated in the previous article.

In addition, the court must order confiscation and restitution if they have a place, and a fine equal to the value of the money embezzled or seized or the benefit or profit achieved. "

([1077]) Article 160 bis of the Criminal Procedure Code.

([1078]) Appeal No. 2053 of 52 S issued at the session of May 18, 1982, and published in the first part of the book of the Technical Office No. 33 page No. 633 rule No. 128.

him with the child. In this case, the court must, before issuing its judgment, examine the circumstances of the child in all respects, and it may seek the assistance of experts it deems appropriate[1079].

In this regard, the Supreme Constitutional Court ruled that: [The criminality of juveniles is of a special nature, and that the precautionary measures and penalties that may be imposed on them are not aimed at pain as much as they want to correct, as their fall into the crime chasm is not often due to evil souls as much as it is the result of environmental and social conditions that contributed to pushing them to it, and therefore the legal status of the juvenile who is accused of a felony is different from the status of the juvenile who is accused of the same felony, which raises a justification Logically, because of the difference between the court competent to try each of them, as well as the different procedures followed in the trial, the juvenile court, in its formation and the procedures followed before it in accordance with the law, becomes the natural judge to try the first, while the Criminal Court or the Supreme State Security, as the case may be, is the natural judge to try the second. In the event that the juvenile commits a felony in which he contributed other than a juvenile, Article (122/2) stipulates the jurisdiction of the Criminal Court or the Supreme State Security Court to adjudicate this crime, but the text makes reservations that the juvenile must be over the age of fifteen at the time of the commission of the crime, and that it is necessary to file a criminal case against the child and those who contributed to the crime without Juveniles, as the court is obligated to discuss - before issuing its judgment - the circumstances of the child in all respects and may seek the assistance of the experts it deems appropriate, and it goes without saying that the child cannot be subjected to a penalty that the Child Law has ruled out according to his age, and there is no doubt that the good administration of criminal justice in this case requires that the trial take place before the Criminal Court or the Supreme State Security Court due to the unity of the incident, and it was not logical at all to try other than the juvenile in this case before the Juvenile Court, whose procedures aim is to provide social care for the juvenile in order to correct him and preserve his future, and then the legal status of the juvenile who commits the crime alone is different from the juvenile who is over fifteen years of age and committed the felony with another juvenile and it was necessary to file the criminal case against them together] [1080].

The Court of Cassation also ruled that: [The street singled out the Child Court to consider the matter of the child when accused of all crimes, provided that it was committed alone or contributed to by a child, whether a principal or an accomplice, with the exception of felonies committed by a child over the age of fifteen years with a non-child, whether the jurisdiction was held for the Criminal Court or the Supreme State Security Court, the Child Court does not have jurisdiction to try him, but the jurisdiction of the competent court to hear felonies in accordance with the rules of jurisdiction established by law][1081] .

Referral to the Criminal Court

The investigator - the investigating judge or the Public Prosecution, as the case may be - shall refer the incident to the Criminal Court if it is a misdemeanor that occurs through newspapers or other means of publication [1082].

The investigating judge shall also refer the incident to the Criminal Court if he deems that the incident is a felony and that the evidence against the accused is sufficient, and he shall instruct

---

([1079]) Article 122 of the Child Law.
([1080]) The judgment of the Supreme Constitutional Court in Case No. 47 of 22 S issued in the session of February 10, 2002 and published in the first part of the book of the Technical Office No. 10 page No. 157 rule No. 29.
([1081]) Appeal No. 33784 of 68 S issued at the session of May 17, 2001 and published in the book of the Technical Office No. 52 page No. 506 rule No. 90.
([1082]) Article 156 of the Criminal Procedure Code, and the first paragraph of Article 214 of the Criminal Procedure Code.

the Public Prosecution to send the papers to it immediately. The Public Defender shall immediately send the papers to the competent Court of Appeal to determine a session to consider them [1083].

The lesson in determining the type of crime is the amount of punishment that the street monitored for it: [Articles 215, 216, 382 of the Code of Criminal Procedure in particular and the policy of procedural legislation in general that the distribution of jurisdiction between the criminal courts and the summary trial is based on the type of punishment that threatens the offender starting from the charge against him according to whether it is a felony, a misdemeanor or a violation, and the reliance on him in determining the specific jurisdiction is by the legal description of the incident as the lawsuit is filed, and the lesson was in determining the type of crime as stipulated in Articles 9, 10, 11, 12 of the Penal Code is the amount of the punishment that the street monitored for it, and the punishment prescribed for the crime of intentional homicide stipulated in Article 234 of the Penal Code is life imprisonment or aggravated imprisonment, this crime is pursuant to the text of Article 10 of the same law of felony crimes, which originally requires that the court competent to try the accused is the Criminal Court, and since the Public Prosecution has submitted the second appellant with the first to the Criminal Court on the charge of intentional homicide, considering that he was present with the first appellant at the crime scene to pull his buttons, and the court concluded To be considered a murderer who committed a felony, and then the Criminal Court is competent to try him and not the Misdemeanor Court as the appellants argued in their appeal, and there is no blame on the court for not responding to this defense because it is prima facie nullity][1084] .

The lawsuit shall be filed in the felony articles by referring it from the Public Defender or his representative to the Criminal Court, and the litigants shall be notified of this order within the ten days following its issuance, and this shall result in the lawsuit leaving the possession of the Public Prosecution and entering into the possession of the Criminal Court, which alone shall conduct the final investigation [1085].

In this text, the Attorney General means the Public Defender of the Public Prosecution as well as the Public Defender of the Appellate Prosecution under his competence stipulated in the Judicial Authority Law, which empowers him with the powers of the Public Prosecutor in his area of competence. Article 25 of the Judicial Authority Law stipulates that: "Every court of appeal shall have a public defender under the supervision of the Public Prosecutor with all his rights and competences stipulated in the laws"[1086].

The Attorney General of the Court of Appeal in his jurisdiction has all the competences of the Attorney General, and the heads of the Public Prosecution have the same powers as the Attorney General to carry out the acts of accusation and investigation of all crimes that occur in the circuit of the Court of Appeal: [Whereas the Judicial Authority Law stipulates that each appellate court shall have a public defender under the supervision of the Attorney General, all his rights and competences stipulated in the laws "Article 25". This requires that he has in his

---

([1083]) Article 158 of the Criminal Procedure Law, and Article 650 of the Judicial Instructions of the Public Prosecution.

([1084]) Appeal No. 6637 of 82 S issued on January 5, 2013 (unpublished).

([1085]) Article 214 of the Criminal Procedure Code.

The Court of Cassation ruled that: [When the criminal lawsuit was filed against the appellee on charges of committing a misdemeanor of manslaughter, and at the trial session before the Court of First Instance, the prosecutor charged him with two new charges - that he obtained without a license a loaded firearm and ammunition used in this weapon - and the lawsuit was filed against the appellee for the last two felonies who does not have the right to file it legally. Contrary to the provisions of Article 214 of the Criminal Procedure Law amended by Law No. 113 of 1957 that the case must be filed in the felony articles by the Chief Public Prosecutor or his substitute, the Misdemeanor Court should not have been subjected to the subject of this lawsuit and should not have ruled to accept it for filing it without status.] Appeal No. 821 of 33 Q issued at the hearing of November 18, 1963 and published in the third part of the Technical Office's letter No. 14, page No. 831, rule No. 149.

([1086]) Article 25 of the Judicial Authority Law.

local jurisdiction all the competences of the Attorney General, whether those that he exercises ex officio or ex officio. The heads of the Appeals Prosecution who work with the First Public Defender shall have the right of the latter to carry out the work of prosecution in the accusation and investigation of all crimes that occur in the circuit of the Court of Appeal, and this jurisdiction is based on a delegation from the First Public Defender or his substitute, which has become as established by the work in the imposed judgment so that he can only be denied by express termination][1087] .

The Attorney General's initiation of investigations and the referral of the accused Attorney General to the Criminal Court is derived from the law and not from the Attorney General: [Whereas it is clear from the provisions of the first paragraph of Article 1, the first paragraph of Article 2, Article 199 and the second paragraph of Article 214 of the Criminal Procedure Law that the Public Prosecution, as a representative of the community, is exclusively competent to initiate criminal proceedings - except in the cases indicated in the law - which it is solely entrusted with initiating, and that the Attorney General is the one who exercises these competences himself, or through one of the members of the Public Prosecution - With the exception of the competencies that were assigned to the Attorney General individually - as his agents, a power of attorney that is proven by virtue of their functions, and derived from the provisions of the law, and that after the Public Prosecution was granted the authority to investigate and replaced the investigating judge for considerations of the street, each member of it works within the limits of that authority, deriving his right not from the Attorney General, but from the law itself, and this is what is derived from the provisions of the law in their entirety, and the Attorney General is competent to refer felonies to the Criminal Court on a legal basis - as shown by the text of paragraph The second of Article 214 of the Code of Criminal Procedure-. Whereas, both the Public Prosecutor who initiated the investigation and the Public Defender who referred the appellants to the Criminal Court - in the case in question - derive their jurisdiction from the law and not from the Public Prosecutor - as mentioned above - which is the conclusion of the contested judgment, all that is raised in this regard shall be without the right][1088] .

The Court of Cassation also ruled that: [It is legally established that the investigation jurisdiction of the members of the Public Prosecution is an inherent jurisdiction that they do not derive from the Public Prosecutor, but they derive it directly from the law][1089] .

([1087]) Appeal No. 2804 of 57 S issued at the session of November 1, 1987 and published in the second part of the book of the Technical Office No. 38 page No. 913 rule No. 168.

([1088]) Appeal No. 34946 of 84 S issued at the 8th session of May 2016 and published in the letter of the Technical Office No. 67 page No. 495 rule No. 57.

([1089]) Appeal No. 18637 of 84 S issued at the hearing of April 14, 2015, and published in the letter of the Technical Office No. 66, page No. 360, rule No. 51

The Court of Cassation ruled that the annulment of the presidential decision issued to appoint the Attorney General does not entail the invalidity of his work, and the work of the members of the Public Prosecution: [Whereas it is clear from the provisions of the first paragraph of Article 1, the first paragraph of Article 2, Article 199, and the second paragraph of Article 214 of the Criminal Procedure Law that the Public Prosecution, as a representative of the community, is exclusively competent to initiate criminal proceedings - except in the cases indicated in the law - which are solely entrusted to it, and that the Attorney General is the one who exercises these competencies himself, or By one of the members of the Public Prosecution - with the exception of the competencies entrusted to the Attorney General individually - as his agents, a power of attorney proven by virtue of their functions, and derived from the provisions of the law, and that after the Public Prosecution was granted the authority to investigate, and replaced the investigating judge for considerations of the street, therefore, each member must act within the limits of that authority, deriving his right not from the Attorney General, but from the law itself. This is what is derived from the provisions of the law in its entirety, which is dictated by the nature of the investigation procedures, as it is one of the purely judicial acts in which it is not conceivable that it will be issued. Any decision based on a power of attorney or a subrogation, but - as is the case in judgments - its source must have been issued by him personally and on his own initiative, and the public defender is competent to refer felonies to the criminal court on a legal basis, as shown by the text of the second paragraph of Article 214 of the Criminal Procedure Law. Whereas, both the prosecutor who initiated the investigation, and the

The Court of Cassation ruled that the Public Prosecutor is the representative of the social authority and his mandate is general, including the authority to investigate and indict, and extends to the entire territory of the Republic and to all crimes of any kind, and he has the right to exercise his jurisdiction himself, or to assign - except for the competencies that have been assigned to him individually - to other prosecutors who are legally entrusted with assisting him or carrying out it on his behalf, and he has the right to delegate Any member of the prosecution, regardless of his position, to investigate any case or conduct any judicial work that falls within his mandate, even if it is not within the qualitative or geographical limitation of the competence of that member: [It is not clear from the provisions of the first paragraph of Article 1, the first paragraph of Article 2, and Article 199 of the Criminal Procedure Law and Articles 21, 23/1, 26 and 121 of the Judicial Authority Law promulgated by Presidential Decree Law No. 46 of 1972 that the Public Prosecution, as a representative of the community, is exclusively competent to initiate criminal proceedings, and that the Public Prosecutor alone is the representative of the social body, which is The principal in the exercise of these competences and his mandate in this regard in general includes the powers of investigation and indictment and extends to the entire territory of the Republic, and to all crimes committed therein of any kind. In this capacity, and as the agent of the group, he may exercise his competences himself or delegate, except for the competencies entrusted to him individually, to other prosecutors who are legally entrusted with assisting him to carry them out on his behalf. He has the right to assign members of the Public Prosecution who work in his office or in any prosecution, whether it is specialized in a specific type of crime, partial, total, or one of the prosecution offices of appeal, to achieve any case or conduct any judicial work that falls within his jurisdiction, even if it is not within the specific or geographical jurisdiction of that member.

Since the first appellant does not contest the finding of the contested judgment that the First Chief Prosecutor of the Supreme State Security Prosecution had been delegated, along with members of that prosecution, by the Public Prosecutor to investigate the incident that is the subject of the current case, and that subsequently the First Chief Prosecutor prepared the referral order and presented it to the Public Prosecutor, who approved it in writing, this indicates that the referral order was, in fact, issued by the Public Prosecutor himself. Therefore, the contested judgment's conclusion to reject the plea of nullity of the referral order is legally sound, and there is no valid basis for criticizing it in this regard][1090].

The filing of the lawsuit before the Criminal Court is not achieved by mere issuance or referral by the Attorney General or his representative, but the accused must be notified of the referral order within ten days following its issuance [1091].

The Court of Cassation ruled that the first public defender is a public defender in terms of jurisdiction, as he is not distinguished from him by special competencies. After the promulgation of Law No. 138 of 1981, the position of the first public defender became merely a job grade, and each of them exercises his competences under the supervision of the public prosecutor. In addition, by virtue of the presidential hierarchy, whoever occupies a higher degree has the right to exercise the competences vested in his subordinates in his jurisdiction, and there is nothing

---

public attorney who referred the appellant to the Criminal Court - in the current case - derive his jurisdiction from the law, not from the Attorney General - as stated above - which is what the contested judgment concluded, and the judiciary to cancel the Republican decision, issued to appoint the former Attorney General, does not entail the invalidity of his actions, and the actions of the members of the Public Prosecution, but those actions and procedures remain based on their origin of validity, and then remain valid and effective, unless it is decided to cancel them, or amend them, from the legally competent authority, what the appellant raises in regard to the foregoing, is not correct], Appeal No. 11246 of 84Q issued at the session of 8 December 2014 and published in the Technical Office's letter No. 65, page No. 949, rule No. 126.

([1090]) Appeal No. 13196 of 76 S issued at the session of May 18, 2006, and published in the letter of the Technical Office No. 57 page No. 636 rule No. 69.

([1091]) Article 214 of the Criminal Procedure Code.

in the law that prevents him from managing any total or specialized prosecution from occupying a higher degree than the degree of public defender. Accordingly, he may be delegated to carry out the work of the first chief public defender of the Court of Appeal with his consent: [Whereas the contested judgment was presented to the plea of the appellant not to accept the lawsuit because the court did not communicate with it legally, and he raised it by saying: "The answer is that it is clear from the provisions of the first paragraph of Article 1, the first paragraph of Article 2 and Article 199 of the Code of Criminal Procedure and Articles 21, 23, 26 and 121 of the Judicial Authority Law that the Public Prosecution, as a representative of the community, is exclusively competent to initiate the criminal case, and it is solely entrusted to it The Public Prosecutor alone is the agent of the social authority and is the principal in the exercise of these competences. His mandate in this regard generally includes the powers of investigation and indictment and extends to the entire territory of the Republic and all crimes committed therein. In this capacity, he may exercise his competences himself or assign - except for the competencies that have been assigned to him individually - to other prosecutors who are legally entrusted with assisting him to carry them out on his behalf. He has the right to assign any member of any prosecution to investigate any case or conduct any judicial work that falls within his mandate, even if it is not within the specific gender or geographical jurisdiction of that member. Whereas, it is established from reading the papers that the First Attorney General of the Supreme State Security Prosecution presented the papers to the Attorney General before ordering their referral to the Criminal Court, as evidenced by his visa dated 9/4/2006, and after the First Attorney General prepared an order to refer his presentation to the Attorney General, which he approved in writing on this date, this indicates that the Attorney General himself issued the referral order, and the court's communication with the case was correct and legal, and the defense presented by the defendant in this regard is invalid. " Whereas the response to the plea is correct in law, as it indicates from the provisions of the first paragraph of Article 1, the first paragraph of Article 2, and Article 199 of the Code of Criminal Procedure, and Articles 21, 23, first paragraph, 26 of the Judicial Authority Law issued by the President of the Republic Law No. 46 of 1972 stipulates that the Public Prosecution, as a representative of the community, is exclusively competent to initiate criminal proceedings, which it is solely entrusted with initiating, and that the Public Prosecutor alone is the agent of the social authority, and he is the origin in the exercise of these competencies. His mandate in general includes the powers of investigation and indictment and extends to the entire territory of the Republic and all crimes committed therein. He has this description, and as the agent of the group, he may exercise his competencies himself or entrust - except for the competencies that have been assigned to him individually - to other prosecutors who are legally entrusted to assist him to initiate them on his behalf, and that the law has granted the Public Prosecutor the right to delegate one of the members of the Public Prosecution who work in his office or in any prosecution, whether specialized In a specific type of crime, partial or total, or in one of the prosecution offices of appeal, to achieve any case or conduct any judicial work that falls within his jurisdiction, even if it is not within his jurisdiction due to the qualitative or geographical limitation in the competence of that member. In addition, the first public defender is a public defender in terms of jurisdiction, as he is not distinguished from him by special competencies, as the function of the first public defender became - after the promulgation of Law No. 138 of 1981 - a mere job grade, and each of them exercises his competences subject to the supervision of the public prosecutor. In addition, by virtue of the presidential hierarchy, whoever occupies a higher degree has the right to exercise the competencies vested in his subordinates in his area of competence, and there is nothing in the law that prevents him from assuming the administration of any total or specialized prosecution who occupies a higher degree than the degree of public defender. The legislator has taken this consideration of the amendment contained in Law No. 142 of 2006 to Article 119 of the Judicial Authority Law, so he may delegate to carry out the work of the first chief public defender of the

Court of Appeal with his consent, and it is only that the aforementioned appellant's defense is a legal defense that is prima facie invalid and does not need to be answered] [1092].

If the referral order is issued and it is not notified to the accused, the lawsuit shall remain in the possession of the Public Prosecution until the accused is notified of this order.

The Court of Cassation ruled that: [It is clear from the provisions of the first paragraph of Article 1, the first paragraph of Article 2, Article 199 and the second paragraph of Article 214 of the Criminal Procedure Law that the Public Prosecution, as a representative of the community, is exclusively competent to initiate criminal proceedings, except in the cases indicated in the law, which it alone is entrusted with initiating. The Public Prosecutor is the one who exercises these competences by himself, or by one of the members of the Public Prosecution, except for the competencies entrusted to the Public Prosecutor individually as his agents by virtue of their functions and derived from the provisions of the law. The Public Prosecution is competent to refer felonies to the Criminal Court on a legal basis, as shown by the text of the second paragraph of Article 214 of the Criminal Procedure Law. Whereas the Public Prosecutor who initiated the investigation and the Public Defender who referred the appellants to the Criminal Court in the case in question derive his jurisdiction from the law and not from the Public Prosecutor as stated above, which is what the contested judgment concluded, all that is raised in this regard shall be without the right [[1093] .

The referral order issued by the public defender or his representative to the criminal court has the legal effect of having the lawsuit leave the possession of the prosecution and enter into the possession of the criminal court, and it can to achieve evidence before it to delegate one of its members to achieve it and not to delegate the public prosecution to investigate the disappearance of its mandate and the end of its jurisdiction.

The public prosecution shall, upon the issuance of a referral order by the public defender, notify the accused of it within the ten days following its issuance. If it is not announced, the lawsuit remains in the possession of the prosecution until the order is announced. The accused shall be assigned to appear before the criminal court after the president of the competent court of appeal determines the session in which the lawsuit will be considered. [1094].

The assignment of the accused to appear before the criminal court is made after the president of the competent court of appeal determines the hearing in accordance with the Judicial Authority Law. In this case, the assignment to appear is merely an executive act.

Accordingly, the person accused of a felony and referred before the Criminal Court must be notified twice:

First: He shall be notified of the referral order issued by the Public Defender and he shall be free from the date of the hearing.

The second is to notify it of the date of the hearing after it has been determined by the president of the competent court of appeal.

It is clear from the above that the accused is referred to the Criminal Court in three cases:

([1092]) Appeal No. 31343 of 77 S issued in the session of February 3, 2008 and published in the letter of the Technical Office No. 59 page No. 100 rule No. 17.

([1093]) Appeal No. 30409 of 86 S issued at the session of 11 November 2017 (unpublished).

([1094]) Article 214 of the Criminal Procedure Code.

First: Felonies, except for what the Attorney General or the Attorney General at the Court of Appeal deems to be referred to the Magistrate Court in accordance with Article 160 bis Procedures and Article 118 bis a Penalties[1095].

Second: Misdemeanors committed by newspapers or other means of publication - unless they are harmful to individuals in accordance with the text of Articles 155 and 156 of the Code of Criminal Procedure, for example, publishing an article insulting or slandering a public official in proportion to attributes or facts related to the exercise of his work.

Third: Misdemeanors related to felonies, whether the association is simple or indivisible, and if some crimes are within the jurisdiction of the ordinary courts and some are within the jurisdiction of special courts, the lawsuit shall be filed for all crimes before the ordinary courts unless the law stipulates otherwise. The fourth paragraph of Article 214 of the Code of Criminal Procedure stipulates that: However, if the investigation includes more than one crime from the jurisdiction of courts of one degree and they are all related, they shall be referred by one referral order to the competent court in one place. If the crimes are the jurisdiction of courts of different degrees, they shall be referred to the higher court, and in cases of association, in which the lawsuit must be filed for all crimes before one court, if some crimes are the jurisdiction of ordinary courts and some of them are the jurisdiction of special courts, the lawsuit shall be filed for all crimes before ordinary courts unless the law[1096] stipulates otherwise.

Originally, it was decided that the ordinary courts have general jurisdiction, while the State Security Courts are only exceptional courts. In cases of association, the lawsuit for all crimes must be filed before a single court if some crimes are within the jurisdiction of the ordinary courts and some are within the jurisdiction of special courts. The lawsuit for all crimes shall be filed before the ordinary courts unless the law stipulates otherwise, and the referral of some crimes punishable by public law to the State Security Courts does not deprive the ordinary courts of their jurisdiction to adjudicate these crimes [1097].

The Court of Cassation also ruled that: [It is the decision or jurisdiction of the ordinary courts to rule on the crimes that occur is an original general jurisdiction, and everything that limits its authority in this regard came as an exception, and the exception must remain within its narrow limits and it is not appropriate to expand or measure it, when it submits to the ordinary courts a case with a criminal description that falls within its general jurisdiction, it must consider it and not give up its jurisdiction, and therefore the ordinary courts may not rule that it does not have jurisdiction unless the criminal description submitted to it is outside its jurisdiction by virtue of a special explicit text][1098] .

([1095]) See: Article No. 160 bis of the Criminal Procedure Code, and Article No. 118 bis (a) of the Penal Code.

([1096]) The fourth paragraph of Article 214 of the Criminal Procedure Code.

([1097]) Appeal No. 17133 of 71 S issued at the hearing of October 15, 2008 (unpublished), Appeal No. 25210 of 69 S issued at the hearing of March 16, 2006 (unpublished), Appeal No. 21231 of 71 S issued at the hearing of February 6, 2006 and published in the Technical Office Letter No. 57 Page 198 Rule No. 24, Appeal No. 8744 of 66 S issued at the hearing of April 22, 1998 and published in the first part of the Technical Office Letter No. 49 Page No. 608 Rule No. 79, Appeal No. 21964 of 60 S issued at the session of June 5, 1992 and published in the first part of the Technical Office letter No. 43 page No. 604 rule No. 90, Appeal No. 348 of 60 S issued at the session of April 11, 1991 and published in the first part of the Technical Office letter No. 42 page No. 619 rule No. 91, Appeal No. 154 of 60 S issued at the session of February 12, 1991 and published in the first part of the Technical Office letter No. 42 page No. 303 rule No. 41, Appeal No. 29288 of 59, issued at the session of October 11, 1990, and published in the first part of the technical office book No. 41, page No. 903, rule No. 158, appeal No. 4209 of 54, issued at the session of March 28, 1985, and published in the first part of the technical office book No. 36, page No. 493, rule No. 82.

([1098]) Appeal No. 5061 of 79 S issued at the 22nd session of November 2010 and published in the book of the Technical Office No. 61 page No. 637 rule No. 82.

The law requires the public defender to assign a lawyer on his own initiative to every person accused of a felony who has been ordered to be referred to the criminal court if he has not appointed a lawyer to defend him, and this is a rule related to public order [1099].

Referral to economic courts

The Court of Cassation ruled that the economic misdemeanor courts are courts of first instance higher than the summary misdemeanor court. If the accusation attributed to the accused includes two crimes subject to the jurisdiction of the economic court, this requires its jurisdiction to consider the other crime, regardless of the laws governing it, even if there is no link between the crimes attributed to the accused: [Whereas the fourth paragraph of Article 214 of the Code of Criminal Procedure has established an original general rule of the rules regulating jurisdiction to the effect that if the investigation includes more than one crime from the jurisdiction of courts of different degrees, all of them shall be referred to the higher court, overriding the jurisdiction of the latter over other lower courts. Whereas, the economic misdemeanor courts, according to their formation as set forth in Law No. 120 of 2008 issued to establish them, were courts of first instance, and therefore they are a higher degree than a misdemeanor court.... The indictment against the accused included the second and third crimes that are subject to the jurisdiction of the Economic Court and to which the laws of intellectual property rights protection and consumer protection apply, and therefore it is also competent in accordance with Article 214, which was mentioned in the consideration of the first crime, in order to prevail over its jurisdiction over the lower court, regardless of the laws that govern it and regardless of the existence or absence of a link between the crimes attributed to the accused. Hence, the jurisdiction is held by the Economic Misdemeanor Court.... Hence, the application submitted by the Public Prosecution and the decision to appoint the Economic Court must be accepted.... Competent court to hear the case][1100] .

It also ruled that: [It is decided that the rules related to the jurisdiction of the criminal courts in criminal matters are all considered public order, given that the street in its assessment of them has based this on general considerations related to the proper functioning of justice, and it is permissible to pay for violating them for the first time before the Court of Cassation or to rule on it on its own without a request, whenever this is in the interest of the convicted person, and the elements of the violation are fixed in the judgment. It was also decided that the jurisdiction of the ordinary courts to rule on the crimes that occur is an original public jurisdiction and everything that limits their authority in this regard came as an exception, and the exception must remain within its narrow limits and it is not valid to expand or measure on it. When a case is submitted to the ordinary courts with a criminal description that falls within its general jurisdiction, it must consider it and not give up its jurisdiction. Therefore, the ordinary courts may not rule that it does not have jurisdiction, unless the criminal description submitted to it is outside its jurisdiction by virtue of a special express provision. Whereas, Law No. 120 of 2008 on the Establishment of Economic Courts stipulates in its fourth article that: "The Trial and Appeals Chambers of the Economic Courts shall have the exclusive competence to hear criminal cases arising from the crimes stipulated in the following laws 1- .... 2- .... 3- .... 9-The Law on the Protection of Intellectual Property Rights "explicitly indicated the jurisdiction of the economic courts established in accordance with its provisions to consider the crimes contained in the Law on the Protection of Intellectual Property Rights as an exclusive and unilateral jurisdiction that is not shared by any other court. The last paragraph of Article 214 of the Code of Criminal Procedure

---

(1099) The second paragraph of Article 214 of the Criminal Procedure Law, and see the judgment of the Court of Cassation in: Appeal No. 12393 of 85 S issued at the session of 14 November 2015 and published in the letter of the Technical Office No. 66 page No. 796 rule No. 119.
(1100) Appeal No. 351 of 82 S issued at the session of July 13, 2014 and published in the book of the Technical Office No. 65 page No. 588 rule No. 71.

states that: "In cases of association in which a lawsuit must be filed for all crimes before a single court if some crimes are within the jurisdiction of the ordinary courts and some are within the jurisdiction of special courts, the lawsuit shall be filed for all crimes before the ordinary courts unless the law stipulates otherwise. " Whereas, the misdemeanor of putting up a counterfeit work "Playstation", the subject of the first charge, has become the exclusive jurisdiction of the economic courts under Law No. 82 of 2002 on the Protection of Intellectual Property Rights Law, which extends to other related crimes that do not fall within its jurisdiction in application of the rules of association referred to in the last paragraph of Article 214 above and the text of Article 4 above, and then the court of the second degree should not uphold the appealed judgment in what it ruled on the subject, but rather cancel it and exclude the jurisdiction of the ordinary misdemeanor court to consider the case in accordance with the correct law, but it did not do and ruled to uphold the appealed judgment, it has erred in the application of the law][1101] .

The Court of Cassation also ruled that the jurisdiction of the economic courts established in accordance with its provisions to consider the crimes contained therein is a unilateral exclusive jurisdiction that is not shared by any other court. If the ordinary courts are presented with a crime within the jurisdiction of the economic courts, they must decide that they do not have jurisdiction over it, and this does not change that the crime was associated with a crime with a more severe penalty within their jurisdiction, because the cohesion of the crime associated with the force of legal association to the crime for which the most severe punishment is prescribed does not lose its entity and does not prevent the court from addressing it and demonstrating its attribution to the accused in proof and in denial: [Article 4 of Law No. 120 of 2008 establishing the economic courts stipulates that "The primary and appellate chambers of the economic courts shall have exclusive jurisdiction, qualitatively and spatially, to hear criminal cases arising from the crimes stipulated in the following laws: (1) .... (2) .... (16) Telecommunications Regulatory Law. ". It explicitly indicated the competence of the economic courts established in accordance with its provisions to consider the crimes contained in it as a unilateral exclusive jurisdiction not shared by any other court. The last paragraph of Article 214 of the Criminal Procedure Law stipulated that "if the investigation includes more than one crime from the jurisdiction of courts of one degree and it is linked, all of them shall be referred by one referral order to the competent court in one place. If the crimes are the jurisdiction of courts of different degrees, they shall be referred to the higher court, and in cases of association in which the lawsuit must be filed for all crimes before one court, if some crimes are the jurisdiction of ordinary courts and some of special courts, the lawsuit shall be filed for all crimes before ordinary courts unless the law stipulates otherwise." Article 35 of the Law of Cases and Procedures of Appeal before the Court of Cassation promulgated by Law No. 57 of 1959, as amended, stipulates that "... The court may revoke the judgment in the interest of the accused on its own initiative if it finds that what is proven in it is based on a violation of the law or on an error in its application or interpretation, or if the court that issued it was not formed in accordance with the law and does not have jurisdiction to adjudicate the lawsuit, or if a law is issued after the contested judgment that applies to the fact of the lawsuit. Whereas, it was decided or the jurisdiction of the ordinary courts to rule on the crimes that occur is an original general jurisdiction, and everything that limits their authority in this regard came as an exception, and the exception must remain within its narrow limits and it is not appropriate to expand or measure it. When the ordinary courts are presented with a case with a criminal description that falls within their general jurisdiction, they must consider it and not give up their jurisdiction, and therefore the ordinary courts may not rule that they do not have jurisdiction unless the description It was decided that the rules related to the jurisdiction of the criminal courts in criminal matters are all considered public order, given that the street has based its

---

([1101]) Appeal No. 12307 of 4S issued at the 27th session of April 2014 and published in the letter of the Technical Office No. 65, page No. 310, rule No. 35.

report on general considerations related to the proper functioning of social justice, and it is permissible to plead the violation of it for the first time before the Court of Cassation or to rule on it on its own without a request when it is in the interest of the convict and the elements of the violation are fixed in the judgment, and therefore if the ordinary courts are presented with one of the crimes mentioned in Article 4 of the aforementioned Law on the Establishment of Economic Courts It must decide that it does not have jurisdiction in its eyes, and this does not change that that crime was associated with it as a crime with a more severe penalty that falls within its jurisdiction, because the cohesion of the associated crime and its accession to the force of legal association to the crime for which the most severe punishment is prescribed does not lose its entity and does not prevent the court from addressing it and demonstrating its attribution to the accused as proven and denied. This consideration supports what is stated in the last paragraph of Article 214 of the Code of Criminal Procedure, and what is stated in the text of Article 4 above. Whereas, the crime subject of the first charge attributed to the appellant was punishable by Articles 1, 11, 70, 71/1, 3 of Law No. 10 of 2003 on Communications, and therefore the Criminal Court had to rule, pursuant to the text of Article 4 of Law No. 120 of 2008 on the establishment of economic courts, the aforementioned statement of its lack of jurisdiction to hear the lawsuit, but it did not do so and dealt with it for adjudication and is not competent to hear it, it has erred in the application of the law, which must revoke the contested judgment and rule that the court does not have jurisdiction to hear the lawsuit and refer the case to the competent circuit of the Economic Court for adjudication][1102].

Since the economic courts are competent qualitatively and spatially to hear criminal cases arising from crimes referred to in the laws of the legislator - including the crimes of the Consumer Protection Law and the Intellectual Property Rights Protection Law - if they submit to the ordinary courts a crime of this description, they must rule that they do not have jurisdiction over them, and this does not change that the crime was associated with a crime with a more severe punishment within their jurisdiction [1103].

The Court of Cassation also ruled that: [It is decided in the jurisdiction of this court - the Court of Cassation - that the rules relating to jurisdiction in criminal matters are all public order, given that the street, in its estimation, has based this on general considerations related to the good administration of justice. Whereas the codes of the contested judgment have disclosed that the crimes attributed to the appellant have been indivisibly linked, which necessitates punishing him with the punishment of the most severe crime under Article 32 of the Penal Code. Whereas, the crime of offering an unknown source for sale, which was criminalized by the Minister of Supply and Internal Trade Resolution No. 113 of 1994, was the most severe crime in its punishment of the two criminal offenses under the articles of Laws No. 82 of 2002 on the protection of intellectual property and Law No. 67 of 2006 on consumer protection, and therefore the penalty for this crime is applicable, and that crime was considered by the ordinary courts, and therefore the jurisdiction to try the appellant is held for the ordinary criminal judiciary, This is consistent with the rules of correct interpretation of the law, which requires, by virtue of mental necessity, that the crime with the lighter penalty follows the crime with the most severe crime associated with it in the investigation, referral and trial and revolves around it, according to the legal effect of association, considering that the punishment of the most severe crime is applicable to the two crimes in accordance with Article 32 of the Penal Code. This is also supported by the provisions of Article 214 of the Code of Criminal Procedure in its last paragraph that in cases of association, the lawsuit must be filed for all crimes before a single court if some crimes are

---

([1102]) Appeal No. 5061 of 79 S issued at the 22nd session of November 2010 and published in the book of the Technical Office No. 61 page No. 637 rule No. 82.

([1103]) Appeal No. 2533 of 80 s issued at the session of June 14, 2010 (unpublished), Appeal No. 2105 of 80 s issued at the session of May 10, 2010 (unpublished).

within the jurisdiction of ordinary courts and some are within the jurisdiction of special courts. Filing the lawsuit for all crimes before the ordinary courts unless the law stipulates otherwise, and if the Law on the Establishment of Economic Courts promulgated by Law No. 120 of 2008 to refer some crimes to the economic courts was devoid of any other legislation that provided for the exclusive adjudication of the crimes related to those that they are competent to hear, and then the court of the second degree had to uphold the appealed judgment in its decision that the Economic Misdemeanor Court does not have qualitative jurisdiction to hear the law, per the law, but it did not do so and ruled to cancel it and return the lawsuit to the court of first instance to decide on the subject and then looked after the subject of the appeal, it has erred in the application of the law][1104] .

Referral of associated crimes to the competent court in one place

If the investigation includes more than one crime from the jurisdiction of courts of one degree and they are all related, they shall be referred by one referral order to the competent court in one[1105] of them.

Referral of Associated Crimes to the Higher Court

If the crimes are within the jurisdiction of courts of different degrees, they shall be referred to the higher court [1106].

The crime with the lighter punishment must follow the crime with the most severe punishment associated with it in the investigation, referral and trial. The rules of correct interpretation of the law require, according to mental necessity, that the crime with the lighter punishment follow the crime with the most severe punishment associated with it in the investigation, referral and trial and revolve around it according to the legal effect of the association, considering that the

---

([1104]) Appeal No. 32422 of 83 S issued at the 22nd session of March 2015 and published in the letter of the Technical Office No. 66 page No. 314 rule No. 44.

([1105]) Article No. 214 of the Code of Criminal Procedure, and see: Appeal No. 6176 of 58 S issued in the session of January 10, 1989 and published in the first part of the book of the Technical Office No. 40, page No. 33, rule No. 4.

([1106]) Article 214 of the Criminal Procedure Law, and the Court of Cassation ruled that: [Since the crime of indecent assault by force is the sole jurisdiction of the Criminal Court, which is the highest court of the district court, which is competent to hear the crimes of simple beating and the use of cruelty also attributed to the appellant, the last two crimes must follow the first crime in the investigation, referral and jurisdiction of the trial, which is required by the text of Article 314 of the Criminal Procedure Law amended by Law No. 170 of 1981 to refer crimes that are the jurisdiction of courts of different degrees to the higher court, which is a general rule to be followed in criminal trials], Appeal No. 29741 of 59 S issued at the session of April 10, 1997 and published in the first part of the Technical Office's book No. 48 page 449 rule No. 66

The Court of Cassation ruled that: [Since the fourth paragraph of Article 214 of the Code of Criminal Procedure, even if it decided an original general rule of the rules regulating jurisdiction to the effect that if the investigation includes more than one crime from the jurisdiction of courts of different degrees, all of them shall be referred to the higher court to prevail over the jurisdiction of the latter over other lower courts, but it is also decided in accordance with the text of Article 397 of the same law that if the accused is absent with a misdemeanor submitted to the Criminal Court, the procedures applicable before The Misdemeanor Court, in which the default judgment issued in it is subject to objection, and therefore if the lawsuit is filed with a felony and an associated misdemeanor - as is the case in the current lawsuit - and a default judgment is issued acquitting the accused of the felony and convicting him of the misdemeanor, then only the latter remains and the decision of association is removed, so the default judgment issued in it is not overturned simply because of the arrest of the accused, and this judgment is subject to appeal by way of opposition, and appealing in this way is the only way to reconsider the lawsuit before the court, as established in accordance with the text of the second paragraph of Article 454 of the Code of Procedure If a judgment is issued on the subject of the criminal lawsuit, it is not permitted to reconsider it except by challenging this judgment in the ways prescribed by law, and if it is proven from reviewing the included vocabulary that the appellant did not decide to object to the default judgment issued against him for the smuggling misdemeanor. The principle in appeals in general was that the court does not consider an appeal that has not been filed by its owner. For it was not permissible for the court, having sought the lawsuit to its yard without the legal way, to return to its consideration and its contact with it in this case is legally non-existent, so it has no right to address its subject matter], Appeal No. 71 of 60 S issued at the hearing of February 14, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 324 rule No. 43.

punishment of the most severe crime is applicable to the two crimes in accordance with Article 32 of the Penal Code [1107].

The Court of Cassation ruled that: [Associated crimes are those that meet the conditions stipulated in Article 32 of the Penal Code that the same act is multiple crimes or several crimes occur for the same purpose and are linked to each other so that they are indivisible and the situation is equal if one of these crimes is committed by several persons, one or more of whom committed the crime for which the association exists][1108] .

([1107]) Appeal No. 28440 of 59 S issued at the session of May 17, 1990 and published in the first part of the book of the Technical Office No. 41 page No. 738 rule No. 129.

In the same judgment, the Court of Cassation ruled that: [The crime of acquiring the penknife of the deer without a license assigned to the other convict and stipulated in Law No. 165 of 1981 amending some provisions of Law No. 394 of 1954 regarding weapons and ammunition, is punishable by a misdemeanor penalty, and shares jurisdiction with the public judiciary, the holder of the original general jurisdiction, and the partial state security courts stipulated in the Emergency Law, pursuant to the third paragraph of Article 1 of Presidential Order No. (1) of the year 1981 and Article 7 of Law No. 62 of 1958 on the amended state of emergency, while the crime of theft in the public road with multiple and carrying weapons, which is also attributed to the appellant and the other convict, is punishable by a felony penalty, and it is not one of the crimes that the Supreme State Security Courts have emergency jurisdiction over, and therefore the jurisdiction of these courts is related to the crime of acquiring white weapons without a license, does not correspond to the correct interpretation of Article 2 of Presidential Order No. (1) of 1981, which stipulates that if a single act constitutes multiple crimes or several crimes related to each other One of these crimes was within the jurisdiction of the State Security Courts. The Public Prosecution must submit the entire case to the State Security Courts (Emergency). These courts apply Article 32 of the Penal Code. The rules of the correct interpretation of the law require, by virtue of mental necessity, that the crime with the lighter penalty follow the crime with the most severe punishment associated with it in the investigation, referral and trial and revolve around it under the legal effect of association, considering that the punishment for the most severe crime is applicable to the two crimes in accordance with Article 32 of the Penal Code, and if the crime of theft is in the public road with multiple and carrying weapons mentioned above, it is considered only by the Criminal Court, which is the highest court of the State Security District Court (Emergency) Which shares with the public judiciary the jurisdiction to consider the crime of acquiring white weapons without a license also assigned to the other convict, the first last crime must be followed in the investigation, referral and jurisdiction of the trial, which is required by the text of Article 214 of the Code of Criminal Procedure, as amended by Law No. 170 of 1981, to refer the crimes that courts of different degrees have jurisdiction over to the higher court, which is a general rule to be followed in criminal trials, where this is the case, and the contested judgment was issued by the ordinary criminal court - which is competent to decide on it - then the appeal against it is issued by a court other than jurisdictional jurisdiction shall be unfounded]

It also ruled that: [... Since the crime of beating that resulted in the aforementioned permanent disability is considered by the Criminal Court alone, which is the highest court of the "Emergency" State Security Court, which shares with the public judiciary jurisdiction to consider the crime of acquiring white weapons without a license also assigned to the appellee, the last crime must follow the first in the investigation, referral and jurisdiction of the trial, which is required by the text of Article 214 of the Code of Criminal Procedure amended by Law No. 170 of 1981 to refer crimes that are the jurisdiction of courts of different degrees to the higher court, which is a general rule to be followed in criminal trials] Appeal No. 5919 of 56 S issued at the session of March 16, 1987 and published in the first part of the Technical Office's book No. 38 page 447 rule No. 69

In the same sense, see: Appeal No. 3844 of 56 S issued at the session of November 23, 1986 and published in the first part of the technical office letter No. 37 page 960 rule No. 181, Appeal No. 3839 of 56 S issued at the session of November 20, 1986 and published in the first part of the technical office letter No. 37 page 916 rule No. 175, Appeal No. 3274 of 56 S issued at the session of October 12, 1986 and published in the first part of the technical office letter No. 37 page No. 740 Rule No. 141, Appeal No. 7042 of 55 S issued at the session of March 6, 1986 and published in the first part of the Technical Office letter No. 37 page No. 349 Rule No. 72, Appeal No. 5569 of 55 S issued at the session of February 26, 1986 and published in the first part of the Technical Office letter No. 37 page No. 316 Rule No. 65, Appeal No. 1493 of 54 S issued at the session of November 21, 1984 and published in the first part of the Technical Office letter No. 35 page No. 795 Rule No. 179.

([1108]) Appeal No. 61 of 88 S issued at the session of November 25, 2018 (unpublished), Appeal No. 632 of 74 S issued at the session of December 13, 2004 (unpublished), Appeal No. 20205 of 67 S issued at the session of October 20, 1999 and published in the first part of the Technical Office's book No. 50, page No. 544, rule No. 123, Appeal No. 5522 of 59 S issued at the session of December 25, 1989 and published in the first part of the Technical Office's book No. 40, page No. 1313, rule No. 213

The Court of Cassation ruled that: [It is legally established that the link mentioned in the last paragraph of Article 214 of the Code of Criminal Procedure, which, among other things, entails the extension of local jurisdiction to facts that are originally not within the jurisdiction of the prosecution and the local court. It means the link, as understood in Article 32 of the Penal Code, which is that the act is multiple crimes or several crimes are committed for a single purpose and are indivisibly linked to each other, which requires, by virtue of mental necessity, that the crime with the lightest punishment follows the crime with the

most severe punishment associated with it in the investigation, referral and trial, considering that the punishment of the most severe crime is applicable to the two crimes according to the text of Article 32 of the Penal Code. As for the simple link, where the conditions for the application of this article are not met, it does not fall within the concept of linkage, which is intended by the last paragraph of Article 214 of the Criminal Procedure Code, which obviously requires that it does not entail the completion of the extension of the spatial jurisdiction of the investigation and judgment to include facts that are originally not competent, since it was established from the minutes of the trial sessions that the defendant of the two appellants adhered to the lack of jurisdiction of the prosecution and the criminal court. .. The facts assigned to them because they fall outside their local jurisdiction and the nullity of the arrest warrant against them and the decision to refer them to the Criminal Court issued by the Public Prosecution.. .... The evidence of the contested judgment was that it was based on the inadmissibility of these defenses on the fact that the territorial jurisdiction of the investigation judiciary and the judgment extends to include what falls outside its local jurisdiction in the cases of indivisible and simple association pursuant to Article 214 of the Code of Criminal Procedure. It was clear from the codes of the contested judgment that the crimes attributed by the Public Prosecution to the appellants are crimes of indecent assault and detention of a female in circumstances other than those authorized by law and physical torture. The first was the charge of beating, while the second was attributed to The third and fourth defendants are charged with aiding the appellants to flee from the face of the judiciary, and since this charge differs in its elements, date, place of commission, and criminal intent from the crimes attributed to the appellants, which do not constitute the criminal unit that the street intended by the provision contained in the second paragraph of Article 32 of the Penal Code, nor the moral plurality within the meaning of the first paragraph of this article, which is not achieved by the link intended in the last paragraph of Article 214 of the Code of Criminal Procedure, and the simple link does not fall within the meaning of the link referred to in Article 214 of the aforementioned procedures. In view of the foregoing, the judgment based on the refusal of the aforementioned payment is flawed in violation of the law], Appeal No. 11796 of 72 S issued at the hearing of 16 December 2002 and published in the letter of the Technical Office No. 53 page No. 1143 rule No. 192

The Court of Cassation ruled that: [If the same act is multiple crimes or crimes related to each other for a single purpose - that link that the street intended in Article 32 of the Penal Code - and one of these crimes is included in the felonies stipulated in Article 214 of the Criminal Procedure Law in its third paragraph added by Law No. 113 of 1957 - whatever the penalty prescribed for it in relation to other crimes - the Public Prosecution may submit the entire case to the Criminal Court by assigning the accused to appear directly before it. Hence, what the appellants fought in regard to what they called the subordinate crime and the subsequent crime and considering the crime of acquiring weapons to be subordinate to the crime of murder and integrated into it - what they fought in it is not consistent with the phrase of the text nor the purpose of its author] Appeal No. 7 of 31Q issued at the session of April 17, 1961 and published in the second part of the book of the Technical Office No. 12 page No. 442 rule No. 82

It ruled that: [If the same act is multiple crimes or crimes related to each other for a single purpose, and one of those crimes is a felony included in the crimes stipulated in Article 214 of the Code of Criminal Procedure in its third paragraph - whatever the punishment prescribed for it compared to other crimes - the Public Prosecution may submit the entire case to the Criminal Court by assigning the accused to appear before it directly, and the situation is equal if one of the two crimes is committed by several persons, one or more of whom committed the crime that creates the link case, then the Public Prosecution may submit the entire case to the Criminal Court directly without dividing the case and referring one of the accused to the Criminal Court directly and the rest to the indictment room, for the unity of the incident and the link between all and to ensure the proper functioning of justice] Appeal No. 1957 of 30 s issued at the session of February 6, 1961 and published in the first part of the Technical Office's book No. 12, page No. 174, rule No. 27

On the other hand, the Court of Cassation ruled that the theft of different persons in different places and circumstances by the accused means that the association did not take place: [Whereas the application of the second paragraph of Article 32 of the Penal Code is based on the fact that the crimes were organized by a single criminal plan with several complementary acts, so that the criminal unit concerned with the provision contained in the aforementioned paragraph is composed of them collectively, The principle is that the assessment of the link between the crimes is within the discretionary authority of the trial court. If the facts as proven by the contested judgment indicate that the crimes committed by the appellants occurred on different persons and on different dates, places and circumstances, which in itself indicates that what occurred in each crime was not the result of a single criminal activity and does not achieve the indivisible link between the crimes subject of the current case and the other crimes subject of the cases referred to in the grounds of appeal, which were considered with them at the session in which the contested judgment was issued. It is also reported that the reason for each of these cases and the case in which an order was issued is not The appeal for the filing of the criminal case is different because of the difference in the right infringed in each of them, and therefore the obituary for the ruling in the grocery store of the error in the application of the law is invalid and the request to defend the appellants before this court to include this appeal to other appeals pending before different circles is ineffective] Appeal No. 20205 of 67 s issued at the session of October 20, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 544 rule No. 123

The Court of Cassation ruled that the mere temporal link between two crimes does not exist as defined in Article 32 of the Penal Code, Appeal No. 2203 of 32 S issued at the session of February 11, 1963 and published in the first part of the Technical Office's letter No. 14 Page No. 113 Rule No. 24

It also ruled that: [Seizure of the firearm and its ammunition at the home of the accused at the time a narcotic was seized, does not make this last crime indivisibly linked to the crimes of acquiring the weapon and ammunition within the meaning of the aforementioned article 32, because the crime of acquiring the drug is in fact a crime independent of these two felonies], Appeal

Failure to require the presence of the accused when issuing the referral order

The accused is not required to be present when a referral order is issued. Therefore, if the accused is a fugitive and then he is present or arrested and a referral order is issued against him in absentia, the lawsuit shall be considered in his presence, and then it shall not return to the public defender to dispose of it again.

Adjudication of the detention of the accused

The investigator shall decide in the order issued to file the lawsuit on the continuation of the pre-trial detention or release of the accused, or on his arrest and pre-trial detention if he has not been arrested or has been released [1109].

Conducting supplementary investigations after the issuance of the referral order

If, after the issuance of the referral order, circumstances arise necessitating supplementary investigations, the Public Prosecution must conduct these investigations and submit the report to the court[1110].

When such circumstances arise following the referral of the case to the court, the Public Prosecution, as the primary authority with general jurisdiction over preliminary investigations, is obligated to carry out those investigations and submit the report to the court[1111].

A prosecutor must investigate any new developments during the course of the trial that are deemed to constitute a new crime, even if they originate from the case under consideration. The court may integrate these supplementary investigations with the original ones to allow all parties involved to derive benefits relevant to their interests.

Upon the referral of the case from the investigative authority to the trial judges, the investigative authority relinquishes its jurisdiction. Consequently, the Public Prosecution may not conduct an investigation concerning the same defendant and the same incident already referred to the court for trial. However, there is no prohibition against the Public Prosecution investigating matters related to another defendant or a different crime arising from the case under consideration.

The Court of Cassation has ruled that the investigations which the Public Prosecution is not authorized to conduct are those related to the same defendant and the same incident already referred for trial, as the referral removes the jurisdiction of the investigative authority. However, if the investigation pertains to another defendant involved in the incident, the Public Prosecution has not only the right but also the duty to investigate any new developments during the trial that may constitute a new crime, even if originating from the case at hand.

Therefore, the appellant's claim that the Public Prosecution's investigations with him after the case was referred to the court to prosecute another defendant for the same crime were invalid—and that the findings of those investigations should not be relied upon—is without merit. This is because it has been established that the appellant was implicated in the commission of the crime[1112] .

Referral Order

No. 949 of 31Q issued at the session of January 29, 1962 and published in the first part of the book of the Technical Office No. 13 page 83 rule No. 22, Appeal No. 745 of 31Q issued at the session of October 30, 1961 and published in the third part of the book of the Technical Office No. 12 page No. 873 rule No. 173.

([1109]) Article 159 of the Criminal Procedure Code.

([1110]) Article 214 bis of the Criminal Procedure Code, Article 652 of the Judicial Instructions of the Public Prosecution.

([1111]) Article 292 of the Judicial Instructions of the Public Prosecution.

([1112]) Appeal No. 1899 of 32 S issued at the hearing of March 26, 1963 and published in the first part of the book of the Technical Office No. 14 page No. 235 rule No. 48.

The referral order issued by the investigating judge must include the name, surname, age of the accused, place of birth, residence, industry, statement of the incident attributed to him and its legal description [1113].

The order issued by the public defender or his representative to the criminal court must also include the data familiar in the orders to act in the investigation, which are the name of the accused, his surname, age, place of birth, residence and industry, a statement of the crime attributed to the accused with its constituent elements and all aggravating or mitigating circumstances and the articles of the law to be applied, and the omission of one of these data is a defect that does not invalidate it [1114].

By requiring the data prescribed in Articles 160 and the second paragraph of Article 214 of the Code of Criminal Procedure, the street aimed to determine the personality of the accused and the charge against him [1115].

The purpose of the statement of the articles of the law is to refer the accused of the crime and the punishment prescribed for it, which can be reached from the statement of the charge, and therefore any error or omission in the mention of these articles does not result in nullity [1116].

The Court of Cassation ruled that: [The contested judgment was submitted to plead the nullity of the referral order and the deficiency of the prosecution's investigations and responded to it in two parts by saying: (Since it is about pleading the nullity of the referral decision to adopt it on improper grounds, the answer is that according to Article 214 in its second paragraph, which states that: - The lawsuit in the felony articles shall be filed by referring it from the Public Defender or his representative to the Criminal Court in a charge report showing the crime attributed to the accused with its constituent elements and all the aggravating or mitigating circumstances of the penalty and the articles of the law to be applied. A list of the results of the statements of witnesses and evidence shall be attached to it, and the Public Defender shall be assigned on his own initiative to a lawyer for each accused of a felony. An order has been issued to refer him to the Criminal Court if he has not appointed a lawyer to defend him. The Public Prosecution shall notify the opponents of the order issued to refer to the Criminal Court within the ten days following its issuance. " Whereas, it was established by the court that the lawsuit was filed by the Chief Prosecutor, Acting Attorney General .... East Prosecution........... The College shall submit to this court an indictment report in which the crimes attributed to the defendants, their constituent elements, and all aggravating and mitigating circumstances, as well as the articles of the law, and a list of the results of the statements of witnesses and evidence, and the assignment of lawyers with the role to defend the detained defendants, and the defendants were announced by the referral order during the legal period and attached to the lawsuit papers to this effect, and then the referral decision shall

---

([1113]) Article 160 of the Criminal Procedure Law.

([1114]) Article 214 of the Criminal Procedure Code.

The Court of Cassation ruled that the omission of the referral order for the age and industry of the accused does not invalidate it: [The omission of the referral order issued by the referral counsel for the age and industry of the accused does not lead to its invalidity as they are not essential data in this order, as the law aimed by requiring the data contained in Article 160 of the Code of Criminal Procedure to achieve two goals, namely the identification of the personality of the accused against whom the order is issued and the determination of the charge against him, which is achieved by mentioning the name of the accused and the incident attributed to him and its legal description], Appeal No. 1314 of 53 s issued at the session of October 3, 1983 and published in the first part of the Technical Office's book No. 34 page No. 785 rule No. 154.

([1115]) Appeal No. 4946 of 58 S issued at the session of December 21, 1988 and published in the second part of the book of the Technical Office No. 39 page No. 1353 rule No. 204.

([1116]) Appeal No. 1509 of 14 S issued at the session of January 29, 1945 and published in the letter of the Technical Office No. 6P, Part No. 1, Page No. 617, Rule No. 475.

have been followed by the correct legal procedures and the defense shown in this regard shall be invalid] [1117].

According to Article 308 Procedures, the court may change in its judgment the legal description of the act attributed to the accused, and it may amend the charge by adding aggravating circumstances that are proven from the investigation or from the pleading at the hearing [1118].

The Court of Cassation ruled that: [The street has specified in Articles 160 and 214/2 of the Code of Criminal Procedure the data to be included in the referral order, and the street aimed to determine the personality of the accused, and the charge against him, and it was decided that the referral order is an act of investigation, there is no place to subject him to the provisions of the rules, and therefore, the deficiency in the referral order does not invalidate the trial, and does not affect the validity of its procedures, and the nullification of the order to refer the case to the trial court after contacting it requires it to be returned to the referral stage, which is not permissible, as that stage is no different from being an investigation body, so it is not permissible to return the case to it after it enters into the possession of the court][1119] .

The referral must be accompanied by a list of the witness statements and evidence.

The lesson in the evidence - including the statements of the prosecution witnesses - is what is stated about them in the investigations and not what is stated by the Public Prosecution in the list of the prosecution witnesses [1120].

Summons to Appear

If the Public Prosecution considers in the articles of violations and misdemeanors that the lawsuit is valid to be filed based on the evidence collected, it shall instruct the accused to appear directly before the competent court [1121].

It is decided that the criminal lawsuit is not considered filed as soon as the Public Prosecution or the party that has the authority to refer it submits it to the court because the indication of this - or ordering it - is only an administrative order to the Registry of the Public Prosecution to prepare the summons to appear paper even if it was prepared and signed by the member of the Public

---

([1117]) Appeal No. 24057 of 84 S issued at the session of February 5, 2015 (unpublished).

([1118]) Article 308 of the Code of Criminal Procedure stipulates that: "The court may change in its ruling the legal description of the act attributed to the accused, and it may amend the charge by adding aggravating circumstances that are proven from the investigation or from the pleading at the hearing, even if it is not mentioned in the referral order or by summoning.

It may also fix every material error and correct every omission in the accusation statement, which is in the referral order, or in the request for summons to appear.

The court shall notify the accused of this change and grant him a deadline to prepare his defense based on the new description or amendment if he so requests.

([1119]) Appeal No. 5979 of 88 S issued on 21 November 2018 (unpublished)

It also ruled that: [It is established that the deficiency or error in the referral order in the statement of the name, surname, age and industry of the accused and the jurisdiction of the source of that order to issue it, does not result in nullity, as long as it does not question the person of the accused and his connection with the criminal case against him, because if Article 160 of the Criminal Procedure Law stipulates that the referral order includes the name, surname, age, place of birth and industry of the accused, but it did not arrange for nullity on the error of the referral order in it or the occurrence of a deficiency in it in it, because it is decided in the judiciary of this court that the referral order is final in nature, there is no place to say that there is damage that requires its nullity, otherwise this entails the return of the lawsuit to the investigating authority after its contact with the judgment, which is not permissible, and that all the accused has to request the court to complete what the referral order missed his statement and present his defense before the court], Appeal No. 1455 of the year 57 issued in the hearing of November 11, 1987 and published in the second part of the Technical Office's letter No. 38 page 935 rule No. 172.

([1120]) Appeal No. 7205 of 85 S issued at the session of June 1, 2016 (unpublished), Appeal No. 2659 of 53 S issued at the session of December 28, 1983 and published in the first part of the Technical Office's letter No. 34 page No. 1110 rule No. 220.

([1121]) Article 63 of the Criminal Procedure Law.

Prosecution after its announcement in accordance with the law, resulting in all legal effects, including the interruption of the statute of limitations as an indictment procedure [1122].

The court's contact with the case without taking the procedures of summons to appear is non-existent and it is not entitled to be subjected to its subject matter. If it did, its judgment and the procedures on which it was based were without effect: [It is established that if the criminal case was filed against the accused contrary to what is stipulated in Article 214 of the Code of Procedure, the criminal court's contact in this case is non-existent and it is not entitled to be subjected to its subject matter. If it did, its judgment and the procedures on which it was based were without effect. The appellate court, when submitting the order to it, does not have the right to address and decide on the subject matter of the case, but must limit its judgment to the judiciary to the invalidity of the appealed judgment and the non-acceptability of the case, considering that the trial is closed without it until it meets the conditions imposed by the street for its acceptance and the invalidity of the judgment for this reason is related to the public order of its contact with an original condition necessary to file the criminal case and the validity of the court's communication with the incident. It may be initiated at any stage of the case, but the court must adjudicate it on its own initiative][1123] .

It is legally established that filing a civil lawsuit through direct prosecution before the Criminal Court entails initiating the criminal lawsuit accordingly, and the litigation in that lawsuit is held by properly assigning the accused to appear before the court [1124].

Details of the Summons

The summons must specify the charge and the legal provisions stipulating the penalty. It must also state the date of the hearing. Both the specification of the charge and the hearing date are essential formalities; failure to comply with these requirements invalidates the summons. The clarity of the charge is critical and must include its elements. If the charge is ambiguous and does not allow for the identification of the alleged crime, the summons is invalid[1125].

Timing of the Summons

This date differs in violations from misdemeanors, as it is determined by a full day in violations, and by at least three full days in misdemeanors other than road distance dates [1126].

In case of flagrante delicto, the summons to appear may be without a date. If the accused attends and requests to be given a date to prepare his defense, the court shall authorize him the legally prescribed date for the crime he committed [1127].

The law stipulates that the accused and witnesses must be summoned to appear before the Criminal Court at least eight days before the hearing[1128].

However, the notification of the accused to attend the trial session before the Criminal Court for less than the legally prescribed time limit of eight days before the hearing does not affect the validity of the announcement and does not invalidate it as a declaration in full legal form, but the

---

([1122]) Appeal No. 8325 of 60 S issued at the 8th session of February 1993 and published in the first part of the Technical Office book No. 44 page No. 166 rule No. 19, Appeal No. 3840 of 63 S issued at the 28th session of April 1999 and published in the first part of the Technical Office book No. 50 page No. 248 rule No. 59, Appeal No. 15180 of 59 S issued at the 26th session of April 1992 and published in the first part of the Technical Office book No. 43 page No. 465 rule No. 68.

([1123]) Appeal No. 15180 of 59 S issued on April 26, 1992 and published in the first part of the book of the Technical Office No. 43 page No. 465 rule No. 68.

([1124]) Appeal No. 1577 of 45 S issued at the session of February 9, 1976 and published in the first part of the book of the Technical Office No. 27 page No. 183 rule No. 37.

([1125]) The second paragraph of Article 233 of the Criminal Procedure Code.

([1126]) Article 233 of the Criminal Procedure Code.

([1127]) Article 233 of the Criminal Procedure Code.

([1128]) Article 374 of the Criminal Procedure.

accused may request a deadline to prepare for the preparation of his defense in fulfillment of his right within the time limit specified by the law, and the court must respond to his request, otherwise the trial procedures are invalid [1129].

The dates for assigning the accused to appear before the referral stage and before the Criminal Court are decided in the interest of the accused himself. If he did not adhere before the trial court to not observe them, he is considered to have waived them because it was estimated that his interest was not affected as a result of its violation, it is not permissible for him to adhere to the occurrence of this violation [1130].

Care should be taken to study the records of the Immigration, Passports and Nationality Authority for crimes committed in violation of the provisions of Law No. 89 of 1960 regarding the entry and residence of foreigners in the territory of the Arab Republic of Egypt, and to submit, if the lawsuit is filed before them, to the nearest session to avoid their escape from the implementation of the penalties imposed on them [1131].

Serving the Summons

The summons to appear shall be served on the person of the addressee or at his place of residence in the ways prescribed in the Code of Procedure [1132].

It is established that the principle in the declaration of papers in accordance with Articles 10 and 11 of the Code of Procedure - to which the first paragraph of Article 234 of the Code of Criminal Procedure was referred - is that they are delivered to the same person or in his home country. If the bailiff does not find the person to be served in his home country, he must hand over the paper to his agent or servant or to his relatives or in-laws who live with him. If he does not find a person to whom it is valid to hand over the paper or if the person found refuses to receive it, he must hand it over on the same day to the administration authority and notify the addressee by registered letter within twenty-four hours[1133].

([1129]) Appeal No. 1831 of 66 s issued at the session of February 8, 1998 and published in the first part of the Technical Office book No. 49 page 220 rule No. 32, Appeal No. 23196 of 65 s issued at the session of December 24, 1997 and published in the first part of the Technical Office book No. 48 page No. 1474 rule No. 225, Appeal No. 723 of 50 s issued at the session of October 12, 1980 and published in the first part of the Technical Office book No. 31 page No. 876 rule No. 169, Appeal No. 90 of 36 s issued at the session of March 21, 1966 and published in the first part of the Technical Office book No. 17 page No. 329 rule No. 64.

([1130]) Appeal No. 1831 of 66 S issued at the session of February 8, 1998 and published in the first part of the Technical Office letter No. 49 page 220 rule No. 32, Appeal No. 4403 of 63 S issued at the session of March 19, 1995 and published in the first part of the Technical Office letter No. 46 page 576 rule No. 85, Appeal No. 723 of 50 S issued at the session of October 12, 1980 and published in the first part of the Technical Office letter No. 31 page 876 rule No. 169.

([1131]) Article 1389 of the Judicial Instructions of the Public Prosecution.

([1132]) Article 234 of the Criminal Procedure Code.

([1133]) Appeal No. 1642 of 66 s issued at the hearing of June 2, 2004 (unpublished), Appeal No. 1494 of 50 s issued at the hearing of January 28, 1981 and published in Part I of Technical Office Letter No. 32 Page 104 Rule No. 13, Appeal No. 2052 of 48 s issued at the hearing of March 4, 1979 and published in Part I of Technical Office Letter No. 30 Page 321 Rule No. 66, Appeal No. 1231 of 45 s issued at the hearing of November 24, 1975 and published in Part I of Technical Office Letter No. 26 Page 745 Rule No. 164, Appeal No. 1046 of 42 s issued at the hearing of April 22, 1973 and published in Part II of Technical Office Letter No. 24 Page 538 Rule No. 111, Appeal No. 5 of 42 s issued at the hearing of February 21, 1972 and published in Part I of Technical Office Letter No. 23 Page 204 Rule No. 50

Article 10 of the Code of Procedure stipulates that: "The papers required to be served shall be delivered to the same person or in his domicile and may be delivered in the chosen domicile in the cases specified by the law.

If the bailiff does not find the person required to be declared in his home country, he shall deliver the paper to the person who decides that he is his agent, that he works in his service, or that he lives with him from spouses, relatives, and in-laws.

Article (11) stipulates that: "If the recorder does not find whoever is fit to deliver the paper to him in accordance with the previous article, or if any of those mentioned in it refrains from signing the original on receipt or from receiving the copy, he must hand it over on the same day to the warden of the department, center, mayor or sheikh of the country in which the addressee's domicile is located, as the case may be, after signing the original on receipt. The clerk shall, within twenty-four hours, send to the addressee in his original or chosen domicile a registered letter, accompanied by another copy of the paper,

The clerk shall, upon delivery of the notice to the warden of the department, send the addressee a registered letter informing him that the copy has been delivered to the administration authority and shall indicate this in detail in the original and copy of the notice. Otherwise, the notice shall be invalid[1134].

It is considered an abstention that requires the delivery of the paper to the administration authority, the abstention of the person who is in the domicile of the person required to be declared from mentioning his name or capacity that allows him to hand over the copy because such abstention prevents the delivery of the copy to him as prescribed by the law [1135].

It also ruled that: [Article 234/1 of the Code of Criminal Procedure stipulates that the summons to appear shall be announced to the person of the addressee or at his place of residence in the ways prescribed in the Code of Civil and Commercial Procedure. The place where the person carries out his craft shall be considered his own home next to his place of origin in order to carry out any legal matter related to this craft. The ruling of the contested judgment not to accept the criminal and civil lawsuits was based on the fact that assigning the third appellee to attend is null and void to announce him at his place of work. He has erred in the application of the law in a way that prevents him from examining the subject of the lawsuits and the extent of the responsibility of the fourth appellee, which must be revoked and the lawsuit returned to the competent partial court to decide on the civil lawsuit][1136] .

If the search does not lead to knowing the place of residence of the accused, the declaration shall be delivered to the administrative authority of which he was the last place of residence in Egypt, and the place where the crime was committed shall be considered the last place of residence unless proven otherwise [1137].

---

informing him that the copy has been delivered to the administration. The minutes must indicate all of this in a timely manner in the original and copies of the declaration. The advertisement shall be considered a product of its effects from the time of delivery of the image to the person to whom it was legally delivered. "

The Court of Cassation also ruled that: [Whereas it is clear from reviewing the attached papers and vocabulary that the record was addressed in .... And......... To the place of residence of the appellant to be notified to attend the session .... And......... which was determined to consider his appeal objection and addressed his wife, who refused to mention her name and refrained from receiving it, so the announcement was delivered to the warden of the department and the appellant was notified of this by a registered letter on .... Whereas this declaration is valid in accordance with the provisions of Article 234/1 of the Code of Criminal Procedure and Articles 10 and 11 of the Code of Procedure, the nullification of the judgment issued in opposition to the appellant as if it were not based on [Appeal No. 130 of 47 s issued at the session of 30 May 1977 and published in the first part of the Technical Office's letter No. 28 page No. 658 rule No. 139, Appeal No. 130 of 42 s issued at the session of 26 March 1972 and published in the first part of the Technical Office's letter No. 23 page No. 461 rule No. 102.

([1134]) Appeal No. 460 of 39 S issued at the session of May 19, 1969 and published in the second part of the Technical Office's letter No. 20 page No. 738 rule No. 149

The Court of Cassation ruled that: [The Court of Cassation ruled that a copy of the notice must be delivered to the administration in the event of refusal to receive it without distinguishing between whether the abstainer is the person to be announced or others stipulated in Article 12 of the Code of Procedure. It also ruled that the original of the announced paper must either include the signature of the recipient of the copy or prove the fact of his abstention and its reason in accordance with the fifth paragraph of Article 10 of the Code of Procedure, as the failure to sign the addressee does not inevitably indicate his abstention, but may be due to another reason, such as the failure of the record to carry out his duty. Whereas, according to the statement of the contested judgment, the appellant refrained from signing the original of his notice of the judgment pronouncement hearing, and the record did not prove the reason for the refusal and did not hand over the copy of the notice to the administration authority and send a registered letter to the appellant informing him that the copy has been delivered to the administration authority, the appellant's notice of this hearing is null and void] Appeal No. 212 of 33 S issued at the hearing of 26 March 1963 and published in the first part of the book of the Technical Office No. 14, page No. 260, rule No. 53.

([1135]) Appeal No. 374 of 42 S issued at the session of 29 May 1972 and published in the second part of the book of the Technical Office No. 23 page No. 810 rule No. 184.

([1136]) Appeal No. 27327 of 64 BC issued on May 2, 2002 (unpublished).

([1137]) Article 234 of the Criminal Procedure Code.

In violations, it is permissible to announce the summons to appear by the men of the public authority, as it is permissible in the misdemeanor articles appointed by the Minister of Justice by a decision from him after the approval of the Minister of Interior [1138].

The notification of detainees shall be to the director of the reform centre or his substitute, and the notification of officers, non-commissioned officers, and soldiers in the service of the army shall be to the army administration.

The person to whom the copy must be delivered in the two aforementioned cases must sign the original, and if he refuses to hand over or sign, he shall be sentenced by the judge of the partial articles to a fine not exceeding five pounds, and if he insists thereafter on his abstention, the copy shall be delivered to the Public Prosecution in the court to which the report belongs to hand it over to him or to the person who is required to be notified personally [1139].

The notice to appear before the court shall result in the litigants having the right to view the lawsuit papers [1140].

Judicial papers may not be declared criminal, civil or administrative in the homes of foreign embassies, commissions and consulates [1141].

The Court of Cassation ruled that the original is to notify the accused of the judicial papers. The exception is for his person to be notified of the judicial papers in the prosecution instead of announcing them to the person of the addressee or in his place of residence. In order to resort to him, the applicant must carry out sufficient investigations that oblige every diligent researcher to investigate the place of residence of the addressee. Investigations must be recorded in the paper so that the court can implement its control. If the paper announcing the appellant against the prosecution does not indicate the investigation of his place of residence before announcing the trial session in which the trial judgment was issued in absentia, this results in the nullity of the trial procedures and the nullity of the judgment issued accordingly[1142].

([1138]) Article 234 of the Criminal Procedure Code.
([1139]) Article 235 of the Criminal Procedure Law.
The Court of Cassation ruled that: [Whereas the court is satisfied with the validity of the certificates submitted in proof of the recruitment of the first appellant in the armed forces on the date of the session in which the contested judgment was issued, which had to be announced at that session - pursuant to Article 235 of the Code of Criminal Procedure - to the Army Department. Whereas it was evident from his notice at the hearing that the minutes proved that he went to .. ... To announce the appellant for a hearing...... When he did not find it and found his house closed, he declared it to the administration, this declaration is invalid, which invalidates the contested judgment for adopting defective procedures that would deprive the opponent of the use of his right to defense], Appeal No. 4361 of 56 S issued at the session of April 27, 1987 and published in the first part of the book of the Technical Office No. 38 page No. 653 rule No. 112.
([1140]) Article 236 of the Criminal Procedure Code.
([1141]) Article 1397 of the Judicial Instructions of the Public Prosecution.
([1142]) Appeal No. 3678 of 74 s issued at the 6th session of March 2013 and published in Technical Office Book No. 64, page No. 322, rule No. 38, Appeal No. 4822 of 64 s issued at the 16th session of February 2000 and published in Technical Office Book No. 51, page No. 194, rule No. 37, Appeal No. 16529 of 63 s issued at the 15th session of November 1999 and published in Part I of Technical Office Book No. 50, page No. 590, rule No. 132, Appeal No. 24369 of 62 s issued at the 15th session of October 1997 and published in Part I of Technical Office Book No. 48, page No. 1102, rule No. 165, Appeal No. 676 of 52 s issued at the 10th session of May 1982 and published in Part I of Technical Office Book No. 33, page No. 566, rule No. 114
It also ruled that: [It is clear from the review of the included vocabulary that it was devoid of what indicates that the appellant was properly notified at the specific hearing of the case in which the default judgment was issued, which was also included in the statement received from a court .. ... That it was not possible for it to know whether the accused declared or not to not be inferred from the books of felonies for the year 1995 contrary to what the contested judgment stated, and therefore this is contrary to what is required by the first paragraph of Article 234 of the Criminal Procedure Law, which states that "the summons to appear shall be announced to the person of the addressee or in his place of residence in the ways prescribed by law in the Civil and Commercial Procedures Law."Therefore, the absence of the notice of the hearing specified for the consideration of the lawsuit inevit inevitably leads to the nullity of the default judgment issued accordingly.], Appeal No. 10334 of 80 s issued at the hearing of March 1, 2012 and published in the letter of the Technical Office No. 63, page No. 230, rule No. 34

Attendance before the Criminal Court requires only the accused to be present without the requirement of notifying his lawyer: [Articles 374 and 378 of the aforementioned law do not require only the accused to be present before the Criminal Court without the requirement of notifying his lawyer. What the appellant claims about the hearing of the case on a day other than the day specified for it - assuming the validity of this - and without notifying his lawyer of it is invalid][1143] .

The aspects of nullity related to the procedures of summons to appear and its date are not of public order. If the accused attends the hearing in person or by proxy, he may not adhere to this nullity [1144].

It ruled that: [Whereas it is clear from the included vocabulary that the appellant was announced to attend the hearing ...... Whereas it was decided that the notification of the opponent to attend the opposition hearing must be made to his person or in his place of residence, and the notification procedures were carried out in accordance with the text of Article 234 of the Code of Criminal Procedure in the ways prescribed in the Code of Procedure, and Articles 10 and 11 of the Code of Civil and Commercial Procedure stipulate that the documents required to be notified must be delivered to the same person or in his home country, and if the minutes required to be notified are not found in his home country, He had to hand over the paper to whoever decides that he is his agent or that he works in his service or that he lives with him from among spouses, relatives and in-laws. If the recorder does not find anyone to whom it is valid to hand over the paper according to what was mentioned or those who found it refused to receive it, he must hand it over on the same day to the authority of the administration in whose jurisdiction the domicile of the addressee is located. In all cases, within twenty-four hours of handing over the paper to a person other than the addressee, he must direct to him in his original or chosen domicile a registered letter informing him of who the copy was handed over to. He must also indicate all this in At the time, in the original of the announcement and its image, when this was the case, and what the minutes proved in the announcement paper was not to be inferred from the appellant, is not sufficient to verify the seriousness of the procedures taken prior to the announcement, as it is not clear from his paper that the minutes did not find the appellant residing in the aforementioned home or found his residence closed or did not find anyone who is valid to hand it over to him or the refusal of those who found it to receive it. Failure to prove this results in the invalidity of the summons paper in accordance with the text of Article 19 of the Civil and Commercial Procedures Law mentioned above, it will be proven that the compelling excuse preventing the appellant from attending that session is not valid for the judiciary in its subject matter in his absence without innocence or that the contested judgment in opposition to the appellant rejecting it on the basis of this invalid declaration has violated the right of defense, which is flawed and must be reversed and returned]Appeal No. 19604 of the year 65 issued in the hearing of January 4, 2005 and published in the Technical Office Book No. 56, page No. 49, rule No. 5

It ruled that: [Since it was decided that an opposition notice to attend the opposition hearing must be issued to his person or place of residence, and the procedures for the notice were in accordance with the text of Article 234 of the Code of Criminal Procedure, it was done in the ways prescribed in the Code of Civil and Commercial Procedure. Articles 10 and 11 of the Code of Civil and Commercial Procedure required that the papers to be served be served be delivered to the same person or in his home country. If he does not find the record to be served in his home country, he must deliver the paper to the person who decides that he is his agent or that he works in his service or that he resides with him from spouses, relatives and in-laws. If he does not find whoever is fit to deliver the paper to him in accordance with the aforementioned or whoever refrains from receiving it, he must hand it over on the same day to the administration in which the domicile of the addressee is located, and he must in all cases within twenty-four hours of delivering the paper to a person other than the addressee in his original or chosen book in which he informs him of the copy of the copy. Whereas, and the fact that the minutes of the announcement paper did not prove the lack of evidence on the appellant is not sufficient to verify the seriousness of the procedures taken prior to the announcement, as it does not show from his paper that the appellant did not find a resident of the aforementioned home or found his house closed or did not find anyone who is fit to deliver it to him or the refusal of those who found him to receive it, the failure to prove this results in the invalidity of the summons to attend in accordance with the text of Article 19 of the Civil and Commercial Procedures Law, and the contested judgment, as it ruled against the appellant by rejecting it on the basis of this invalid announcement, violated the right of defense], Appeal No. 133 of 62 of 2002 issued at the session of February 2, 2002 and published in the Technical Office's book No. 53, page No. 170, rule No. 28.

([1143]) Appeal No. 31477 of 70 S issued at the 6th session of March 2008 and published in the Technical Office's letter No. 59, page No. 187, rule No. 30, Appeal No. 3672 of 59 S issued at the 8th session of November 1989 and published in the first part of the Technical Office's letter No. 40, page No. 893, rule No. 148.

([1144]) Appeal No. 7268 of 63 s issued at the session of January 15, 2003 and published in Technical Office Letter No. 54 Page 91 Rule No. 7, Appeal No. 8334 of 61 s issued at the session of February 22, 1998 and published in Part I of Technical Office Letter No. 49 Page 286 Rule No. 45, Appeal No. 4403 of 63 s issued at the session of March 19, 1995 and published in Part I of Technical Office Book No. 46 Page 576 Rule No. 85, Appeal No. 9532 of 60 s issued at the session of December 5, 1991 and published in Part II of Technical Office Letter No. 42 Page 1284 Rule No. 178, Appeal No. 7382 of 54 s issued at the session of April 13, 1988 and published in Part I of Technical Office Book No. 39 Page 602 Rule No. 90, Appeal No. 831 of 52 s issued at the session of March 16, 1982 and published in Part I of Technical Office Book No. 33 Page 370 Rule No. 75.

Effect of the Summons

The initiation of criminal proceedings in misdemeanors and violations by summons to appear shall result in the following:

The conclusion of the criminal litigation, so the lawsuit enters into the possession of the court.

The lawsuit is not in the hands of the Public Prosecution, so it cannot initiate any action in it, whether as an accusatory authority or as an investigative authority, provided that the Public Prosecution, as an evidence authority, may take what it deems necessary, whether by itself or by the judicial officer, and submit the record of the evidence to the court [1145].

The communication of the authority of judgment with the lawsuit extinguishes the right of the prosecution to initiate an investigation it about the accused bringing the trial for the same incident, and it follows that the decision of the prosecution issued after the court's communication with the lawsuit does not have any authority [1146].

Prosecutors, who initiate proceedings before the courts, must expedite the adjudication of cases involving foreigners, to avoid disrupting their travel and facilitate the implementation of the judgments issued against them [1147].

7-2 Within the Framework of International Covenants

There are two sets of standards that require the completion of criminal proceedings within a reasonable period. The first group applies to persons detained before trial and according to the second set of standards, which we address in Chapter 19, applies to every person charged with a criminal offence, whether or not he is detained. Both groups are related to the principle of the presumption of innocence and the interest of justice. Every person detained on a criminal charge has the right to be tried within a reasonable period of time or released until the trial takes place[1148].

This right is based on the presumption of innocence and the right to liberty, which requires that detention be the exception, and that it last no longer than is necessary in a particular case (see chapters 5/3 and 6/3) and means that any person detained before trial is entitled to have his case given priority and that proceedings to consider his detention are conducted expeditiously in particular[1149].

([1145]) The Court of Cassation ruled that: [Article 558 of the Criminal Procedure Law stipulates that: "If all or part of the investigation papers are lost before a decision is issued, the investigation shall be re-investigated for what has been lost, and if the case is submitted to the court, it shall undertake the investigation it deems appropriate." It indicated that the jurisdiction to re-investigate what was lost is held as a public asset for the party in possession of the lawsuit. If the lawsuit is submitted to the court, it is the only competent one to conduct the investigation, given the separation between the investigating authority and the judiciary of the judgment as one of the original guarantees that criminal trials must be surrounded by. The lawsuit is not considered to have entered the possession of the criminal court unless it is submitted to it in accordance with Article 214 of the Criminal Procedure Law by the referral decision] Appeal No. 612 of 38 S issued at the session of June 3, 1968 and published in the second part of the Technical Office's letter No. 19, page 622, rule No. 124.

([1146]) Appeal No. 1577 of 45 S issued at the session of February 9, 1976 and published in the first part of the book of the Technical Office No. 27 page No. 183 rule No. 37.

([1147]) Article 1393 of the Judicial Instructions of the Public Prosecution.

([1148]) Article 9(3) of the International Covenant, Article 16 (6) of the Migrant Workers Convention, Article 7(5) of the American Convention, Article 14 (5) of the Arab Charter, Article 5(3) of the European Convention, Principle 38 of the Set of Principles, Section M(3) (a) of the Principles of Fair Trial in Africa, and Article 25 of the American Declaration; see Article 60 (4) of the Rome Statute.

Tomasi v. France (12850) / 87) ECHR 84 § (1992); Human Rights Committee General Comment 32, §61; Cagas et al. v. Philippines, Human Rights Committee, 1997/4/ §7 (2001) UN Doc. CCPR/C/73/D/788..

([1149]) Pareto Leyva v. Venezuela, Inter-American Court (- § §120 (2009) 122; Wimhof v. Germany (2122) / 64) European Court (1968) Law. 5- § §4.

Pre-trial detention should not be used for punishment purposes [1150].

Failure to comply with the requirement of a reasonable period of detention amounts to a sentence without conviction, in contravention of internationally recognized general principles of law [1151].

Prolonged delays in bringing people to trial, leading to longer periods of pre-trial detention, exacerbate the already overcrowded conditions of detention facilities, and may lead to conditions that violate international standards [1152].

The release from pre-trial detention on the basis that the trial proceedings have not been initiated or completed within a reasonable period of time does not mean that the charges should be dropped. This release is temporary until the start of the trial, which must be held without undue delay [1153].

Conditions may be imposed on such release with appropriate guarantees to ensure that the person appears at the time of the trial, if this seems necessary and proportionate in the physical case (such as bail and the requirement to prove regular presence or electronic tracking[1154].

7.2.1 What is a reasonable period of time?

The reasonableness of the period of pre-trial detention shall be assessed, under international law, on a case-by-case basis. (The jurisprudence of the European Court on this issue is often cited[1155].

While the accused must raise the matter, the burden of proof to justifying the delay lies with the authorities [1156].

The time frame for assessing the reasonableness of pre-trial detention begins when the deprivation of liberty of the suspect begins, and ends, at least for the purposes of compliance with Article 9(3) of the International Covenant and Article 5(3) of the European Convention, with the judgment of the court of first instance [1157].

(Otherwise, the timeframe for assessing whether criminal proceedings were conducted without undue delay - under the criteria that apply to every person charged with a criminal offence, whether detained or not - extends until a final judgement is rendered, including the results of any stage of the appeal stage.)

([1150]) Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas.
López Álvarez v. Honduras, Inter-American Court 69 § (2006); Pirano Basso v. Uruguay (12). 553), U.S. Commission § §84 (2009) and 141 - 147; Prosecution v. Bemba (475) - 08/01 - 05 / ICC-01), ICC Single Judge, Second Pre-Trial Chamber, Decision on the Provisional Release of Jean-Pierre Bemba Gombo (14) August §38 (2009).

([1151]) Juvenile Reeducation Institute v. Uruguay, Inter-American Court, 229 § (2004).

[1152]See, e.g., Concluding Observations of the Committee against Torture: Bolivia, §95 (2001) UN Doc. A/56/44 (e).

([1153]) See Wimhof v. Germany (2122) / 64), European Court, (1968) Law 5- §4.

([1154]) See Article 9(3) of the International Covenant, Article 7(5) of the American Convention, Article 14 (5) of the Arab Charter, Article 5(3) of the European Convention, Rules 57, 58 and 62 of the Bangkok Rules, the Tokyo Rules in particular Rules 2/3 and 2/6, Section M(1) (e) of the Principles of Fair Trial in Africa, and Rules 4 and 2(1) of the European Rules of Pre-trial Detention.

([1155]) European Court: Kalashnikov v. Russia (47095) / 99), (2002) §114, Kudla v. Poland (30210) / 96) Grand Chamber 110 § (2000), Lapita v. Italy (26772) / 95), Grand Chamber 152 § (2000).
See Article 19 v. Eritrea (275) / 2003), African Commission, Annual Report 22 (99- §90 (2007); Lacayo v. Nicaragua, Inter-American Court §77 ,(1997); Prosecution v. Lubanga (824) - 06/01-/ 04 / ICC-01), ICC Appeals Chamber (13) February, §124 (2007).

([1156]) Barroso v. Panama, Human Rights Commission, / UN Doc. CCPR. 5/ §8 (1995) C/54/D/473/1991.

([1157]) Evans v. Trinidad and Tobago, Commission on Human Rights,. UN Doc. 2/ §6 (2003) CCPR/C/77/D/908/2000
Solmuz v. Turkey (27561 / 02), European Court (26- §23 (2007)..

Each of the following factors should be taken into account when examining the reasonableness of the length of pre-trial detention: [1158]

the complexity of the case;

whether the authorities have shown "special care" in proceeding, taking into account the complexities and special features of the investigation;

Whether the delays are due mostly to the conduct of the accused or the prosecution;

The measures taken by the authorities to speed up the procedures [1159].

Some States have laws that specify maximum periods of pre-trial detention. The detention of a person for a shorter period than allowed by national pre-trial law can be relevant to the evaluation, but it is not crucial in determining the reasonableness of the person under international human rights law [1160].

The Human Rights Committee has raised concerns about laws that determine the maximum period of pre-trial detention based on the possible punishment of the alleged offense, as these laws focus on the potential punishment, rather than the necessity of legitimate interests, in determining the length of pre-trial detention, and in bringing the detainee promptly before the courts. Such laws, and similar laws that require mandatory detention pending trial, are inconsistent with the presumption of innocence, the presumption of release pending trial, and the right of the person to be tried within a reasonable period of time or released [1161].

Factors relevant to determining the complexity of the case include the nature of the offence (s), the number of alleged offenders, and related legal issues [1162].

The complexity of the case alone does not determine, decisively, whether the length of pre-trial detention is reasonable [1163].

In assessing whether the accused has unnecessarily delayed proceedings, the fact that the accused has exercised his or her rights, including the right to remain silent, should not be taken into account[1164].

The length of a person's pre-trial detention that is considered reasonable may be shorter than the length of the delay that is considered reasonable before the start of the trial of a person who is not subject to detention, since the aim of these standards is to limit the length of pre-trial detention [1165].

In the case of a man accused of committing a major crime who had been detained for more than 22 months before the start of his trial, the Human Rights Committee reiterated its previous opinion that the accused, in cases involving serious charges that deprive him of a bail order by

---

([1158]) Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas..

([1159]) European Court: Kalashnikov v. Russia (47095) / 99), (2002) 120- §114, Audaud v. United Kingdom (7390) / 07) (70- § §68 (2010).

([1160]) Moiseev v. Russia (62936 / 00), ECt 150 § (2008)..

([1161]) Concluding observations of the Human Rights Committee: Argentina,. UN Doc §10 (2000) CCPR/C0/70/ARG, Moldova UN Doc. CCPR/C/MDA/CO/2 §19 (2009), Italy, §14 (2005) UN Doc. CCPR/C/ITA/CO/5..

[1162]Sixtus v. Trinidad and Tobago, Commission on Human Rights, 2/ §7 (2001) UN Doc. CCPR/C/72/D/818/1998; Van der Tang v. Spain (92/19382), ECtHR (76- §72 (1995); see Lorenzi, Bernardini and Grete v. Italy (13301/ 87), ECtHR (17- §14 (1992)..

([1163]) European Court: Asinov et al. v. Bulgaria (24760) / 94), (1998) 158- §153; see Milassi v. Italy (10527) / 83), (20- §15 (1987); see also Bocholz v. Germany (7759) / 77), 55 § (1981); Jaramillo et al. v. Colombia, Inter-American Court 156 § (2008).

([1164]) Mamedova v. Russia (7064) / 05), European Court 83 § (2006)..

Haas [1165]v. Federal Republic of Germany (7412) / 76), European Commission Report 120 § (1977); Pareto Leyva v. Venezuela, American Commission (2009). §119.

the court, should be tried as soon as possible and based on its assessment that the right of the accused to be tried within a reasonable period had been violated, the Committee took into account that he had been placed in detention since the day of the crime, that the evidence according to the facts was direct and decisive and required little investigation from the police, and that the reasons invoked by the authorities to justify the delay - general problems and instability following a failed coup attempt - would not have justified such a delay[1166].

The Human Rights Committee expressed its concerns about the length of pre-trial detention of persons accused of organized crime and terrorism-related crimes in France, which lasted for four years and eight months. Although detainees were allowed to consult a defense lawyer and the practical basis for the need for continued detention was periodically reviewed by judges, the Committee considered it difficult, however, to align this practice with the requirements of the right to trial within a reasonable period[1167].

The African Commission found that a two-year delay without a case being heard, or a trial date being set constituted a violation of Article 7(1) (d) of the African Charter[1168].

She also explained that «States parties to the Charter (which does not allow the suspension of this right) cannot rely on the political situation on their territory or on the large number of cases heard by the Court to justify excessive delay» in the context of the detention of 18 journalists in Eritrea in isolation from the outside world, without trial, for more than five years [1169].

The Inter-American Court said that detaining a person before trial for a period of time equal to or greater than the sentence he faces, remains, taking into account the presumption of innocence, a disproportionate measure and ruled that detaining a person before trial for a period longer than 16 days from his subsequent sentence (imprisonment for 14 months) exceeded reasonable limits [1170].

Do the authorities act with due diligence?

The authorities must act with "special care" to ensure that persons detained pending trial are tried within a reasonable period [1171].

The European Court stressed that it is the responsibility of the authorities "to collect evidence and conduct the investigation in such a way as to ensure that the individual is tried within a reasonable period of time"[1172].

However, it is necessary to reconcile the need to expedite the procedures and not to obstruct the efforts of the authorities to pay due attention to the performance of their tasks and did not find any violation of the European Convention when a foreign national was detained before trial in a drug trafficking case for more than three years because the risk of his escape remained, and because his continued detention for all this time was not the result of any failure to pay special attention by the authorities [1173].

The European Court concluded that the authorities had violated the right to trial within a reasonable period of time for a young man accused of at least 16 robberies and burglaries following his detention for two years before his trial. Although the government claimed that the

---

([1166]) Sixtus v. Trinidad and Tobago, Commission on Human Rights,. UN Doc. 2/ §7 (2001) CCPR/C/72/D/818/1998.

Concluding [1167]observations of the Human Rights Committee: France,. UN Doc. §15 (2008) CCPR/C/FRA/CO/4.

([1168]) Annette Beniol (Agent for Abdoulaye Mazou) v. Cameroon (39) / 90), African Commission, Annual Report 10 (1996) - 1997, pp. 52-56 at p. 55.

([1169]) Article 19 v. Eritrea (275) / 2003), African Commission, Annual Report. 100- § §97 (2007) 22.

([1170]) Pareto Leyva v. Venezuela, American Commission (123- §117 (2009).

([1171]) European Court: Stögmüller v. Austria (1602) / 62), §5 (1969), Audaud v. United Kingdom (7390) / 07) §68- §70 (2010).

([1172]) Mamedova v. Russia (7064) / 05), European Court 83 § (2006)..

Van [1173]der Tang v. Spain (19382) / 92), European Court (1995) §72- §76.

delay was due to the complexities of the case, the Court found that almost no action had been taken in a full year - no new evidence was collected, while the suspect was interrogated only once [1174].

The Human Rights Committee considered that a delay of about 16 months before the start of the trial of a person accused of premeditated murder constituted a violation of the International Covenant, and noted that the authorities had collected all the evidence in the case within days of the arrest of the accused [1175].

Chapter Eight: The Right to Sufficient Time and Facilities for the Preparation of the Defense

A fundamental aspect needed to give effect to the right to a fair trial is that everyone charged with a criminal offence should be able to exercise his or her right to adequate time and facilities for the preparation of his or her defense.

8-1 Within the Framework of Egyptian Law

The Code of Criminal Procedure obliges the lawyer to be allowed to view the investigation on the day preceding the interrogation or confrontation unless the judge decides otherwise, and it is not permissible to separate the accused from his lawyer present with him during the investigation in all cases [1176].

The investigator shall allow access to the lawyer to the entire investigation file undiminished, including all the procedures that have been initiated, even if they were carried out in the absence of the accused. Access is intended to enable the lawyer to know everything in the case file, including authorizing him to copy and photograph. It is never permissible to prevent the lawyer from the case file. Otherwise, the prosecution as an opponent in the case is in a privileged position against the accused, which is not permissible. If the prosecution is the one conducting the investigation, it shall exercise this authority as an investigative authority and not an accusatory authority, which must be impartial, objective, and respectful of the rights of the defense.

The lawyer must be allowed to revisit the investigation file if the investigator initiates some procedures after the lawyer has reviewed the investigation file.

The Court of Cassation ruled that: [The law does not provide for nullity except when the investigator in a felony confronts the accused with other defendants or witnesses without following the guarantees stipulated in Articles 124 and 125 of the Criminal Procedure Law by inviting the defendant's lawyer to attend, if any, and allowing him to view the investigation on the day preceding the confrontation unless the investigator decides otherwise][1177] .

The Public Prosecution may, at any time, review the papers in the cases investigated by the investigating judge to determine what happened in the investigation, provided that this does not result in delaying the progress of the investigation [1178].

([1174]) Asinov et al. v. Bulgaria (24760) / 94), European Court (1998) § 153- §158.

([1175]) Tisdale v. Trinidad and Tobago, Commission on Human Rights,. UN Doc. 3/ §9 (2002) CCPR/C/74/D/677/1992.

([1176]) Article 125 of the Criminal Procedure Law, and Article 222 of the Judicial Instructions of the Public Prosecution.

([1177]) Appeal No. 54 of 39 S issued on April 28, 1969 and published in the second part of the technical office book No. 20 page No. 578 rule No. 119.

([1178]) Article 80 of the Criminal Procedure Code, and Article 646 of the Judicial Instructions of the Public Prosecution.

The accused, the victim, the plaintiff of civil rights, and the person responsible for them may request, at their expense, during the investigation, copies of papers of any kind, unless the investigation takes place without their presence based on a decision issued to that effect [1179].

The decision issued by the Attorney General to refrain from granting a copy of the investigations carried out in a criminal case is a judicial act, which the Council of State does not have the competence to hear the appeal against, so the Administrative Court ruled that: [Since the investigation is a purely judicial act carried out by the Public Prosecution or the investigating judge, as the case may be, and therefore everything related to it is considered a branch of it, the original judgment is carried out on it, and it is the jurisdiction of the body that investigated everything related to it, and this is far from the jurisdiction of the General Council of State in all matters related to requests for revocation, in respect of the rules of jurisdiction between the two judicial bodies regulated by the Constitution and the law, and therefore the request to stop the implementation and revoke the decision of the Attorney General to refrain from granting the plaintiffs a copy of the investigations that took place in Case No.... For the year ... The restriction of achieving the security of the Supreme State is outside the jurisdiction of the courts of the Council of State][1180] .

The law has allowed the investigator to initiate some investigation procedures in the absence of litigants, while allowing them to view the documents proving these procedures [1181].

8-2 Within the Framework of International Covenants

8.2.1 Adequate time and facilities for the preparation of the defense

Every person charged with a criminal offence must have adequate time and facilities to prepare his defense [1182].

This right is an important aspect of the principle of equal legal opportunity: the defense and the prosecution must be treated in a way that ensures that the parties have equal opportunities to prepare their case and bring it before the court [1183].

This right applies to all stages of the proceedings, including the pre-trial stage, and during it, as well as the stages of appeal, and its applicability is not related to the seriousness of the charges against the accused [1184].

The European Court explained that the right to adequate time and facilities for the preparation of the defense implies that the accused must have the opportunity to organize his defense appropriately and be allowed to "present all defensive arguments to the court hearing his case, and thus affect the outcome of the proceedings"[1185].

([1179]) Article 84 of the Criminal Procedure Law.
([1180]) The judgment of the First Circuit of the Administrative Court in Case No. 38366 of 61 S issued at the session of February 3, 2009 (unpublished).
([1181]) Appeal No. 1471 of 45 S issued on January 4, 1976 and published in the first part of the Technical Office's letter No. 27 page No. 9 rule No. 1.
([1182]) Article 14 (3) (b) of the International Covenant, article 18 (3) (b) of the Migrant Workers Convention, article 8(2) (c) of the American Convention, article 16 (2) of the Arab Charter, article 6(3) (b) of the European Convention, principle 7 and guidelines 44§ 4 (g), 45§ 5 (b) and 12 62§ of the Principles of Legal Assistance, section n(3) of the Principles of Fair Trial in Africa, article 67 (1) (b) of the Rome Statute, article 20 (4) (b) of the Statute of the Rwanda Tribunal and article 21 (4) (b) of the Statute of the Yugoslavia Tribunal; see article 11 (1) of the Universal Declaration and article 8(c) of the Inter-American Convention against Terrorism.
([1183]) General Comment 32 of the Human Rights Committee, §32.
([1184]) Galstian v. Armenia (26986/03), European Court (2007) §85- §88.
([1185]) Moiseev v. Russia (62936), ECt 220 § (2008)..

The Inter-American Court found that violations of the rights of the defense occurred in one of the cases in which the court did not allow the accused to make new statements, after the court amended the charges against him in the indictment from aggravated rape to murder (which is punishable by death) and changed the basis of the facts on which it based its accusation [1186].

On the question of "facilities", the European Court noted that the conditions in which individuals are held in pre-trial detention should enable them to read and write with a reasonable degree of concentration. Moreover, the Court concluded that the following situations adversely affect the rights of the defense: the exhaustive transfer of the detainee to the court on the night before the trial in a prison vehicle, the continuation of hearings for more than 17 hours, and the restriction of access by the defense team to the case file and to their personal memoranda[1187].

The right to adequate facilities for the preparation of the defense includes the right of the accused to obtain the opinion of relevant independent experts in the course of the preparation and presentation of the defense [1188].

8.2.2 What is sufficient time?

Determining the sufficient time to prepare the defense depends on the nature of the proceedings (for example, whether they are preliminary proceedings, a trial or an appeal), the circumstances of the facts in each case, and the factors that govern this include the complexity of the case, the extent to which the accused has access to evidence (and the adequacy of these materials), communication with his lawyer, and the time limits stipulated in the text of the law, although these factors alone are not critical for this purpose[1189].

The right to be brought to trial within a reasonable time shall be balanced by the right to adequate time for the preparation of the defense.

If the accused considers that the time he had to prepare his defense (including talking to the lawyer and reviewing the documents) was insufficient, he should ask the court to postpone the trial proceedings [1190].

Courts have a duty to respond to reasonable requests for adjournment, and adjournment decisions must allow sufficient time for the defense and its counsel to prepare the defense [1191].

In this context, the European Court found that a defendant charged with "minor riots" (described as an administrative crime) and representing himself in a trial that began a few hours after his arrest and interrogation, was deprived of adequate time and facilities to prepare his defense [1192].

[1186]Ramirez v. Guatemala, Inter-American Court (2005) §70- §80.

([1187]) European Court, Moiseev v. Russia (62936), (- § §221 (2008) 224; see Maizet v. Russia (63378) / 00), 81 § (2005); see also Barbera, Messiou and Gabardo v. Spain (1590) / 83), 89 § (1988, Hidden v. France (39335) / 00) (42- §20 (2004).

([1188]) Guideline 62§ 12 of the Principles of Legal Aid; see Article 8(2) (f) of the American Convention, and J.P. v. France (44069/ 98), European Court (2001). 70- § §56.

[1189]See General Comment 32 of the Human Rights Committee, §32; Ngirabatware v. The Prosecution (ICTR-99-54-A), ICTR Appeals Chamber, ICTR Appeals Chamber Decision on Decisions Denying Augustine Ngirabatware Applications to Change Trial Dates (12) May §20- §33 (2009) (in particular 28).

([1190]) General Comment 32 of the Human Rights Committee, §32; Douglas, Gentleys and Kerr v. Jamaica, Commission on Human Rights, 1989 / UN Doc. CCPR/C/49/D/352 1/ §11 (1993), Sawers and McLean v. Jamaica, Human Rights Committee,. UN Doc 6/ §13 (1991) CCPR/C/41/D/226/1987; Nahimana et al. v. The Prosecution (ICTR-99-52-A) Judgement of the Appeals Chamber of the International Tribunal for Rwanda (28) Nov. §220 (2007).

([1191]) General Comment 32 of the Human Rights Committee, §32.

Commission on Human Rights, Chan v. Guyana, / UN Doc. CCPR 3/ §6 (2006) C/85/D/913/2000, Smith v. Jamaica,. UN Doc 4/ §10 (1993) CCPR/C/47/D/282/1988, Philip v. Trinidad and Tobago, 2/ §7 (1992) UN Doc. CCPR/C/64/D/594/1992; see Sakhnovsky v. Russia (21272/ 03), Grand Chamber of the European Court 103 § (2010).

([1192]) Galstian v. Armenia (26986/ 03), European Court (2007). 88- § §85.

8.2.3 Access to information relating to the charges

8.2.3.1 When should information be given?

Each State shall take the necessary measures to prevent and punish the refusal to provide information on a case of deprivation of liberty, or the provision of incorrect information, at a time when the legal requirements for providing such information are met [1193].

Detailed information about the nature and cause of the charges must be given "urgently"[1194].

The Human Rights Committee, in clarifying the duties of governments under article 14 (3) (a) of the International Covenant, has emphasized that information should be given immediately after a person is formally charged with a criminal offence under national law, or publicly designates the person as a suspect [1195].

In a case in which a person was initially arrested for fraud, was informed more than a month later that he was a suspect in the murder of three people, and was accordingly charged with murder more than six weeks later, the Human Rights Committee ruled that his rights under article 14 (3) had been violated [1196].

The Inter-American Court explained that Article 8(2) (b) of the American Convention requires the competent judicial authorities to inform the accused of the details of the charges against him and the reasons for these charges before the accused makes his preliminary statements before the investigating judge [1197].

Failure to promptly notify the accused that the charges against him have been amended may also constitute a violation of his right - the accused must also have the right to adequate time and facilities to prepare his defense on the amended charges - when issuing its decision on a request to amend the indictment, the Special Tribunal for Rwanda indicated that the test in the matter is whether the amendment will unfairly punish the accused in the course of his defense, noting that the longer the amendment is delayed, the greater the likelihood that this will constitute an infringement of the accused's rights[1198].

Whereas the document under which the accused was referred to trial included the charge of bankruptcy by fraud, the scope of the investigation assigned to the investigating judge was limited to the charge of bankruptcy by fraud, and the pleadings before the court were limited to the crime of bankruptcy by fraud, while the accused was not aware that he could be convicted of a separate charge of "assisting in bankruptcy by fraud and covering it up". The European Court found that there was a violation of the right of the accused to be notified of the charges and the right of the accused to sufficient time and facilities to prepare his defense. The elements of the two charges differed from each other, and the accused did not know of the new charge until the court returned with its verdict of conviction[1199].

([1193]) Article 22 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1194]) Article 14 (3) (a) of the International Covenant, Article 40 (2) (b) (ii) of the Convention on the Rights of the Child, Article 18 (3) (a) of the Migrant Workers Convention, Article 16 (1) of the Arab Charter, Article 6(3) (a) of the European Convention, and Section n(1) (a) of the Principles of Fair Trial in Africa.

([1195]) General Comment 32 of the Human Rights Committee, §31.

([1196]) Kurbanov v. Tajikistan, Human Rights Commission,. UN Doc. 3/ §7 (2003) CCPR/C/79/D/1096/2002.

([1197]) Lopez-Alvarez v. Honduras, Inter-American Court 149 § (2006).

Musema [1198]v. The Prosecution (ICTR-96-13-A), ICTR Appeals Chamber (16) Nov. §343 (2001).

([1199]) Belissier and Sassi v. France (25444) / 94), Grand Chamber of the European Court (63- §42 (1999)..

8.2.3.2 Language

Information regarding the charges must be provided in a language that the accused can understand[1200].

If the accused person does not speak or understand the language used, the indictment document must be translated into a language that the accused understands [1201].

The U.S. Commission stressed the vulnerability of a person facing criminal proceedings in a foreign country

She said that, in order to ensure that a person understands the charges and the full dimensions of their rights available in the context of the proceedings, it is necessary to translate and interpret all legal concepts in the mother tongue of the person concerned, and the State should, if necessary, finance this[1202].

This right also requires the provision of services or facilities necessary to facilitate accused persons with disabilities and children's access to such information [1203].

8.2.3.3 Access to Case Documents

The right to adequate facilities for the preparation of the defense requires that the accused and his lawyer, in addition to information related to the charges, have access to timely relevant information. This information includes lists, information, documents, and other documents, on which the prosecution intends to rely (evidentiary materials). It also includes information that can lead to the acquittal of the accused (exculpatory materials), affect the credibility of the evidence submitted by the prosecution, support the arguments of the defense, or assist the accused in preparing his defenses or in mitigating the penalty [1204].

Disclosure of documents provides the defense with an opportunity to review the observations that have been made or the evidence that will be presented by the prosecution, and to prepare comments thereon [1205].

Where necessary, the information should generally be translated into a language that the accused understands, although providing documentation to a defense lawyer who understands the language or providing interpretation to the accused (by the lawyer or interpreter) may be sufficient [1206].

The Inter-American Court clarified that the right to adequate time and means for the preparation of the defense "obliges the state to allow the accused to have access to the record of the case and to the evidence collected against him"[1207].

([1200]) Article 14 (3) (a) of the International Covenant, article 18 (3) (a) of the Migrant Workers Convention, article 16 (1) of the Arab Charter, article 6(3) (a) of the European Convention, section n(1) (a) of the principles of fair trial in Africa, principle 5 of the principles relating to all persons deprived of liberty in the Americas, article 67 (1) (a) of the Rome Statute, article 20 (4) (a) of the Statute of the Rwanda Tribunal, article 21 (4) (a) of the Statute of the Yugoslavia Tribunal; see article 8(2) (a) - (b) of the American Convention, and guideline 43§ 3 (f) of the principles of legal aid.

([1201]) See Hermé v. Italy (18114) / 02), Grand Chamber of the European Court 68 § (2006).

([1202]) Report on Terrorism and Human Rights, Inter-American Commission (2002), Section 3(h)400 § (3).

([1203]) Article 13 of the Convention on the Rights of Persons with Disabilities; see Principle 10 of the Principles of Legal Aid..

Principle [1204]21 of the Basic Principles on the Role of Lawyers, Principle 12 36§ of the Principles of Legal Aid, Principles n(3) (d) and(e) (3) - (7) of the Principles of Fair Trial in Africa, Article 67 (2) of the Rome Statute, Rules 66-68 of the Rwanda Rules, Rules 66, 67 (2) and 68 of the Yugoslavia Rules.

Human Rights Committee General Comment 32, §33.

([1205]) See Foucher v. France (22209/ 93), European Court (1997). 38- § §36.

([1206]) Rule 66 of the Rules of Yugoslavia..

([1207]) Leyva v. Venezuela, Inter-American Court 54 § (2009).

The information should be provided in a timeframe that allows the accused sufficient time to prepare his defense [1208].

The prosecution must provide information regarding the circumstances in which a confession was obtained to enable the defense to assess the chances of being admitted and challenged, or to assess its weight in the course of the case [1209].

The prosecution's duty to disclose information that can assist the defense is extensive and continues throughout the course of the trial (before and after the testimony of witnesses). The prosecution must monitor the testimony of witnesses and disclose information relevant to the credibility of witnesses [1210].

In cases involving large amounts of information, the prosecution must identify and disclose evidence related to the case that can incriminate or exonerate the accused, and this duty is not fulfilled by simply providing the defense with large volumes of documents, including information that requires searching in a computer database, and it is difficult for the defense to determine whether it is relevant to the case or useful for its purposes. This can negatively affect the rights of the defense and lead to delays in the trial proceedings[1211].

The right to disclose information relevant to the case at hand is not absolute; however, restrictions on disclosure of documents and non-disclosure of information may not result in unfair trial and the necessity to avoid injustice caused by non-disclosure of documents may, ultimately, lead to the dropping of charges or the termination of penal proceedings.

In exceptional circumstances, it may be legitimate for an independent and impartial court (following impartial procedures) to allow the prosecution to withhold some evidence from the defense. However, any restrictions on the right to disclose documents must be strictly necessary and proportionate to the purpose of protecting the rights of another individual (including persons who may be subject to reprisals) or to protect an important public interest (such as national security or the effectiveness of legal investigations conducted by the police). Court orders not to disclose information must be the exception, not the rule, and should not have adverse effects on the overall fairness of the conduct of the trial. The difficulties caused by non-disclosure to the defense must be adequately balanced by the court while ensuring integrity. The authorities and courts must also keep the issue of the integrity of non-disclosure of documents under review, in light of the importance of information and the adequacy of safeguards and the extent to which they affect the integrity of the proceedings in[1212] general.

The necessity of non-disclosure should be determined by a court decision and not by the opinion of the prosecution. For this purpose, the court considering the matter should generally

---

([1208]) Castillo Petruzzi et al. v. Peru, Inter-American Court (1999). §141.
([1209]) General Comment 32 of the Human Rights Committee, §33..
([1210]) Prosecution v. Blaškić, (IT-95-14-A), ICTY Appeals Chamber (29) July § 263- §267 (2004); Prosecution v. Lubanga Dyilo (06) / 01 - 04 / ICC-01), ICC, Decision on Prosecution Duty to Disclose Defence Witnesses (12) November §12- §16 (2010).
Prosecution [1211]v. Bemba (55) - 08/01 - 05 / ICC-01, ICC Pre-Trial Chamber, Decision on the Evidence Disclosure Regime and the Scheduling of Inter-Party Disclosures (31) July 2010, §20- §21 and 67; Prosecution v. Karemera et al., ICTR-98-44-AR73. 7 ICTR Appeals Chamber, Decision of the Appeals Chamber on an Interim Appeal on the Role of the Prosecutor's Electronic Disclosure Action in Exemption from Disclosure Obligations (30 June 2006). 15- § §9.
([1212]) See Rules 81-84 of the ICC Rules of Procedure and Evidence.
Rao and Davis v. United Kingdom (28901) / 95), Grand Chamber of the European Court (67- §60 (2000); Prosecution v. Katanga and Ngudjolo (475) - 07/01- 04 / ICC-01), ICC Appeals Chamber, Judgment on the Prosecutor's Appeal against the First Pre-Trial Chamber's Decision entitled “First Decision on the Prosecution's Request for Authorization to Revise Witness Statements (13) ”, May §60- §73 (2008).

decide in a dispute session between the arguments of the defense and the prosecution and respect the principle of equality of arms [1213].

According to the Johannesburg Principles, any restrictions on the disclosure of information based on national security imperatives should be described in law and allowed only if their demonstrable effect is to protect the existence or territorial integrity of the country, or to respond to the use or threat of force [1214].

In the context of its review of Canada's counter-terrorism legislation, which allows for the non-disclosure of information that could harm international relations, defense or national security, the Human Rights Committee reminded the authorities that in no case may exceptional circumstances be invoked to justify a deviation from fundamental principles of fair[1215] trial.

The Committee called on the authorities in Spain to consider repealing a rule that allows judges during criminal investigations to impose restrictions on the disclosure of information to the defense and drew the attention of the authorities to the fact that respect for the principle of equal legal opportunities includes the right of the defense to have access to the documents necessary for the preparation of its defense [1216].

The Human Rights Committee has made it clear that the right to adequate facilities for the preparation of a defense must be understood as a safeguard, that it is not possible to convict individuals on the basis of evidence that the accused or his lawyer has not been able to properly access [1217].

Principle 21 of the Basic Principles on the Role of Lawyers states: "It is the duty of the competent authorities to ensure that lawyers have access to appropriate information, files and documents in their possession or disposal, for a period sufficient to enable them to provide effective legal assistance to their clients, and this access should be secured within the shortest appropriate period of time."

([1213]) European Court: Rao and Davis v. United Kingdom (28901) / 95), Grand Chamber (67- §60 (2000), McKeon v. United Kingdom (6684) / 05), §45- §55 (2011); Myrna McChang v. Guatemala, Inter-American Court of Justice §179 (2003); but see European Court: Jasper v. United Kingdom (95/27052), Grand Chamber (58- §42 (2000), Toma and Scientific v. United Kingdom (15187) / 03), (45- §41 (2007).

([1214]) Principles 1, 2 and 15 of the Johannesburg Principles.

Concluding [1215]observations of the Human Rights Committee: Canada, / UN Doc. CCPR/C §13 (2005) can/CO/5; see Onofrio v. Cyprus, Human Rights Committee, 11/ §6 (2010) UN Doc. CCPR/C/100/D/1636/2007; Concluding observations of the Human Rights Committee: United Kingdom, UN Doc. CCPR/C/GBR/CO/6 §17 (2008); Joint Report of the UN Mechanisms on Guantánamo Bay Detainees, 120/2006/ §36 (2006) UN Doc. E/CN. 4; Special Rapporteur on the independence of judges and lawyers, 181 / - §41 (2009) UN Doc. A/64/43; see Myrna McChang v. Guatemala, Inter-American Court (2003) § 182-§179; see also Prosecution v. Katanga and Ngudjolo (ICC-01/04-01/06-2681-Red2), Trial Chamber of the International Criminal Court, Decision on Prosecution Request for Non-Disclosure of Information, Request to Lift Restriction on Rule 81 (4) and Application of Protective Measures in Accordance with Guideline 42 (14) of March §27 (2011).

([1216]) Concluding observations of the Human Rights Committee: Spain,. UN Doc. §18 (2008) CCPR/C/ESP/CO/5.

Onofrio [1217]v. Cyprus, Commission on Human Rights, / UN Doc. CCPR 11/ §6 (2010) C/100/D/1636/2007, Concluding observations of the Human Rights Committee:Canada, §13 (2006) UN Doc. CCPR/C/can/CO/5; Prosecution v. Katanga and Ngudjolo (ICC-01/04-01/06-2681-Red2), ICC Trial Chamber, Decision on Prosecution Request for Non-Disclosure of Information, Request to Lift Restriction on Rule 81 (4) and Application of Protective Measures in Accordance with Guideline 42 (14) March §27 (2011); Principle 20 (i) of the Johannesburg Principles.

Chapter Nine: Rights and Guarantees during the Stages of the Investigation

9.1 Rights and Guarantees During Investigation

The practice of detaining people in an isolated prison and interrogating them in unofficial or secret facilities raises many concerns because it puts individuals at high risk of torture. Secret detention itself is tantamount to torture or ill-treatment and should be abolished and criminalized under domestic law. States must ensure that interrogation only takes place in official facilities that are accessible regardless of the form of detention. In the criminal justice system, any evidence obtained from a detainee in an unofficial detention center and not confirmed by the detainee during the interrogation process in official places should not be accepted as evidence in court [1218].

9-1-1 Within the framework of Egyptian law

Interrogation is an important investigative procedure that aims to establish the truth of the charge from the same accused, and to reach a confession from him that supports it or a defense from him that denies it.

It is established that the failure to ask the accused in the investigation does not result in the nullity of the procedures, as there is no objection in the law to filing a public lawsuit without questioning the accused [1219].

A- Establishing the Identity of the Accused and Informing Them of the Charge

The investigator must, upon the first appearance of the accused during the investigation, verify their identity, inform them of the charges against them, and document their statements in the record[1220].

([1218]) (A/71/298‹ 5 August 2016‹ §63)‹ (A/56/156).

([1219]) Appeal No. 49051 of 85 S issued at the 26th session of February 2017, Appeal No. 27324 of 84 S issued at the 14th session of February 2017, Appeal No. 11889 of 85 S issued at the 24th session of January 2017, Appeal No. 19721 of 86 S issued at the 28th session of December 2016 and published in the Technical Office Letter No. 67 Page No. 961 Rule No. 120, Appeal No. 33124 of 84 S issued at the 13th session of December 2016 and published in the Technical Office Letter No. 67 Page No. 901 Rule No. 111, Appeal No. 38895 of 85 S issued at the session of 22 November 2016, Appeal No. 30488 of 83 S issued at the session of 5 June 2014, Appeal No. 4100 of 83 S issued at the session of 8 April 2014, Appeal No. 23452 of 83 S issued at the session of 12 October 2014 and published in the Technical Office's letter No. 65 Page No. 702 Rule No. 86, Appeal No. 24649 of 3 S issued at the session of 27 November 2013 and published in the Technical Office's letter No. 64 Page No. 932 Rule No. 144, Appeal No. 1352 of 80 S issued at the 22nd session of December 2011, Appeal No. 1130 of 81 S issued at the 6th session of July 2011, Appeal No. 51172 of 72 S issued at the 20th session of December 2009 and published in the Technical Office Letter No. 60 Page No. 572 Rule No. 74, Appeal No. 10318 of 74 S issued at the 25th session of February 2008, Appeal No. 12626 of 70 S issued at the 17th session of December 2006, Appeal No. 21645 of 65 S issued at the 24th session of June 2004, Appeal No. 18900 of 64 S issued at the 11th session of December 1996 and published in the first part of the Technical Office's letter No. 47, page No. 1326, rule No. 190, Appeal No. 7554 of 62 S issued at the 10th session of January 1995 and published in the first part of the Technical Office's letter No. 46, page No. 106, rule No. 11, Appeal No. 29282 of 59 S issued at the 1st session of January 1991 and published in the first part of the letter Technical Office No. 42 Page No. 9 Rule No. 2, Appeal No. 1883 of 59 S issued at the hearing of July 27, 1989 and published in the first part of the Technical Office's book No. 40 Page No. 688 Rule No. 117, Appeal No. 2342 of 51 S issued at the hearing of December 29, 1981 and published in the first part of the Technical Office's book No. 32 Page No. 1212 Rule No. 217, Appeal No. 990 of 14 S issued at the hearing of October 16, 1944 and published in the Technical Office's book No. 6 P No. 1 Page No. 514 Rule No. 374, Appeal No. 1700 of 9 S issued at the hearing of December 4, 1939 and published in the Technical Office's book No. 5 P No. 1 Page 29 Rule No. 23, Appeal No. 1217 of 9 P issued at the hearing of May 22, 1939 and published in the Technical Office's book No. 4 P No. 1 Page No. 557 Rule No. 396.

([1220]) Article 123 of the Criminal Procedure Law.

The investigator must ensure respect for the dignity and humanity of the accused, avoiding methods and language that degrade human dignity. Torture is prohibited as a means of extracting a confession regarding the incident under investigation[1221].

The law does not require hearing the statements of the accused or interrogating them during the preliminary investigation phase unless they are detained pursuant to an order by a judicial officer, upon their first appearance during the investigation, before issuing an order for pretrial detention, or before reviewing such detention[1222].

The investigator may not promise the accused anything, such as reduced punishment, or attempt to entrap them through questions, or through deception by alleging false confessions by other suspects or false testimony against them, with the aim of extracting a confession to committing the crime[1223].

Accordingly, the investigator must, upon the first appearance of the accused during the investigation, verify their identity, inform them of the charges against them, and document their statements in the record. The investigator is responsible for verifying the identity of the accused, and the law does not require the investigator to inform the accused of their identity nor does it invalidate the process if this is omitted[1224].

The Court of Cassation ruled in another case that interrogating the accused in an unusual manner, such as conducting an investigation by the Public Prosecution at the Administrative Control Authority's premises without informing the accused that the Public Prosecution was overseeing the investigation, and leaving the accused for long hours within the Authority's premises to the extent that even the investigator recorded their own exhaustion, renders the interrogation of the accused invalid: [Whereas the foregoing, and it was clear from the Public Prosecution's investigation that the first accused was interrogated in an unusual way, The investigator began his report by asking the member of the administrative control and did not summon the first three defendants to the investigation room and informed them of the charge against them as stipulated in the first paragraph of Article 123 of the aforementioned Criminal Procedure Law, then summoned the second defendant and interrogated him, leaving the first defendant outside the investigation room despite the fact that he is the main defendant in the case, and he was the one who was the focus of the investigations at the beginning, and permission was issued to search his residence and he was searched and the incident was seized, which authorized the investigator to start interrogating this defendant, but this was only done on the morning of the third day of his arrest and after leaving him for long hours Inside the headquarters of the Administrative Control Authority, and his exhaustion to the extent that the investigator himself has recorded is his feeling of exhaustion, from which the court concludes that the will of the first accused when interrogated was not free and innocent of all influence, which indicates that the investigation procedures at the headquarters of the Administrative Control Authority were tainted by a deviation from the principle of the impartiality of the Public Prosecution and confidence in its procedures, which invalidates the interrogation of the first

(1221) Article 160 of the Judicial Instructions of the Public Prosecution.

(1222) Article 782 of the Judicial Instructions of the Public Prosecution.

(1223) Article 161 of the Judicial Instructions of the Public Prosecution.

(1224) Appeal No. 30639 of 72 S issued at the session of 23 April 2003 and published in the book of the Technical Office No. 54 page No. 583 rule No. 74, Appeal No. 1752 of 63 S issued at the session of 11 January 1995 and published in the first part of the book of the Technical Office No. 46 page No. 134 rule No. 16, Appeal No. 8260 of 58 S issued at the session of 23 March 1989 and published in the first part of the book of the Technical Office No. 40 page No. 439 rule No. 75, Appeal No. 225 of 57 S issued at the session of April 21, 1987 and published in the first part of the Technical Office letter No. 38 page No. 626 rule No. 106, Appeal No. 311 of 48 S issued at the session of June 12, 1978 and published in the first part of the Technical Office letter No. 29 page No. 619 rule No. 120, Appeal No. 122 of 41 S issued at the session of April 25, 1971 and published in the second part of the Technical Office letter No. 22 page No. 371 rule No. 91, Appeal No. 2009 of 34 S Issued at the session of May 4, 1965 and published in the second part of the Technical Office's letter No. 16, page No. 430, rule No. 87.

accused and all that resulted from it. This consideration confirms that although the law does not require the investigator to inform the accused that the Public Prosecution is the one who initiates the investigation. However, with regard to the current case and in view of the circumstances surrounding it, the investigator had to - at the beginning of the investigation at the headquarters of the Administrative Control Authority and after a long period of time after the first accused was arrested and stayed at the headquarters of the Authority away from the investigation room - disclose to the accused his personality in order to consolidate the principle of the impartiality of the Public Prosecution and to reassure himself that he has become away from everything that may affect his will, and the investigator had to listen to the statements that the accused wants to make regardless of the sincerity of these statements The statements or their contradiction to the truth. First and foremost, the matter is subject to the discretion of the Public Prosecution and the trial court afterwards for these statements, as this confirms that the Public Prosecution seeks only to protect the rights and freedoms, whether they are for the accused or for society][1225] .

The member of the prosecution shall continue the investigation without haste until it is completed. If it cannot be completed at once, successive close sessions shall be determined for the speed of completion [1226].

The investigating member of the prosecution shall work to place the accused and the prosecution witnesses in a place where they are isolated from each other and from people, in order to ensure that the testimonies are not fabricated and to avoid the impact that the accused may have on the prosecution witnesses. He then proves the identity of the accused by stating his name and surname, if any, the date of birth on the day, month and year, the destination of birth, the governorate in which it is located, and nationality by reviewing personal or family cards, passports or any other official document. After examining the accused and proving his observations, he begins by asking him orally about the charge against him after he informs him of it. If he confesses to it, he initiates a detailed interrogation with care to present what strengthens his confession. If he denies it, he asks him whether he has a defense he wants to present, and whether he has defense witnesses he wants to cite. He proves this defense and the names of witnesses in the minutes, and then asks him whether he wants to cite others. If he decides that he does not have other witnesses, he proves this in the minutes as well, and then he orders to summon all those whom the accused martyred immediately and puts them in a secluded place until they answer their question. He then completes the investigation by asking the prosecution witnesses in the order of their importance and discusses them to clarify their statements and know the extent of their share of the truth, and confronts them with the statements they have decided in the record of collecting evidence contrary to what they testified before him and discusses them in it, and he may not re-question the people who were previously asked in the record of collecting evidence as witnesses if they did not testify to anything and there is no benefit in re-questioning them. Whenever the name of a person who may have information is mentioned in the incident, he is immediately asked and asked for his information. He then interrogates the accused - if he has not taken the initiative to interrogate him after asking him orally about the charge against him and confessing to it - and confronts him with the evidence against him and asks him whether he has anything to refute it. Then he takes on his defense that he had a defense. He must take the initiative to hear the witnesses on his behalf immediately after the completion of the interrogation of the accused in order to prevent what he may obtain from receiving testimonies that correspond to the statements of the accused. It is not permissible to be lax in hearing them since the accused is imprisoned, as it is

---

([1225]) Appeal No. 30639 of 72 S issued at the session of 23 April 2003 and published in the letter of the Technical Office No. 54 page No. 583 rule No. 74.
([1226]) Article 242 of the Judicial Instructions of the Public Prosecution.

not difficult for him or his family to contact these witnesses. It shall be considered that the accused and witnesses confront each other regarding the differences in their statements. [1227].

The member of the prosecution shall, in the investigation he initiated, unless something arises that requires the completion of another member. In this case, the investigator shall attach to the case a memorandum detailing the facts of the case, the investigation conducted therein, and the aspects that need to be fulfilled [1228].

The members of the prosecution must determine the investigation sessions themselves and do not leave this to the clerks. They must take legal measures to ensure the attendance of witnesses on the days specified for the investigation in order to avoid undue postponement. The statements of witnesses must be heard at once and confronted with what they need to face. If some of them attend and others fail to attend, the statements of those present may be heard from them if this does not harm the interest of the investigation. It is not permissible to assign witnesses to attend the investigation more than once without cause. The investigation must be postponed only for important reasons and as soon as possible, even if it falls on an official holiday as long as the interest of the investigation requires.[1229]

Prosecutors must not set a single session to investigate several cases that they are not able to achieve in their entirety, and they must estimate what they can do from the investigation work per day to complete it without postponement, and they must specify, as far as the circumstances of the case allow, a specific time to start investigating a particular subject. One of them must not move to the whereabouts of an accused or a witness, whatever his capacity and whatever his status, unless he is sick or has any excuses that prevent him from coming to the headquarters of the prosecution.[1230]

B- Notifying the litigants of the day and place of commencement of the investigation

The investigator must notify the litigants of the day on which the investigation begins and its place.[1231]

The investigator must verify that the investigation clerk has taken the initiative to notify the litigants of the day specified for the investigation and its place, and that he has announced the required witnesses, and the margin of the investigation record shall be recorded in conjunction with the postponement decisions that have been implemented, with clarification of the date and number of the clerk under which the decision was implemented, and it shall always be taken into account that the implementation of the decisions shall be in original and copy books and the copy shall be kept in the case [1232].

C- The right of the accused not to be subjected to torture or ill-treatment during interrogation

This right presupposes the prohibition of torture of the accused, and this principle was confirmed by the Universal Declaration of Human Rights of 1948, which prohibited the torture of the accused in its article 5, which states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This right represents one of the basic values in a democratic society, and it stems from the duty to respect human dignity "dignité humaine". Three consequences stem from this right, namely: the inadmissibility of subjecting the accused

(1227) Article 216 of the Judicial Instructions of the Public Prosecution.
(1228) Article 243 of the Judicial Instructions of the Public Prosecution.
(1229) Article 246 of the Judicial Instructions of the Public Prosecution.
(1230) Article 247 of the Judicial Instructions of the Public Prosecution.
(1231) Article 225 of the Judicial Instructions of the Public Prosecution.
(1232) Article 207 of the Judicial Instructions of the Public Prosecution.

to torture, the inadmissibility of inhuman treatment, and the inadmissibility of subjecting him to inhuman punishments.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment places a number of basic duties and obligations on States parties to combat torture, the most important of which are: [1233].

The obligation to prohibit torture and other ill-treatment is an obligation incumbent upon all States, as it is a right deriving from respect for the inherent human dignity of all people.

The obligation of States to comprehensively and absolutely prohibit torture, and not to justify it in any exceptional circumstances, including a state of war or threat of war, internal armed conflicts, political instability, combating terrorism, and other emergency situations. In addition, it is irrelevant to receive orders from a superior as a justification for the practice of torture. Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that: «1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. Orders issued by higher-ranking officials or by a public authority may not be invoked as a justification of torture»[1234].

Article 2, paragraph 1, obliges each State Party to take action to strengthen the prohibition of torture by putting in place effective legislative, administrative, judicial or other measures that will ultimately ensure the prevention of torture.

In order to ensure that effective measures are taken to prevent or punish various acts of torture, the Convention sets forth in subsequent articles obligations for the State party to take the measures specified in those articles [1235].

The obligation to prevent torture in article 2 is of a broad nature, and the obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated.

The obligation to prevent ill-treatment in practice overlaps with, and is largely consistent with, the obligation to prevent torture. Article 16, which defines the means of preventing ill-treatment, emphasizes "in particular" the measures set out in articles 10 to 13, but does not limit effective prevention to these articles, as the Committee has made clear, for example with regard to compensation under Article 14.

In practice, the borderline between the concepts of ill-treatment and torture is often blurred. Experience proves that conditions conducive to ill-treatment often facilitate torture, therefore, measures to prevent torture must be applied to prevent ill-treatment. Accordingly, the Committee considered that the prohibition of ill-treatment also constitutes a non-derogable principle under the Convention, and that combating it constitutes an effective and non-derogable measure [1236].

([1233]) Ratified by Egypt by Presidential Decree No. 154 of 1986 issued on 06 April 1986 and published on 07 January 1988 in the Official Gazette.

([1234]) Article 2 of the Convention against Torture.

Committee [1235]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §2).

Committee [1236]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §3).

States parties to the Convention against Torture are obliged to remove all legal or other obstacles to the elimination of torture and ill-treatment; and to take effective positive measures to ensure that such conduct is effectively prevented and repeated. States parties are also obliged to continue to review and improve their national laws and performance under the Convention in accordance with the Committee's concluding observations and views adopted on individual communications. If the measures adopted by the State party fail to achieve the objective of eliminating acts of torture, the Convention requires that they be revised and/or that new and more effective measures be[1237] adopted.

Article 2, paragraph 2, states that the prohibition of torture is absolute and non-derogable, and emphasizes that no exceptional circumstances whatsoever may be invoked by a State Party as a justification for the occurrence of acts of torture in any territory under its jurisdiction. Among these circumstances, the Convention defines a state of war, a threat of war, internal political instability or any other public emergency. This includes all threats related to terrorist acts or violent crimes, as well as armed conflict, whether international or non-international. The Committee expresses its deep concern about any attempts by States to invoke public safety or the prevention of states of emergency in all these and all other situations as a justification for torture and ill-treatment and declares its categorical rejection of this. It also rejects any justifications based on religion or tradition that would violate this absolute prohibition. The Committee against Torture considers that amnesties or other impediments that prevent or indicate unwillingness to promptly and fairly prosecute and punish perpetrators of torture or ill-treatment constitute a violation of the principle of non-derogability[1238].

The Committee against Torture reminds States parties to the Convention of the non-derogable nature of the obligations they have undertaken upon ratification of the Convention. In the aftermath of the attacks of September 11, 2001, the Committee identified the obligations contained in article 2 (according to which “no exceptional circumstances whatsoever may be invoked as a justification of torture”), in article 15 (prohibition of confessions obtained by torture being admitted as evidence, except against a torturer), and in article 16 (prohibition of cruel, inhuman or degrading treatment or punishment), as three of the provisions that must be observed in all circumstances. ”

The Committee considers that articles 3 to 15 of the Convention are also mandatory in their application to torture and ill-treatment. It recognizes that States Parties may choose measures by which to fulfil these obligations, as long as they are effective and consistent with the object and purpose of the Convention[1239].

The concept of "any territory under its jurisdiction", which is linked to the principle of non-derogability, means any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control exercised by the State Party. The Committee emphasizes that the State party's obligation to prevent torture also applies to all persons acting de jure or de facto, either on behalf of, in conjunction with, or at the behest of the State party. It is urgent that each State Party closely monitor its personnel and those acting on its behalf, identify and report to the Committee any cases of torture or ill-treatment that occur as a result of, inter alia, counter-terrorism measures, and measures taken

---

Committee [1237]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §4).
Committee [1238]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §5).
On [1239]22 November 2001, the Committee adopted a statement on the events of 11 September 2001 sent to all States parties to the Convention (A/57/44, paras. 17 and 18); see Committee against Torture, General Comment No. 2 on the implementation of article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by States parties (CAT/C/GC/2, 24 January 2008, §6).

to investigate such cases, punish perpetrators, and prevent future recurrences, paying particular attention to the legal responsibility of both the direct perpetrators and those responsible in the chain of command, whether as a result of acts of incitement, acquiescence, or acquiescence[1240].

The obligation to take effective measures to prevent torture includes that state parties must make the crime of torture a punishable offence under their criminal law, at a minimum, in accordance with the elements of the crime of torture as defined in Article 1 of the Convention, and in accordance with the requirements of article 4 thereof [1241].

All States are obliged to criminalize the practice of torture and punish its practice, and to include torture in their criminal law as a "serious crime" punishable by the most severe penalties and not subject to a statute of limitations, and that these texts are consistent with international norms and standards. Article 4 of the Convention against Torture stipulates that: "1. Each State Party shall ensure that all acts of torture are offences under its criminal law, and the same shall apply to any attempt to commit torture and to any other act constituting complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature. "[1242].

The Committee against Torture has held that serious discrepancies between the Convention's definition and those contained in domestic law create actual or potential loopholes for impunity. Although the wording used to define torture may in some cases be like that used by the Convention, the meaning may be determined by domestic law or judicial interpretation, and therefore the Committee calls on each State party to ensure that all organs of its government adhere to the definition provided for in the Convention to determine the State's obligations. At the same time, the Committee recognizes that the creation of broader domestic definitions also contributes to the achievement of the goals and objectives of the Convention, if they incorporate the standards contained in the Convention and are applied per these standards as a minimum. In particular, the Committee emphasizes that the intent and purpose elements of Article 1 do not involve a subjective investigation into the motives of the perpetrators, but must constitute objective elements of the determination under the circumstances. It is necessary to conduct investigations and determine the responsibility of the various persons in the chain of command, and the responsibility of the perpetrator (s) directly[1243] .

The Committee against Torture has recognized that most States parties define or define in their criminal laws' certain behaviors as constituting ill-treatment. Ill-treatment may differ from torture in terms of the severity of pain and suffering and does not require evidence to prove impermissible purposes. The Committee stressed that conviction for the crime of ill-treatment only despite the elements of the crime of torture also constitute a violation of the Convention[1244].

By defining the crime of torture as distinct from ordinary assault or other crimes, the Committee considers that States parties will directly pursue the overall objective of the Convention, which is to prevent torture and ill-treatment. The description and definition of the offence will further the

---

Committee [1240]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §7).
Committee [1241]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §8).
([1242]) Article 4 of the Convention against Torture.
Committee [1243]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §9).
Committee [1244]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §10).

objective of the Convention, including by alerting everyone, including perpetrators, victims and the public, to the gravity of the crime of torture. The codification of this crime will also (a) emphasize the need for appropriate punishment that takes into account the seriousness of the offence, (b) enhance the deterrent effect of the risk itself, (c) enhance the capacity of responsible officials to track the specific crime of torture, and (d) empower and authorize the public to monitor and, if necessary, challenge State action and inaction in violation of the Convention[1245].

The Committee against Torture has recommended specific actions aimed at strengthening the capacity of all States parties to implement the necessary and appropriate measures to prevent acts of torture and ill-treatment promptly and effectively and thereby assist them in bringing their laws and practices into full conformity with[1246] the Convention.

Certain fundamental guarantees shall apply to all persons deprived of their liberty. Some of these safeguards are specified in the Convention, and the Committee consistently calls on States parties to implement these safeguards. The Committee's recommendations on effective measures are intended to clarify the current baseline and are not exhaustive. These guarantees include, inter alia, the maintenance of an official register of detainees, the right of detainees to be informed of their rights, the right to prompt access to independent legal and medical assistance, the right to contact relatives, the need to establish impartial mechanisms to inspect and visit places of detention and confinement, and the provision of judicial and other remedies to detainees and persons at risk of torture and ill-treatment to allow them to have their complaints promptly and impartially considered, to defend their rights, and to challenge the legality of their detention[1247] or treatment.

The Committee against Torture has stressed the importance of appointing same-sex guards out of respect for privacy. After discovering new means of preventing torture (such as videotaping all interrogations, using investigative procedures such as the Istanbul Protocol of 1999, or adopting new approaches to educating the public or protecting minors) and testing these means and proving their effectiveness, Article 2 gives the authority to rely on the rest of the articles and expand the scope of the measures necessary to prevent torture [1248].

The Convention imposes obligations on States Parties and not on individuals. States bear international responsibility for the acts or omissions of their officials and others, including agents, private contractors, and others acting in an official capacity or on behalf of the State, in conjunction with it and under its direction or control, or otherwise under the umbrella of law. Accordingly, each State Party should prohibit, prevent and redress torture and ill-treatment in all contexts of detention or surveillance of individuals, such as in prisons, hospitals, schools, institutions engaged in the care of children, the elderly, the mentally ill or the disabled, in military service, and in other institutions, as well as in contexts where State non-intervention encourages and reinforces the risk of harm by private actors. However, the Convention does not

---

Committee [1245]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §11).
Committee [1246]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §12).
Committee [1247]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §13).
[1248]See Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §14).

specify the international responsibility that can be incurred by States or individuals because of the practice of torture and ill-treatment under international customary law and other treaties [1249].

Article 2, paragraph 1, requires each State Party to take effective measures to prevent acts of torture not only in its sovereign territory but also “in any territory under its jurisdiction”. The Committee has recognized that the term “any territory” includes all areas in which a State party exercises, in accordance with international law, effective control, direct or indirect, in whole or in part, de jure or de facto. The reference to “any territory” in Article 2, like that in Articles 5, 11, 12, 13 and 16, refers not only to prohibited acts committed on board a ship or on board an aircraft registered by a State Party, but also to acts committed during military occupation or peacekeeping operations and in places such as embassies, military bases, detention facilities or other areas where the State exercises effective or de facto control. The Committee notes that this interpretation supports article 5, paragraph 1(b), according to which a State party must take the necessary measures to exercise its jurisdiction "when the alleged offender is a national of the State party". The Committee considers that the scope of the term “territory” under Article 2 should also include situations in which a State party exercises control over persons detained directly or indirectly, de facto or de jure [1250].

States Parties are under an obligation to adopt effective measures to prevent public authorities and other persons acting in an official capacity from committing, instigating, inducing, encouraging, directly accepting, participating in or in any other way becoming involved in acts of torture as defined in the Convention. States parties should therefore take effective measures to prevent such authorities or others acting in an official capacity or under the umbrella of the law, from consenting to or acquiescing in any act of torture. The Committee concluded that States parties are in breach of the Convention when they fail to fulfil these obligations. For example, when detention centers are privately owned or run, the Committee against Torture considers that its officials act in an official capacity because they are responsible for the performance of State function without diminishing the obligation of government officials to monitor acts of torture and ill-treatment and to take all effective measures to prevent them [1251].

The Committee against Torture has made it clear that if State authorities or others acting in an official capacity or under the umbrella of the law know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors, and fail to exercise due diligence to prevent, investigate, prosecute and punish them in a manner consistent with the provisions of the Convention, the State bears responsibility and its officials should be considered as perpetrators, accomplices or otherwise responsible under the Convention for acquiescing in or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, punish and provide remedies to victims of torture facilitates and enables non-state actors to commit acts impermissible under the Convention with impunity, State indifference or inaction provides a form of encouragement and/or de facto authorization. The Committee has applied this principle to States parties that are unable to prevent and protect victims of gender-based violence such as rape, domestic violence, female genital mutilation and trafficking in persons[1252].

Committee [1249]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT/C/GC/2, 24 January 2008, §15).
Committee [1250]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §16).
Committee [1251]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §17).
Committee [1252]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §18).

In addition, if a person is to be transferred or sent to the custody or control of an individual or institution known to have participated in torture or ill-treatment, or to have failed to implement adequate safeguards, the State is responsible and its officials are liable to punishment for ordering, permitting or participating in such transfer contrary to the State's obligation to take effective measures to prevent torture per article 2, paragraph 1. The Committee has expressed concern whenever States parties send persons to such places without due process as required by Articles 2 and 3[1253].

The principle of non-discrimination is a fundamental and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. The non-discrimination aspect falls within the very definition of torture in Article 1, paragraph 1, of the Convention, which expressly prohibits specific acts when carried out "for any reason based on discrimination of any kind…". The Committee emphasizes that the discriminatory use of psychological or physical violence or abuse is an important factor in determining whether an act constitutes torture [1254].

The protection of certain minorities, individuals or marginalized populations who are particularly at risk of torture is part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as obligations under the Convention are concerned, their laws apply in practice to all persons, irrespective of race, color, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic status or indigenous affiliation, and are not seen as a reason to detain persons, including individuals accused of political offences or terrorist acts, asylum-seekers, refugees or other persons under international protection, or any other status or adverse discrimination. Therefore, States parties should ensure the protection of members of groups particularly at risk of torture, by fully prosecuting and punishing perpetrators of all acts of violence and abuse against such individuals and ensuring the implementation of other positive measures of prevention and protection [1255].

Article 2, paragraph 3, affirms the long-standing principle that orders from superior officers, or a public authority may not be invoked as a justification of torture and that the prohibition of torture may not be derogated from. Thus, subordinates may not seek refuge in higher authority and should be held accountable on an individual basis. At the same time, officials exercising superior authority - including public officials - cannot evade accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates, if they knew or should have known that such impermissible conduct had occurred, or was likely to occur, and failed to take reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any senior official, whether for direct incitement, encouragement, approval or acquiescence in torture or ill-treatment, be fully investigated by competent, independent and impartial prosecutorial and judicial authorities. Persons who disobey what they see as unlawful orders and who cooperate in the investigation of acts of torture or ill-treatment, including orders and acts of high-ranking officials, should be protected from retaliation of any kind[1256].

States are obligated not to accept any confessions, evidence or information obtained from the accused through torture, except for those that may convict the torturers themselves (this

---

Committee [1253]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §19).
Committee [1254]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §20).
Committee [1255]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §21).
Committee [1256]against Torture, General Comment No. 2 on the Implementation by States Parties of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/GC/2, 24 January 2008, §26).

obligation is very important because the purpose of torture is often to obtain confessions or evidence to convict the accused). Article 15 of the Convention states: "Each State Party shall ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."[1257].

Each State shall also abide by the rules governing interrogation, its instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing any cases of torture. Article 11 of the Convention stipulates that: "Each State shall keep under systematic review the rules, instructions, methods and practices of interrogation, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture. "[1258].

States have an obligation to educate and train all relevant law enforcement personnel on the aspects of deprivation of liberty, to qualify them in accordance with international standards and norms, and to inform them of the legal framework for the prohibition of torture, Article 10 of which provides that: “1. Each State shall ensure that education and information concerning the prohibition of torture are fully included in the training of law enforcement officials, whether civilian or military, medical personnel, public officials or others who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall ensure that such prohibition is included in the laws and instructions issued with respect to the duties and functions of such persons. "[1259].

States are also obliged to accept the system of inspection and monitoring of their penal facilities and places of detention in them, and to allow the relevant independent international and national organizations to regularly visit those facilities and places [1260].

Regional bodies, including the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Court, the European Committee for the Prevention of Torture and the African Commission on Human Rights, also contribute to the development of standards for the prevention of torture.

On November 22, 1969, the Organization of American States adopted the American Convention on Human Rights, which entered into force on July 18, 1978. Article 5 of the Convention states: “1. Everyone has the right to respect his or her physical, mental and moral integrity.

2. No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person"[1261].

Article 33 of the Convention establishes the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Commission's primary function, as defined by its statute, is to promote the observance of human rights, to defend them and to serve as an advisory body to the Organization of American States in this regard.

([1257]) Article 15 of the Convention against Torture.

([1258]) Article 11 of the Convention against Torture.

([1259]) Article 10 of the Convention against Torture.

([1260]) See Articles 4, 11, 12, 14 and 15 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted in 2002 and entered into force in 2006.

United [1261]Nations, Treaty and Organization of American States, Treaty Series No. 36 "Basic Documents Pertaining to Human Rights in the Published and Republished Series, vol. 1144, p. 123. Inter-American System", OEA/Ser. L/V/II. 82, document 6, rev. 1, p. 25 (1992).

In carrying out this task, the Committee is guided in its interpretation of the meaning of torture referred to in article 5 by the provisions of the Inter-American Convention to Prevent and Punish Torture.

The latter is a Convention adopted by the Organization of American States (OAS) on December 9, 1985, and entered into force on February 28, 1987. Article 2 of this Convention defines torture as:

"... Any act intentionally inflicting physical or mental pain or suffering on a person for the purposes of a criminal investigation, as a means of intimidation, as a personal punishment, as a preventive measure, in execution of a punishment, or for any other purpose. It is also considered torture to use methods with a person to erase thier personality or reduce his physical or mental abilities, even if these methods did not cause him physical pain or mental[1262] distress.

Under article 1, States parties to the Convention undertake to prevent torture and to punish perpetrators in accordance with the provisions of the Convention.

States parties must conduct a prompt and proper investigation into any allegation of torture within their jurisdiction.

Article 8 requires States parties to "ensure that any person who has a concern that he or she has been subjected to torture within the scope of their jurisdiction has the right to an impartial hearing ". Similarly, if an act of torture is charged within their jurisdiction or there is a reasonable basis to believe that such an act has occurred, States Parties shall ensure that their authorities promptly and properly investigate the case and, where appropriate, initiate appropriate criminal proceedings.

In one of its 1998 country reports, the Committee warned that an obstacle to the effective prosecution of perpetrators of torture is the lack of independence in the investigation of torture claims in order to attribute the investigation to federal agencies that are likely to have a known link to the parties accused of torture. The Committee cited article 8 to highlight the importance of "impartial consideration" in each case [1263].

Having considered the question of the necessity of investigating claims of violation of the American Convention on Human Rights, the Inter-American Court of Human Rights, in its judgment of 29 July 1988 in the Velásquez Rodríguez case, decided that:

"The State is obliged to investigate every case involving a violation of the rights protected by the Convention. If it acts in a manner that leaves the violation unpunished and does not restore to the victim as soon as possible the full enjoyment of these rights, the State has failed in its duty to ensure that persons within its jurisdiction enjoy the free and full exercise of these rights. "

Although that case was specifically concerned with the issue of disappearance, article 5 of the Convention provides for the right not to be subjected to torture and thus one of the rights that the Court noted that the American Convention on Human Rights protects is the right not to be subjected to torture or other forms of ill-treatment.

For the European Court of Human Rights, on 4 November 1950, the Council of Europe adopted the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which entered into force on 3 September 1953.

([1262]) Regulations of the Inter-American Commission of Human Rights, OEA/Ser. L/V/II. 92, document 31, rev. 3 of 3 May 1996, art. 1 See Case 10-832, Report No. 35/96, para. 75 of the 1997 Annual Report of the Inter-American Commission on Human Rights. Organization of American States, Treaty Series, No. 67.

([1263]) Inter-American Commission on Human Rights, Report About Human Rights in Mexico, 1998, para. 323, 324.

Article 3 of the Convention states that "no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment".

The European Convention has established control mechanisms in the form of the European Court of Human Rights and the European Commission of Human Rights.

Following a reform that took effect on November 1, 1998, the Court and the Commission were replaced by a new Permanent Court. The right of individuals to bring proceedings is now guaranteed by a mandatory provision, and all victims can approach the court directly. The Court had the opportunity to consider the necessity of investigating allegations of torture, as a means of guaranteeing the rights guaranteed by Article 3 [1264].

The first judgment on this subject was the one issued by the court on December 18, 1996, in the case of Aksoy v. Turkey. In this case, the court held: "When an individual is in good health when the police take him into custody and then upon his release it is found that he has injuries, the state is obliged to provide an acceptable explanation for the cause of the injuries. If it does not do so, a case clearly arises under Article 3 of the Convention" [1265].

The Court held that the injuries sustained by the Claimant arose from torture and that Article 3 had been violated.

The Court also interpreted Article 13 of the Convention, which guarantees the right to an effective remedy before a national authority, as imposing an obligation to thoroughly investigate allegations of torture. The Court stated that, given the "fundamental importance of the prevention of torture" and the vulnerability of victims of torture, "Article 13 requires States to conduct a full and effective investigation of incidents of torture, without prejudice to any other remedy available under the national system".

According to the Court's interpretation, the concept of "effective remedy" mentioned in Article 13 entails a thorough investigation of every "arguable" allegation of torture. The court noted that although the Convention does not contain an explicit provision such as article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the necessity of conducting such an investigation "is implicit in the concept of an effective remedy under article 13". Accordingly, the court concluded that the State had violated article 13 by failing to investigate the allegation of torture raised by the plaintiff [1266].

In the October 28, 1998, judgment in Assenov et al. v. Bulgaria (90/1997/874/1086), the Court went further in recognizing the obligation of the State to investigate allegations of torture, not only based on article 13 but also based on Article 3.

In this case, a young Roma man who had been arrested by the police provided medical evidence of repeated beatings, although it is impossible to determine from the available evidence whether the injuries were caused by his father or the police.

The Court acknowledged that "the extent of the bruises established by the doctor who examined Mr. Asenov indicates that his injuries, whether caused by the father or the police, were serious enough to qualify as ill-treatment within the scope of Article 3."

Contrary to the Committee's position that there was no violation of Article 3, the Court did not stop there but added that the facts "raise a reasonable suspicion that the police caused these injuries".

([1264]) United Nations, Treaty Series, vol. 213, p. 222.

[1265]See Protocols Nos. 3, 5 and 8, which entered into force, respectively, on 21 September 1970 . European Treaty Series Nos. 45, 46 and 118 ,1990 1 January and 20 December 1971 and see European Court of Human Rights, Reports of Judgments and Decisions 1996-VI, para.

([1266]) Ibid., paras. 64, 98, 100.

The Court therefore decided that: "In such circumstances where an individual raises an arguable allegation that he or she has suffered serious ill-treatment at the hands of the police or other agents of the State unlawfully and contrary to Article 3, it would be implicit, if the text of this Article were read in conjunction with the State's general duty under Article 1 of the Convention to ensure to every person within its jurisdiction the rights and freedoms provided for in the Convention, to conduct an effective official inquiry.

This obligation of the State should make it possible to identify and punish those responsible. Otherwise, the general legal prohibition of torture and inhuman or degrading treatment or punishment, while essential ..., it will have no effect in the application and in some cases, it will be possible for state agents to infringe on the rights of those under their control with practical impunity. "

The court thus concluded for the first time that there had been a violation of Article 3 not because of the ill-treatment per se but because of the failure to conduct an effective formal investigation into the allegation of ill-treatment. In addition, the Court decided to express the position it had previously recorded in the Aksoy case and further found a violation of Article 13, holding that: "Where an individual makes an arguable claim that he has been ill-treated in violation of Article 3, the concept of an effective remedy entails, in addition to a thorough and effective investigation as is also required by Article 3 ,... The complainant has effective access to the investigation procedures and obtains compensation when necessary "[1267].

For the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in 1987 the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force on 1 February 1989, and by 1 March 1999 all 40 member states of the Council of Europe had ratified the Convention.

This Convention complements the judicial organ of the European Convention on Human Rights with a preventive mechanism. It does not intentionally set out objective criteria.

The Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which is composed of one member for each Member State. Those elected to its membership are required to be of a high moral level, characterized by integrity and independence, and to be available to carry out field missions [1268].

The Commission undertakes visits to the member states of the Council of Europe, some on a regular periodic basis and some on the occasion of particular situations. The visiting delegation of the Committee shall consist of members of the Committee accompanied by experts in the medical, legal and other fields, interpreters, and members of its secretariat.

These delegations visit persons deprived of their liberty by the authorities of the country of visit. A person deprived of his liberty means any person deprived of his liberty by a public authority, that is, but not limited to persons arrested or detained in any way, prisoners awaiting trial, prisoners serving their sentences, and persons held against their will in psychiatric hospitals.

Each visiting delegation has very broad powers: it may visit any place where persons are deprived of their liberty; it may carry out visits without prior notice to any such place; it may return to visit such places; it may speak with persons deprived of their liberty without the presence of others; it may visit any or all persons in such places if it so wishes; it may inspect, without any restriction, all places (not only those of cells); it may see all papers and files relating to the persons it visits. The Committee's work is based on confidentiality and cooperation.

([1267]) Ibid., paras. 95, 101, 102, 117.
([1268]) European Treaty Series, No. 126.

After the visit, the committee will write a report. Based on the facts observed during the visit, the report records comments on what was found by the delegation, makes specific recommendations and asks questions on any points that require further clarification. The State party responds to the report in writing, thus establishing a dialogue between the Committee and the State party that will continue until the next visit. The reports of the Committee and the State party's replies shall be treated as guaranteed documents of a confidential nature, but the State party (not the Committee) may decide to make the reports and replies public together. To date, nearly all States Parties have made public the reports and responses.

During its activities over the last ten years, the Commission has gradually established a set of standards for the treatment of detained persons that constitute general uniform levels. These levels concern not only material conditions but also procedural safeguards. For example, the Committee has called for three safeguards for persons in police custody:

The right of persons deprived of their liberty to be informed immediately, if they wish, of their arrest by a third party (a member of their family);

The right of persons deprived of their liberty to have prompt access to a lawyer;

The right of persons deprived of their liberty to communicate with a doctor, including, if they so wish, with a doctor of their choice.

The Committee has also repeatedly stressed that one of the most effective means of preventing ill-treatment by law enforcement officials is for the competent authorities to seriously examine all complaints they receive about ill-treatment and to impose appropriate punishment when necessary, as this has a strong disincentive effect.

As for Africa, it does not have a convention on torture and its prevention similar to the European Convention and the Inter-American Convention, but the issue of torture is considered at the same level as other human rights violations. Torture is addressed primarily in the African Charter on Human and Peoples' Rights adopted by the Organization of African Unity (OAU) on 27 June 1981 and entered into force on 21 October 1986. Article 5 of the Charter states: “Everyone has the right to respect for the inherent dignity of the human person and to the recognition of his or her legal status. It prohibits all forms of exploitation and humiliation of the human being, in particular slavery, the slave trade, torture and cruel, inhuman or degrading treatment or punishment "[1269].

Pursuant to Article 30 of the African Charter, the African Commission on Human and Peoples' Rights was established in June 1987 with the mandate to “promote and ensure the protection of human and peoples' rights in Africa ”. At its periodic meetings, the Committee has issued several country-specific resolutions on issues related to human rights in Africa, some of which have addressed torture among other violations. In some of its country-specific resolutions, the Committee has expressed concern about the deteriorating human rights situation, including the practice of torture.

The Commission has established new mechanisms such as the Special Rapporteur on Prisons, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on women's issues, and has mandated these rapporteurs to report to the public sessions of the Commission.

These mechanisms have provided opportunities for victims and NGOs to send information directly to the Special Rapporteurs. At the same time, the victim or the NGO concerned can complain to the Committee about the acts of torture defined in Article 5 of the African Charter. In cases where an individual complaint is under consideration by the Committee, the same

([1269]) Organization of African Unity, (document CAB/LEG/67/3, Rev. 5, 21.) International Legal Materials, 58 (1982).

information may also be sent by the victim or the NGO to the Special Rapporteurs for inclusion in their public reports to the sessions of the Committee. In order to create a body to adjudicate claims of violation of rights guaranteed by the African Charter, in June 1998 the OAU adopted a protocol establishing an African Court on Human and Peoples' Rights.

For the ICC, the Rome Statute adopted on 17 July 1998 established the Permanent International Criminal Court to prosecute individuals responsible for acts of genocide, crimes against humanity and war crimes (9/183). CONF/A).

This Court has jurisdiction to hear cases of alleged occurrence of torture, either as part of the crime of genocide or as a crime against humanity, if torture is part of a widespread or systematic attack, or as a war crime under the Geneva Conventions of 1949. Torture is defined in the Rome Statute as the intentional infliction of severe pain or suffering, whether physical or mental, on a person in the custody or control of the accused. As of September 25, 2000, the Rome Statute of the International Criminal Court had been signed by 113 countries and ratified by 21.

The seat of the Court shall be The Hague. The jurisdiction of the Court shall be limited to cases in which the States concerned are unable or unwilling to prosecute individuals responsible for the crimes designated by the Rome Statute.

In Egypt, Article 55 of the Constitution guarantees the safety of the body in the face of criminal proceedings, stipulating that: "Anyone who is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves his dignity. He may not be tortured, intimidated, coerced, or physically or morally harmed. His detention or imprisonment shall only be in places designated for that purpose as humanly and healthily appropriate. The state is committed to providing means of access for persons with disabilities.

The violation of any of this is a crime punishable in accordance with the law.

The accused has the right to remain silent. Every statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable."

The Egyptian legislator stipulated in Article 126 of the Penal Code that the penalty of rigorous imprisonment or imprisonment from three to ten years shall be imposed on every public official or employee who ordered the torture of an accused person or did so himself to force him to confess, and he shall be punished by the penalty prescribed for intentional killing if the accused dies.

Elements of the crime of ordering an employee or public servant to torture an accused person to make him confess

The establishment of that crime requires a material element, which is the act of torture, and the availability of a special characteristic in the perpetrator, which is to be an employee or public servant, and a special characteristic in the victim, who is the accused, as well as the moral element or criminal intent.

The capacity of the perpetrator

Article 126 of the Penal Code stipulates that: “Every public official or employee... »It follows that for the crime to be investigated, a special characteristic of the perpetrator is that he must be an official or a public employee.

Article 119 of the Penal Code stipulates that: “A public official means, in the terms of this Part:

Those responsible for the public authority and those working in the state and local administration units.

Heads and members of councils, units, popular organizations and others who have a general representative capacity, whether they are elected or appointed.

Members of the armed forces.

Whoever is delegated by a public authority to carry out a specific work, within the limits of the work delegated therein.

Chairmen and members of boards of directors, directors and other employees of entities whose funds are considered public property in accordance with the preceding article.

Whoever performs a work that is carried out in the public service on the basis of an assignment issued to him in accordance with the laws or by a public official within the provisions of the preceding paragraphs, whenever he owns such assignment in accordance with the prescribed laws or systems, in relation to the work that is assigned.

It is the same if the job or service is permanent or temporary, with or without pay, voluntarily or forcibly.

The termination of service or the loss of capacity shall not preclude the application of the provisions of this Part whenever the work occurs during the service or the availability of the capacity."

The Court of Cassation ruled that: [What is meant by a public official is a person who is granted some degree of public authority permanently or temporarily or is granted this status by laws and regulations][1270] .

It also ruled that: [It is established that a public official is the one who is entrusted with permanent work in the service of a public facility managed by the state or a person of public law, by holding a position that falls within the administrative organization of that facility][1271] .

The status of public official in this crime is closely related to his exercise of the authority of his job. It is not imagined that the public official or employee is unrelated to the conduct of the proceedings in the criminal case or in proving it. The crime is often committed by judicial officers or their aides and assistants.

([1270]) Appeal No. 24651 of 69 S issued at the session of February 11, 2002 and published in the book of the Technical Office No. 53, page No. 280, rule No. 51.

([1271]) Appeal No. 8249 of 67 S issued at the session of June 2, 2005, Appeal No. 14807 of 65 S issued at the session of February 3, 2005 (unpublished), Appeal No. 2616 of 66 S issued at the session of January 2, 2005, Appeal No. 9615 of 65 S issued at the session of January 15, 2004, Appeal No. 13563 of 62 S issued at the session of February 7, 2002 and published in the book of the Technical Office No. 53 page No. 265 rule No. 48, Appeal No. 14376 of 64 S issued at the 25th session of October 2000 and published in Technical Office Letter No. 51 Page 667 Rule No. 132, Appeal No. 12898 of 64 S issued at the 14th session of June 2000 and published in Technical Office Letter No. 51 Page 507 Rule No. 99, Appeal No. 608 of 60 S issued at the 5th session of January 1997 and published in the first part of Technical Office Letter No. 48 Page 19 Rule No. 2, Appeal No. 5486 of 62 S issued at the 1st session of February 1995 and published In the first part of Technical Office Letter No. 46 Page No. 291 Rule No. 41, Appeal No. 21484 of 59 S issued at the session of 21 May 1992 and published in the first part of Technical Office Letter No. 43 Page No. 548 Rule No. 80, Appeal No. 8951 of 59 S issued at the session of 29 March 1992 and published in the first part of Technical Office Letter No. 43 Page No. 344 Rule No. 48, Appeal No. 7193 For the year 60 S issued in the session of October 10, 1991 and published in the first part of the Technical Office book No. 42 Page 981 Rule No. 135, Appeal No. 16077 of 59 S issued in the session of January 17, 1991 and published in the first part of the Technical Office book No. 42 Page 98 Rule No. 13, Appeal No. 1201 of 59 S issued in the session of June 1, 1989 and published in the first part of the Technical Office book No. 40 Page 602 Rule No. 101, Appeal No. 2814 of 56 S issued in the session of October 9, 1986 and published in the first part of Technical Office Letter No. 37 Page No. 723 Rule No. 137, Appeal No. 2506 of 53 s issued at the session of January 11, 1984 and published in Part I of Technical Office Letter No. 35 Page No. 39 Rule No. 6, Appeal No. 2125 of 50 s issued at the session of February 9, 1981 and published in Part I of Technical Office Letter No. 32 Page No. 147 Rule No. 21, Appeal No. 1601 of 45 s issued at the session of February 2, 1976 and published in Part I of Technical Office Letter No. 27 Page No. 152 Rule No. 30, Appeal No. 1813 of 35 s issued at the session of February 15, 1966 and published in Part I of Technical Office Letter No. 17 Page 152 Rule No. 27.

Accordingly, anyone who works in the name of the authority and for its account, regardless of the name given to him, is considered a public official. The term public official or public employee is used for anyone who occupies a position that derives its authority from the state without regard to the type of work he performs. Therefore, it includes mayors, sheikhs, guards, and their sheikhs, as well as policemen from their lowest to highest ranks.

It is sufficient for the crime to have the status of public official or public employee in the perpetrator and to have the authority under his public function to allow him to torture the accused, and it is not required for it to be the competence of the employee to conduct inference or investigation regarding the criminal incident, but it may not have the legal powers to interrogate the accused or question him. The Court of Cassation ruled that: [It is decided that it is not required to apply the text of Article 126 of the Penal Code, that the public official who tortured the accused to get him to confess is competent to the procedures of inference or investigation regarding the criminal incident committed by the accused or his suspicion of committing or participating in it, but it is sufficient for the public official to have an authority under his public function that allows him to torture the accused to get him to confess and whatever the motive to do so][1272] .

Article 1 of the Code of Conduct for Law Enforcement Officials states: "... (a) "law enforcement officials" includes all law enforcement officials who exercise police powers, in particular powers of arrest or detention, whether appointed or elected;

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of "law enforcement officials" shall be deemed to include personnel of those services... "[1273].

Capacity of the victim

In the application of Article 126 of the Penal Code, the accused means anyone who has been accused of committing a specific crime. In this regard, the Court of Cassation ruled that: [It is established that the accused in the provision of the first paragraph of Article 126 of the Penal Code is everyone who has been accused of committing a specific crime, even if this is during the task of judicial officers to search for crimes and their perpetrators and collect the evidence necessary for investigation and lawsuit under Articles 21 and 29 of the Code of Criminal Procedure, as long as there is suspicion that he is involved in committing the crime in which these officers collect evidence][1274] .

The material element of the crime

The material element of the crime under study is achieved by committing the act of torture, and the Penal Code does not provide a specific definition of the act of torture, and Article 55 of the Constitution stipulates that: "Whoever is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves his dignity, and it is not permissible to torture, intimidate, coerce, or harm him physically or morally, and his detention or imprisonment shall only be in places designated for this purpose in a humane and healthy manner, and the state is obligated to provide the means available to persons with disabilities... "..

([1272]) Appeal No. 5732 of 63 S issued at the session of March 8, 1995 and published in the first part of the book of the Technical Office No. 46 page No. 488 rule No. 75.

([1273]) Adopted and made public by United Nations General Assembly resolution 34/169 of 17 December 1979.

([1274]) Appeal No. 36562 of 73 S issued at the session of February 17, 2004 and published in the Technical Office letter No. 55, page No. 164, rule No. 19, appeal No. 5732 of 63 S issued at the session of March 8, 1995 and published in the first part of the Technical Office letter No. 46, page No. 488, rule No. 75, appeal No. 1314 of 36 S issued at the session of November 28, 1966 and published in the third part of the Technical Office letter No. 17, page No. 1161, rule No. 219.

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: “1. For the purposes of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of a public official for such purposes as obtaining from that person or another person information or a confession, punishing him for an act he has or is suspected of having committed, intimidating him or intimidating other persons. To the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners, torture shall not include pain or suffering arising solely from, inherent in or incidental to lawful sanctions.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment "..

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: “1. For the purposes of this Convention, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This does not include pain or suffering arising solely from, inherent in, or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation that contains or may contain provisions of wider application[1275].

The American Convention to Prevent and Punish Torture, in its article 2, defines the act of torture as: "For the purposes of this Convention, torture is understood as an act committed intentionally to inflict physical or mental pain or suffering on any person for the purposes of criminal investigation as a means of intimidation, as a personal punishment, as a preventive measure, or for any other purpose. Torture is also understood as the use of means intended to obliterate the personality of the victim, or to impair his physical or mental abilities, even if they do not cause physical or mental pain.

The concept of torture does not include physical or mental pain or suffering that is inherent in or the effects of legal proceedings, provided that it does not include the commission of acts or the use of means referred to in[1276] this article.

The Court of Cassation ruled that the law did not define physical torture not require it to have a certain degree of gravity and need not lead to injury to the victim, and it is up to the discretion of the trial court to deduce it from the circumstances of the case [1277].

([1275]) Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force: 26 June 1987, in accordance with the provisions of article 27 of the Convention, approved by Presidential Decree No. 154 of 1986 and published in the Official Gazette by the decision of the Minister of Foreign Affairs published in the first issue of the Official Gazette on 7 January 1988.

([1276]) Organization of American States - Treaty Series No. 67 entered into force on February 28, 1987.

([1277]) Appeal No. 71 of 71 S issued at the session of October 9, 2008 and published in the letter of the Technical Office No. 59 page No. 406 rule No. 74, Appeal No. 44223 of 73 S issued at the session of April 4, 2004 (unpublished), Appeal No. 20640 of 67 S issued at the session of March 25, 2007 and published in the letter of the Technical Office No. 58 page No. 311 rule No. 59, Appeal No. 15220 of 75 S issued at the session of December 28, 2007 2005 and published in Technical Office Letter No. 56 Page 844 Rule No. 114, Appeal No. 16258 of 66 S issued at the session of July 2, 1998 and published in Part I of Technical Office Letter No. 49 Page 833 Rule No. 107, Appeal No. 11872 of 66 S issued at the session of June 1, 1998 and published in Part I of Technical Office Letter No. 49 Page 752 Rule No. 99, Appeal No. 13081 of 65 S issued at the session of September 18, 1997 and published in Part I of Technical Office Letter No. 48 Page 880 Rule No. 133, Appeal No. 18953 of 64 S issued at the 9th session of October 1996 and published in Part I of Technical Office Book No. 47 Page 951 Rule No. 137, Appeal No.

It is clear from this that torture is the assault or harm to the accused, whether this assault or harm is physical or psychological, so the physical pain is equal to the psychological pain, and this is evident from the constitutional legislator's statement "... Physically or morally harming him... " The legislator has equated physical or moral abuse.

The text of Article 126 of the Penal Code also contains the word torture devoid of any descriptions, and it follows that the legislator did not differentiate in the type of torture or abuse, whether physical or moral, so the legislator criminalized any form of influence on the accused, whether material or moral.

It is not required that torture lead to injury to the victim, so the Court of Cassation ruled that: [The law did not require the elements of the crime of torture for the accused to be present in order to get him to confess stipulated in Article 126 of the Penal Code, that torture has led to injury to the victim, just to bend his hands behind his back and hang him in a pinnacle with his head down - which was proven by the judgment against the appellant from the statements of the victim's wife - is considered torture, even if it does not result in injuries][1278] .

It is also not required that the perpetrator - the employee - carry out the act of torture himself. The legislator, in Article 126 of the Penal Code, suffices in the material element of the crime to order torture, without actually requiring the occurrence of torture. Torture means that the superior positively or negatively discloses his binding will to the subordinate to exert physical or moral violence on an accused person to force him to confess.

Forms of the torture order

The order to torture may be positive or negative.

Positive order for torture

This is achieved by the boss ordering his subordinates to torture the accused to obtain a confession, and the matter does not have a fixed formula. He does any formula and, in any language, whether the formula is explicit in its words, such as the boss telling the subordinate to beat or torture him to obtain a confession, or subjecting him to any kind of pressure until he confesses. The formula can be implicit, such as the president saying to his subordinates, "Do the necessary," and this phrase is familiar to them, and it can be in the form of a signal from the president to the subordinate, such as nodding, shaking the head, or knocking on the table, for example, as long as this signal is recognized among them, the order of torture is valid as a statement and a hint.

The torture order does not require that this order specify the type of torture required, the method of practicing it, its place, or its duration, and it is equal that the order is issued from the superior to the next subordinate in the hierarchy or to other subordinates without taking into account the hierarchy.

The positive order of torture is not imagined to be in a written form, as it is unreasonable for the president to issue a written order to his subordinates to torture the accused, because that writing will be tangible physical evidence of the crime of ordering torture, and it is also inconceivable in light of the criminalization of torture internationally and regionally that any

---

2524 of 59 S issued at the 9th session of November 1989 and published in Part I of Technical Office Book No. 40 Page 904 Rule No. 150, Appeal No. 218 of 39 S issued at the 9th session of June 1969 and published in Part II of Technical Office Book No. 20 Page 853 Rule No. 171, Appeal No. 1314 of 36 S issued at the 28th session of November 1966 and published in Part III of Technical Office Book No. 17 Page 1161 Rule No. 219, Appeal No. 717 of 29 S issued at the 23rd session of June 1959 and published in Part II of Technical Office Book No. 10 Page 688 Rule No. 153.

([1278]) Appeal No. 3351 of 56 S issued at the session of November 5, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 827 rule No. 160.

president would violate legitimacy in such a way, as torture is often an individual verbal order issued to subordinates to act in the light of this order.

The crime against the president does not arise in the event of his subsequent approval of the act of torture, and the example of this case is that the subordinate tortures the accused and obtains from him the required confession, and after the torture is completed, the matter is presented to the president who approves this act, and therefore his approval is a subsequent approval, this approval is not carried out by the crime of ordering torture because it is like consent and approval of what was done, but it is not suitable to be an order or permission to torture as it is subsequent to the completion of the crime, the perpetrator here is the subordinate without the president..

The crime is achieved by merely ordering or authorizing torture and does not require torture to actually occur. The mere order of torture is a criminal act. Therefore, if the superior orders the subordinate to torture an accused, but the subordinate for one reason or another does not torture the accused, the crime of ordering torture becomes existing, due to the completion of his criminal activity of disclosing his will to torture the accused.

Negative order to torture

The negative order of torture is achieved in the event of non-interference by the president to prevent his subordinates from torturing the accused, which constitutes an abstention from an act imposed by law, by taking a negative position, by not issuing orders to his subordinates to stop torturing the accused. In this case, it is assumed that the president saw the accused being tortured, so he preferred this measure and did not order the cessation of torture. The crime is also achieved in the event that torture is not witnessed, due to the knowledge of the president that there is an accused being tortured to obtain a confession from him, whether this knowledge is through the president himself, such as hearing the voices of distress issued by the accused in the event of torture or hearing the sounds of screaming resulting from torture, or his knowledge through a complaint from the accused, his agent or his family.

Therefore, for the perpetrator to be questioned about his negative order of torture, two conditions are stipulated:

The first condition: The existence of a legal duty to do a certain job and refrain from doing this duty, and in this crime, the legal duty imposed on the president is the duty to preserve the accused, his dignity and safety, and to refrain from harming him materially or morally, according to the legislative and constitutional texts that determine the right of the citizen who is arrested to be treated in a manner that preserves his dignity and does not harm him. This legal duty imposed by the Constitution in Article No. 55, and determined by international conventions, is a duty that goes to every authority who deals with the accused in the stages of accusation and trial, as long as he is entrusted with the implementation of a procedure of investigation, trial or execution, during which it is imagined that the accused will be subjected to material or moral coercion, and the official in charge of preventing these pressures refuses to prevent them for his approval and approval. This refusal was tant to carry out a negative order of torture.

The second condition: The ability to carry out this duty, by having the necessary will to abstain, in the sense that there is a causal relationship between the will and the negative behavior taken by the abstainer, and when this abstention is stripped of the voluntary capacity, the description of abstention does not apply to him.

Therefore, in order for the crime of the negative order of torture to be realized, the president - the perpetrator of the crime - must have a free will that makes him refrain from freedom and choice in preventing this torture with the ability to prevent it, but refrain from the compatibility of the torture that is carried out with his will to practice this torture to obtain a confession.

Criminal Intent

Establishment of Criminal Intent

Criminal intent is achieved whenever the employee or public employee tortures an accused person to make him confess and it is not a matter for him to do so. Extracting the availability of this intent is within the discretionary power of the trial court without any control over it from the Court of Cassation when it is properly extracted from the case papers. The Court of Cassation ruled that: [It is decided that the criminal intent required in the crime stipulated in Article 126 of the Penal Code, is achieved whenever the employee or public employee tortures an accused person to make him confess, whatever the motive. The availability of this intent was what falls within the discretionary power of the trial court, which distances itself from the control of the Court of Cassation, when its extraction is properly derived from the lawsuit papers, and the judgment responded to the plea made by the appellants regarding the absence of criminal intent and dismissal based on what the court invoked for justifiable reasons from the circumstances surrounding the incident, and the evidence derived from the statements of the evidence witnesses, and what the second accused decided in the investigations of the Public Prosecution that an infringement occurred on the victim, and that the attack was not intended to harm him, but exceeded their activity in the attack on the victim to force him to confess to the crime for which he was accused, and then the judgment indicates the availability of the criminal intent for the crime stipulated in Article 126 of the Penal Code against the appellants][1279] .

Confession Not Required

The criminal intent is achieved in the crime of torturing an accused person with the intention of obtaining a confession to commit the act of torture, and it is not required for it to be fully realized. The Court of Cassation ruled that: [It is established that the application of the provision of Article 126 of the Penal Code does not require a confession to be actually obtained, but it is sufficient - according to its explicit text - that the torture of the accused occurs with the intention of getting him to confess][1280].

Causal Relationship

In order for the crime to be investigated, a causal relationship is required between the accused's act and the result of the torture. The Court of Cassation ruled that: [Since the causal relationship in the criminal articles is a material relationship that begins with the act committed by the perpetrator and is morally linked to what he must expect from the usual results of his act if he deliberately comes to it. This relationship is an objective issue that the trial judge alone assesses and when he decides on it as evidence or denial, the Court of Cassation has no control over him as long as he has based his judiciary on reasons leading to his conclusion. Whereas the judgment has established the existence of a causal relationship between the acts of torture committed by the appellant and the result of these acts, which is the death of the victim, in saying: "Since the court considers that there is a causal relationship between the act of torture committed by the accused against the victim and the result of this torture, which is the death of the victim by drowning, the provision of the second paragraph of Article 126 of the Penal Code is based on and applies to the facts of the case, as the act of torture committed by the accused against the victim since the beginning of the acts of torture By beating and dropping into contaminated water with the threat of being thrown into the sea and what led to

([1279]) Appeal No. 5732 of 63 s issued at the session of March 8, 1995 and published in the first part of the technical office book No. 46 page No. 488 rule No. 75, Appeal No. 2460 of 49 s issued at the session of November 13, 1980 and published in the first part of the technical office book No. 31 page No. 979 rule No. 190.

([1280]) Appeal No. 5732 of 63 s issued at the session of March 8, 1995 and published in the first part of the Technical Office letter No. 46 page No. 488 rule No. 75, Appeal No. 1314 of 36 s issued at the session of November 28, 1966 and published in the third part of the Technical Office letter No. 17 page No. 1161 rule No. 219.

this with the continuation of the assault in that form on a small boy and pushing him to the edge of the water pavement in an attempt to lower him again. The victim was previously harmed by the previous one. All of this entails that the victim tries to get rid of the grip of the accused by pulling him. It also entails the accused to push him to try to lower the victim into the water or even threaten him while he is not sure that the victim is good at swimming. All of this took place in a spot On the side of the pavement, it was narrowed by the presence of oil pipes extending along it. This sequence, which ended with the victim falling into the sea water and is related to the defendant's belt and then drowning and death, is considered normal and familiar in life and current with the usual turn of things and did not involve an abnormal factor unlike the cosmic year. Therefore, it is not accepted and not heard from the defendant that he did not expect that the last result, which is the death of the victim by drowning," which is a justifiable pampering that leads to the outcome of the judgment and is in accordance with the law. What the appellant mourns in this regard is not correct, as well as The absence of his interest in this immunity because the penalty imposed by the sentence, which is imprisonment for five years, falls within the scope of the penalty prescribed for the crime of torturing a defendant to force him to confess the circumstances of the death of the victim stipulated in the first paragraph of Article 126 of the Penal Code][1281].

The Perpetrator’s Right to Claim Exemption from Criminal Responsibility for Carrying Out an Order Issued by a Superior

Article 63 of the Penal Code stipulates that: "There shall be no crime if the act is committed by a princely employee in the following cases:

If he commits the act in execution of an order issued to him by a superior who is obliged to obey him or believes that he is obliged to do so.

If he has good faith and commits an act in implementation of what is ordered by the laws or what he believes his action is within his competence.

In any case, the employee must prove that he did not commit the act until after verification and investigation and that he believed that it was legitimate and that his belief was based on reasonable grounds.

The text of Article 63 of the Penal Code to authorize the act of a public official assumes the issuance of an illegal order by a superior who has the authority to direct the order to him and the employee undertakes this act, believing that it is a legitimate act or that obeying his superior in this act is obligatory.

Three conditions are required for the employee to benefit from the permissibility of his criminal act:

Condition 1: Employee Goodwill

The employee must mistakenly believe that the act he commits is legitimate, and therefore there is no good faith if the employee knows that the law punishes the act he commits. In this regard, the Court of Cassation ruled that: [It is established that obedience to the president does not extend in any way to the commission of crimes and that a subordinate does not have to obey the order issued to him by his superior to commit an act that he knows is punishable by law] . [1282].

([1281]) Appeal No. 2460 of 49 S issued at the session of November 13, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 979 rule No. 190.

([1282]) Appeal No. 48600 of 85 S issued at the session of December 21, 2016 (unpublished), Appeal No. 14934 of 83 S issued at the session of February 4, 2014 and published in the Technical Office's letter No. 65 page No. 48, Appeal No. 51824 of 75 S issued at the session of April 20, 2008, Appeal No. 24823 of 69 S issued at the session of May 15, 2000, Appeal No. 5002 of 5

It is inconceivable that the employee believes - in good faith - in the legality of ordering torture or actually practicing torture. In addition, ordering or practicing torture is a stipulated crime; therefore, no one is accepted to plead ignorance of the law pursuant to the rule that ignorance of the Penal Code is not an excuse, a fortiori the employee or judicial officer who ordered or practiced torture himself.

Accordingly, the employee or judicial officer who orders torture or who practises it shall not be exempted from punishment in accordance with the text of Article 63 of the Penal Code, due to the absence of the two exemption conditions contained in the text.

Condition 2: Verification and investigation

The permissibility of the work of the public official when executing the order of his superior must prove - in addition to the availability of his good faith - that he did not commit the act until after verifying and investigating its legitimacy, and the burden of proving this falls on him, and in that the Court of Cassation ruled that: [Article 63 of the Penal Code in its first paragraph applies only if it is proven that an order was issued by a superior who must be obeyed - and the employee's belief in the issuance of the order does not replace the fact that it was actually issued and the confirmation of the issuance of the order is indispensable for the availability of good faith][1283] .

This is achieved by the employee doing everything possible to verify the legality of the act before it is committed, that is, in order to verify that the act is within his competence or that the order issued to him by his superior is not defective.

There is no doubt that the act of torture does not need to make an effort to verify its illegality.

Condition 3: The belief in the legality of the act must be based on reasonable grounds

Third, in order for the employee's act to be permissible, his belief in the legitimacy of the act he committed must be based on reasonable grounds, and the criterion for the availability of this condition is the normal employee's criterion if it is placed in the same circumstances, circumstances and factors that surrounded the accused employee. [1284].

In application of the foregoing, the employee or the judicial officer who orders torture or who practices it shall not be exempted from punishment in accordance with the text of Article 63 of the Penal Code, due to the absence of the conditions for exemption contained in the text of Article.

S issued at the session of February 25, 2016 and published in the Office's letter Technical No. 67 Page No. 260 Rule No. 31, Appeal No. 24012 of 74 S issued at the session of December 4, 2004 and published in the Technical Office's letter No. 55 Page No. 772 Rule No. 118, Appeal No. 5732 of 63 S issued at the session of March 8, 1995 and published in the first part of the Technical Office's letter No. 46 Page No. 488 Rule No. 75, Appeal No. 6860 of 59 S issued at the session of February 16, 1993 and published in the first part of the Technical Office's letter No. 44 Page No. 187 Rule No. 22, Appeal No. 6533 of the year 52 s issued at the session of March 24, 1983 and published in the first part of the Technical Office book No. 34 page 432 rule No. 88, Appeal No. 927 of the year 44 s issued at the session of October 13, 1974 and published in the first part of the Technical Office book No. 25 page No. 674 rule No. 145, Appeal No. 95 of the year 42 s issued at the session of March 13, 1972 and published in the first part of the Technical Office book No. 23 page No. 388 rule No. 86, Appeal No. 1913 of the year 38 s issued at the session of January 6, 1969 and published in the first part of the Technical Office book No. 20 page No. 24 rule No. 6, Appeal No. 360 of the year 31 s issued at the session of May 29, 1961 and published in the second part of the Technical Office book No. 12 page No. 628 rule No. 120.

([1283]) Appeal No. 1412 of 26 S issued at the session of January 28, 1957 and published in the first part of the book of the Technical Office No. 8 page No. 76 rule No. 22.

([1284]) Penal Code - General Theory; Dr. Abdel Fattah Mustafa Al-Saifi; Professor of Criminal Law, Faculty of Law, Alexandria University; Dar Al-Huda Publications; page 513.

The Permissibility of Self-Defense Against Acts of Torture

Article 246 of the Penal Code stipulates that: "The right of legitimate self-defense shall be permissible for a person except in the exceptional cases indicated after the use of the necessary force to defend any act considered a crime against the person stipulated in this law.

The right of legitimate defense of property allows the use of force to respond to any act that is considered a crime stipulated in Parts Two, Eight, Thirteen and Fourteen of this book and in paragraph 4 of Article 379.

As a general rule, in order for the right of legitimate defense to arise, the act of aggression that led to its response and resistance must meet two conditions:

First: The assault must be an act that is considered a crime against self or property.

Second: The assault must be immediate or imminent.

As for the condition that the assault is considered a crime against oneself, jurisprudence has unanimously agreed that the act of assault should be unlawful, that the assault or its danger should be considered a crime. If the assault is not considered a crime, then the right of legitimate defense does not exist.

There is a characteristic of assault on the act committed by the torturer, as the act of torture committed against the accused constitutes an existing crime stipulated in Article 126 of the Penal Code. Therefore, if the accused, who is subjected to torture, repudiates the assault inflicted on him by the torturer, he shall not be punished because he used a legally prescribed right to defend himself against the acts of the aggressor, which may constitute a crime against himself.

It is inconceivable that the accused - who is subjected to torture - should invoke the possibility of resorting in a timely manner to the protection of public authority in accordance with the text of Article 247 of the Penal Code, which stipulates that: "This right does not exist when it is possible to rely in a timely manner on the protection of the men of public authority," because the act of aggression against him is an act of the men of public authority themselves and it is not conceivable that the accused - the victim - will take refuge with the perpetrator of torture.

The defendant - who is subjected to torture - is also not subject to the provisions of Article 248 of the Penal Code, which prohibits the use of the right of legitimate defense to resist a judicial police officer, which stipulates that: "The right of legitimate defense does not allow the resistance of one of the police officers while carrying out an order based on the duties of his job with good faith, even if this officer exceeds the limits of his job, unless it is feared that his actions will result in death or severe injuries and this fear has a reasonable reason."

The principle is that it is not permissible to use the legitimate defense against the judicial officer, even if he exceeds the limits of his job, but this is limited by the availability of two conditions:

First: The good faith of the judicial officer, as the officer must believe in the legality of the work he performs;

Second: He should not fear that his act will result in death or serious injuries if this fear has a reasonable cause.

The crime of ordering the torture of the accused to make him confess cannot meet these two conditions, as torture or ordering it is not a duty of the job. On the contrary, it is the job of the judicial officers to protect the citizen from any attack in implementation of the requirements of his job. The employee's order to torture the accused to make him confess or actually torture him does not come from good faith. Therefore, the accused - the victim - may use force and defend

himself to defend this crime, even if he is not afraid of the actions of the man of power to cause death or severe injuries.

The Aggravated Form of the Crime

The aggravated form of the crime of ordering torture is achieved to obtain the confession of the accused if the victim dies, and the intent to kill is not required to punish the aggravated form of the crime. The origin is that the perpetrator intended only to coerce the accused to confess, not his death, but another result was achieved that exceeded this intent to achieve the death and the killing became intentional, and the legislator did not require a specific form in the perpetrator's act in terms of cruelty, severity or harshness of execution in achieving that result, so that death occurs as a result of torture, even if it is the simplest type of torture, it is conceivable that death may occur as a result of nervous shock or as a result of surprise in the practice of torture or as a result of a sudden drop in the blood circulation due to the severity of the trauma resulting from the conduct of torture with the accused.

Criminal Penalty for Torture

The criminal legislator has set original penalties and consequential penalties for the perpetrator of torture to force the accused to confess, for each form of torture separately, so we will introduce the punishment of simple torture, followed by the punishment of torture leading to death.

Penalty for Simple Torture

The first paragraph of Article 126 of the Penal Code stipulates that: “Every public official or employee who ordered the torture of an accused person or did so himself to get him to confess shall be punished by rigorous imprisonment or imprisonment from three to ten years.”

Article 126 of the Penal Code punishes the crime of ordering the torture of an accused person to obtain a confession of aggravated imprisonment or imprisonment from three to ten years, which is a penalty that falls within the limits prescribed for the punishment of the felony, and it is up to the judge to impose the punishment of aggravated imprisonment or imprisonment, according to the circumstances of each incident presented to him.

Penalty for Torture Leading to Death

Article 126 of the Penal Code, in its second paragraph, referred to the penalty of premeditated murder for anyone who tortures the accused to death, stipulating that: «... If the victim dies, he shall be sentenced to the penalty prescribed for intentional killing. "

The Penal Code distinguishes between two types of murder, simple murder punishable by Article 234 of the Penal Code, and premeditated murder or stalking punishable by Article 230 of the same law.

The first paragraph of Article 234 of the Penal Code stipulates that: "Whoever intentionally kills a person without premeditation and without being monitored shall be punished by life imprisonment or aggravated imprisonment... ».

Article 230 of the Penal Code stipulates that: "Anyone who deliberately kills a person with premeditation or premeditation shall be punished by death."

The act of torture that led to the death of the victim does not exist in any of my circumstances. The perpetrator did not want this result. The perpetrator did not think about the crime and how to commit it calmly and deliberately and did not resolve to implement it. He did not have the opportunity to think calmly and control himself and end up determined to commit it after turning things around. Rather, the perpetrator here intended only to torture to obtain a confession, but

another unexpected and involuntary result occurred and then the killing was intentional. Nor did the circumstance of surveillance ever materialize in that crime.

Consequential punishments for torture in both forms

Any sentence for a felony entails ancillary penalties in accordance with the text of Article 25 of the Penal Code, which stipulates that: "Every sentence for a felony inevitably entails depriving the convict of the following rights and benefits:

accept any service in government directly or as an undertaker or obligor howsoever important the service may be;

hold the rank or title of Nishan;

testifying before the courts for the duration of the sentence except by way of inference;

Managing his works related to his money and property for the period of his detention and appointing a guardian for this department approved by the court. If he is not appointed by the civil court to which his place of residence belongs in its counseling room at the request of the Public Prosecution or who has an interest in this, the court may oblige the guardian to submit a bail. The values approved or established by the court shall be subordinate to it in all matters relating to his stature, and the convict may not dispose of his property except upon permission from the said civil court. Every obligation he undertakes, without taking into account the foregoing, shall be null and void of himself, and the convict's funds shall be returned to him after the expiry of his sentence or release, and he shall provide him with the values as an account of his management;

from the day he is finally sentenced, he remains a member of one of the Hassala councils, district councils, municipal or local councils, or any public committee;

Its validity is never to be a member of one of the bodies set forth in the fifth paragraph or to be an expert or witness in contracts if it is finally sentenced to life or aggravated imprisonment.

Consequential penalties shall be imposed by force of law without the need to provide for them in the operative part of the judgment of conviction.

Supplementary penalties for the perpetrator of torture

Every employee who commits a felony and is treated with clemency shall be sentenced to imprisonment, with a penalty of dismissal for a period not less than twice the period of imprisonment imposed on him. Article 27 of the Penal Code stipulates that: "Every employee who commits a felony stipulated in Title III, IV, VI and XVI of Book II of this Law shall be treated with clemency and shall be sentenced to imprisonment for a period not less than twice the period of imprisonment imposed on him."

Civil Liability for Torture

The crime as an unlawful act results in damage to an individual - the victim or the victim of the crime - that may be physical, material or moral damage, and this results in the right of the victim to compensation for this damage, and his means of doing so is the compensation lawsuit that he brings independently before the civil courts or before the criminal courts by association with the criminal lawsuit, Article No. 163 of the Civil Code stipulates that: "Every mistake that causes harm to others is obligated to compensate".

Article (220) of the Criminal Procedure Law stipulates that: "A civil lawsuit may be filed regardless of its value to compensate the damage arising before the criminal courts for consideration with the criminal lawsuit."

The provisions of civil liability in the crime of torturing the accused to make him confess do not differ from the general provisions in anything except in two matters:

First: The civil lawsuit arising from it shall not be time-barred.

Second: Establishing the responsibility of the state for compensation.

No Statute of Limitations on Civil Lawsuits Arising from Torture

Article 52 of the 2014 Constitution stipulates that: "Torture in all its forms and manifestations is a crime that is not subject to the statute of limitations."

Article 259 of the Code of Criminal Procedure affirms that the civil lawsuit arising from the crime of torturing the accused to induce him to confess to the statute of limitations shall not lapse. It reads as follows: "The civil lawsuit shall lapse by the lapse of the period prescribed in the Civil Code. However, the civil lawsuit arising from the crimes stipulated in the second paragraph of Article 15 of this law that occur after the date of its entry into force shall not lapse.

If the criminal lawsuit lapses after it is filed for one of its own reasons, this shall not affect the progress of the civil lawsuit filed with it.

Article 15 of the Code of Criminal Procedure stipulates that: «... As for the crimes stipulated in Articles 117, 126, 127, 282, 309 bis and 309 bis (a) and the crimes stipulated in Section I of Part II of Book II of the Penal Code, which occur after the date of entry into force of this Law. The criminal case arising therefrom shall not lapse with the lapse of the period. "

It is clear from the foregoing that the constitutional legislator and the ordinary legislator sensed the seriousness of the crime of torturing the accused to induce him to confess and the damage resulting from its violation of the physical and psychological integrity of the accused, so we exempted it from all types of statute of limitations and the forfeiture of the period, whether for criminal or civil proceedings.

State Civil Liability for Torture

The principle is that the convict is responsible for the crime of torturing an accused person to force him to confess to compensating the victim. Article 253 of the Code of Criminal Procedure stipulates that: “A civil lawsuit shall be filed against the accused of the crime if he is an adult, and his representative if he is incapacitated. If he does not have a representative, the court shall appoint a representative in accordance with the preceding article.

Civil lawsuits may also be filed against those responsible for civil rights for the act of the accused.

The Public Prosecution may intervene with those responsible for civil rights, even if there is no civil rights claimant in the lawsuit, to sentence them for the expenses due to the government.

It is not permissible before the criminal courts to file a lawsuit for security, nor to enter into the lawsuit other than the civil rights defendant, the person responsible for civil rights, and the insurer.

However, Article No. 174 of the Civil Code recognized the responsibility of the subordinate for the acts of his subordinate, which entails the civil responsibility of the state for compensating the victim as a result of the crime committed by its employees, stipulating that: «1-The subordinate shall be responsible for the damage caused by his subordinate by his illegal work, whenever it is committed by him in the event of performing his job or because of it.

2. The bond of subordination exists, even if the subordinate is not free to choose his subordinate, whenever he has authority over him, he must control him and direct him. "

The text of Article 174 of the Civil Code determines the civil liability of the follower - the state - for the actions of its subordinates - its employees - but this is limited by the availability of two conditions, namely:

First: Establishing a relationship of subordination between the subordinate and the subordinate, in which the Court of Cassation ruled that: [The relationship of subordination is established whenever there is guardianship in control and guidance so that the subordinate has actual authority to issue orders to the subordinate in the way he performs his work and in monitoring him in the implementation of these orders and holding him accountable for deviating from them][1285] .

It also ruled that: [The Rapporteur - in the Court of Cassation's judiciary - that the Civil Code, as stipulated in Article 174 thereof, stipulates that (1) the follower shall be responsible for the damage caused by his subordinate to his illegal work whenever it is committed by him in the event of performing his job or because of it. (2) The association of subordination, even if the subordinate is not free to choose his subordinate whenever he has actual authority to control and direct him, and he has based this responsibility on a presumed error on the part of the subordinate assuming that the opposite is not acceptable to prove due to his poor choice of his subordinate and his failure to control him, and that the law specifies that the scope of this responsibility is that the wrongful harmful act is committed by the subordinate in the event of performing the job or because of it, he did not intend that the responsibility be limited to the fault of the subordinate, and that the job is the direct cause of this error, or that it is necessary for it to occur, but the responsibility is also realized whenever the subordinate's act occurred from him during the performance of the job or whenever he took advantage of his job or this job helped him to perform his wrongful act or prepared him in any way that he had the opportunity to commit, whether committed by the subordinate to the interest of the subordinate or by a personal motive, and whether the motive paid to him was related to the job or not, and whether the error occurred with the knowledge of the subordinate or without his knowledge [1286].

The second is that the illegal act was committed by the subordinate during and because of the service;

Hence, the victim of the crimes of torture and coercion has the right to obtain a confession to claim compensation from the administration for the damage he suffered based on the foregoing. The Court of Cassation has settled on this, and the Court of Cassation ruled that: [Decision in - the Court of Cassation - that while the administration is responsible with the employee before the victim for the compensation due to him for the damage he suffers due to the error committed by this employee on the basis of the responsibility of the follower for the actions of the subordinate stipulated in Article 174 of the Civil Code, whether this error is attached or personal, but according to what is stipulated in Article 78 of the State Civil Servants Law No. 47 of 1978 in its last paragraph and Article 47/3 of Law No. 109 of 1971 regarding the Police Authority and as disclosed in the explanatory memorandum to this latter law, this employee shall not be liable for compensation unless the error committed by him personally][1287] .

([1285]) Appeal No. 12205 of 84 S issued at the session of November 20, 2016 (unpublished), Appeal No. 3608 of 71 S issued at the session of December 25, 2002 and published in Part II of Technical Office Letter No. 53, page No. 1278, rule No. 245, Appeal No. 1974 of 70 S issued at the session of December 13, 2001 and published in Part II of Technical Office Letter No. 52, page No. 1302, rule No. 253, Appeal No. 2922 of 58 S issued at the session of June 28, 1990 and published in Part II of Technical Office Letter No. 41, page No. 394, rule No. 239.

([1286]) Appeal No. 10820 of 75 S issued at the 24th session of November 2011 (unpublished).

([1287]) Appeals No. 8014, 8722 of 79 BC issued at the session of March 20, 2012 and published in the book of the Technical Office No. 63 page No. 455 rule No. 70.

Confrontation of the accused with litigants and witnesses

The investigator must conduct the investigation against the litigants who want to attend, namely the accused, the victim, the civil rights plaintiff, the person responsible for them and their agents. The prosecution is considered in relation to the investigation conducted by the investigating judge when he conducts a supplementary investigation among the litigants who are entitled to attend the investigation [1288].

If the investigation requires that the accused be presented to the victim or a witness for identification, the investigating member of the prosecution must take the necessary precaution so that the presentation process is not subject to any challenge, including not enabling the victim or witness to see the accused before being presented to him and avoiding the issuance of any phrase, movement or signal that may facilitate his identification, and proving the names of those who were used in the presentation process in the record, indicating the age of each of them, his place of residence and his clothes. It is better for these to be at the age and shape of the accused as much as possible, and it is better to start among other persons and present it to the victim or witness, and this is followed in every identification process conducted by the prosecution in order to be subject to trust and consideration[1289].

If a foreigner claims during his trial in one of the crimes committed in violation of the provisions of Law No. 89 of 1960 regarding the entry and residence of foreigners in the territory of the Arab Republic of Egypt and exit from it that he enjoys the nationality of the Arab Republic of Egypt, based on papers that are not legally valid to prove a claim, the member of the prosecution shall be careful to declare the record of the seizure of the incident in the special case as a witness before the court to show what helps to assess the validity of the documents submitted to it, in order to ensure the integrity of the judgment issued in it[1290].

The right of the arrested foreign accused to notify the consular mission of his state

The arrested foreign defendant must be informed that he has the right to notify the consular mission of his state. If he wishes to do so, he must respond to his request without delay, with permission to meet with the consul of his state or authorize the consul to visit him in prison in accordance with the rules prescribed in this regard, and within the limits permitted by the circumstances of the investigation and the requirements of the public interest. All these procedures shall be recorded in the investigation report [1291].

Prosecutors may not communicate directly with missions of political and consular representation in Egypt, and that communication shall be through the Technical Office of the Attorney General, which informs these bodies with the knowledge of the Ministry of Foreign Affairs [1292].

Prosecutors must also take care of investigating cases in which foreigners are accused and dispose of them expeditiously [1293].

The intention must be to detain the passports of the arrested foreign defendants and to limit this to cases imposed by the interest of the investigation and for the least possible period, such as: If the passport is the subject of a forgery crime or the use of a forged document or the proceeds of a crime[1294].

([1288]) Article 223 of the Judicial Instructions of the Public Prosecution.
([1289]) Article 235 of the Judicial Instructions of the Public Prosecution.
([1290]) Article 1391 of the Judicial Instructions of the Public Prosecution.
([1291]) Article 1384 of the Judicial Instructions of the Public Prosecution.
([1292]) Article 1395 of the Judicial Instructions of the Public Prosecution.
([1293]) Article 1383 of the Judicial Instructions of the Public Prosecution.
([1294]) Article 1385 of the Judicial Instructions of the Public Prosecution.

Prosecutors must notify the Aliens Department of the Consular Department of the Ministry of Foreign Affairs - through the attorneys general of the Public Prosecutions - of all investigations they initiate into facts attributed to foreigners that do not require their pretrial detention, as well as informing the aforementioned section of the actions of the prosecution in[1295] this regard.

Prosecutors shall take into account the speed of investigation of crimes committed with or against tourists, and ensure that they are disposed of as soon as possible, in the interest of investigation and trial procedures as a result of their short stay in the country [1296].

Procedures for investigating some entities

Investigation with judicial bodies

The Public Defenders shall entrust the Chief Prosecutors to investigate the cases in which the members of the judicial bodies are accused and notify the Technical Office of the Attorney General when initiating any investigation procedure. This notification shall be accompanied by a precise and comprehensive summary report of all the facts and proceedings of the investigation [1297].

In cases other than flagrante delicto, it is not permitted to arrest a judge or a member of the Public Prosecution and remand him in custody except after obtaining permission from the Supreme Judicial Council.

In cases of flagrante delicto, the public prosecutor shall, upon the arrest and imprisonment of the judge or member of the public prosecution, submit the matter to the aforementioned council within the following twenty-four-hour period. The council may decide to either continue the imprisonment or release on bail or without bail. The judge or member of the public prosecution may request to hear his statements before the council when the matter is presented to him.

The board shall specify the period of detention in the decision issued for imprisonment or its continuation. The aforementioned procedures shall be taken into account whenever it is deemed that pretrial detention continues after the expiry of the period decided by the board.

Except for the aforementioned, it is not permissible to take any action to investigate a judge or a member of the Public Prosecution or to file a criminal case against him for a felony or a misdemeanor except with the permission of the aforementioned council and at the request of the Attorney General [1298].

The meaning of judges - and in the place of immunity and guarantees of impartiality and independence - are those who hold the reins of justice and are independent in deciding cases on objective grounds and in accordance with procedural rules that are fair in themselves to ensure full protection of the rights of those who take refuge in them, and these are defined by the Constitution and limited to the courts of the ordinary and administrative judiciary and the Supreme Constitutional Court [1299].

([1295]) Article 1387 of the Judicial Instructions of the Public Prosecution.

([1296]) Article 1388 of the Judicial Instructions of the Public Prosecution.

([1297]) Article 556 bis of the Judicial Instructions of the Public Prosecution.

([1298]) Articles No. 96 and 130 of the Judicial Authority Law, and Article No. 556 bis A of the Judicial Instructions of the Public Prosecution, Appeal No. 7994 of 75 S issued at the session of July 27, 2005.

([1299]) Appeal No. 4144 of 75 S issued at the session of February 20, 2007 (unpublished)

The Court of Cassation ruled that: [The word judge only refers to the person who actually occupies the position of judge, considering that he is a member of the judicial body, as it added a special immunity prescribed for his position and not for his person. If this capacity recedes, he becomes like any employee who has lost his job status for any reason. Therefore, the word judge cannot be referred to him. Whereas, the present lawsuit was filed after the appellant ceased to have the status of assistant to the Public Prosecution by accepting his resignation on 7/11/2002, as evidenced by the guaranteed vocabulary, its referral from the Public Prosecution to the court without the permission of the Supreme Judicial Council was carried out in accordance

The judge here means the members of the Public Prosecution, all the judges of the District and First Instance Courts, and the advisors of the Courts of Appeal and the Court of Cassation [1300].

The legislator's purpose in requiring the permission of the Supreme Judicial Council is his desire to reassure them that the performance of their job duties will not cause arbitrary measures to be taken before them, so they perform these duties without any fear, and that the basis of the permission is not the interest of the victim, but the public interest related to the proper functioning of that authority, and therefore it is of public order, so it is not permissible for those for whom these guarantees are determined to waive it [1301].

The immunity goes to the person who actually occupies the position of judge, considering that he is a member of the judicial authority, as it has added a special immunity prescribed for his position and not for his person. If this status is reduced, he becomes like any employee who has lost his job status for any reason. Therefore, the word judge cannot go to him. If the investigation procedures are started after the judge's capacity to accept his resignation has ceased, it does not need the permission of the Supreme Judicial Council [1302].

Imprisonment shall be carried out on members of judicial bodies in places separate from those designated for the detention of other prisoners [1303].

For members of the Council of State of the rank of delegate and above, all the guarantees enjoyed by the judiciary shall apply, and the body constituting the Disciplinary Council shall be the competent authority in all matters relating to this regard. [1304].

In the event of flagrante delicto, it is not permitted to arrest the member of the administrative prosecution, detain him on remand, take any investigation procedures with him, or file a criminal lawsuit against him except after obtaining permission from the competent public defender. In the event of flagrante delicto, the member of the administrative prosecution must notify the public defender to decide to imprison him or release him on bail, after consulting the opinion of the public prosecutor, after an investigation assigned to conduct by a member of the public prosecution.

The head of the administrative prosecution authority must be notified - through the technical office of the public prosecutor - when conducting an investigation, arresting a member of the administrative prosecution, or remanding him in custody. [1305].

It is not permitted to conduct a criminal investigation with a member of the State Lawsuits Authority except with the knowledge of a member of the Public Prosecution. In the event of flagrante delicto, it is not permitted to arrest a member of that authority, remand him in custody,

---

with the correct path set by law, and the appellant's claim that the referral decision is null and void of the Supreme Judicial Council's permission to file the criminal lawsuit before him because he is a misplaced member of the Public Prosecution [Appeal No. 7994 of 75 s issued at the session of 27 July 2005 (unpublished).

([1300]) Appeal No. 5468 of 82 S issued at the 14th session of April 2013 and published in the Technical Office's letter No. 64, page No. 500, rule No. 66. The Court of Cassation ruled that the same ruling applies to the assistants of the Public Prosecution. See: Appeal No. 5564 of 57 S issued at the 7th session of April 1988 and published in the first part of the Technical Office's letter No. 39, page No. 563, rule No. 86.

([1301]) Appeal No. 5468 of 82 S issued at the hearing of April 14, 2013 and published in the book of the Technical Office No. 64, page No. 500, rule No. 66.

([1302]) Appeal No. 61510 for the year 73 S issued at the session of November 20, 2005 and published in the letter of the Technical Office No. 56 page No. 612 rule No. 95.

([1303]) The fifth paragraph of Article 96 of the Judicial Authority,Article 556 bis (c) of the Judicial Instructions of the Public Prosecution.

([1304]) Article 91 of the State Council Law, and Article 556 bis (a) of the Judicial Instructions of the Public Prosecution.

([1305]) Article 40 bis 2 of Law No. 117 of 1958 on the Reorganization of the Administrative Prosecution and Disciplinary Trials in the Egyptian Region, Article 556 bis (a) of the Judicial Instructions of the Public Prosecution, and see: Appeal No. 8267 of 71 S issued at the session of November 16, 2005 and published in the letter of the Technical Office No. 56 page No. 578 rule No. 90.

or file a criminal case against him except by order of the competent public defender after consulting the opinion of the Public Prosecutor.

The head of the State Lawsuits Authority or the head of the competent branch must be notified when one of its members is arrested or imprisoned within the next twenty-four hours.

If a member of the State Lawsuits Authority, while he is present at the hearing to perform his job or because of it, violates the order of the hearing or any matter that requires him to be held criminally or disciplinaryly accountable, the chairman of the hearing shall order the writing of a memorandum of what happened and refer it to the competent public defender. The head of the branch to which the member of the aforementioned authority is affiliated shall be notified of this. In these cases, it is not permitted to arrest the member of the authority, remand him in custody, or file a criminal lawsuit against him except by order of the public prosecutor or his representative from among the assistant public prosecutors or the first public attorneys of the appellate prosecution. [1306].

The Court of Cassation ruled that: [Whereas the accused, while serving as an adviser to the State Cases Authority, is not considered a judge ... It has no jurisdiction to adjudicate in the cases of individuals, or individuals, and the state by judicial rulings that the legislator has determined the ways to challenge. Rather, the legislator entrusted him in Article 6 of Law No. 75 of 1963, as amended by Law No. 10 of 1986, regarding state cases, on behalf of the state in all its public legal persons, in cases filed by or against it in courts of various types and degrees, and in other bodies authorized by law with judicial jurisdiction. The legislator, in Article 1 of the aforementioned Law on the State Lawsuits Authority, stipulates that "the State Lawsuits Authority is an independent judicial body attached to the Minister of Justice," as the lesson here is that immunity and guarantees of impartiality and independence stipulated in the Constitution and the laws establishing these bodies are achieved. It was established from the Law of the State Lawsuits Authority that it stipulated in Article 6 bis that "it is not permissible to conduct a criminal investigation with a member of the authority except with the knowledge of a member of the Public Prosecution. In cases other than flagrante delicto, it is not permissible to arrest or imprison a member of the authority or to file a criminal lawsuit except by order of the competent public defender with notification to the authority." These guarantees mentioned by the legislator in this law are the same guarantees prescribed for lawyers in Articles 49, 50 and 54 of the Advocacy Law No. 17 of 1983. The aforementioned article also included the same restriction contained in Article 63/3 of the Code of Criminal Procedure that no criminal case may be filed against a public official and his equivalent if he commits a crime - a felony or a misdemeanor - during the performance of his job or because of it, except for the Attorney General, the Attorney General or the head of the Public Prosecution.

Hence. In the light of the foregoing, the accused is a public official, and not a member of the judicial authority entrusted by the Constitution and the law to consider and issue judgments on disputes, which is the essence of what is handled by the courts and independent judges in charge of them. Therefore, the competence of the Administrative Control Authority to investigate irregularities in its work does not diminish, as do all those mentioned in Article 4 of the Administrative Control Authority Law [1307] .

Imprisonment and custodial sentences are carried out on a member of the State Lawsuits Authority in places independent of those designated for the detention of other prisoners [1308].

([1306]) Article 6 bis 1 of the Law on the Organization of the State Lawsuits Authority, Article 556 bis (a) of the Judicial Instructions of the Public Prosecution.

([1307]) Appeal No. 4144 of 75 S issued at the session of February 20, 2007 (unpublished).

([1308]) Article 6 bis 1 of the Law Regulating the State Cases Authority.

Cases in which members of judicial bodies who are not members of the judicial authority are accused shall be sent to the office of the Assistant Attorney General accompanied by an opinion through the appellate prosecution offices, except for those related to the appellate prosecution offices headed by assistant attorneys general. As for cases in which members of the judicial authority are accused, they shall be sent - through the appellate prosecution offices - to the technical office of the Attorney General accompanied by an opinion memorandum. [1309].

Investigation of Police Personnel

Prosecutors themselves investigate all allegations attributed to police officers and accidents that occur in reform centers, whenever they are accused of committing a felony or a misdemeanor, whether it is the performance of their job or because of it or not related to the work of their jobs. Prosecutors themselves investigate all accidents that occur in reform centers except those that are of little importance. They may then assign the director of the reform center to investigate them unless the complaint is against one of the employees of the reform center. Prosecutors must investigate it themselves on the day specified for this without delay, and it is better to move to the reform center for investigation, especially if the matter calls for asking a number of its employees or inmates [1310].

If the prosecution receives a report against a police officer for an order signed by him during the performance of his job or because of it, it must ask the complainant or his witnesses and then send the papers to the public defender or the head of the public prosecution to seek an opinion on the complainant's question and continue the investigation according to the seriousness of the complaint. If necessary, it may seek the opinion of the public defender or the head of the public prosecution by telephone [1311].

Prosecutors must notify the Advocate General or the Chief Prosecutor by telephone of allegations made against police officers.

This notification shall be attached to a comprehensive and accurate summary report of all the facts and proceedings of the investigation [1312].

The members of the prosecution shall notify the security director or the head of the department to which the officer belongs or in whose jurisdiction the investigation is being conducted, as the case may be, of the subject matter of the charge, in advance of the start of the investigation in an appropriate time so that he can attend the investigation or send a representative by him to attend it and follow its procedures, in addition to the notification sent to the general advocate or the head of the general prosecution [1313].

If the prosecutor sees the investigator arresting the police officer or detaining him on remand, he must seek the opinion of the Attorney General or the Chief Prosecutor before taking this action [1314].

If the member of the prosecution sees the release of the officer, this release may not be suspended on the payment of bail, as the military guarantee is sufficient in this regard [1315].

The members of the prosecution must initiate an investigation into incidents in which police officers are accused and their weapons are seized. It shall be taken into account to facilitate the task of the police representative in the event that he attends to take precautionary measures to

---

([1309]) Article 556 bis (b) of the Judicial Instructions of the Public Prosecution.
([1310]) Articles 125, 128 and 557 of the Judicial Instructions of the Public Prosecution.
([1311]) Article 558 of the Judicial Instructions of the Public Prosecution.
([1312]) Article 559 of the Judicial Instructions of the Public Prosecution.
([1313]) Article 561 of the Judicial Instructions of the Public Prosecution.
([1314]) Article 562 of the Judicial Instructions of the Public Prosecution.
([1315]) Article 563 of the Judicial Instructions of the Public Prosecution.

prevent the damage of these weapons if it is necessary to deposit them in the prosecution store, provided that the aforementioned procedures are carried out in the presence of the member of the prosecution and recorded in the minutes [1316].

If the investigation requires the inclusion of military investigations of a police member, the investigating member of the prosecution must contact the attorney general at the Court of Appeal in this regard to request these investigations from the competent authority [1317].

Cases in which a police officer is accused shall be referred to the competent administrative authority for administrative consideration unless one of the defendants in the case is a civilian or the expected administrative penalty is not commensurate with the gravity of the act. In these cases, the case must be submitted to the competent court for[1318] adjudication.

Cases in which the secretaries and assistants of the police, non-commissioned officers, soldiers and uniformed guards are accused and which relate to their regular work, such as cases of negligence in guarding the arrested and facilitating their escape and embezzling things from the funds in charge of guarding them, shall be sent to the presidential authorities they follow if they are seen to refer them to the military courts to sign the penalties prescribed in the Police Authority Law No. 109 of 1971 or in the Military Provisions Law No. 25 of 1966.

Cases involving other civilians should be prosecuted before the criminal courts against all defendants [1319].

Cases in which police officers are accused of committing a felony or a misdemeanor shall be sent with an opinion to the Assistant Attorney General, who shall send to the Technical Office of the Attorney General what he deems appropriate to submit for criminal prosecution or to send him for disciplinary accountability [1320].

The presidential authorities followed by the police officers shall be notified of the charges against them, the result of the final disposition thereof, and the judgment issued in the lawsuit [1321].

Investigation of members of the armed forces

Prosecutors themselves investigate felonies and misdemeanors attributed to the officer of the armed forces, and the military judiciary does not have jurisdiction over them, whether the crime was committed by them during the performance of their functions or because of them or if it is not related to the work of their functions [1322].

The member of the prosecution shall initiate the investigation as soon as the incident report is received from the police or directly from those concerned. It is not permitted for him to entrust the police with conducting this investigation except if it is urgently necessary.

The member of the prosecution shall notify the public defender or the head of the total prosecution of the incident, as well as the unit of the accused officer, as well as the military police. The notification shall be sufficiently in advance of the investigation so that a representative of the aforementioned police can be sent to attend the investigation and follow up its procedures, without suspending the progress of these procedures on the presence of this

---

(1316) Article 564 of the Judicial Instructions of the Public Prosecution.
(1317) Article 565 of the Judicial Instructions of the Public Prosecution.
(1318) Article 566 of the Judicial Instructions of the Public Prosecution.
(1319) Article 567 of the Judicial Instructions of the Public Prosecution.
(1320) Article 568 bis of the Judicial Instructions of the Public Prosecution.
(1321) Article 569 of the Judicial Instructions of the Public Prosecution.
(1322) Article 570 of the Judicial Instructions of the Public Prosecution.

representative in cases of flagrante delicto, as well as informing the authorities of the result of the final disposition of the investigation [1323].

The summoning of the soldier shall be by the military police or the Military Justice Department. It is permitted, upon urgency, for the summoning request to be oral, provided that it is then supported by a special letter. The summoning request shall indicate whether the wanted person is a witness or an accused, the type of charge against him, and all the data that leads to his knowledge.

If the procedure relates to a conscript and the unit to which he is attached is not known, the application must indicate the date of his recruitment, his country, and the number of his deportation from the police station or department to the recruitment area.

The prosecution shall attach any correspondence that may have been made by the unit followed by the person requested to attend or the enforcement form so that it may later be easier to announce the lawsuit and implement the judgments that may be issued in it [1324].

The member of the prosecution shall verify the military defendant by reviewing his identity card and including all its data, or any official document proving this capacity, before sending the papers to the military judiciary for jurisdiction. In the event of suspicion of his capacity, he shall be handed over with the record to the competent military prosecution to verify with its knowledge of his capacity and its competence of the incident [1325].

If the investigation conducted by the prosecution in any crime requires asking a member of the armed forces of non-commissioned officers and soldiers, it is sufficient to determine his identity by asking him about his full name, rank and military number, and to verify the validity of these data from the military identity card he holds, and it is not permissible in any case to prove the name of the unit to which each of these "belongs, its location or its (code number secret) in the investigation record [1326].

The members of the prosecution shall, in the reports to which the Military Provisions Law No. 25 of 1966 applies, whether by themselves or by the police, as the case may be, take the necessary preliminary measures to prevent the loss of evidence, with the notification of the Military Prosecution, and the seizure by the police of the accused when necessary until the Military Prosecution receives them [1327].

If the prosecutor sees the investigator arresting the accused of the armed forces or detaining him on remand, he must seek the opinion of the Attorney General or the Chief Prosecutor before taking this measure, and the detention must be carried out in the special prison attached to the military prison[1328].

If the release of the accused member of the armed forces is considered, this release may not be suspended on the payment of a bail, as the military guarantee is sufficient in this regard [1329].

Prosecutors must expedite the completion of cases in which members of the armed forces or their equivalent are accused, and redefine the positions of military defendants in pre-trial

---

([1323]) Article 571 of the Judicial Instructions of the Public Prosecution.
([1324]) Article 572 of the Judicial Instructions of the Public Prosecution.
([1325]) Article 573 of the Judicial Instructions of the Public Prosecution.
([1326]) Article 574 of the Judicial Instructions of the Public Prosecution.
([1327]) Article 575 of the Judicial Instructions of the Public Prosecution.
([1328]) Article 576 of the Judicial Instructions of the Public Prosecution.
([1329]) Article 577 of the Judicial Instructions of the Public Prosecution.

detention by carefully considering whether the circumstances necessitate their continued detention or not, especially if the crimes attributed to them take a long time to investigate[1330].

If the prosecution decides to prosecute the accused men of the armed forces militarily or to take administrative action against them, the special cases shall be sent to the Military Justice Department of the General Command of the Armed Forces "Military Prosecution Branch" to carry out the required action [1331].

Prosecutors must observe the provisions of the Military Provisions Law No. 25 of 1966 and send all reports and cases subject to it to the police authority to be sent to the competent military prosecution[1332].

If a member of the armed forces, non-commissioned officers, or those of similar status, or students of military colleges, commits a crime while on regular leave - which is granted for a limited period - in a place where there is a military unit and the prosecution has issued a warrant for his arrest or pre-trial detention, the accused must be sent with a police officer to the aforementioned military unit in a letter with the stamp of the prosecution, indicating the number of the special case, the date of the incident, the charge against the accused, the date of the decision issued to arrest him or pre-trial detention, and the original of the arrest or pre-trial detention order and its copy shall be sent on the same day to the Public Prosecutor's Office to inform the competent authority to implement it on him by placing him in the special prison attached to the military prison and returning the original of the detention order, indicating that the execution has taken place.

However, if the aforementioned accused has committed the crime in an area where there is no military unit or is on free leave - which is granted for an unlimited period - the usual procedures with regard to arrest and pretrial detention shall be taken against him, with notification of the competent authority through the Public Defender's Office at the Court of Appeal of the charge against the accused and what is done in it.

The foregoing shall be followed with regard to officers of the armed forces of all ranks, provided that in all cases they are placed in the special prison attached to the military prison [1333].

The members of the prosecution shall initiate the investigation of incidents in which members of the armed forces are accused and their weapons are seized, in cases where the military judiciary does not have jurisdiction.

The task of the representative of these forces shall be facilitated in the event that he attends to take precautionary measures to prevent the damage of these weapons if the investigation requires their deposit in the prosecution store, provided that the aforementioned procedures are carried out in the presence of the member of the prosecution and are recorded in the minutes [1334].

If the investigation requires the inclusion of military investigations into a member of the armed forces and the like, the prosecution must inform the Attorney General at the Court of Appeal about them to request these investigations from the competent authority as mentioned above [1335].

(1330) Article 578 of the Judicial Instructions of the Public Prosecution.
(1331) Article 579 of the Judicial Instructions of the Public Prosecution.
(1332) Article 580 of the Judicial Instructions of the Public Prosecution.
(1333) Article 581 of the Judicial Instructions of the Public Prosecution.
(1334) Article 582 of the Judicial Instructions of the Public Prosecution.
(1335) Article 583 of the Judicial Instructions of the Public Prosecution.

Cases in which officers of the armed forces are accused of committing a felony or a misdemeanor, accompanied by an opinion, shall be sent to the Assistant Attorney General, who shall send to the Technical Office of the Attorney General what he deems appropriate to submit for criminal prosecution or to send him for disciplinary accountability [1336].

The prosecution shall send to the competent authority the copies of the decisions and judgments issued in cases in which the armed forces have an interest to determine the losses resulting from them and appoint the person responsible for compensating them [1337].

The Coastal and Border Authority shall be notified, as the case may be, of all crimes committed by coast and border men, the complaints filed against them, the dates of the hearings, and if the prosecution requests any member of these two bodies, it shall indicate in the request the reason for his request, the number of the case in which he is requested, whether he is a witness or an accused, and the type of charge against him. The request shall include his rank, military number, and all data related to his identity. His request shall be through the Office of the Public Defender at the Court of Appeal [1338].

Investigating Lawyers

The Public Prosecutions shall record the complaints received against lawyers from actions related to their profession in the Lawyers' Complaints Book - according to the dates of their receipt - indicating their registration numbers and their investigation by the oldest members of the Public Prosecution as much as possible and proving the procedures in which they are carried out in the aforementioned book.

If the District Prosecution receives such a complaint, it must send it immediately to the District Prosecution to register it in the Lawyers' Complaints Book and take the necessary action with its knowledge [1339].

If a lawyer is accused of committing a felony or misdemeanor unrelated to his profession, the police shall, if the report has been received, immediately notify the prosecution to the prosecution to investigate the accident. The partial prosecution that received the accident report or was notified of it shall undertake its investigation and record it in its schedules, taking into account notifying the general advocate or the chief prosecutor of the college of this immediately and before starting the investigation. The prosecution may not assign the police to investigate any of the complaints filed against the lawyers nor conduct a fulfillment in them.

If the investigation requires the presence of the lawyer to the headquarters of the prosecution, it must be requested by a special letter sent directly to him or contacted by telephone, and it is not permissible to request the lawyer to the prosecution through the police [1340].

If the subject of the complaint against the lawyer is related to his profession, the attorney general or the head of the college may only request the information of the lawyer, unless it is necessary to hear the complainant or conduct an investigation into what was included in the complaint. If the parties to the complaint understand or prove that it is not serious, it must be kept unless the attorney general or the head of the college prosecution sees the opinion of the attorney general before the Court of Appeal before disposing of it [1341].

([1336]) Article 583 bis of the Judicial Instructions of the Public Prosecution.
([1337]) Article 584 of the Judicial Instructions of the Public Prosecution.
([1338]) Article 585 of the Judicial Instructions of the Public Prosecution.
([1339]) Article 586 of the Judicial Instructions of the Public Prosecution.
([1340]) Article 587 of the Judicial Instructions of the Public Prosecution.
([1341]) Article 588 of the Judicial Instructions of the Public Prosecution.

If the lawyer is accused of committing a criminal or misdemeanor, the prosecution offices shall send the investigation it conducts in this regard to the first public defender at the Court of Appeal with a memorandum to seek an opinion before disposing of it, and he shall send the papers to the public prosecutor if he sees a place to file a criminal or disciplinary lawsuit.

If the incident attributed to the Public Defender is nothing more than a breach of the duties of his profession or the performance of acts or behaviors that undermine the honor of the profession or degrade its value or others, the First Public Defender of the Appeals Prosecution may send the investigation to the Council of the Syndicate to take what he deems appropriate and send it to the Technical Office of the Attorney General [1342].

If it is signed by the lawyer while he is in the session to perform a duty or because of a breach of the order of the session or any matter that requires disciplinary or criminal accountability, the chairman of the session shall order to write a memorandum of what happened and refer it to the competent prosecution. The memorandum shall be sent immediately to the general prosecution. The general attorney shall entrust one of the heads of the general prosecution to initiate an investigation into what was included in it with notifying the competent branch bar association. The case shall be disposed of as described in the previous article[1343].

Prosecutors must notify the Bar Association of the complaints they receive against lawyers, whether professional or non-professional, indicating the name of the lawyer, the number of the case, its subject matter, and what is submitted to criminal or disciplinary prosecution, indicating the articles of the law applicable to it [1344].

It is not permitted to arrest or detain a lawyer on remand if he signs a memorandum of what happened while in the session to perform his duty or because of a breach of the order of the session, and the crimes of slander, insult, and insult due to statements or writings issued by him during or due to practicing any of the work of the profession or any order that calls for his criminal accountability. In this case, a memorandum of what happened shall be drawn up and referred to the Public Prosecution and its copy shall be reported to the Syndicate Council. The Public Prosecutor may take action if what happened from the lawyer constitutes a crime punishable in the Penal Code, or refer it to the Syndicate Council if what happened is merely a breach of order or professional duty. In this case, the trial shall be held in a secret session.

It is not permitted to participate in the consideration of the lawsuit by the judge or one of the members of the body before which the sinful act occurred [1345].

([1342]) Article 589 of the Judicial Instructions of the Public Prosecution.
([1343]) Article 590 of the Judicial Instructions of the Public Prosecution.
([1344]) Article 591 of the Judicial Instructions of the Public Prosecution.
([1345]) Article 50 of the Advocacy Law, Article 592 of the Judicial Instructions of the Public Prosecution, in which the Court of Cassation ruled that: [The legislator has limited the Attorney General alone to taking measures of arrest, pretrial detention and filing a criminal lawsuit for acts that constitute crimes punishable by the Penal Code, equal to those that occurred during the session to perform his duty or because of him, as well as crimes of slander, insult and insult due to statements or writings issued by him during or due to the exercise of any of his profession. Article 3 of the Advocacy Law - the aforementioned - specifies what is considered a lawyer's business and stipulates in its first clause "Attending on behalf of the concerned parties before courts, arbitration bodies, administrative bodies with judicial jurisdiction, criminal and administrative investigation bodies, and police departments, and defending them in lawsuits filed by them or against them, and carrying out pleadings and judicial procedures related to that."

Whereas, it was established from the vocabulary that the court ordered to be included in the investigation of the appeal that the appellant - a lawyer - was assigned by the Public Prosecution a crime of insulting a public official - a secretary of the session - during and because of the performance of his job, if he requested to see one of the judgments issued by the department in which the victim works, and then the crime attributed to the appellant was committed by him because of practicing one of the work of his profession, and the first public attorney ordered a prosecution of appeal .. .. By himself - without the authorization of the Attorney General - to initiate the criminal case against the appellant on 24/9/2008, although he does not have the right to

It is not permitted to investigate a lawyer or inspect his office except with the knowledge of the members of the prosecution. The member of the prosecution must notify the council of the bar association or the council of the branch association in advance of initiating the investigation of any complaint against a lawyer in an appropriate time.

If the lawyer is accused of a felony or misdemeanor related to his work, the captain, the president of the branch syndicate, or any of the lawyers acting on his behalf may attend the investigation.

The Council of the Bar Association and the competent subordinate council of the Bar Association may request copies of the investigation without fees [1346].

If it is necessary to inspect the headquarters of the bar association, one of the syndicates, or sub-committees, or to place seals on them, this must be done with the knowledge of one of the members of the prosecution and in the presence of the president of the bar association, the president of the sub syndicate, or their representative after notifying him of the attendance.

In no case may judicial officers other than members of the prosecution be assigned to carry out one of the procedures referred to in the preceding paragraph [1347].

The Court of Cassation ruled that: [It is established that the provision of Article 51 of the Lawyers Law No. 17 of 1983 that the Bar Council or the Bar Council must be notified well in advance of the initiation of the investigation of any complaint against a lawyer, is only a regulatory action that does not result in the violation of the nullity of the investigation procedures][1348] .

Also, notifying the Bar Association of the investigation of the lawyer is a procedure decided in the interest of the accused, as the presence of a representative of the Bar Association provides him with a certain guarantee in the meaning of the text in the chapter on the rights of lawyers,

---

initiate it in accordance with Article 50 of the Lawyers Law replaced by Law No. 197 of 2008 [Appeal No. 323 of 4Q issued at the session of 16 May 2013 and published in the letter of the Technical Office No. 64 page No. 630 rule No. 89

It also ruled that: [Whereas the text of Article 245 of the Criminal Procedure Law and Articles 49 and 50 of the Lawyers Law stipulate that if a lawyer, while performing his duty in the session, and because of him, signs what requires criminal prosecution, the chairman of the session shall write a record of what happened and refer it to the Public Prosecution for investigation. In this case, the criminal case may not be initiated except by order of the Attorney General or his representative from the first public lawyers. Whereas, it was established from the records of the contested judgment that the court sentenced the appellant, who is a lawyer, to imprisonment for a period of one year with work for committing the crime of insulting the court during his appearance at the hearing to perform his duty after the representative of the Public Prosecution present at the hearing ordered the initiation of the criminal case before him, without the court noticing the performer of the aforementioned articles, it has erred in the application of the law, which must be overturned and corrected by ruling not to accept the criminal case] Appeal No. 18254 of 65 BC issued at the session of January 4, 2005 and published in the letter of the Technical Office No. 56 page No. 47 rule No. 4.

([1346]) Article 51 of the Advocacy Law, Article 593 of the Judicial Instructions of the Public Prosecution.

([1347]) Article 594 of the Judicial Instructions of the Public Prosecution.

([1348]) Appeal No. 13018 of 87 S issued at the hearing of November 13, 2019 (unpublished), Appeal No. 6416 of 87 S issued at the hearing of October 21, 2017 (unpublished), Appeal No. 20627 of 5 S issued at the hearing of November 28, 2013 and published in the letter of the Technical Office No. 64 Page 949 Rule No. 146, Appeal No. 9785 of 80 S issued at the hearing of June 5, 2011 (unpublished), Appeal No. 30230 of 67 S issued at the session of 23 November 2006 and published in Technical Office Letter No. 57 Page 901 Rule No. 101, Appeal No. 13196 of 76 S issued at the session of 18 May 2006 and published in Technical Office Letter No. 57 Page 636 Rule No. 69, Appeal No. 6045 of 67 S issued at the session of 18 May 2006 (unpublished), Appeal No. 18485 of 74 S issued at the session of 6 January 2005 (unpublished), Appeal No. 21096 of 66 S issued at the session of 4 October 1998 and published in the first part of the Technical Office Letter No. 49 Page No. 978 Rule No. 132, Appeal No. 22192 of 62 S issued at the session of April 5, 1997 and published in the first part of the Technical Office's book No. 48 Page No. 427 Rule No. 62, Appeal No. 5760 of 62 S issued at the session of February 17, 1994 and published in the first part of the Technical Office's book No. 45 Page No. 302 Rule No. 43.

and that guarantee relates to the accused and is not related to public order, and therefore as long as it is decided in his interest, he may waive it [1349].

The Court of Cassation ruled that the Public Prosecution must notify the Syndicate Council or the Sub Syndicate Council before initiating the investigation of any complaint against a lawyer in an appropriate and unnecessary time before inspecting the lawyer's office or at the time of its occurrence [1350].

Investigating journalists

It is not permitted to investigate a member of the Syndicate in connection with his journalistic work except with the knowledge of a member of the[1351] Public Prosecution.

The members of the Public Prosecution shall immediately upon receiving any report against a journalist relating to the crimes of publication by newspapers stipulated in Chapter Fourteen of Book Two and Chapter Seven of Book Three of the Penal Code inform the Attorney General of the Public Prosecution, who in turn shall notify the Technical Office of the Attorney General.

Taking into account the competence of the Supreme State Security Prosecution to investigate and act on some publishing crimes by newspapers [1352].

The investigating member of the prosecution shall promptly prepare a memorandum containing the name of the complainant, the name of the journalist against whom the complaint is filed, the subject matter of the complaint, the articles of the law relating to it, and the date of the session specified for the investigation with the journalist - taking into account the appropriate time - sent through the public defender to the Technical Office of the Attorney General, to be sent to the Journalists Syndicate to consider assigning the necessary members to attend the investigation with the journalist, as well as taking any measures it deems appropriate to reconcile the parties to the complaint.

The journalist against whom the complaint is made must not be requested by the police or the bailiff's office.

When the lawsuit is ready to be disposed of, an inquiry shall be made from the Journalists Syndicate - through the Public Defender - about the results of its efforts to reconcile the two parties to the complaint with the inclusion of the documents proving this, and then the disposal of the papers in the light of this, provided that such inquiry does not result in the disruption of the disposition of the lawsuit in the event that no response is received from the Syndicate in a timely manner [1353].

A journalist may not be arrested for a crime committed by newspapers except by order of the Public Prosecution. He may not be investigated or searched for this reason except by a member of the Public Prosecution. He may not be remanded in custody in these crimes, not in the crime stipulated in Article (179) of the Penal Code [1354].

([1349]) Appeal No. 13665 of 70 S issued at the session of March 22, 2001 and published in the book of the Technical Office No. 52 page No. 353 rule No. 59.

([1350]) Appeal No. 199 of 60 S issued at the hearing of May 15, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 802 rule No. 115.

([1351]) Article 68 of the Law on the Establishment of the Journalists Syndicate.

([1352]) Article 595 bis of the Judicial Instructions of the Public Prosecution.

([1353]) Article 595 bis (a) of the Judicial Instructions of the Public Prosecution.

([1354]) Article 69 of the Law on the Establishment of the Journalists Syndicate, Article 595 bis (b) of the Judicial Instructions of the Public Prosecution.

It is not permitted to take from the documents, information, data, and papers that may be issued by the newspapers as evidence of accusation against him in any criminal investigation unless they are themselves the subject of the investigation or the subject of the crime [1355].

It is not permitted to inspect the headquarters of the Journalists Syndicate and its subordinate syndicates or to place seals on them except with the knowledge of a member of the Public Prosecution and in the presence of the President of the Journalists Syndicate, the President of the subordinate syndicate, or their representative [1356].

The syndicate and the subsidiary syndicates have the right to obtain copies of the judgments issued against the journalist and the judgments and investigations conducted with him without fees [1357].

Investigating trade unionists

The investigation authority shall notify the trade union organization concerned of the accusations attributed to a member of its board of directors of violations or crimes related to his trade union activity and the date set for conducting the investigation before starting to conduct it. The trade union organization may delegate one of its members or appoint a lawyer to attend the investigation, unless the investigation authority decides that it is confidential [1358].

If a member of professional unions is accused of a felony or misdemeanor related to his profession, the prosecution must notify the competent unions of what has been assigned[1359] to him.

The notification must include the name of the complainant, the number of the case, its subject matter and the applicable articles of law [1360].

It shall be taken into account that the aforementioned notification reaches the competent president in a timely manner before the start of the investigation so that he or his representative can attend the investigation in accordance with the law [1361].

The prosecution shall notify the competent syndicate of the result of the investigation, and it shall also be notified of all judgments issued against its members by the criminal and[1362] misdemeanor courts.

Immunity for Foreign Consular Political Corps

The men of the political corps shall mean the men of the diplomatic mission, whether an ambassador or a minister accredited to the Head of State, or a chargé d 'affaires accredited to the Minister of Foreign Affairs, as well as the ministers accredited, advisers, secretaries, and diplomatic attachés who are included on the diplomatic list issued by the Protocol Department of the Egyptian Ministry of Foreign Affairs, and amended in accordance with the movements of the members of the aforementioned corps.

Diplomats are considered military attachés, commercial advisors, cultural advisors, their assistants, and administrative attachés.

([1355]) Article 595 bis (c) of the Judicial Instructions of the Public Prosecution.

([1356]) Article 70 of the Law on the Establishment of the Journalists Syndicate, and Article 595 bis (d) of the Judicial Instructions of the Public Prosecution.

([1357]) Article 71 of the Law on the Establishment of the Journalists Syndicate, and Article 595 bis (d) of the Judicial Instructions of the Public Prosecution.

([1358]) Article 51 of the Trade Union Organizations Law and the Protection of the Right to Organize.

([1359]) Article 596 of the Judicial Instructions of the Public Prosecution.

([1360]) Article 597 of the Judicial Instructions of the Public Prosecution.

([1361]) Article 598 of the Judicial Instructions of the Public Prosecution.

([1362]) Article 599 of the Judicial Instructions of the Public Prosecution.

The diplomatic envoy also includes members of his family from his family [1363].

Foreign politicians enjoy absolute immunity in criminal matters. It is not permitted to take action before them or to contact them in any way in these matters, whether or not they relate to their official business.

The said immunity shall be enjoyed by the domicile, papers and correspondence of the foreign politician.

This does not preclude taking investigative measures from inspecting, hearing, and assigning experts, as long as these procedures do not affect the persons of the men of that corps, their residences, papers, or correspondence.

In all cases, it shall be taken into account to notify the Technical Office of the Attorney General immediately, and to send investigations after their completion to him for disposal [1364].

Foreign politicians shall also enjoy judicial immunity in civil and administrative matters, except in the following cases:

Lawsuits in kind related to private real estate funds in Egypt, unless they are held by members of the political corps on behalf of the authorized state to be used for the purposes of the mission;

Cases related to inheritance and inheritance affairs, in which he enters as an executor, administrator, heir or legatee, on his own behalf and not on behalf of the accredited state. The possibility of taking executive measures against the foreign politician in the aforementioned cases shall not prejudice the inviolability of his person or home.

The Public Prosecutions shall seek the opinion of the Attorney General regarding the documents received from the bailiffs and clerks related to these matters [1365].

Foreign cadres shall be exempted from performing the certificate [1366].

Prosecutions must inform the Technical Office of the Attorney General in criminal, civil and administrative matters related to non-Egyptian technical and administrative staff in diplomatic missions, or non-Egyptian private servants working for the members of those missions, and to seek opinion in each case, since the granting of these diplomatic immunities is left to the discretion of the country's authorities in accordance with Egypt's reservation regarding the immunities granted to them under the Vienna Convention on Diplomatic Relations signed in 1961[1367].

Non-Egyptian employees of the diplomatic mission or permanent residents of Egypt shall enjoy the aforementioned immunity in relation to the acts they perform in the performance of their duties [1368].

A politician who is a citizen of Egypt or a permanent resident shall only enjoy judicial immunity and personal inviolability in relation to official acts carried out in the exercise of his functions, due to the additional privileges and immunities granted by Egypt [1369].

([1363]) Article 1398 of the Judicial Instructions of the Public Prosecution.
([1364]) Article 1399 of the Judicial Instructions of the Public Prosecution.
([1365]) Article 1400 of the Judicial Instructions of the Public Prosecution.
([1366]) Article 1401 of the Judicial Instructions of the Public Prosecution.
([1367]) Article 1402 of the Judicial Instructions of the Public Prosecution.
([1368]) Article 1403 of the Judicial Instructions of the Public Prosecution.
([1369]) Article 1404 of the Judicial Instructions of the Public Prosecution.

The said immunities shall not be enjoyed by employees of diplomatic missions and private servants who are citizens or permanent residents of Egypt, except to the extent permitted by the State [1370].

The role of diplomatic missions enjoys immunity. It is not permitted to enter them except with the consent of the heads of those missions, and they, their furniture, other funds in them, and their means of transport are exempt from the procedures of search, seizure, seizure, or execution.

The official correspondence of the mission shall be inviolable.

The diplomatic bag may not be opened or seized, and the bearer enjoys immunity and may not be subjected to any form of arrest and detention [1371].

The following persons shall also enjoy immunity and diplomatic privileges:

Representatives who come to Egypt on a special mission such as presenting the medals to the Head of State and wanted their cards, as well as delegates to international conferences and bodies;

Members of the World Health Organization;

Members of the Council of the League of Arab States, members of its committees and employees, whose diplomatic privileges and immunity are stipulated in the rules of procedure of the League of Arab States in the course of their work;

Delegates of States Members of the United Nations and officials of that body in respect of their functions in connection therewith;

Members of the International Court of Justice while exercising their functions;

The Governors of the International Monetary Fund and the International Bank for Reconstruction and Development and the members, deputies, officers and employees of their Executive Committees with respect to acts performed by them in their official capacity, unless the Fund or the Bank waives such immunity;

Employees of the Food and Agriculture Organization of the United Nations during the exercise of their functions, whether they are nationals of the Arab Republic of Egypt or nationals of foreign countries, unless this organization authorizes the lifting of their immunity[1372].

It is not permissible to assign foreign diplomatic personnel to work as experts, whether in criminal or civil matters, unless the need arises. In this case, the prosecution must contact the technical office of the Attorney General to seek an opinion on the following in this regard [1373].

Foreign consular officers mean the head of the consular mission, whether he is a working consul, consul, deputy consul or agent, as well as the working consular members whose names are included in the consular list issued by the consular administration of the Egyptian Ministry of Foreign Affairs [1374].

Foreign consular officers mean judicial immunity in criminal, civil, and administrative matters that relate to their official business only, and they are subject to the Egyptian judiciary.

([1370]) Article 1405 of the Judicial Instructions of the Public Prosecution.
([1371]) Article 1406 of the Judicial Instructions of the Public Prosecution.
([1372]) Article 1407 of the Judicial Instructions of the Public Prosecution.
([1373]) Article 1408 of the Judicial Instructions of the Public Prosecution.
([1374]) Article 1409 of the Judicial Instructions of the Public Prosecution.

The aforementioned immunity shall not apply to lawsuits resulting from a contract concluded by a member or a consular officer in which the contract was not expressly or impliedly concluded as a representative of the sending State.

As well as lawsuits filed by a third party for damage resulting from an accident in Egypt caused by a boat, ship, or aircraft.

However, one of the men of this corps was accused of committing something, whether related to his official work or not, the prosecutors must initiate investigation procedures that would preserve the evidence from loss, such as hearing witnesses, conducting inspections, delegating experts, and so on.

If the crime is not related to the official work of the judicial officer and the vision of taking any action such as arresting him, searching him, searching his residence, seizing his correspondence, or assigning him to attend, the opinion of the Attorney General in that action must be consulted before taking it.

It is not permissible to arrest a foreign consular officer or detain him on remand except in important felonies and misdemeanors and after consulting the opinion of the attorney general or the head of the general prosecution [1375].

If criminal proceedings are initiated against a consular officer, he must appear before the competent authorities, but these proceedings must be initiated with the necessary respect for him, in view of his official position, and in a manner that does not hinder the exercise of judicial business, and if the surrounding circumstances require the seizure of a consular officer, proceedings must be initiated against him without delay [1376].

In the event that a foreign consular officer is arrested, detained or criminal proceedings are taken against him, the prosecution offices shall immediately notify the Technical Office of the Attorney General of this to inform the head of the consular mission to which the consular officer belongs through the Ministry of Foreign Affairs or to take measures to inform the sending State of the aforementioned route if any of these procedures are directed against the head of the mission himself[1377].

He does not enjoy any privileges or immunities of honorary consular members, whether they are Egyptians or foreigners [1378].

Jurisdictional immunity does not extend to members of the entourage of the foreign consular corps or members of their families [1379].

Members of consular missions are exempt from giving testimony on the facts relating to the carrying out of their work, as well as from submitting correspondence and official documents relating to it.

They may refrain from providing testimony as experts in the national law of the sending State [1380].

Except in previous cases, members of consular missions may be required to attend to testify during the course of judicial or administrative proceedings. They may not refuse to testify, but no coercive or penal measures may be taken against them if they refuse to do so[1381].

([1375]) Article 1410 of the Judicial Instructions of the Public Prosecution.
([1376]) Article 1411 of the Judicial Instructions of the Public Prosecution.
([1377]) Article 1412 of the Judicial Instructions of the Public Prosecution.
([1378]) Article 1413 of the Judicial Instructions of the Public Prosecution.
([1379]) Article 1414 of the Judicial Instructions of the Public Prosecution.
([1380]) Article 1415 of the Judicial Instructions of the Public Prosecution.

Prosecutions must facilitate the performance of testimony by consular officers, and they can obtain testimony from them at their residence or at the headquarters of the consular mission or accept a written report of it whenever possible [1382].

The accrediting State may waive the jurisdictional immunity enjoyed by its political and consular officers and other persons enjoying it, provided that the waiver is express.

If the waiver is in a civil or administrative case, it does not include immunity in relation to the procedures for the implementation of the judgment, which need a separate waiver [1383].

If the political or consular envoy offers to waive the enjoyment of judicial immunity, he shall not accept it except after obtaining permission to do so from his state [1384].

If the prosecution receives a declaration of a direct misdemeanor lawsuit against a foreign consular officer, the head of the criminal registry department must immediately present the matter - before estimating the fees on the declaration - to the director member of the prosecution to order the suspension of the declaration if it appears from him that the subject of the lawsuit relates to the official work of the person to be declared. If this is not clear from the declaration, the director member of the prosecution must take the initiative to hear the statements of the applicant for the declaration and whoever he deems necessary to hear his statements to know the extent of the immunity of the applicant for the subject of the lawsuit. If it becomes clear that the subject is related to his official work, the declaration must be stopped, but if it becomes clear that it is not related to his official work, in this case, the papers must be sent to the technical office of the Attorney General for a subsequent opinion poll.

If the opinion of the prosecution concludes not to proceed with the announcement, it must in all cases return the announcement as soon as possible to the bailiffs' registry, accompanied by its opinion and the investigations it has conducted to present the matter to the judge of temporary matters for decision in accordance with Article 8 of the Code of Procedure [1385].

When the prosecution receives from the clerks and bailiffs papers related to civil and administrative lawsuits filed against foreign consular officers, it must follow the provisions of the previous article, and it is taken into account that the clerks and bailiffs must send to the prosecution all papers related to civil, commercial, administrative and other lawsuits that are required to be notified to one of the foreign embassies or consulates [1386].

If a consular officer is sentenced to a fine or expenses fine or expenses and the execution of the sentence is required by physical coercion, the prosecution must send the execution form to the Technical Office of the Attorney General to take what it deems necessary in this regard [1387].

If it is necessary to announce witnesses from members of the foreign consular corps to hear their statements before the courts, the prosecution must send requests for these witnesses to appear to the Technical Office of the Attorney General with a memorandum indicating the subject of the case for which testimony is required and the extent to which it relates to their official business [1388].

([1381]) Article 1416 of the Judicial Instructions of the Public Prosecution.
([1382]) Article 1417 of the Judicial Instructions of the Public Prosecution.
([1383]) Article 1418 of the Judicial Instructions of the Public Prosecution.
([1384]) Article 1419 of the Judicial Instructions of the Public Prosecution.
([1385]) Article 1420 of the Judicial Instructions of the Public Prosecution.
([1386]) Article 1421 of the Judicial Instructions of the Public Prosecution.
([1387]) Article 1422 of the Judicial Instructions of the Public Prosecution.
([1388]) Article 1423 of the Judicial Instructions of the Public Prosecution.

9.1.2 Within the framework of international covenants

There are a number of due process and procedural guarantees that ensure the application of the right to justice and a fair trial and prevent arbitrary detention, which are very important and closely linked to the prevention of torture and ill-treatment during interrogation. Article 14 of the International Covenant on Civil and Political Rights states:

Everyone is equal before the courts. Every person shall have the right to have his case examined by a competent, independent and impartial court established by law, which shall adjudicate any criminal charge against him or any civil lawsuit dealing with his rights and obligations. The press and the public may be prevented from attending all or some of the trial, taking into account considerations of public morals, public order, or national security in a democratic society, the inviolability of the lives of private parties, or the requirements of strict necessity, in the opinion of the court, in special circumstances in which publicity leads to a violation of the interest of justice, but the judgment issued in any criminal (criminal) or civil case shall be issued in a public hearing unless it relates to juveniles whose interest requires otherwise or unless the lawsuit relates to marital disputes or guardianship over children.

Every person accused of a crime shall be presumed innocent until proven guilty by law.

Every person charged with a crime shall, while his case is under consideration, be entitled to equal enjoyment of the following minimum guarantees:

Informing him promptly and in detail, in a language he understands of the nature of the charge against him and the reasons for it,

to have adequate time and facilities for the preparation of his defense and to communicate with an advocate assigned to him for his defense,

to be tried without undue delay,

Trial him in his presence and enable him to defend himself in person or through a defender of his choice, inform him of his right to have a defender, and provide him, when the interest of justice so requires, with a defender who appoints him a referee and is free of charge if he cannot reward him for his fees,

Discussing the witnesses for the accusation, on his part or on the part of others, and securing the attendance and hearing of witnesses for the defense or defense under the same conditions applied in the case of witnesses for the accusation,

To be provided free of charge with an interpreter if he does not understand or speak the language used in court,

Not to be coerced to testify against himself or to confess guilt.

In the case of juveniles, procedures appropriate to their age and the need for rehabilitation shall be followed.

Every person convicted of a crime shall have the right to appeal, in accordance with the law, before the court of highest instance against the judgment issued against him and his punishment.

In the event that any person convicted of a final judgment for a crime is subsequently annulled or a special pardon is issued for him for the occurrence of a new incident or the emergence of a definitive precedent indicating the commission of a judicial error, he must be granted the necessary compensation, in accordance with the law, if the penalty is imposed in implementation of the conviction and his total or partial responsibility for not broadcasting the unknown incident is not proven in a timely manner.

No person shall be tried or punished for a crime for which he has already been convicted or acquitted by a final judgment in accordance with the law and criminal procedures in each country.

That article provides safeguards against the use by the authorities of all forms of direct or indirect physical or psychological pressure against a suspect for the purposes of obtaining a confession. The right not to be compelled to testify against oneself or to confess guilt, and the right to have access to a lawyer and legal aid are of paramount importance. Apart from protecting the basic human rights of individuals, these measures benefit societies at large by strengthening trust in institutions, establishing the reliability of evidence, and facilitating the effectiveness of domestic judicial proceedings.

In the same context, the guarantees provided for in article 9 of the Covenant help to prevent torture by limiting the opportunities and incentives for ill-treatment and coercion during detention, stating that:

Everyone has the right to liberty and security of person. No one may be arbitrarily arrested or detained. No one may be deprived of his liberty except on such grounds and in accordance with such procedures as may be prescribed by law.

Every arrested person shall be informed of the reasons for his arrest and shall be promptly notified of the charges against him.

In the case of any person arrested or detained on charges of committing a crime, he shall be promptly brought before a judge or other officer authorized by law to exercise judicial functions, and he shall be required to be tried within a reasonable time or released. It shall be taken into account that pretrial detention shall not be the general rule followed for those awaiting trial. However, the release of the person concerned may be restricted by guarantees that ensure his attendance at the trial, at any stage of the case, and when necessary for the implementation of the judgment issued.

Every person who is deprived of his liberty by arrest or detention shall have the right to refer to the judiciary so that the competent court may decide without delay on the legality of his detention and order his release to prove the illegality of this detention.

Every person who is unlawfully arrested or detained shall have a necessary right to[1389] compensation.

Persons held in pretrial detention by the authorities shall not be subjected to torture or other ill-treatment. Persons being questioned on suspicion of involvement in a criminal offence shall also have the right to be presumed innocent, not to be compelled to incriminate themselves, to remain silent, and to have a lawyer present and assisted by them. A number of other safeguards aim to protect against abuse during the investigation.

Rights and guarantees apply during investigations by all representatives of the State, including intelligence officers, and when these investigations take place outside the territory of the State [1390].

Judicial control of detention is an essential safeguard for persons deprived of liberty in the context of criminal charges. Persons detained on criminal charges should not be detained in facilities under the control of their interrogators or interrogators for a period of time beyond what is legally required to hold a judicial hearing and obtain a judicial pre-trial detention order. This

---

([1389]) (A/71/298، 5 August 2016، §60)، (A/HRC/WGAD/2012/40).

([1390]) Special Rapporteur on human rights and counter-terrorism,. UN Doc 2010 (A/HRC/14/46), Practice 29 and§43; see Concluding Observations of the Committee against Torture: United States of America UN Doc. CAT/C/USA/CO/2. §16 (2006).

period should never exceed a period of 48 hours, except in the most exceptional and fully justified circumstances. Suspects shall be transferred immediately to a pre-trial detention facility under a different authority, after which no further contact with interrogators or investigators shall be permitted without supervision. With regard to best practice, States should entrust to different bodies under a separate chain of command the detention and interrogation of persons in order to protect detainees from ill-treatment and reduce the risk of conditions of detention being used to exert pressure on them during interrogation. All detainees must be properly registered from the moment of arrest, a public central detention record must be maintained, and the sequence of detention must be fully documented [1391].

The Human Rights Council resolution of 23 March 2021 on the roles and responsibilities of the police and other law enforcement personnel confirmed that the purpose of interrogation is to obtain accurate and reliable information in order to know the truth about matters under investigation, and that the use of torture and other cruel, inhuman or degrading treatment or punishment does not contribute to this purpose;

It also emphasized that States should regularly review interrogation rules, instructions, methods and practices, as well as arrangements for the detention and treatment of persons subjected to any form of arrest, detention or imprisonment within their jurisdiction;[1392].

Statements and other forms of evidence obtained as a result of torture or other ill-treatment of any person shall be excluded from the list of evidence admissible in court, except during the trial of the alleged torturer. Evidence obtained from the accused as a result of other forms of coercion shall also be excluded from the proceedings.

The risk of violations during an investigation is often heightened by the actual or perceived personal characteristics of the individual under investigation, by his or her particular situation (as a result of discriminatory perceptions), or by the circumstances of the case (including the nature of the offence). Particular risk groups include persons with disabilities, persons with mental illnesses, those who cannot speak or read the language used by the authorities, members of racial, ethnic, religious and other minorities, foreign nationals and those facing discrimination on the basis of their sexual orientation or gender identity [1393].

Individuals under investigation in connection with terrorism-related offenses, politically motivated offenses, or interrogated because of their political opinions, remain particularly vulnerable to coercion or other violations during the investigation [1394].

Additional safeguards apply during the investigation of children and women. For example, women in detention should be investigated by female police officers or judicial[1395] officers.

The risk of abuse during the investigation is also increased when persons are detained, and international standards prohibit the authorities from exploiting the state of control they unduly have over the detained person during the investigation to coerce him to confess or to make statements against himself or others [1396].

[1391](A/71/298, 5 August 2016, §62), (see general comment No. 35) (see A/68/295) (see A/HRC/13/39/Add. 5).

[1392](A/HRC/RES/46/15, 1 April 2021, §9-10), (A/HRC/46/L. 27, 15 March 2021, §9).

[1393]See the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 187 / UN Doc. A/RES/67 (2012), Suppl. §32.

[1394]See United Nations General Assembly resolution 65/221, §6 (n); Report on Terrorism and Human Rights, Inter-American Commission, section 1(a) §1, and section 3(c). 216- § §210 (3).

([1395]) Section M(7) (b) of the Principles of Fair Trial in Africa; see Rule 65 of the Bangkok Rules..

Principle [1396]21 of the Body of Principles, and Section M(7) (d) of the Principles for a Fair Trial in Africa; see Article 7 of the Inter-American Convention for the Prevention of Torture.

Informing the accused of the charges against them

Any person who is arrested or detained shall, when deprived of liberty and before the beginning of the interrogation, be provided with information about his or her rights and the manner in which they are to be used. This includes the right to be informed without delay of the grounds - the factual and legal basis - justifying the arrest or detention, and the right to bring an action before a court and to have access to appropriate remedies. Persons arrested or detained on criminal charges are entitled to immediate access to information on such charges. It is recognized that if persons are not aware of their rights, their ability to effectively exercise those rights is adversely affected. The right of persons deprived of their liberty to be informed of their rights is a crucial element in the prevention of ill-treatment as well as an indispensable condition for the effective exercise of the rights related to a fair trial [1397].

Before the beginning of each interrogation, the information provided to the person concerned must include, at a minimum, the right to remain silent during the interrogation; to have access to a lawyer of his or her choice and to free legal assistance in any case where the interests of justice so require; to consult with a lawyer before interrogation and to have the interrogation conducted in the presence of a lawyer; and to obtain free and effective interpretation and translation if the individual does not understand or speak the language in which the interrogation is conducted [1398].

Information should be provided to interviewees in a manner that is sensitive to their age, gender and culture, appropriate to the needs of vulnerable people, and in a language, means, methods and formats that are accessible to them and that they can understand. Ways must be adopted and documents must be prepared to confirm that they have already been informed of this information, whether in a printed record, on an audio or video tape, or with the testimony of witnesses [1399].

The Special Rapporteur on torture is aware that the content of certain procedural rights may change to some extent, depending on the legal status of the person being interrogated and the context of the interrogation. It is therefore extremely important to provide accurate information regarding his status and rights prior to interrogation. Authorities may not interrogate persons as “witnesses” or under the guise of “information-gathering conversations” in order to avoid the legal safeguards accompanying the interrogation of suspects. Any person who is legally obliged to attend and remain in an institution for questioning shall be accorded the same rights as a suspect. When a person becomes a suspect during interrogation, the interrogation must be suspended and not resumed unless he has been informed of this change and has been offered the full list of his rights, and is able to exercise them in full [1400].

The right of the accused to have adequate time and facilities for the preparation of the defense requires that all those against whom criminal charges are brought be allowed to be promptly informed of the details, nature and cause of any charges against them.

The rules of interrogation or investigation should be uniform, formal, public, and non-discriminatory for any reason, and they should be reviewed regularly and systematically by the judicial authorities[1401].

([1397]) (A/71/298, 5 August 2016, §64), (see Body of Principles) (see general comment No. 35) (CAT/OP/MDV/1, 26 February 2009, §96).

([1398]) (A/71/298, 5 August 2016, §65), (see Rome Statute; Article 55; and EU Directive 2012/13/EU).

([1399]) (A/71/298، 5 August 2016، §66)، (WGAD/CRP. 1/2015).

([1400]) (A/71/298, 5 August 2016, §67), (EU Directive 2013/48/EU).

CPT [1401]Standards, Second General Report of the Committee for the Prevention of Torture, §39 ,CPT/Inf92 (3), Concluding Observations of the Committee against Torture: Kazakhstan, §11 (2008) UN Doc. CAT/C/KAZ/CO/2, Latvia,. UN Doc §7

The Human Rights Council emphasized that no one should be subjected to arbitrary arrest or detention, that all arrests should be carried out under a warrant or based on reasonable suspicion that a person has committed or is about to commit a crime, and the need to easily identify the police or other law enforcement personnel carrying out an arrest, including the organization and, where appropriate, the unit to which they belong;

It also stressed the obligation of States to ensure that any person arrested is informed at the time of arrest of the reasons for his or her arrest, that any charges against him or her are promptly communicated in an accessible manner, including using a language he or she understands, and that he or she is provided with information about and an explanation of his or her rights;

It called upon States to ensure that effective legal and procedural safeguards are in place to prevent torture and other cruel, inhuman or degrading treatment or punishment, and in particular to ensure that any individual arrested or detained by police or other law enforcement officials is brought promptly before a judge or other independent judicial officer, that at any stage of detention he or she has access, without undue delay, to a lawyer and a doctor, including, where necessary, to an age- and gender-sensitive medical examination, that a relative or other third party is notified of the person's detention, and that the detained person is able to notify and communicate with the consulate, as appropriate;[1402].

No human being shall be tortured, treated or punished in a cruel, inhuman or degrading manner [1403].

States should regularly and systematically review these rules and interrogation methods [1404].

The rules should address, inter alia: informing the person of the identity (names or numbers) of all those present during the investigation; the permissible duration of the interrogation process as well as of the interrogation session (which should be strictly limited in both cases); the required breaks between sessions and pauses during the same session; the places where the interrogation can take place; and the interrogation of persons under the influence of drugs or alcohol [1405].

The identity of each person conducting the investigation should be known [1406].

The United Nations General Assembly and international human rights bodies have stressed the duty of States to provide training on human rights standards to persons who participate in the interrogation of suspects [1407].

The Convention against Torture requires such training [1408].

(2003) 3/CAT/C/CR/31 (h), Greece, 2/2004) UN Doc. CAT/C/CR/33) §6 (e), USA, 2006) UN Doc. CAT/C/USA/CO/2) § §19 and 24.

[1402](A/HRC/RES/46/15, 1 April 2021, § §3-5), (A/HRC/46/L. 27, 15 March 2021, § §3-5).

([1403]) Article 5 of the Universal Declaration of Human Rights, and Article 7 of the International Covenant on Civil and Political Rights.

([1404]) Article 11 of the Convention against Torture.

Committee [1405]for the Prevention of Torture Standards, Second General Report of the Committee for the Prevention of Torture, §39 ,CPT/Inf92(3); Concluding Observations of the Human Rights Committee: Japan,. §19 (2008) UN Doc. CCPR/C/JAP/CO/5.

Principle [1406]4(4) of the Council of Europe Guidelines on the Eradication of Impunity.

Resolution [1407]65/205 of the United Nations General Assembly, §8; Resolution 2005/39 of the Office of the High Commissioner for Human Rights, 14 §; General Report 12 of the Committee for the Prevention of Torture, §34 ,CPT/Inf2002 (15).

([1408]) Article 10 of the Convention against Torture.

Not only should the law punish those who use unlawful force, threats or other prohibited methods to extract confessions, but also provide penalties for those who violate interrogation rules, including time limits [1409].

For every human being deprived of his liberty or treated humanely with the necessary respect for the inherent dignity of the human person, except in exceptional circumstances, the separation of accused persons from convicted persons and their independent treatment consistent with their status as unconvicted persons shall be taken into account, and the separation of juvenile accused persons from adults shall be taken into account and referred as soon as possible to the judiciary for adjudication of their cases.

The prison system shall also take into account the treatment of prisoners with the primary aim of reforming and rehabilitating them, separating juvenile offenders from adults and treating them in a manner appropriate to their age and legal status [1410].

Several international standards contain two separate provisions on the right to information about the charges and vary in their purpose, the persons to whom they apply, and the level of detail required

Provisions such as those contained in Article (92) of the ICCPR require States to promptly inform any detained person of the charges against him in sufficient detail to afford him the opportunity to challenge his detention and to begin preparing his defense.

On the other hand, provisions such as Article 14 (3) (a) of the ICCPR apply to all persons immediately after they are formally charged, whether they are detained or not. When a person is formally charged, he must be given detailed information about the law under which he was charged («the nature of the charge») and the alleged material facts that form the basis of the accusation («the reason»). The information must be sufficient and detailed to allow him to prepare his defense[1411].

The Special Tribunal for the former Yugoslavia clarified that where the prosecution alleges that the accused committed criminal acts in person, it should be presented in detail with the material facts and facts relating, for example, to the identity of the victim, the time and place of the events, and the means by which the acts were committed. It also clarified that for large-scale crimes, and crimes with a broad connotation, including persecution, it remains “unacceptable on the part of the prosecution to omit material aspects of the main allegations included in the indictment for the purpose of molding the case to the disadvantage of the accused in the course of the trial, based on how the evidence unfolds”. However, it noted that “in criminal trials where the evidence unfolds differently than expected”, it may be necessary to “amend the indictment and agree to postponement or to exclude some evidence as it does not fall within the operative part of the indictment”[1412].

Information regarding the charges should be provided in writing; if presented orally, it should be confirmed in written form at a later date [1413].

([1409]) Concluding observations of the Committee against Torture: The former Yugoslav Republic of Macedonia, 44 / §110 (1999) UN Doc. A/54 (b), Japan. § §16 (2007) CAT/C/JPN/CO/1.

([1410]) Article 10 of the International Covenant on Civil and Political Rights.

([1411]) General Comment 32 of the Human Rights Committee, §31, McClorence v. Jamaica, 9/ §5 (1997) UN Doc. CCPR/C/60/D/702/1996; Grand Chamber of the European Court, Bélissier and Sassi v. France (25444/ 94), (52- §51 (1999, Matuccia v. Italy (23969/ 94), (60- §59 (2000)..

([1412]) Prosecution v. Kupreškić et al., (IT-95-16-A), ICTY Appeals Chamber (23) Oct. §88- §124 (2001) (excerpt from §92).

([1413]) General Comment 32 of the Human Rights Committee, §31. (a) Article 14 (3) (a) of the International Covenant, Article 40 (2) (b) (ii) of the Convention on the Rights of the Child, Article 18 (3) (a) of the Migrant Workers Convention, Article 16 (1) of the Arab Charter, Article 6(3) (a) of the European Convention, Sections n(1) (a) - (c) and(3) (b) of the Principles of Fair

A formal obligation should be imposed to inform a relative or another trusted adult of the child's detention, regardless of whether the child has requested it, unless it would not be in the child's best interests. Parents and adults trusted by the child should also be allowed to be present during questioning and when appearing in court. The questioning of children is a key issue. Interrogation should be age-sensitive and individualized and should be carried out by authorities who have skills in questioning children. Photographic recording should be given due consideration under certain circumstances to avoid causing children to become upset due to repeated questioning and frequent court visits. Children should also have immediate access to a lawyer and health professional. A specific information sheet covering the aforementioned safeguards should be given to all detained children immediately upon their arrival at the law enforcement facility, and that information should be explained to them orally and in a way they understand [1414].

The right of the accused not to be subjected to torture or ill-treatment during interrogation

Law enforcement personnel and other investigative bodies, such as intelligence and military services, play a vital role in serving communities, preventing crime and protecting human rights. In the performance of their duties, they are obliged to respect and protect the inherent dignity and the physical and psychological integrity of all persons under interrogation, including suspects, witnesses and victims [1415].

The right not to be subjected to torture and ill-treatment is a rule of customary international law and a peremptory norm of jus cogens in international law applicable to all States. It is enshrined in international and regional treaties and domestic legal systems worldwide; its violation constitutes a grave breach of the Geneva Conventions, a violation of common article 3 to those Conventions and of customary international humanitarian law; and it can constitute a crime against humanity or an act of genocide under international criminal law. The obligation to prevent torture and ill-treatment applies at all times, including during the investigation of serious crimes and in situations of armed conflict, and is complemented by a set of accompanying standards and procedural safeguards [1416].

People questioned by authorities during investigations may face all of society's repressive apparatus. Interrogation, particularly the interrogation of suspects, is inherently linked to the risks of intimidation, coercion and ill-treatment. The risks to vulnerable persons and persons questioned during their detention are increased. This is especially true for arrest and in the early stages of detention, when the authorities controlling the detention and its conditions are the same authorities conducting the investigation [1417].

Trial in Africa, Article 67 (1) (a) of the Rome Statute, Articles 19 (2) and 20 (4) (a) of the Statute of the Rwanda Tribunal, and Articles 20 (2) and(21) (4) (a) of the Statute of the Yugoslavia Tribunal.

([1414]) (A/HRC/28/68، §75).

([1415]) (A/71/298, 5 August 2016, §5), (see Human Rights Council resolution 31/31)

The word “interrogation” is used in some jurisdictions to refer to interrogation during criminal investigations, and it is used in a neutral manner that does not necessarily denote coercion. The term “interrogation” includes the questioning of suspects, witnesses and victims alike. This term further highlights the non-adversarial nature of interrogation based on familiarity with the suspect, which first and foremost attempts to enforce the principle of presumption of innocence, and suggests a criminal investigation model that is likely to be effective in preventing any form of coercion and also to be more effective in untangling crimes.

The term “law enforcement” is used to refer to traditional law enforcement agencies entrusted with police powers, such as powers of arrest, interrogation and detention. In jurisdictions where military or intelligence services also assume police powers, the term “law enforcement officials” is understood to include military and intelligence personnel.

([1416]) (A/71/298، 5 August 2016، §6).

([1417]) (A/71/298، 5 August 2016، §8).

The continued use of illegal and improper interrogation practices stems from a range of domestic factors, including the erroneous assumption that ill-treatment and coercion are necessary to obtain confessions or extract information. The misconception that torture is a “necessary evil” is particularly prevalent in interrogations related to organized crime and crimes against national security. In the context of counterterrorism, governments resort to “ticking bomb scenarios” in attempts to justify the use of arbitrary and unlawful methods of interrogation, implicitly challenging the absolute and non-derogable nature of the prohibition of torture under any circumstances. While some seek to provide flawed legal interpretations to justify the use of torture, it is increasingly common to choose policies that deny that certain practices constitute torture or ill-treatment under international law [1418].

In many countries, detainees are mistreated while investigating ordinary crimes. Perverse incentives for arrests and abuse arise from pressure from politicians, supervisors, judges, and prosecutors to adjudicate large numbers of cases, and from inadequate measurements of police performance, including evaluation systems that focus only on the number of crimes that are “broken” or the number of convictions. The lack of physical forensic methodology and the lack of training in modern techniques and equipment used in criminal investigations also often give rise to the impression that torture, ill-treatment and coercion are the easiest and quickest ways to obtain confessions or other information [1419].

Serious concerns arise about legal systems that prioritize confessions in establishing criminal responsibility. Although admission and recognition of guilt can be critical to the rehabilitation and reintegration of offenders, the ability to convict suspects on the basis of confessions alone without additional evidence encourages physical or psychological abuse and coercion. Legal systems that impose by law that extrajudicial confession proves guilt only if confirmed by other evidence nevertheless constitute actual incentives for ill-treatment [1420].

Compelling evidence from the criminal justice system shows that coercive methods of interrogation produce false confessions even when they do not amount to torture. Coercion can control one's will to such an extent that one doubts one's own memory, believes the accusations made against one, or admits because one believes that one's innocence will not be believed. Acquittals based on DNA evidence in some jurisdictions reveal that more than a quarter of unjustly convicted persons have made false confessions or statements establishing their guilt. Studies reveal that the more coercive the interrogation, the more likely it is to lead to a false confession, and also reveal that criminal defendants who make false confessions and then deny the charges against them during the trial are nonetheless convicted by 81 percent, often based on their confessions alone [1421].

Persons questioned in connection with an alleged role in a criminal offence must not be compelled to testify against themselves or to confess guilt (ICCPR, art. 14 (3) (g)) nor may investigative authorities resort to “any undue psychological pressure or direct or indirect physical pressure” to make them confess. Accordingly, the prohibition of torture and ill-treatment is complemented by the prohibition of any form of coercion during the interrogation of suspects. The Rome Statute of the International Criminal Court also prohibits “any form of coercion,

(1418) (A/71/298، 5 August 2016، §9).
(1419) (A/71/298، 5 August 2016، §10).
(1420) (A/71/298، 5 August 2016، §11).
(1421) (A/71/298، 5 August 2016، §19)
See Innocence Project, “False confessions or admissions”, 2016, available from www. innocenceproject. org/causes/false-confessions-admissions/..
See Mark, A. Costanzo and Ellen Gerrity, "The effects and effectiveness of using torture as an interrogation device: using research to inform the policy debate", Social Issues and Policy Review, vol. 3, No. 1 (2009).
See: Supreme Court of Canada, R. v. Oickle.

coercion or threat" during investigations (Article 55). The protocol should explicitly state this prohibition and extend it to interrogations of witnesses, victims and other persons in the criminal justice system [1422].

As a general rule of application, all States must refrain from using any kind of coercion when interrogating persons subjected to any form of detention. International law recognizes the need to provide special protection systems for all detainees, who may not be subjected, during their interrogation, to violence, threats, or practices that undermine their ability to make decisions, judge matters, force them to confess, incriminate themselves, or testify against another person[1423].

Examples of other safeguards against ill-treatment and coercion during interrogation include ensuring that no interrogation is conducted without direct or indirect supervision, including through one-sided mirrors, live broadcasts, or review of audio recordings.

Apart from exceptional circumstances, strict domestic regulations must ensure that persons detained for more than two hours without interruption are not questioned, that adequate refreshment breaks are provided, and that periods of at least eight consecutive hours of rest - free from questioning or any activity related to the investigation - are allowed every 24 hours.

Except for compelling circumstances, no interrogation should be conducted at night [1424].

The SPT was of the view that if a person was ill-treated by the police, it was understandable that that person, while remaining in police custody, would fear reporting this to anyone.

If that person wants to complain about ill-treatment, the doctor can be the likely choice, as doctors are supposed to work independently of the security forces and given that consultations with doctors are supposed to be private and confidential. Furthermore, if the detainee sustains any injuries the doctor is in the best position to examine and record them.

From a preventive perspective, if persons deprived of their liberty are routinely examined by a doctor in private while in police custody, any police officer may be deterred from resorting to ill-treatment. The SPT considers that access to a doctor without the presence of a police officer is an important safeguard against ill-treatment.

The sub-committee considered that it is clear from the lack of medical examination neither in police stations nor in detention centers, as well as the constant presence of police officers when detainees meet the doctor; that there is no culture of medical secrecy in the meeting between the patient and the doctor. Moreover, showing patients to a doctor usually handcuffed is an unacceptable routine practice and constitutes degrading treatment. It undermines the trust that exists between the patient and their doctor.

The SPT therefore recommended that the authorities ensure that all persons in police custody undergo regular medical examination without the use of any restrictive measures. The SPT also recommends that medical examinations be carried out in accordance with the principle of medical discretion; non-medical persons, other than the patient, should not be present and in exceptional cases, when requested by a doctor, special security arrangements such as keeping a police officer on call could be considered. The doctor should note this assessment in a

---

([1422]) (A/71/298, 5 August 2016, §36), (see Human Rights Committee, General Comment No. 32 (2007) on the right to equality before courts and tribunals and in a fair court of law (article 14 of the International Covenant on Civil and Political Rights).

([1423]) (A/71/298, 5 August 2016, §37), (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 21).

([1424]) (A/71/298, 5 August 2016, §89), see the report to the Turkish Government on the visit to Turkey of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 17 June 2009 (CPT/Inf (2011) 13).

document as well as the names of all persons present. On the other hand, police officers should avoid attending during the examination period and should preferably not be seen by others during the medical examination.

In addition to adequate medical examination, the recording of injuries to persons deprived of their liberty by the police is an important safeguard that contributes to the prevention of ill-treatment as well as the fight against impunity. Comprehensive recording of injuries can deter persons who may otherwise resort to ill-treatment. The SPT recommends that each routine medical examination be conducted using a standardized form that includes (a) a person's medical history. (b) any account given by the person examining and relating to any violence committed (c) the results of the thorough physical examination, including a description of any injuries (d) and an assessment, where the training of the physician allows, of the consistency of the first three items mentioned above.

The medical record should be made available to the detainee, at his request, and to his lawyer[1425].

Even in situations of armed conflict, the use of torture or any other form of coercion against prisoners of war to extract any kind of information from them is strictly prohibited. As for prisoners of war who refuse to provide information, they may not be "threatened .. or insulting them or exposing them to any inconvenience or prejudice. " It is also prohibited to exert any physical or moral coercion against protected persons for any purpose, especially with the aim of extracting information from them or from others. In cases where persons face criminal proceedings, the Geneva Conventions and their Additional Protocols I and II also provide for their right not to be compelled to testify against themselves or to confess guilt, whether during international or non-international armed conflicts. This must also be understood as the absence of any physical or moral coercion in order to induce them to confess. In cases other than those mentioned above, the prohibition of coercion during the investigation should be applied as a matter of public policy, regardless of the international or non-international character of the conflict and the status of the person questioned [1426].

Accusatory interrogation models are usually motivated by a desire to obtain a confession, are characterized by an assumption of actual guilt and the use of confrontation and psychological manipulation. Common manipulative tactics are coercive, and are likely to weaken the free will, judgment, and memory of interviewees. Examples of problematic practices include threats, inducements, misleading practices, a prolonged or suggestive interrogation process, and the use of drugs or hypnosis. Also of concern are derogatory or superior comments or accusations based on individual qualities or cultural identities [1427].

The temptations may be promises of immunity or a reduced sentence in exchange for confessions. Misleading practices include resorting to subterfuge or deception, by, inter alia, presenting false evidence, confronting people with false witnesses, or leading one to believe that one's partners have confessed. These methods are improper because they end up depriving a person of their freedom of decision through the use of false statements. Methods aimed at minimizing or maximizing the suspect's perceptions of responsibility or blame, including implicit promises of leniency and providing false evidence, claims, or insinuations

---

([1425]) (CAT/OP/MDV/1, 26 February 2009, §§108 - 112).
([1426]) (A/71/298, 5 August 2016, §38), (Geneva Convention relative to the Treatment of Prisoners of War, Article 17) (Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 31) (Geneva Convention relative to the Treatment of Prisoners of War, Article 99; Protocol I, Article 75; Protocol II, Article 6).
([1427]) A/71/298، 5 August 2016، §39.

about the existence of evidence against him, also increase the likelihood of making false confessions [1428].

The Special Rapporteur on torture considers that prolonged or suggestive interrogations, in which people are interrogated for extended periods without adequate rest, or are asked confusing, vague, or leading questions with extreme intensity, are likely to become coercive interrogations and constitute ill-treatment and can cause sleep deprivation, impaired decision-making, and a willingness to confess to anything in order to put an end to the interrogation [1429].

Even where coercive methods do not amount to torture or ill-treatment, they remain means to the same ends for government officials to assert the presumption of guilt. It is likely to result in misinformation and create conditions conducive to the use of torture or ill-treatment. Thus, strengthening protection from coercive interrogation methods and advocating a model of interrogation based on the principle of the presumption of innocence are essential to prevent ill-treatment during interrogation and increase the effectiveness of authorities [1430].

It is well established that the term “cruel, inhuman or degrading treatment or punishment” must be interpreted to include the maximum possible protection against abuse. When persons are deprived of liberty, the prohibition of torture and ill-treatment overlaps with and complements the principle of humane treatment of detainees. The European Court of Human Rights, in Bouyid v. Belgium, found the inherent link between the concept of degrading treatment or punishment and the concept of human dignity, and concluded that any treatment in which “a person is insulted or debased, or shown to be disrespectful or derogatory of his human dignity, or to give rise to a feeling of fear, anguish or inferiority that can break his moral and physical resistance,” can be described as degrading. Any act by law enforcement officials that detracts from a person's human dignity, including the use of physical force when its use is not strictly necessary for that person's conduct, constitutes a violation of the prohibition of torture and ill-treatment [1431].

Psychological pressures and unwarranted manipulative practices can, in and of themselves, amount to inhuman or degrading treatment, depending on their degree, severity, type, and frequency. This may occur, inter alia, when certain methods are used in combination, over a long period of time, or against vulnerable people including children, people with psychosocial disabilities, people who do not understand or speak the language of the interrogating staff adequately, and other people who may be particularly affected by coercion because of their special needs or because of their physical or emotional development [1432].

International and regional human rights mechanisms have so far developed an extensive body of jurisprudence on practices that amount to physical or psychological torture or ill-treatment, including but not limited to punching, kicking, beating, electrocution, forms of strangulation, causing body burns, use of firearms, death mockery, threats of retaliation against relatives, death threats, restraint in extremely painful positions, rape, sexual assault and humiliation, sleep deprivation, coercion into stress positions for prolonged periods, prolonged solitary confinement, detention with contact denied, disruption of the senses, exposure to extremely high or low temperatures or loud music for prolonged periods, diet modification, blindfolding, full head covering during interrogation, prolonged interrogation sessions, stripping of clothing, deprivation of all religious comforts and possessions, and exploitation of phobia during interrogation. Unfortunately, these illegal methods have often been accompanied by poor conditions of

---

[1428](A/71/298, 5 August 2016, §40), (see E/CN. 4/813).

([1429]) (A/71/298، 5 August 2016، §41)، (E/CN. 4/813), for example, Christian Meissner, Christopher E. Kelly and Skye A. Woestehoff, "Improving the effectiveness of suspect interrogations", Annual Review of Law and Social Science, vol. 11 (2015).

([1430]) (A/71/298، 5 August 2016، §42).

([1431]) (A/71/298, 5 August 2016, §43), see: Body of Principles, and see (A/HRC/68/295).

([1432]) (A/71/298، 5 August 2016، §44).

detention - which alone can amount to cruel, inhuman or degrading treatment - in order to exert additional psychological pressure on detainees to extract information from them. The Special Rapporteur notes that the physical environment and conditions in which interrogation takes place must be appropriate, humane and free from intimidation, so as not to violate the prohibition of torture or ill-treatment [1433].

The Special Rapporteur on torture expressed serious concern about the practice of holding persons suspected of terrorist acts in solitary confinement or any other form of isolation to break their resistance to interrogation. Imposing solitary confinement for any period in order to pressure persons to confess, provide information or plead guilty violates the prohibition of torture. Practices such as the "segregation" method described in Appendix M of the United States Army Field Manual, according to which detainees are isolated and prevented from contacting anyone other than medical, detention and intelligence personnel, with the aim of reducing their resistance to interrogation, are coercive tactics and violate international law [1434].

It is encouraging that some countries have shifted away from models of interrogation based on accusation, manipulation and motivated by the desire to obtain a confession, with the aim of increasing accurate and reliable information, reducing the risks of unreliable information and aborting justice. The interrogation model known as the pace model adopted in 1992 in England and Wales was the first to capture the essence of alternative models of information gathering. Models of interrogation in investigations subsequently adopted by other jurisdictions and the International Criminal Court (ICC) were modelled on this model[1435].

The interrogation model in investigations consists of a number of key elements that play a key role in preventing ill-treatment and coercion and help ensure effectiveness. In particular, interrogators must seek accurate and reliable information to obtain the truth; gather all available evidence relevant to the case in question before commencing operations; prepare and plan interrogations based on that evidence; maintain a professional, fair and respectful attitude during interrogation; establish and maintain an amicable relationship with the interrogator; allow the interrogator to provide a free narrative of events without interruption; use final open-ended questions and listen attentively; scrutinize the interrogator's narrative and analyse the information obtained against previously available information or evidence; and evaluate each interrogation to learn and develop additional skills [1436].

Therefore, I must emphasize that the specific objective of the interrogation is to obtain accurate and reliable information to reach the truth of all the facts relevant to the matters under investigation. Interrogations should not be aimed at obtaining confessions or any other information that reinforces the presumptions of guilt or any other assumptions of interrogation staff but should be conducted in order to give effect to the presumption of innocence. Employees actively build and test alternative assumptions through systematic preparation, build an empathetic relationship, ask open-ended questions, listen attentively, strategically explore, and disclose potential evidence. These interrogations are far more effective and comply with human rights [1437].

Objectivity, impartiality and fairness are crucial elements of interrogation in investigations. It requires that interrogation officers have a broad horizon, even if the evidence against the person

---

[1433](A/71/298, 5 August 2016, §45), (see A/HRC/13/39/Add. 5; A/52/44; CCPR/C/USA/CO/3/Rev. 1; CAT/C/USA/CO/2; and CAT/C/KAZ/CO/3).

([1434]) (A/71/298‹ 5 August 2016‹ §46)‹ (A/66/268).

([1435]) (A/71/298, 5 August 2016, §47), and the five steps that comprise the peace model are: preparation and planning; communication and explanation; narrative; closure; and evaluation.

([1436]) (A/71/298‹ 5 August 2016‹ §48).

([1437]) (A/71/298, 5 August 2016, §49), see the twelfth report of the Administrative Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its activities (CPT/Inf (2002) 15).

in question is strong. When the interrogation process is objective, impartial and fair, it reduces the risk of resorting to methods directed at obtaining confessions or coercion, and the risk of obtaining false statements or false information. In criminal investigations, a fair policing process forms the preparatory basis for a fair trial. Interrogation staff must maintain their professionalism and not allow their prejudices, preconceptions, or emotions to influence their performance during interrogations [1438].

When the preparation of an investigation is systematic and robust, it increases the quality and likelihood of success of interrogations. Conversely, if insufficient, it is likely to cause setbacks and create risks for employees to resort to pressure or physical coercion to obtain information or confessions. Adequate preparation for interrogations requires full knowledge of and compliance with the applicable procedural rules governing their conduct. In order for staff to carry out interrogations as effectively as possible, they should, inter alia, clearly know and understand all information relevant to the case, be fully familiar with the legal definition of the crime under investigation and identify all potential evidence in the case file and every possible explanation of its origins. It is also indispensable to prepare an interrogation strategy and structure to find the best way to extract information, and the ability to retain flexibility throughout the interrogation is indispensable [1439].

Establishing and maintaining an amicable relationship with the interviewee is a critical factor in determining the effectiveness of non-coercive interrogations. An amicable relationship with the interviewee can help reduce anxiety, anger, or distress, while increasing the likelihood of obtaining more complete and reliable information. The methods of establishing an amicable relationship with the interrogator must not be used for the purposes of manipulation or undue pressure to extract confessions, as this is contrary to the purpose and spirit of the interrogation model in investigations. Interrogation staff must act professionally at all times and refrain from using any form of coercion throughout the interrogation process. Interrogation officers must obtain the cooperation of the interrogators, not show their authority, impose control over the interrogators, manipulate them, or force them to comply with their wishes [1440].

It is therefore recommended that the interviewees begin each topic by asking open-ended questions of the interviewee and allow him/her to present a free narrative of the events under investigation without interrupting it. Unlike complex, leading, or complex questions, open-ended and neutral questions aim to encourage the interviewee to recall events from memory and are less likely to result in statements against their will, affect their narrative, or distort their memory. General and open-ended questions would enable innocent suspects to present information freely, while preventing convicted suspects from understanding its evidentiary significance [1441].

For best practice, respondents are encouraged to initiate, where necessary, exploratory questions designed to elicit information that tests all possible alternative explanations previously identified during the preparation of the interview. Strategic exploration and disclosure of potential evidence allows interrogation officers to probe in depth the interrogator's account before moving on to the next topic, helping to ensure respect for the presumption of innocence while reinforcing the justification against the convicted suspect by preventing him from later fabricating an alibi. Although interrogators can insist on the line of interrogation they took when

---

([1438]) (A/71/298, 5 August 2016, §50), see European Code of Police Ethics.
([1439]) (A/71/298, 5 August 2016, §51), see, e.g., OSCE, Office for Democratic Institutions and Human Rights, Human Rights in Counterterrorism Investigations: A Practical Guide for Law Enforcement Officials (Warsaw, 2013).
([1440]) (A/71/298، 5 August 2016، §52).
([1441]) (A/71/298، 5 August 2016، §53).

investigating the narrative provided by the interrogator, the interrogation must never become oppressive or unfair [1442].

1. Exclusion of evidence obtained in violation of international standards

The term "evidence of torture" is used below as an acronym to refer to all forms of evidence extracted by torture or other cruel, inhuman or degrading treatment or punishment, including confessions, other information and other forms of evidence. The impact of evidence of torture is indicated based on the experiences of the States concerned, which covers the inadmissibility of evidence extracted by coercion, pressure, intimidation, persecution or other unlawful means.

The effectiveness of a state's criminal justice system depends on the trust of the people it serves.

The ways in which police and other law enforcement agencies investigate crime, interview suspects, witnesses and victims, and gather evidence are essential to building and maintaining this trust.

Where torture and ill-treatment are used to extract confessions or other information or evidence, that trust can be broken.

The rule of inadmissibility of evidence obtained by torture or ill-treatment in any proceedings, also known as the "exclusionary rule", contained in Article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) sets out an important step to ward off corrupt practices, removes one of the basic incentives for arbitrariness, and guarantees due process rights and the fairness of court proceedings.

The application of this rule helps to dismantle unreliable confessions based on police investigations, and leads to better and more reliable collection of evidence and investigations.

This tool outlines a variety of legislative, policy and practical measures and procedures adopted by States to prohibit and prevent the taking of evidence by torture and ill-treatment and their subsequent use in domestic criminal processes. Aimed at helping officials - particularly police, prosecutors, medical practitioners and judges - how to avoid and exclude such evidence obtained by torture or ill-treatment, experience shows that the proper process of preventing and excluding the use of evidence [including confessions] obtained as a result of torture or ill-treatment helps to reduce the risks and incentives that lead to the use of torture and ill-treatment in the first place.

Courts should exclude statements and other evidence obtained as a result of torture, ill-treatment or any other form of coercion from evidence admissible at all stages of the trial. The only exception is acceptance as evidence in a case against the alleged perpetrator of torture or other ill-treatment.

Respect for the right to a fair trial may require the exclusion of evidence obtained in a manner that violates other international human rights standards.

Article 15 of the United Nations Convention against Torture stipulates that: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made[1443]."

([1442]) (A/71/298, 5 August 2016, §54), see Ivar A. Fahsing and Asbj?rn Rachlew, "Investigative interviewing in the Nordic region", in International Developments in Investigative Interviewing, Tom Williamson, Becky Milne and Stephen P. Savage, eds. (Cullompton, United Kingdom, Willan, 2009).

([1443]) Article 15 of the United Nations Convention against Torture.

Statements, documents or other evidence obtained by torture or ill-treatment are not admissible in any proceedings, except against suspected perpetrators. This exclusionary rule constitutes a non-derogable norm of customary international law. It is essential to respect the prohibition of torture and ill-treatment by creating a disincentive. The rule applies to ill-treatment of both suspects and third parties, including witnesses, and to evidence obtained in a third State, regardless of whether the evidence is particularly substantiated or conclusive in the case. The exclusionary rule fully applies to the collection, sharing and receipt of any information tainted by abuse.

The exclusionary rule includes any form of coercion. Confessions of guilt are valid only if made without coercion of any kind. The Luanda Guidelines recall that confessions or other evidence obtained by any means of coercion or force, including those obtained during solitary confinement, cannot be admitted as evidence or considered as establishing any facts at trial or for sentencing.

The exclusionary rule also applies to evidence gathered or derived from information extracted under duress, and States must bear the burden of proving that confessions were extracted without coercion, intimidation or inducement. As a best practice, the exclusionary rule should also apply to the collection, sharing and receipt of information tainted by any form of coercion.

Unfortunately, coerced confessions are accepted as evidence in many jurisdictions, particularly where law enforcement relies on confessions as the primary means of resolving cases, and courts are unable to put an end to these practices. The protocol must address the need to change the culture of tolerance and impunity regarding coerced confessions in such cases. Domestic legislation should only accept confessions made in the presence of a competent and independent lawyer (and persons responsible for providing support where appropriate), and confirmed before an independent judge.

Confessions outside the trial that are not corroborated by other evidence or have been retracted must not be accepted by the courts. If there are doubts about the voluntariness of a person's confessions, as in the absence of information on the circumstances in which statements were made, or following arbitrary arrests, secret or incommunicado detentions, statements should be excluded regardless of the evidence or knowledge of the violation.

Domestic laws must provide for the exclusion of all evidence obtained in violation of safeguards designed to prevent ill-treatment, such as confessions or incriminating statements obtained in violation of a person's right to be informed of his or her rights and legal status prior to interrogation, or duly warned that his or her statements may be recorded and used in evidence against him or her.

Evidence should also be excluded when the use of a lawyer is unduly delayed or denied, or forcibly waived; when the specific safeguards applicable to the interrogation of vulnerable persons are violated; and when persons are denied adequate breaks and breaks during interrogations except in compelling circumstances.

Accountability is also required in cases where evidence or information is taken in violation of preventive safeguards and the accused confesses without trial [1444].

There are several good policy reasons for excluding evidence obtained by torture or ill-treatment, including:

[1444](A/71/298, 5 August 2016, § §96-100), see American Convention on Human Rights, article 8 (3), (A/HRC/25/60), (A/63/223), (A/HRC/13/19/Add. 5 and A/HRC/4/33/Add. 3), and see: Report of the Inter-American Commission on the Human Rights of Persons Deprived of Liberty in the Americas (OEA/Ser. L/V. II. Doc. 64), Inter-American Court of Human Rights, Cabrera Garc?a and Montiel Flores v. Mexico).

To make the trial proceedings more effective by ensuring that they are based on reliable evidence, there are many scientific researches that show that any statement or information obtained under torture is unreliable, because it was not made freely;

Saving police and court time and associated costs spent on responding to allegations of torture or misconduct;

Avoiding miscarriages of justice, where someone is forced to confess to a crime they did not commit;

To protect the rights of victims of torture, in legal proceedings, and to provide remedies for the violation of their rights;

Protect the fairness of the trial by protecting the defendant's right to remain silent and not to have to provide information under pressure;

Protecting the integrity of the judicial system, instilling public confidence in it, and promoting the supremacy of institutions based on the rule of law;

Enhance police effectiveness, by encouraging police forces to develop effective investigative skills and techniques;

Deterring and not incentivizing torture and ill-treatment, by removing one of the main reasons for committing torture and ill-treatment.

Many States prohibit the use of illegally obtained evidence, including evidence of torture, in their constitutions or through legislation. This is sometimes done through the specific reference to the prohibition on the use of evidence of torture, as enshrined in Article 15 of the UN Convention against Torture, or more broadly through the prohibition on the use of unlawful evidence.

In Equatorial Guinea, there is legislation against torture, prohibiting the use of evidence of torture, and prohibiting the use of confessions or information obtained through torture [1445].

The Constitution of Japan expressly prohibits the admission of confessions extracted by torture as evidence: “Confession by coercion, torture, or threat, or after prolonged arrest or detention, shall not be permitted[1446].”

In Spain, the 1978 Constitution defines the right not to be tortured as a fundamental right, and the Spanish Judicial Code states: 'Evidence obtained directly or indirectly through the violation of fundamental rights will have no legal effect'[1447].

The Spanish Supreme Court has stated that: [Evidence obtained in violation of fundamental rights must not be considered by the court][1448] .

In Tunisia, the Code of Criminal Procedure invalidates evidence of torture, and the explicit legal prohibition of the use of evidence obtained by torture was added to Article 155 of the Criminal Procedure Code of 2011, which states that: "The accounts and confessions of the accused and the statements of witnesses shall be considered null and void if it can be proven that they were obtained under torture or coercion."[1449].

(1445) Equatorial Guinea, Article 8 of Law No. 2 of 2006 on the Prevention and Punishment of Torture.
(1446) Article 38, paragraph 2, of the Constitution of Japan of 1947.
(1447) Spain, Spanish Judiciary Law of 1985, Article 11. 1.
(1448) Judgement No. 3943/1990 of 24 May 1990.
(1449) Tunisia, Code of Criminal Procedure, Article 155.

2. Exclusion of evidence of torture or ill-treatment

Courts may not use in their proceedings any evidence, including confessions of defendants, if extracted under torture or other cruel, inhuman or degrading treatment, except when instituting proceedings against, and as evidence against, persons who allegedly extracted such evidence forcibly. These exclusion rules stem from the nature of the prohibition against torture and other ill-treatment, as well as the right of accused persons not to be compelled to testify against themselves or to confess guilt, and to remain silent. Respect for these rights requires that the prosecution prove its case without resorting to evidence obtained through torture or other ill-treatment, coercion or persecution [1450].

The rule excluding statements extracted as a result of torture or other ill-treatment applies not only to statements extracted from the accused, but also to statements made by any other person, whether or not they have been called to testify. It also applies to all places, regardless of where torture or other treatment was practiced (including outside the territory of the state), and whether or not the perpetrator of the prohibited treatment is from a foreign state [1451].

The exclusion rule applies regardless of the seriousness of the alleged offence the person is accused of, or the context of that offence [1452].

as applicable at all times, including in time of war or emergency,[1453]

The prohibition of torture and other ill-treatment cannot be derogated from under human rights treaty law, a principle of customary international law [1454].

The Convention against Torture and the American Convention for the Prevention of Torture contain explicit rules that require the exclusion of statements extracted by torture (except for actions taken against alleged perpetrators[1455].

However, the scope of the exclusionary rule goes beyond the limits of these rules. Torture and other forms of ill-treatment or inhuman or degrading treatment are prohibited under any circumstances on the basis of provisions contained in a range of treaties and norms that do not have the status of treaties, and by virtue of customary international law. The Human Rights Committee, the Committee against Torture, and other United Nations experts, courts, and regional human rights bodies have emphasized that the exclusionary rule stems from the nature of the prohibition, and thus also applies to any cruel, inhuman, or degrading treatment other than torture [1456].

([1450]) General Comment 32 of the Human Rights Committee, § §6, 41 and 60; Cabrera-García and Montel Flores v. Mexico, Inter-American Court 165 § (2010); Gavgen v. Germany (22978) / 05), Grand Chamber of the European Court (2010) - § 168 §165; Osman v. United Kingdom (8139) / 09), European Court §264 - § 267 (2012).

([1451]) Cabrera-García and Montel Flores v. Mexico, Inter-American Court § 167 (2010); European Court: El Haski v. Belgium (649) / 08), § - § 8788 (2012) and 91; Osman v. United Kingdom (8139) / 09), European Court §263- § 267(2012) and 282; see, Committee against Torture: Concluding Observations: United Kingdom, 3/2004) UN Doc. CAT/C/CR/33) § §4 (a) (1) and 5(d); 2002) UN Doc. CAT/C/29/D/193/2001 ‹P. E. v France) 2003) UN Doc. CAT/C/30/D/219/2002 ‹G. K. v Switzerland ‹3/ §6) . 10/6-9/ § §6.

[1452]See General Comment 2 of the Committee against Torture, §5 and§ 6; Concluding Observations of the Committee against Torture: United Kingdom, 44 / UN Doc. A/54 §76 (1999) (d)..

([1453]) Human Rights Committee General Comment 32, §6; see Human Rights Committee General Comment 29, §7 and§ 15;Cabrera-García and Montel Flores v. Mexico, Inter-American Court 165 § (2010).

([1454]) General Comment 32 of the Human Rights Committee, §6; Case concerning Ahmadou Diallo (Republic of Guinea v. Democratic Republic of the Congo), ICJ JM. Henckaerts and L. Doswald-Bec; §87 (2010), ICRC Study on Customary International Humanitarian Law, Volume 1: Rules, 2006, Rules 90 and 100, pp. 315-319 and 367.

([1455]) Article 15 of the Convention against Torture, and Article 10 of the American Convention for the Prevention of Torture.

([1456]) Article 12 of the Declaration against Torture, Guideline 29 of the Robben Island Guidelines, and Principle 5 of the Principles on All Persons Deprived of their Liberty in the Americas; see Article 7 of the International Covenant, Article 5 of the African Charter, Article 5 of the American Convention, Article 8 of the Arab Charter, Article 3 of the European

Although the European Convention did not specifically provide for exclusion, the European Court ruled that any evidence obtained by torture or other ill-treatment should be excluded from criminal proceedings, except for those against the alleged perpetrator of that treatment. It decided that the right to a fair trial was violated when the court recognized statements made under torture or other ill-treatment as evidence, even in cases where such statements did not constitute a decisive factor and were relied upon alongside other evidence [1457].

Statements and statements made by the accused as a result of coercion must also be excluded from the list of evidence. For example, the Inter-American Court clarified that the American Convention requires the exclusion of confessions of guilt made as a result of coercion in any form, including conduct that may not amount to torture or other ill-treatment, but is coercive in nature [1458].

The Inter-American Court explained that the exclusionary rule also applies to statements resulting from the coercion of a third party, such as witnesses, and to evidence derived from information obtained under coercion [1459].

Fair trial principles in Africa explicitly prohibit the inclusion of confessions or other evidence obtained through any form of coercion or force for consideration by the court or in the course of sentencing[1460].

Accordingly, any confession or confession obtained during incommunicado detention is the result of coercion [1461].

The exclusionary rule shall therefore apply to statements made by any person as a result of torture or other ill-treatment, and to statements obtained as a result of coercion, both physical and psychological, in particular from the accused. This includes, for example, prolonged incommunicado detention (including in the context of enforced disappearances) and arbitrary detention [1462].

Many countries have consistently used statements made by the accused because of coercion in proceedings against persons suspected of involvement in terrorism, in violation of international standards [1463].

The Committee against Torture has expressed concern about reports that women in Chile receive life-saving medical care after undergoing illegal abortions only if they provide information on those who have undergone such abortions; as well as about the inclusion of this information, subsequently obtained under duress, in subsequent criminal proceedings [1464].

Convention, and Principles 21 and 27 of the Body of Principles, Special Rapporteur on Torture, 426/1999) UN Doc. A/54) §12 (e); Human Rights Committee, General Comment §12 ,20, and General Comment 32, §60; Committee against Torture: General Comment §6 ,2, Concluding Observations: Mongolia, §18 (2010) UN Doc. CAT/C/MNG/CO/1; Swilmes v. Turkey (99/46661), European Court § 121- § 125 (2006); see Malawi African Society et al. v. Mauritania (54/91 et al.), African Commission, Annual Report § 13 §3 (2000), 8, 11 and 115.

([1457]) European Court: Harutyunyan v. Armenia (36549) / 03), §63- § 66 (2007), Leventa v. Moldova (17332) / 03), 100 § (2008); Stanimirović v. Serbia (26088) / 06), 52 § (2011).

([1458]) Article 8(3) of the American Convention.

([1459]) Cabrera-Garciaand Montel Flores v. Mexico, Inter-American Court §166- § 167(2010).

([1460]) See also, African Commission Concluding Observations: Benin, §50 (2009).

Section N (6[1461]) (d) (1) of the Principles of Fair Trial in Africa.

([1462]) Special Rapporteur on Torture, 259/2006) UN Doc. A/61) §56; Special Rapporteur on human rights and counter-terrorism, UN Doc §45 (2008) A/63/223 (d); Inter-American Commission on Human Rights, Resolution 29/89: Nicaragua (10). 198)، (1990)..

Concluding [1463]observations of the Human Rights Committee: Russian Federation, UN §8 (2009) Doc. CCPR/C/RUS/CO/6; Special Rapporteur on Torture, ,UN Doc. A/61/259، §96 (2010) UN Doc. A/HRC/13/39/Add. 5. §46 (2006).

([1464]) Concluding observations of the Committee against Torture: Chile, UN Doc § §6 (2004) ,CAT/C/CR/32/5 (j) and 7(m).

The Special Rapporteur on torture recommended that confessions made by persons while in detention should only be admissible if they are recorded and made in the presence of a competent and independent lawyer and confirmed before a judge. It should never be used as the sole basis for conviction [1465].

Even with such guarantees, the exclusionary rule must remain in force for statements obtained as a result of torture or other ill-treatment or forms of coercion.

Challenges to the Legality of Acceptance of Statements

Statements and statements made by the accused should not, in principle, be admitted as evidence in criminal proceedings unless it is established that they were made voluntarily. This principle should provide substantial protection against the adoption of statements obtained under duress.

More generally, when allegations arise that statements made by defendants or others have been obtained as a result of human rights violations, or there are grounds to believe that this could be the case, the authorities should inform the defendant and the court of the circumstances in which the evidence was obtained. The court shall, therefore, assess the matter in an independent hearing before admitting the evidence in the course of the trial. Consistent with the principle of the presumption of innocence, the prosecution bears the burden of proving beyond reasonable doubt that the evidence was obtained in lawful ways [1466].

The Human Rights Committee concluded that a component of Sri Lanka's terrorism law, which places the burden on the accused to prove that his confession was the result of coercion and should therefore be excluded from the evidence, violated the principle of the presumption of innocence and the prohibition on the admission of coerced confessions [1467].

The Inter-American Court ruled that, given that the burden of proof rests on the State, it is not necessary for the accused to prove conclusively his claim that evidence was extracted from him as a result of torture or other ill-treatment [1468].

The European Court and the Inter-American Court have ruled that if a person who has made a statement as a result of torture or other ill-treatment confirms or repeats his statement before a different authority (including a court), this should not automatically lead to the conclusion that he has made the statement voluntarily and that it is admissible [1469].

It is still necessary for the court to make an assessment of the voluntariness of the assertion or repetition, in light of past abuse and the person's current situation.

In cases where evidence has been obtained in another country, the European Court and the Special Rapporteur on Torture have argued that there is a reasonable risk that the evidence was obtained as a result of torture or other ill-treatment, and that the admissibility of the evidence would constitute a violation of the right to a fair trial. The only exception to this is that

---

([1465]) Special Rapporteur on Torture, 156/2001) ,UN Doc. A/56) §39 (d) and(f), § - § 100101 (2010) UN Doc. A/HRC/13/39/Add. 5; see Concluding Observations of the Committee against Torture: Chad, / UN Doc. CAT/C/TCD. §29 (2009) CO/1.

([1466]) Cabrera-Garcíaand Montel Flores v. Mexico, Inter-American Court (177- § §173 (2010); Commission on Human Rights: Singarasa v. Sri Lanka, 2001/4 / §7 (2004) ,UN Doc. CCPR/C/81/D/1033; General Comment § §33 ,32 and 41, Ideva v. Tajikistan, / UN Coc. CCPR 3/ §9 (2009) C/95/D/1276/2004 and 9/6; Special Rapporteur on Torture: §39 (2001) ,UN Doc. A/56/156 (j), 259 / §65 (2006) ,UN Doc. A/61، §98 (2010) UN Doc. A/HRC/13/39/Add. 5.

Singarasa [1467]v. Sri Lanka, 2001 / UN Doc. CCPR/C/81/D/1033 7/ §3 (2004) and 7/4..

([1468]) Cabrera-Garcíaand Montel Flores v. Mexico, Inter-American Court (2010) §176 and§ 177.

([1469]) European Court, Harutyunyan v. Armenia (36549) / 03), (2007) §65- §66, Stanimirovich v. Serbia (26088) / 06), 52 § (2011), Cabrera-García and Montel Flores v. Mexico, Inter-American Court (2010) §173- § 174.

the court, after having examined the allegations, is convinced, otherwise, that the evidence has not been extracted as a result of such treatment, based on objective and concrete evidence[1470].

The Special Rapporteur on human rights and counter-terrorism stressed that if there are doubts about the voluntariness of statements by the accused or witnesses, for example, that there is no information about the circumstances of this or if the person has been arbitrarily or secretly detained, these statements should be excluded, even in the absence of direct evidence of physical abuse [1471].

3. Exclusion of other evidence of torture or ill-treatment

Respect for the right to a fair trial and the prohibition against torture requires not only the exclusion of statements obtained through torture, but also other forms of evidence obtained as a result of torture [1472].

This includes other evidence such as physical evidence of a crime obtained from information obtained through torture. This exclusion rule also applies at all times, including during emergencies[1473].

Furthermore, the principles of fair trial in Africa and the jurisprudence of the Inter-American Court explicitly require the exclusion of all forms of evidence obtained as a result of torture or other ill-treatment or other forms of coercion [1474].

Similarly, the Human Rights Committee has stated that the International Covenant requires not only the exclusion of statements and confessions, but also, in principle, all other forms of evidence obtained as a result of torture or other treatment, at all times [1475].

Judgments of the European Court

The European Court has made it clear that it should never rely on the use of "real evidence" (sensory or physical evidence, for example) obtained as a direct result of torture in establishing a person's guilt [1476].

The court said that evidence based on torture must be "excluded to protect the integrity of the trial proceedings and, ultimately, the rule of law itself"[1477].

The European Court also said that providing "real evidence" obtained as a result of ill-treatment that does not amount to torture could make the trial lose its impartiality [1478].

However, until June 2013, the court had not ruled that the right to a fair trial required the exclusion of all "true evidence" obtained as a result of inhuman treatment in all circumstances[1479].

([1470]) European Court: Alhaski v. Belgium (649) / 08, (2012) §87 and§99; see, Osman v. United Kingdom (8139) / 09, European Court § 281- §282 (2012) (extradition sought case); Special Rapporteur on Torture: 259 / §65 (2006) ,UN Doc. A/61.

Special [1471]Rapporteur on human rights and counter-terrorism, UN Doc §45 (2008) A/63/223 (d).

Concluding [1472]observations of the Committee against Torture: Israel, UN Doc §52 (2002) A/57/44)Supp((k), 53 (j) (or § § (k), 7 (j) (excerpt document), Belgium, UN Doc. CAT/C/CR/30 (o) and 7(n), UK, § 3/ §4 (2004) UN Doc. CAT/C/CR/33 (a) (i) and 5(d); Human Rights Committee General Comment 32, §6; Inter-American Commission: Venezuela, . 364(8) § (2003).

([1473]) Human Rights Committee General Comment 32, §6; see Human Rights Committee General Comment 29, §7 and§ 15;Cabrera-García and Montel Flores v. Mexico, Inter-American Court § 165 (2010).

Section N (6[1474]) (d) (1) of the Principles for a Fair Trial in Africa, Cabrera-García and Montel Flores v. Mexico, Inter-American Court § 165- § 168 (2010); CAT Inquiry Report: Mexico, §220 (2003) UN Doc. CAT/C/75 (d) and(f).

([1475]) General Comment 32 of the Human Rights Committee, §6.

([1476]) Grand Chamber of the European Court: Gavgen v. Germany (22978) / 05), §167 (2010), Gloux v. Germany (54810) / 00), § 105 (2006).

([1477]) Osman v. United Kingdom (8139) / 09), European Court (2012) § §264 and§ 267.

([1478]) Glouh v. Germany (54810/ 00), Grand Chamber of the European Court §106- § 108 (2006).

The court's main issues in two Grand Chamber cases, in which it reached different conclusions, appeared to be whether the evidence had an impact on the conviction and sentence, and whether the defendant's rights to a defense had been respected.

In Gloh v. Germany, the Court found that the production of material evidence obtained as a result of inhuman treatment constituted a violation of the right to a fair trial. In this case, a person suspected of selling drugs swallowed a bag when he was arrested. At the hospital, four policemen immobilized him while forcibly administering medication to make him vomit. (The court considered this treatment inhuman or degrading (as the drug bag thus extracted constituted the decisive evidence against him[1480].

In Gavgen v. Germany, which followed, the court ruled that the presentation of evidence gathered as a result of a suspect making a statement following a threat of torture (which the court considered inhumane treatment) did not completely lose the fairness of the trial. It considered that the failure to exclude this impugned evidence did not have an impact on the conviction of the accused for the crime of kidnapping and killing a child, and that his right to defense and not to testify against himself was respected.

In reaching this conclusion, the majority of the Tribunal found that the following facts were decisive:

the decision of the court deciding on the case that statements made following the ill-treatment are inadmissible as evidence in the case;

Enabling the accused to challenge the legality of the admissibility of the sensory evidence collected as a result of his statement following his ill-treatment, and to do so;

The court that decided the case has the right to exercise due diligence in excluding such sensory evidence;

the conviction is not based on such physical evidence, but on two other confessions made by the accused during the trial, based on court decisions accepting them and reminding him of his right to remain silent;

a statement by the accused that he or she made his or her confessions during the trial of his or her own free will;

The absence of the need for evidence to prove guilt or determine the nature of the judgment [1481].

4. Exclusion of other evidence derived from violation of other standards

Respect for the right to a fair trial can also, in some circumstances, require the exclusion of evidence obtained in violation of other international human rights standards.

The Special Rapporteur on human rights and the fight against torture announced that in addition to the prohibition on the use of evidence obtained through torture and other ill-treatment, the use of evidence obtained through violations of human rights law, or national law in general, loses the integrity of the trial [1482].

The Inter-American Court declared that the exclusionary rule should apply to any evidence arising from irregular procedures, or from a violation of established procedures [1483].

([1479]) Gavgen v. Germany (22978/ 05), Grand Chamber of the European Court §167 (2010).

([1480]) Glouh v. Germany (54810/ 00), Grand Chamber of the European Court § 118- §123 (2006).

([1481]) Gavgen v. Germany (22978) / 05), Grand Chamber of the European Court §169- § 188 (2010).

Special [1482]Rapporteur on human rights and counter-terrorism, UN Doc §45 (2008) A/63/223 (d).

([1483]) American Commission, Venezuela, (8) (2003) § 364.

Some non-treaty standards require the exclusion of evidence (including statements made) obtained by means that constitute a serious violation of human rights [1484].

The Guidelines on the Role of Prosecutors state that, when prosecutors get their hands on evidence they have reason to believe has been obtained through unlawful methods and constitutes gross violations of a suspect's human rights, they must refuse to use such evidence against anyone other than those accused of such conduct [1485].

Confidential correspondence and communications between detained or imprisoned individuals and their lawyers should be excluded from the evidence, unless they are related to an ongoing or planned crime [1486].

The set of principles stipulates that "non-compliance with these principles in obtaining evidence shall be taken into account when deciding on the admissibility of such evidence against a detained or imprisoned person"[1487].

The principles of legal aid list the exclusion of evidence among the possible forms of reparation required by the failure to adequately inform a person of his or her right to legal aid[1488].

In recent years, some human rights courts, bodies and mechanisms have examined the question of whether not to exclude evidence obtained as a result of other human rights violations would compromise the integrity of criminal proceedings. Cases handled included, for example: evidence obtained during incommunicado or arbitrary detention;[1489].

Statements and statements obtained in the absence of defense counsel;[1490].

Evidence obtained in violation of the right to remain silent;[1491].

Evidence that is sniped through deceiving and entrapment of the accused [1492].

5. Role of the police

States must ensure that any statements that are found to have been made under torture are not invoked as evidence in any proceedings, except in proceedings against a person accused of torture as evidence that the statements were made, [and] urges States to extend this prohibition to statements obtained under cruel, inhuman or degrading treatment or punishment [1493].

Many States have adopted policies and procedures [protections] for police officers and other law enforcement officials on how to interview suspects, witnesses and victims, ensuring that the information they provide is obtained voluntarily and without coercion.

Guideline 16 of the Guidelines on the Role of Prosecutors and section n(6[1484]) (g) of the Fair Trial Principles in Africa; see principle 27 of the Body of Principles and article 69 (7) of the Rome Statute.
([1485]) Guideline 16 of the Guidelines on the Role of Prosecutors..
Principle 18 (5[1486]) of the Set of Principles; see Section N(3) (e) (ii) of the Principles for a Fair Trial in Africa.
([1487]) Principle 27 of the Set of Principles..
Guideline [1488]42§ 2 (e) and Principle 9 of the Principles of Legal Aid.
([1489]) Resolution 29/89 of the Inter-American Commission: Nicaragua (10). 198), (1990); see Special Rapporteur on human rights and counter-terrorism, Spain, UN Doc §43 (2008) A/HRC/10/3/Add. 2. Prolonged incommunicado detention can in itself constitute cruel, inhuman or degrading treatment or torture.

(See Chapter 4/3).
([1490]) European Court: Salduz v. Turkey (36391) / 02), Grand Chamber §56- §58 (2008), Yarimenko v. Ukraine (32092) / 02), §85- §91 (2008), Öcalan v. Turkey (46221) / 99), Grand Chamber §131 (2005)..
([1491]) European Court: Saunders v. United Kingdom (19187) / 91), Grand Chamber §68- §76 (1996), Heaney and McGuinness v. Ireland (34720) / 97), §47- §59 (2001), Allan v. United Kingdom (48539) / 99), (2002) §52 - §53.
([1492]) Teixeira de Castro v. Portugal (25829) / 94), European Court §34- §39 (1998); see, European Court: Edwards and Lewis v. United Kingdom (39647) / 98 and 40461/ 98) §49- §59 (2003), Ramanowski v. Lithuania (74420) / 01), Grand Chamber §54 - §74 (2008).
United [1493]Nations General Assembly Resolution A/Res/72/163, 19 December 2017, para.

In some States, confessions can only be used in court proceedings if these protections are found to comply with them. In other jurisdictions, lessons have been learned that improving the collection of early evidence and forensic documents, before suspects are brought in for questioning, reduces the motivation to obtain confessions by unlawful means. In many countries, confession evidence requires proof.

In an increasing number of countries, methods of building trust and familiarity in the interrogation of suspects, victims and witnesses have been found to lead to more accurate and reliable information, and to be more effective in the prosecution, investigation and detection of crime. These methods also reduced false allegations of misconduct by the police or other authorities. When trying to dismantle investigative techniques to reach confessions, it is important that efforts are made not only to train police on new techniques, but also because promotion systems do not prioritize case resolution statistics, and remove other negative incentives. The need to invest in forensic science, along with other crime detection techniques and training, is equally relevant.

Legal and procedural safeguards that accompany and encourage effective interviewing include:

notification of the suspect's rights;

immediate access to a lawyer;

Independent medical examination;

Communication with a family member or with a third party;

Audiovisual recording of interviews;

Time limits for interviews, granting breaks when needed, and judicial control of arrest immediately after the arrest;

Keeping records of detention [including time period] .

6. The role of prosecutors

Prosecutors play an important role in preventing the use of evidence obtained by torture collected by police investigators, as well as in determining what evidence to present in legal proceedings. Often, they are not only among the first authorities, other than the police, to have access to interviewees and/or to obtain copies of their interviews, but are also responsible, in many jurisdictions, for gathering evidence and assessing whether the case should be brought to court, which requires an assessment of whether the evidence was collected lawfully and fairly; in a number of Latin American countries, prosecutors or the specific police force known as the “judicial police” [the judicial police], which is usually subordinate to the judiciary, or reporting to a branch of the judiciary such as the prosecutor's office, /for example, conduct interviews rather than leaving them to the regular police apparatus, as is the case in common law states.

Separating the police from the independent prosecution service in a number of states, particularly those with a common law system, has an important effect in reducing the pressure on the police to conduct their investigations, which has led them to rely on extracting confessions as primary evidence. In such systems, confession evidence is seen as only one part of the case material that the prosecution must weigh when considering whether to proceed to trial.

Prosecutors [judicial police - in some Latin American systems] are well positioned to reduce the incentives and risks of evidence obtained from torture, and have the opportunity to:

Informing the suspect and/or his/her lawyer, asking him/her in general if he/she has been informed of his/her rights and that the procedural safeguards have been complied with;

Asking the suspect and/ or his lawyer about the treatment he received from the police [without the presence of any police officers];

make their own assessment as to whether the suspect was treated fairly and whether evidence was lawfully collected;

Refer or provide information on rehabilitation and support services to suspected victims of torture;

Communicate complaints or other indications of ill-treatment to the competent investigating authority, and bring to the attention of the judge any concerns in a timely manner.

Effective training on relevant domestic laws and international standards, and on the professional skills needed to implement relevant legal provisions, can help prosecutors play this proactive role.

Because the state is responsible for treating the individuals it detains, once an individual makes a credible complaint about torture or other ill-treatment, the state/ prosecution bears the burden of proof in the process of proving that the evidence was not obtained by torture.

Prosecutors and judges share responsibility in this regard, in relation to the referral of an allegation of torture or ill-treatment for investigation.

«Prosecutors, ... by examining the proposed evidence to ascertain whether it was obtained lawfully or constitutionally; [and] refusing to use evidence that is reasonably believed to have been obtained through recourse to unlawful methods which constitute a serious violation of a suspect's human rights, in particular methods which constitute torture or cruel treatment… »[1494].

In France, under the Code of Criminal Procedure, the prosecutor [or investigating judge] can initiate the procedure for the exclusion of evidence if he suspects that the evidence has been obtained by torture. The challenge to the validity of a piece of evidence shall be referred to the Investigation Chamber of the Court of Appeal [Chambre de l 'instruction][1495] .

In the United States of America, although the situation is diverse and complex, but all jurisdictions require some form of evidence in addition to the confession itself, the federal courts and some US states apply the rule of proof, which requires the prosecution to support any confession with some other evidence to prove the credibility of the confession. The US Supreme Court has described this rule as “requiring [the government] to produce substantial evidence that tends to establish the credibility of the statement” [1496].

The United Nations Guidelines on the Role of Prosecutors, Havana Guidelines, 1990, help states secure the fundamental values and protection of human rights upon which prosecution services are based, and that criminal proceedings are effective, fair and just. The Guidelines include the legal obligation that when evidence against suspects comes into the hands of prosecutors who know or reasonably believe that it has been obtained through the use of unlawful methods, such as torture or ill-treatment, they must refuse to use such evidence and take all necessary steps to ensure that those responsible for the use of such methods are brought tojustice[1497] .

([1494]) Standards of Professional Responsibility of the International Association of Prosecutors and Statement of Fundamental Duties and Rights of Prosecutors, 1999, Article 4 (3).
([1495]) Article 173 of the French Code of Criminal Procedure.
([1496]) [Opper v United States [1954] 348 US 84, 93].
([1497]) United Nations Guidelines on the Role of Prosecutors, the Havana Guidelines, 1990.

7. Role of medical practitioners

Medical practitioners have professional and ethical responsibilities to document and prevent torture and ill-treatment, and are also involved in the rehabilitation of victims of torture and ill-treatment. Following the detailed guidance in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Istanbul Protocol] helps to ensure that forensic medical examinations provide the essential evidence required to substantiate allegations of torture and ill-treatment, such as for the purposes of prosecution or seeking redress / compensation.

Sometimes a challenge arises because such medical practitioners are often employed by the state [sometimes as medical officers employed by the police, prisons, or military], but even then, their primary duty is to be "patient" and they have the same ethical obligations as other health professionals, that is, the duty to provide compassionate and confidential care and to obtain informed consent from their patients. These duties are set out in Chapter Two, Section C of the Istanbul Protocol.

[Medical practitioners] "[-] cannot be obliged by contractual or other considerations to imagine their professional independence. They must make an unbiased assessment of the patient's health interests and act accordingly "..

In Ecuador, the accused is entitled to a medical certificate in the investigation proceedings of the Judicial Police or the Judicial Prosecution Police. Chapter V on "Detention Procedures" of the Manual of the Public Prosecution Authority and the Investigation Procedures of the Judicial Police of Ecuador stipulates that any person arrested by order of the competent authority or arrested in flagrante delicto [if a crime has been committed], once transferred and registered in a police station or similar unit, must be transferred to a forensic medicine unit or to a health center where the certificate must be obtained and attached to the police report.

In the Kyrgyz Republic, in December 2014, the Kyrgyz Ministry of Health approved the issuance of a "Practical Guidance on Effective Medical Documentation of Violence, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" [updated December 2015]. In the event that a patient files a complaint of violence, torture or ill-treatment, the mentor requires doctors to conduct a special medical examination [in accordance with the Istanbul Protocol], and to provide a copy of the report to the police within 24 hours.

In Mexico, to help standardize the documentation of torture cases, the Public Prosecutor's Office issued Convention No. 2003/057/A, published in the Federal Official Gazette of Mexico, which provides for the mandatory application by forensic doctors and medical examination practitioners of a so-called "specialized medical/ psychological opinion in cases of possible torture and/or ill-treatment". This is a standard forensic document designed to assist in expert investigations of clear and targeted torture cases.

In the Philippines, the Anti-Torture Act of 2009 provides for the right of persons arrested, detained or detained under investigation to have a physical and/or psychological examination in a medical report, which is a public document following the protocol system in force. If, during the examination of a prisoner upon admission or the provision of medical care to a prisoner thereafter, health care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they must document the cases and report them to the specialists of the medical, administrative or judicial authority...

The United Nations Standard Minimum Rules for the Treatment of Prisoners oblige: «National medical associations must support the adoption of 'racial norms and legislative provisions ...

which aims to affirm the ethical obligation of doctors to report or denounce the worlds of torture or cruel, inhuman or degrading treatment of which they are aware … »[1498].

The World Medical Association decided on the responsibility of physicians to document and condemn acts of torture, cruel, inhuman or degrading treatment that: «National medical associations must support the adoption of 'customary norms and legislative provisions … which aims to confirm or denounce the ethical obligation of physicians to report acts of torture or cruel, inhuman or degrading treatment of which they are aware … »[1499].

8. The role of judges

Judges have a special role in determining whether an accused person before them has been ill-treated while in police custody or in another place of detention, as well as to exclude evidence obtained by torture or ill-treatment from criminal proceedings.

In most jurisdictions, a detainee is brought before a custodial judge at an early stage after his or her arrest [as part, for example, of a hearing to authorize the initial detention or extension of detention of the arrested person, or as part of the investigation itself] and the detainee or his or her lawyer may file a complaint about torture or ill-treatment.

Even if no specific complaint is made, experience or training may allow the judge to be vigilant and investigate any indications of ill-treatment, such as visible injuries or the detainee's general appearance and actions. The law must enable the judge to respond immediately when there is any suggestion of abuse. This may include asking a judge to record obvious allegations or injuries in writing, ordering an immediate medical examination of a suspect, or ordering an investigation.

Many States allow for the admissibility of evidence to be challenged in “pre-trial hearings”, which are pre-trial and early challenges to “torture evidence”, pre-trial, may be important, particularly when a confession obtained by torture is the only evidence linking the accused to the crime, and this is the basis on which the accused is placed in pre-trial detention.

In other countries, a judge will consider the admissibility of any confession at the start of a trial, through a process sometimes known as “trial of the merits” or “witness oath.” This has a number of advantages:

[a] increase the efficiency of the trial, where witnesses [and sometimes the jury] do not remain waiting;

[b] remove the preliminary issue from the way so that the judge can then plan the trial;

[c] This may be the first time the Defendants have a lawyer, so that they can consider the evidence against them carefully;

And[d] for states with jury trials, this means that if the defendant succeeds in excluding evidence, the jury is never aware of the excluded evidence, ensuring that they are not prejudiced.

Because of these advantages, some countries require applications to be made at the beginning of the case. In practice, however, it is not always possible for a defendant to raise these issues too early in the proceedings, and a number of countries have sought to address this by providing some degree of flexibility.

([1498]) United Nations Standard Minimum Rules for the Treatment of Prisoners, “Mandela Rules” 2015, Rule No. 34.

([1499]) World Medical Association Resolution on the Responsibility of Physicians to Document and Condemn Acts of Torture, or Cruel, Inhuman or Degrading Treatment, para 9.

States have, in accordance with their laws and judicial practice, developed various processes to exclude evidence obtained through torture or ill-treatment. Some States adopt a two-stage process: an initial stage of initiating an exclusion procedure, requiring a credible complaint of torture or ill-treatment, or initiated by a judge; and, second, the stage of determining whether the material in question was obtained through torture or ill-treatment. In common law states that use the jury system, this process takes place before the trial begins.

In the absence of a jury, when confession is excluded from the proceedings on the basis of the prohibition of reliance on torture evidence, this necessarily means that the accused is acquitted if there is other credible evidence. Rather, it may mean an assessment of whether the specific evidence, or the evidence arrived at as a result of that previous evidence, [the derivation of evidence] should not be admitted during the hearing.

It is often difficult for defendants while in custody to make such an allegation, as they may fear retaliation, may not know the law, may not have knowledge of the circumstances in which the statements were obtained, or the identity of those who made the statements. Judges can mitigate these difficulties by ensuring that:

Enable defendants to obtain medical or other evidence that can help to confirm a complaint of torture or ill-treatment.

All investigations are carried out in accordance with the Istanbul Protocol.

All evidence of torture and/or ill-treatment is handed over to the defense so that they can make a reasonable complaint.

The African Commission on Human and Peoples' Rights has recognized that evidence obtained by coercion or force is contrary to fair trial rights. The Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that: “Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as evidence of any fact at trial or in sentencing”[1500].

In Kenya, the court conducts a “trial within a trial” on the admissibility of torture evidence. The Kenyan Constitution does not allow evidence that violates any right or freedom enshrined in the Bill of Rights to be used in the trial; otherwise, it would render the trial unfair and would be detrimental to the administration of justice. In practice, the prosecution must inform the court of its intention to give a confession as evidence, and if the accused objects, the court will conduct a “trial within a trial” for the primary purpose of determining the circumstances in which the statement was taken, and determining whether the evidence is admissible, This procedure ensures that the accused can give testimony about the admissibility of evidence without the risk of self-incrimination from cross-examination in matters that could affect the discovery of guilt.

In the People's Republic of China, evidence can be challenged throughout the process, including during the trial, and the Chinese Criminal Procedure Law requires the exclusion of evidence of torture at every stage of the criminal case, including the investigation, prosecution, pre-trial and trial stages, and explicitly, evidence obtained by torture cannot be relied upon in the opinions of the prosecution and the decisions or judgments of the prosecution, and according to the rules of exclusion, evidence can be challenged during the trial, but the person submitting the appeal must explain the reason for not objecting at a previous opportunity[1501].

([1500]) Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples' Rights in 2003 in Luanda, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Article N /6/D/1.

([1501]) Articles 29 and 54 of the Chinese Criminal Procedure Code.

In Vietnam, a separate investigation examining evidence of torture must be conducted. The Criminal Procedure Code of Vietnam provides for a separate investigation to determine whether evidence of torture should be excluded.

In such a case, the court or the prosecutor shall suspend the trial proceedings and order a re-examination of the evidence said to have been obtained by torture [1502].

The UN Committee against Torture has consistently held that the burden of proof is on the state [prosecutor] to prove that statements were made voluntarily and were not made under torture or ill-treatment. With regard to the standard of proof excluding alleged torture or ill-treatment, practice varies across countries from those that apply the 'real risk' standard that evidence has been obtained by torture or ill-treatment, to those systems that apply the 'balance of probabilities ' debtor standard. The Special Rapporteur on Torture argued in 2014 that the applicant "is only required to prove that his/her allegations are well founded, and therefore there are reasonable grounds to believe that there is a real risk of torture or ill-treatment", after which the burden of proof shifts to the prosecutor or the court "to investigate whether there is a real risk that the evidence and there are clear indications that the evidence was obtained by unlawful means; if there is a real risk, the evidence must not be admissible" [1503].

Prosecutors must provide evidence that there has been no torture or ill-treatment [e.g., tape recordings and/or medical reports] that assists all relevant actors.

In Australia, the Australian federal courts exclude evidence once a "reasonable possibility" has been raised that the admission was "influenced by violent, oppressive, inhuman or degrading conduct, either towards the person who made the admission or towards another person, or towards the threat of conduct of that kind" [1504].

In that case, there are two considerations, [1] whether the investigators' conduct was violent, oppressive, inhumane, degrading, or a threat of that kind; and [2] whether the court is satisfied that the consent was not affected by such conduct. If the prosecution cannot prove, on the balance of probability, that the admission was obtained without violence or threat, such admission is inadmissible and the judge has no discretion to admit the evidence.

The court must consider "whether the impropriety or the violation is incompatible with the right of a person recognized in the International Covenant on Civil and Political Rights"[1505].

In England and Wales, the Police and Criminal Evidence Act states: 'Where there are petitions to the court that a confession has been or may have been obtained by 'repression or as a result of anything said or done [...] to make the confession unreliable, "and although the confession may be true, it must be excluded. It is the responsibility of the prosecution to prove "beyond a reasonable doubt" [i.e., the forensic standard] that it was not obtained in such a way. Repression includes' torture, inhuman or degrading treatment and the use or threat of violence [whether amounting to torture] ', as well as other inappropriate interviewing practices'[1506] .

In practice, this means that if the defense or the court [on its own] challenges a confession, the court must not allow the confession to be presented in evidence unless the prosecution proves that it was not obtained by "repression". This is usually done by summoning the interview officer

---

([1502]) The Criminal Procedure Code of Vietnam for the year 2015 Article No. 174.

Report [1503]of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendes, 10 April 2014, 60/25/HRC / A, On the scope and purpose of the exclusionary rule in judicial proceedings and in relation to the acts of executive actors, paras. 33، 67.

([1504]) Australia, Evidence Act 1995, Article 84/1.

([1505]) Australia, Evidence Act 1995, Article 138 [3] [f].

([1506]) England, Police and Criminal Evidence Act 1984, Article 76.

to provide proof that the procedures were followed, there was no mistreatment, and provide a tape recorder of the interview.

In South Africa, reasonable grounds must be shown to suspect the use of torture, as the 1996 Constitution excludes any "evidence obtained in a manner that violates any right in the Bill of Rights." Article 12 [1] of the Bill of Rights states that "Everyone has the right to liberty and security of person, which includes the right not to be subjected to torture in any form; and... not to treat or punish them in a cruel, inhuman or degrading manner. " In practice, the accused or the defense needs to: first, raise the possibility of evidence being obtained against them by torture. The court then assesses whether there are reasonable grounds to suspect the use of torture, and if it suspects the use of torture, this should be investigated to determine whether or not the evidence is admissible. This procedure ensures that the accused testifies to the admissibility of the contested evidence without exposing himself to mutual questioning regarding his guilt or innocence.

Confessions or statements obtained through torture or ill-treatment may lead investigators - directly or indirectly - to other evidence [e.g., location of physical evidence, crime scene, other witnesses].

To protect against risks that allow "elicited" evidence to induce the use of torture, ill-treatment or other forms of coercion against suspects in the proceedings, a number of States as well as international and regional bodies and courts have excluded "elicited evidence" from the proceedings. Some States exclude evidence in its entirety; others apply a balancing test, with respect to the integrity of evidence that is weighed against the seriousness of the harm or wrongdoing to the individual.

In Brazil, evidence derived from "illegitimate evidence" is prohibited by law and the Code of Criminal Procedure states that: "All illegitimate evidence and evidence derived from the Code of Criminal Procedure shall not be admissible in legal proceedings. Whereas illegitimate evidence is understood to be evidence obtained by violating the Constitution or other laws'[1507] .

The prohibition of torture and ill-treatment was enshrined in the 1988 Constitution of Brazil [1508].

The Constitution also stipulates that: "Evidence obtained by illegal means is inadmissible in any proceedings"[1509].

In Thailand, all evidence obtained by unlawful means is prohibited by law. The Code of Criminal Procedure provides that: "In any case in which it appears to the court that evidence lawfully arose from unlawful means or through reliance on information unlawfully arose or was obtained, such evidence shall not be admissible ... »[1510].

The Inter-American Court of Human Rights has ruled that: [The absolute nature of the exclusionary rule is reflected in the prohibition of granting probative value not only to evidence obtained directly under duress, but also to evidence derived from the act in question][1511] .

9. Mutual legal assistance

States shall cooperate regularly with each other to facilitate the collection and sharing of information for use in criminal investigations or prosecutions.

([1507]) Brazil, Code of Criminal Procedure of 1941, Article 157.
([1508]) Brazil, 1988 Constitution, Article 5 [III].
([1509]) Brazil, 1988 Constitution, Article 5 [LVI].
([1510]) Thailand, Thai Criminal Procedure Code of 1937.
Inter-American [1511]Court of Human Rights, Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico, Case No. 12, 449 [26 November 2010], para.

States parties to the United Nations Convention against Torture provide "the greatest measure of assistance" to other States in relation to crimes of torture, including the provision of all evidence in their possession necessary for the proceedings; and States parties implement their mutual legal assistance obligations in this regard [1512].

Whether in proceedings for torture offences, or for other ordinary criminal offences, if there is a "real risk" that evidence obtained from other States has been obtained by torture or ill-treatment, such evidence must be excluded in accordance with Article 15 of the UN Convention against Torture.

Many States reduce the risk of being considered to be involved in torture by establishing a clear basis for sharing and receiving information and sharing "intelligence" with other States, have procedures in place to assess the risk of information being obtained through torture, and restrict its sharing if that risk cannot be excluded.

In the case of information sharing with other countries, information sharing policies with other countries can include provisions to:

Prevent the exchange of information with other States where there is a reasonable risk that such exchange of information would contribute to or facilitate the violation of the prohibition of torture [and establish due diligence and risk assessment procedures to determine the existence of such a credible threat];

Request the attachment of restrictions ["warnings"] when exchanging information to ensure that such information is not used in violation of domestic or international law and establish procedures to monitor and address compliance with such violations ["warnings"];

Assess the reliability of information when exchanged [and keep this assessment under review, for example, if errors are discovered or concerns arise about its reliability] .

The report of the United Nations Special Rapporteur on Torture states: "A State has a responsibility to be complicit in torture when it assists another State in committing torture or other ill-treatment, or accepts such acts, in the knowledge [including presumed knowledge] that a real risk of torture or ill-treatment will occur or has occurred, and assists and assists the torturing State in maintaining impunity for acts of torture or ill-treatment. Thus, the State is responsible when it is aware of the risk of obtaining information by torture or other ill-treatment, or it should have been aware of this risk and not taken reasonable steps to prevent it"[1513].

If information is received from other countries, policies for requesting and/or receiving information may include provisions relating to:

prevent the use of information when there is a reasonable risk that the other State has obtained it in violation of the prohibition of torture;

Analysis of the origin, accuracy and verifiability of information exchanged with another State;

respect any restrictions ["reservations"] imposed by the other State on the information exchanged, to ensure that such information is not used in violation of domestic or international law and to notify the other State of any violation of such restrictions ["reservations"];

Provides internal mechanisms, through which police officers and intelligence agencies can disclose any concerns about intelligence sharing, and provides another layer of protection against the risks involved.

([1512]) Article 9 of the United Nations Convention against Torture.
([1513]) Report of the United Nations Special Rapporteur on Torture, Juan E. Mendes, 10 April 2014, 60/25 / HRC / A, para. 53.

In Canada, by law, intelligence-sharing arrangements must be disclosed to the oversight body. Under section 17 of the Canadian Security Intelligence Service Act of 1985, Canadian intelligence agencies are required by law to provide the relevant oversight body [Security Intelligence Service Review Committee] with access to written information-sharing arrangements [1514].

In Germany, the basic legislation regulates intelligence cooperation through intelligence exchange, and the Foreign-Foreign Intelligence Collection Act authorizes the Federal Intelligence Service to collect and process communications for foreign citizens abroad, and sets general standards for intelligence cooperation with foreign agencies, including via intelligence exchange [1515].

The UN Human Rights Committee has recognized the importance of prior independent authorization in the context of intelligence sharing, noting that “robust surveillance and interception and intelligence-sharing systems for personal communications activities” must include “the provision of judicial participation in the authorization of such measures in all cases” [1516].

The right of the arrested foreign accused to notify the consular mission of his state

The Human Rights Committee has stated that failure to promptly inform detained foreign nationals of their right to notify the consulate of their status pursuant to the Vienna Convention on Consular Relations in cases resulting in the imposition of the death penalty would constitute a violation of the right to life. Not allowing individuals who are about to be deported to a country where their lives are allegedly at real risk to judicially challenge their deportation decision would also violate article 6 of the International Covenant on Civil and Political Rights. In Indonesia and the United Arab Emirates, where the use of the death penalty has resumed after a short moratorium, it is reported that a large proportion of persons sentenced to death for drug offences are foreign nationals who have sometimes been unable to obtain consular support [1517].

D. Additional safeguards for vulnerable persons

Recognizing that some groups are more vulnerable than others during interrogation, the protocol should include specific provisions for, among others, children, women and girls, persons with disabilities, persons belonging to minorities or indigenous groups, non-citizens, including migrants (regardless of migration status), refugees, asylum-seekers and stateless persons. The vulnerability of persons should be identified quickly to consider their specific needs that should be taken into account when conducting interrogations and implementing additional safeguards.

With regard to the need to inform persons of their rights during interrogation, additional safeguards are required for some persons, with direct provision of comprehensive explanations of the rights of children and persons with intellectual or psychosocial disabilities, inter alia, to parents, families, guardians or legal representatives.

One of the complementary guarantees is the presence of a person responsible for providing support during interrogation, in addition to the lawyer. Children should never be questioned, asked to make any statement, or sign any document, without the presence of a lawyer and, in

---

([1514]) Canada, Canadian Security Intelligence Service Act of 1985, Article 17.

([1515]) Gesetzes zur Ausland-Ausland-Fernmeldeaufkl?rung des Bundesnachrichtendienstes.

Seventh [1516]Periodic Report of the United Kingdom, Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland, UN Doc 7 / CO/GBR/C / CCPR, 17 August 2015, at para 24.

General comment[1517] No. 36, para. 42, document A/HRC/36/26, para. 27, and letter from Reprieve, See The Death Penalty and the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Annual Supplement to the Five-Year Report of the Secretary-General on the Death Penalty, (A/HRC/42/28), 28 August 2019, §41.

principle, without the presence of a caregiver or other qualified adult (encouraged to be present to prevent coercion, reassure the child, and reduce the likelihood of trauma) at all stages of the investigation and proceedings. As for people who appear to have a psychosocial or intellectual disability, they should be assisted by an independent person responsible for providing support during interrogation, whether a relative, legal guardian, mental health professional, or social worker with appropriate experience and training [1518].

Training of investigators and interrogators

Interrogation of persons is a specialized task that requires specific training to be performed successfully and in accordance with the highest professional standards. The protocol should emphasize the importance of providing adequate and regular training for law enforcement and other personnel involved in the interrogation of persons [1519].

The training of interviewees includes several elements, starting with effective training in international human rights law, including the prohibition of torture, ill-treatment and other forms of coercion; where necessary, training should also be provided on the Geneva Conventions. Training should include, but not be limited to, theoretical knowledge of international and domestic standards and guidelines relating to interrogation, as well as practical information, preparation and practice in interrogation and investigation steps, and training aimed at facilitating skills development. The use of scenario-based trainings and the recording and review of interviews constitute best practices in this regard. References to empirical and scientific evidence of the unreliability and counterproductive nature of torture and coercion will help bring about the desired change in mindsets and interrogation culture. It would be particularly useful to emphasize the detrimental effect of maltreatment on retrieval of events from memory. Training should also include awareness-raising activities on the effective protection of the vulnerable and adaptation to their specific needs [1520].

States must also ensure that supervisors, judicial officials, prosecutors and medical personnel also receive training in international standards relating to the prohibition and prevention of torture, human rights-compliant interrogation techniques, and duties to effectively report, document and investigate allegations of torture and ill-treatment. Raising the awareness of all staff directly or indirectly involved in questioning people is a necessary step towards changing the culture of law enforcement, particularly in jurisdictions where ill-treatment is routinely or systematically practiced, and towards the effective implementation of the prohibition of torture. It is also indispensable to educate leaders of enforcement operations about the detrimental strategic impact that torture and ill-treatment have on proving their legitimacy within communities, establishing and maintaining their relations with them[1521].

The Special Rapporteur on torture stressed the importance of developing supportive methods to investigate crimes, investing in adequate equipment, and providing effective training to investigators in the use of modern and scientific investigative methods available. These measures can help facilitate a shift from confession-directed investigations to evidence-directed investigations and provide a surplus of useful information for the preparation and conduct of

---

([1518]) (A/71/298, 5 August 2016, § §79-81), see general comment No. 35, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice; see also Inter-American Court of Human Rights,Tibi v. Ecuador.

([1519]) (A/71/298، 5 August 2016، §56)، (A/HRC/4/33/Add. 3; and CAT/C/USA/CO/2).

([1520]) (A/71/298, 5 August 2016, §57), see Report of the Inter-American Commission on Human Rights on the Human Rights of Persons Deprived of Liberty in the Americas (OEA/Ser. L/V/II. Doc. 64).

([1521]) (A/71/298، 5 August 2016، §58).

effective interrogations, thereby reducing the risk of interrogation officers resorting to ill-treatment to extract information [1522].

9.2 The Right to Legal Counsel During Investigation

9-2-1 Under Egyptian Law

Article 124 of the Egyptian Code of Criminal Procedure stipulates that: "The investigator may not interrogate a defendant in felonies or misdemeanors punishable by mandatory imprisonment or confront them with other defendants or witnesses without first summoning their lawyer to be present, except in cases of flagrante delicto or urgency due to fear of evidence being lost, as documented by the investigator in the report. The defendant must declare the name of their lawyer in a statement filed with the court clerk or the prison warden, or notify the investigator. The defendant's lawyer may also make this declaration or notification. If the defendant does not have a lawyer or if the lawyer does not attend after being summoned, the investigator must appoint one for them. The lawyer may record their defenses, requests, or observations in the report. Upon the investigator's final disposition of the investigation, the appointed lawyer may request the issuance of an order determining their fees, based on the fee schedule issued by a decision from the Minister of Justice after consulting the General Bar Association. These fees are treated as judicial fees."

The investigator must summon the lawyer of a defendant in a felony case, if present, before interrogating the defendant or confronting them. The investigator may interrogate the defendant without summoning their lawyer if the defendant has not officially declared their lawyer's name, either in the interrogation record, through a report filed with the court clerk, or to the prison warden. The presence of the lawyer in a prior stage does not affect this requirement unless the lawyer's name has been declared through the legally prescribed methods[1523].

A distinction must be made between questioning and interrogation. Questioning occurs when the defendant appears for the first time in an investigation and involves informing them of the charges against them and recording their statements without further questioning. Interrogation, on the other hand, involves confronting the defendant with the evidence and discussing it in detail.

In felony cases, except in cases of flagrante delicto or urgency due to fear of evidence being lost, the investigator may not interrogate the defendant or confront them with others without summoning their lawyer, provided the defendant has one. If the defendant does not have a lawyer, or the case is a misdemeanor, the investigator may proceed without delay or waiting. The urgency of the situation is left to the discretion of the investigator, subject to review by the trial court. This may include the need to promptly obtain a confession from the defendant or take urgent measures required for the investigation.

The defendant must declare their lawyer's name in a report filed with the court clerk or the prison warden. The lawyer may also make this declaration on their behalf[1524].

The investigator must assist lawyers in fulfilling their duty to defend defendants and must grant their legitimate requests aimed at proving their clients' innocence, provided this does not hinder or unnecessarily delay the investigation[1525].

(1522) (A/71/298، 5 August 2016، §59).
(1523) Article 228 of the Judicial Instructions of the Public Prosecution.
(1524) Article 221 of the Judicial Instructions of the Public Prosecution.
(1525) Article 169 of the Judicial Instructions of the Public Prosecution.

The purpose of this legal provision is to protect the defendant during interrogation from any suspicion of coercion, whether physical or psychological, or allegations of such coercion being used against them, other defendants, or witnesses in the case during confrontations. If the rationale for this provision does not apply—such as when the defendant denies the charges, there is no confrontation with other individuals, or the interrogation concerns a case of flagrante delicto or urgency due to fear of evidence being lost—the application of Article 124 of the Code of Criminal Procedure is not warranted[1526].

The investigator must summon the defendant's lawyer to be present in cases involving felonies or misdemeanors punishable by mandatory imprisonment before interrogating the defendant or confronting them with others, except in cases of flagrante delicto or urgency, as documented in the report.

The Court of Cassation ruled that the conduct of the photographic inspection without the assignment of a lawyer to the accused results in the invalidity of the inspection and the invalidity of the evidence derived from it: [Whereas it is clear from the reading of the vocabulary that the investigating prosecutor conducted the photographic inspection on June 23, 2010, and the accused admitted in her report the killing of the victim and represented how she committed the crime, and this inspection took place without the Public Prosecution delegating a lawyer to her despite the absence of a lawyer with her. Whereas the foregoing, and Article 124 of the Criminal Procedure Law replaced by Law No. 145 of 2006 issued on 28/6/2006 and in force as of 15/7/2006, stipulates: "It is not permissible for the investigator of felonies or misdemeanors punishable by imprisonment to interrogate the accused or confront him with other accused or witnesses except after inviting his lawyer to attend except in flagrante delicto and a state of urgency due to the fear of losing evidence as evidenced by the investigator in the minutes, and the accused must announce the name of his lawyer in a report to the clerk of the court or to the prison warden or notify the investigator, and his lawyer may also take over this announcement or notification, and if the accused does not have a lawyer or does not attend his lawyer after his invitation, the investigator must on his own initiative assign a lawyer... " This text stated that the legislator required a special guarantee for each defendant in a felony or misdemeanor punishable by imprisonment, which is that his lawyer, if any, must be invited to attend the interrogation or confrontation, except in flagrante delicto and the state of urgency due to fear of losing evidence, in order to ensure the defendant's freedom to defend himself. In order to be able to invite the defendant's lawyer in order to achieve this important guarantee, the defendant must announce the name of his lawyer in a report in the clerk of the court or the prison warden or that his lawyer undertakes this acknowledgement or announcement. The law for this invitation does not require a specific form. It may be made by a letter or by a record or by one of the public authority. If the defendant does not have a lawyer or does not have his lawyer present with him after his invitation, the investigator must appoint a lawyer of his own accord. Whereas, it was clear from the vocabulary and in the context mentioned that the convicted woman did not have a lawyer with her at the time of the photographic inspection and it is proven in its minutes that she confessed to killing the victim and represented her how the incident was committed, and the investigator did not assign her a lawyer in application of the immediate effect of Law No. 145 of 2006, which results in the invalidity of the inspection, and since the contested judgment was based on the conviction within the evidence on which it was based on the photographic inspection, it is flawed by what invalidates it][1527] .

([1526]) Appeal No. 2470 of 85 S issued at the 9th session of March 2016 and published in the letter of the Technical Office No. 67, page No. 302, rule No. 38, Appeal No. 12795 of 80 S issued at the 25th session of July 2011 (unpublished), Appeal No. 213 of 80 S issued at the 28th session of February 2011 (unpublished).

([1527]) Appeal No. 5762 for the year 82 S issued in the session of December 1, 2013 and published in the book of the Technical Office No. 64 page No. 1009 rule No. 149.

The assessment of the availability of cases of flagrante delicto and urgency is left to the investigator under the supervision of the trial court [1528].

If the record omits to prove this statement, this indicates that the investigator did not observe this procedure, which is a violation of the right of defense [1529].

The accused shall announce the name of his lawyer with a report to the clerk of the court or to the prison warden, or notify the investigator of it, and their lawyer may also take over this announcement or notification.

If the accused does not have a lawyer, or their lawyer does not attend after their invitation, the investigator shall, on his own initiative, assign him a lawyer.

The lawyer may record in the minutes whatever defenses, requests, or observations he may have.

After the final disposition of the investigation, the investigator shall issue, at the request of the assigned lawyer, an order to estimate his fees, guided by the schedule of fees estimation issued by a decision of the Minister of Justice after taking the opinion of the Board of the General Bar Association. These fees shall take the ruling of judicial fees.

The right to a defender is available to every accused in a criminal offense, but it is obligatory in every felony or misdemeanor punishable by imprisonment, where the investigator must assign a lawyer to those accused without regard to status, status or solvency. In other words, there are no conditions that qualify for the enjoyment of this right in terms of income or social status, and therefore there is no need for the investigator, and it is even his duty, not to consider these matters or to suspend the assignment of a lawyer on the condition of the solvency of the accused or his social status.

The legislator requires a special guarantee for each accused in a felony or misdemeanor punishable by mandatory imprisonment, which is that his lawyer, if any, must be invited to attend the interrogation or confrontation, otherwise the investigator must, of his own accord, assign him a lawyer [1530].

If the accused has a private lawyer, the right to a defender becomes effective as soon as the accused announces the name of his lawyer in the manner prescribed by law.

However, if he does not have a lawyer, the right to appoint a lawyer becomes effective at the moment when the Public Prosecution begins to interrogate him or confront him with other defendants or witnesses.

Whereas, the accused arrested by the arresting officers must be presented to the Public Prosecution within twenty-four hours from the hour of his arrest, and the Public Prosecution must, when the accused offers it, start interrogating him within twenty-four hours from the hour he is presented to it, and therefore this is the maximum time that the right to seek the assistance of a defender, which requires the assignment of a lawyer by the Public Prosecution to attend with the accused, must take effect [1531].

([1528]) Appeal No. 9917 of 78 S issued at the 4th session of July 2010 (unpublished), Appeal No. 1797 of 45 S issued at the 15th session of February 1976 and published in the first part of the Technical Office's letter No. 27 page No. 201 rule No. 41.

([1529]) Crime, 13 avril 1911, Bull. No. 210.

([1530]) Appeal No. 10017 of 88 S issued at the 10th session of October 2019 (unpublished), Appeal No. 8236 of 88 S issued at the 11th session of April 2019 (unpublished), Appeal No. 28565 of 86 S issued at the 6th session of May 2017 (unpublished), Appeal No. 22305 of 83 S issued at the 12th session of October 2014 and published in the book of the Technical Office No. 65, page No. 656, rule No. 85.

([1531]) Articles 36, 123/1 and 124 of the Criminal Procedure Code.

There is no doubt that the prosecution began to investigate the accused in the absence of a lawyer, as long as his assignment became impossible or otherwise it was disrupted in the performance of its function. The Court of Cassation ruled that: [The legislator put a special guarantee for each accused in a felony or misdemeanor punishable by imprisonment, which is the obligation to invite his lawyer, if any, before interrogating him or confronting him with other defendants or witnesses and gave the accused the right to choose his lawyer, by announcing his name in a report with the clerk of the court or to the prison warden or that the lawyer do so. If the accused does not have a lawyer, the investigator must assign him a lawyer of his own accord. The legislator excepted two cases in which he envisaged preserving the evidence of the case, namely the case of flagrante delicto and the case of speed on suspicion of fear of the loss of evidence, and required the investigator to prove the state of speed that prompted him to investigate the accused without inviting or waiting for his lawyer and assured the defendant of his right to defend himself. Whereas, the judgment had put forward the appellant's defense/ .... In this regard, as it was found that there was no lawyer for him, the investigator was sent to the Bar Association to assign him one of the lawyers, but he did not find any of them, so he did not find any way to conduct the investigation and interrogated him. This is what was stated in the judgment, which is sufficient and acceptable in dismissing that plea, and there is no rebuke to the prosecution if it began the investigation with the accused in the absence of a lawyer, as long as his assignment became impossible - as is the case in this case - otherwise it would not be able to perform its job][1532] .

It also ruled that: [It is clear that the accused did not announce the name of his lawyer to the investigator in the interrogation record or before his interrogation in a report in the clerk's office or in front of the prison warden. The investigator, in the request of one of the professors, sent the lawyers from the association to attend the interrogation, but he was unable to do so because of the closure of the association, so the assignment of the lawyer is not possible, so the prosecution - afterwards - does not have to continue to interrogate the appellant, and there is no fault of the investigator in that, as he is not obliged to wait for the lawyer or postpone the interrogation until he is present, and therefore the trial procedures are correct in accordance with the concept of Article 124 of the aforementioned Criminal Procedure Law, and to say otherwise has the possibility of losing or tampering with the evidence of the case, especially if it requires the speed of its investigation. As in the case at hand. Rather, it obstructs the Public Prosecution from performing its function pending the presence of a lawyer whose name has not been announced by the accused in the manner prescribed by the aforementioned article. He is the beneficiary of its judgment][1533] .

The accused may not waive the right to seek the assistance of a defender. When the Public Prosecution is presented with an accused in a felony or misdemeanor punishable by mandatory imprisonment and has not assigned himself a lawyer, the law obliges it to assign him a lawyer to attend interrogation or confrontation procedures. The accused may not waive this right, as the right to seek the assistance of a defender, and the street stipulates that it is obligatory in some cases. The presence of a lawyer to interrogate the accused or confront him with other accused or witnesses is a duty and not a freedom or license that the accused may waive at any time.

This is also true if the accused is a lawyer

This rule applies in view of the higher interest of society, which is to ensure a fair trial for citizens

---

([1532]) Appeal No. 4007 of 82 S issued at the session of 15 May 2014 and published in the Technical Office's letter No. 65 page No. 410 rule No. 46, Appeal No. 5467 of 80 S issued at the session of 12 May 2011 (unpublished), Appeal No. 11083 of 79 S issued at the session of 2 December 2010 (unpublished), Appeal No. 11083 of 79 S issued at the session of 2 December 2010 (unpublished).

([1533]) Appeal No. 3190 of 81 S issued on July 7, 2013 (unpublished).

However, the application of that rule must not infringe on the right of the accused to choose his lawyer.

There are two exceptions to the right to use a defender before the Public Prosecution during the preliminary investigation stage, as follows:

Case of flagrante delicto:

It is a specific case that is not based on personal elements, as its only element is the "temporal convergence" between the realization of the material element of the crime and its discovery, and the investigator relies, in his assessment of whether there is room to implement this exception or not, on the image mentioned by the judicial officer in his report regarding the seizure of the crime in flagrante delicto [1534].

Speed status due to fear of loss of evidence:

The court of cassation ruled that: [It is established from the vocabulary that the convict did not announce the name of his lawyer, whether to the investigator in the interrogation record or before his interrogation with a report in the clerk's office or in front of the prison warden, and that the investigator asked him whether he had a lawyer to attend the investigation procedures with him. He replied in the negative, and the investigator proved in his record that due to the state of speed due to the fear of losing the evidence that the accused confessed to committing the incident, his interrogation was conducted, the investigation procedures were carried out in accordance with the law][1535] .

Cases that call for not waiting for a lawyer include:

The accused confessed when asked about the charge when he first appeared in the investigation.

Serious injury to the accused to be interrogated that may make him near death.

The investigator's belief that the accused is aware of the whereabouts of another person suspected of involvement in the case and that he is about to escape..

([1534]) Appeal No. 4042 of 87 S issued at the session of January 20, 2018 (unpublished), Appeal No. 31111 of 84 S issued at the session of November 7, 2015 and published in the letter of the Technical Office No. 66 page No. 729 rule No. 112, Appeal No. 9081 of 79 S issued at the session of February 18, 2010 (unpublished)

The Court of Cassation also ruled that: [Whereas, the contested judgment responded to the plea of nullity of the appellant's interrogation of the prosecution's investigations for not inviting a lawyer to attend with him pursuant to the text of Article 124 of the Code of Criminal Procedure by saying: "Whereas, the defense raised that the accused did not have a lawyer at the time of his interrogation before the Public Prosecution, since Article 124 of the Code of Criminal Procedure obligated the criminal investigator, when interrogating the accused, to invite his lawyer to attend, except in flagrante delicto and state of urgency due to the fear of losing evidence as evidenced by the investigator in the record, it was established for the court from its review of the case papers that the accused was in a state of flagrante delicto to arrest him and surrender himself after killing his victim wife, as well as the investigator's fear of losing evidence, which led him to the interrogation of the accused. However, it was proven from reading the investigation report in which the prosecutor interrogated the accused investigator that he had sent one of the workers of the Public Prosecution to the Bar Association at the hearing of May 15, 2009 at 10:00 pm to bring one of the lawyers to attend with the accused in the investigations However, the Syndicate was closed and did not have any of the lawyers, and therefore the investigating prosecutor followed the correct law when interrogating the accused and what the defense raised in this regard was not supported by the law." It was decided that Article 124 of the Code of Criminal Procedure, as it stipulated that the accused may not be interrogated or confronted - in felonies - except after inviting his lawyer to attend, if any, except for the cases of flagrante delicto and speed, and if the assessment of this speed is left to the investigator under the control of the trial court, as long as it is approved within the limits of its discretionary authority - as in the case at hand - the appeal in this regard is incorrect, and this does not change what is stipulated in the last paragraph of Article 124 of the aforementioned added to Law No. 145 of 2006 that a lawyer must be assigned to attend the investigation, as this is limited to cases of flagrante delicto and urgency originally excluded pursuant to the first paragraph of the aforementioned article] Appeal No. 8842 of the year 81 issued in the hearing of May 5, 2013 (unpublished).

([1535]) Appeal No. 8958 of 81 S issued on 7 May 2013 (unpublished).

The assessment of speed is left to the discretion of the investigator under the control of the trial court as the original jurisdiction, according to what has been established by the judgments of the Court of Cassation: [It is established that Article 124 of the Code of Criminal Procedure, if it stipulates that the accused may not be interrogated or confronted - in felonies - except after inviting his lawyer to attend, if any, except for cases of flagrante delicto and speed due to fear of loss of evidence, and if the assessment of this speed is left to the investigator under the control of the trial court as long as it has been approved by it for the justifiable reasons it mentioned, and it indicates the availability of fear of loss of evidence, then the appellants may not confiscate it in its doctrine or argue it with what it ended up][1536] .

There are important things to consider when making either exception:

the investigator must prove his support in starting the investigation without the presence of a defender with the accused, and which of the two exceptions I work, in order to allow the trial court later to monitor his good judgment of the facts that prompted him to take the path of exception.

The Court of Cassation ruled that: [The legislator has put a special guarantee for each defendant in a felony or misdemeanor punishable by mandatory imprisonment, which is that his lawyer, if any, must be called before interrogating him or confronting him with other defendants or witnesses, and gave the accused the right to choose his lawyer by announcing his name in a report at the court clerk's office or to the prison warden, or that the lawyer does so. If the accused does not have a lawyer, the investigator must assign him a lawyer of his own accord. The legislator excepted two cases in which he sought to preserve the evidence of the case, namely the case of flagrante delicto and the state of urgency of suspicion of fear of losing evidence, and it was necessary for the investigator to prove the state of speed that prompted him to investigate with the accused without inviting or waiting for his lawyer to reassure the accused and preserve his right to defend himself]

the defendant's lawyer must be allowed to attend the interrogation of his client at any time as long as he is present at the prosecutor's offices as soon as the investigation begins or while the investigation is underway, even if one of the two exceptions applies [1537].

The accused is free to choose his lawyer and the prosecution does not interfere with this right. If he chooses a lawyer and announces his name in a report in the Registry of the Prosecution or to the prison warden or notifies the investigator of it, the member of the Prosecution may not infringe on this choice and appoint another defender.

As soon as the prosecutor learns that the accused has chosen a lawyer, it must be possible for the accused to summon him.

([1536]) Appeal No. 1990 of 88 S issued at the session of February 4, 2020 (unpublished), Appeal No. 61 of 88 S issued at the session of November 25, 2018 (unpublished), Appeal No. 5979 of 88 S issued at the session of November 21, 2018 (unpublished), Appeal No. 4745 of 88 S issued at the session of November 4, 2018 (unpublished), Appeal No. 44270 of 85 S issued at the session of October 22, 2016 and published in the Office's letter Technician No. 67 Page No. 735 Rule No. 94, Appeal No. 1031 of 82 S issued at the hearing of 12 December 2012 and published in the book of the Technical Office No. 63 Page No. 833 Rule No. 151, Appeal No. 8560 of 80 S issued at the hearing of 26 September 2011 and published in the book of the Technical Office No. 62 Page No. 251 Rule No. 43, Appeal No. 8560 of 80 S issued at the hearing of 26 September 2011 and published in the book of the Technical Office No. 62 Page No. 251 Rule No. 43, Appeal No. 97 of 80 S issued at the hearing of 16 July For the year 2011 (unpublished), Appeal No. 2238 for the year 80 S issued at the session of May 5, 2011 (unpublished)Appeal No. 823 for the year 59 S issued at the session of November 12, 1989 and published in the first part of the Technical Office's book No. 40 Page 922 Rule No. 153, Appeal No. 702 for the year 58 S issued at the session of May 12, 1988 and published in the first part of the Technical Office's book No. 39 Page 712 Rule No. 106.

([1537]) Articles 30 and 124 of the Criminal Procedure Law, and Appeal No. 10461 of 80 S issued at the session of January 4, 2011 (unpublished).

It is required that the lawyer be invited to attend at an appropriate time with which he can attend (meaning that access to the lawyer is likely), and this time depends on the discretion of the investigator according to the circumstances of each case, under the control of the trial court.

If the investigator believes that the chosen lawyer did not attend with the intention of disrupting the progress of the lawsuit, he may proceed to assign another lawyer and initiate the investigation.

The law did not require a special form for the accused to announce the name of his lawyer, as it may be done by a letter or by a bailiff or a man of public authority [1538].

The Court of Cassation ruled that: [It is decided that there is no dispute that the accused is free to choose whoever he wants to defend him and his right to do so is a special inherent right that is submitted to the right of the judge to choose the defender. If the accused chooses a defender, the judge does not have the right to kill him and appoint another defender, but this principle, if it conflicts with the right of the president of the hearing to manage it and maintain not to disrupt the progress of the case, the president of the hearing must obviously acknowledge his right and give him complete freedom of action on one condition, which is not to leave the accused without a defense][1539] .

[As long as it is established that the accused has attended on his behalf a lawyer and witnessed the proceedings of his trial and defended him without any objection from the accused, it is equal that the lawyer has attended on the basis of a power of attorney from the accused or on behalf of the attorney assigned to the court or on his own initiative, as what matters is that the defendant has achieved the defense as required by law][1540] .

In the event that the accused does not have a lawyer and cannot appoint one, the text of the law is clear in that a member of the prosecution must be assigned a lawyer to attend with the accused if the latter has not appointed a lawyer before proceeding with the interrogation or confrontation. However, this provision is limited to only two investigative procedures, namely interrogation and confrontation. As for the rest of the investigation procedures, such as inspecting the crime scene, questioning witnesses, or others, the investigator may initiate them without the need to assign a lawyer.

The investigator shall have fulfilled his obligation to appoint a lawyer by informing the competent sub-union of the type of case, the date and date of the investigation, and by requesting the dispatch of a qualified lawyer to represent the accused.

The Court of Cassation ruled that: [There is no place for what the appellant raises to violate his right to defense due to the absence of his lawyer with him during the examination of the prosecution, as Article 124 of the Criminal Procedure Law, which he adheres to, is specific to the interrogation of the accused in cases and under the conditions set forth therein][1541] .

Cases involving a number of defendants raise the issue of conflict of interest, and in this case, it is necessary to appoint a lawyer for each defendant as long as there is a conflict of interest

([1538]) Appeal No. 8352 of 88 S issued at the session of May 5, 2019 (unpublished), Appeal No. 6101 of 84 S issued at the session of February 2, 2015 and published in the Technical Office letter No. 66, page No. 213, rule No. 24, Appeal No. 22305 of 83 S issued at the session of October 12, 2014 and published in the Technical Office letter No. 65, page No. 656, rule No. 85, Appeal No. 37001 of 77 S issued at the session of April 10, 2008 and published in the Technical Office letter No. 59, page No. 267, rule No. 46.

([1539]) Appeal No. 6375 of 63 S issued at the session of May 8, 1995 and published in the first part of the book of the Technical Office No. 46 page No. 835 rule No. 126.

([1540]) Appeal No. 1680 of 9 S issued at the hearing of November 6, 1939 and published in the first part of the set of legal rules No. 5 page No. 7 rule No. 5.

([1541]) Appeal No. 164 of 34 S issued at the session of May 11, 1964 and published in the second part of the book of the Technical Office No. 15 page No. 362 rule No. 71.

between all or some of the defendants: [If one of the defendants confesses to himself and others, this defendant is considered a witness against the other defendant, it is not permissible for one lawyer to defend the aforementioned defendants][1542] .

The Bar Association is legally competent to provide the lawyers required to be assigned to attend with the defendants present before the Public Prosecution for interrogation or confrontation, which is one of the main objectives that the Bar Association works to achieve. Accordingly, the member of the prosecution may not resort to the assistance of any lawyer to defend the accused before the implementation of the provisions of the law by notifying the competent branch Bar Association to take the necessary action towards providing a lawyer to attend with the accused [1543].

The law did not require inviting a lawyer to attend the interrogation of the accused or confront him in a certain form, which may be done by a speech or by a man of public authority, but there are a set of requirements that must be met in this notification in order to achieve its desired purpose, which are as follows:

The notification shall be addressed to the competent branch bar association, that is, the office of the association located in the same geographical district in which the headquarters of the prosecution before which the accused is brought is located. The last part of the manual includes contact information for branch union headquarters.

The notification data must include the name and address of the prosecution requested to appear before it, the name of the accused, the number and type of the case, the content of the assignment decision, the date and date of the investigation session, the date of editing, and the signature of the competent prosecution member.

The notification must contain proof of receipt by the syndicate (i.e. a place designated for the signature of the subordinate syndicate specialist indicating an hour, the date of receipt, and the name of the recipient with a copy of his address).

Proof of that notification in the investigation report.

It is worth mentioning that there is nothing to prevent the Public Prosecution, in coordination with the General Bar Association, from following other methods of communication, such as the use of e-mail or fax, as long as these means provide information that enables the trial court to extend its control over this procedure. It must always be taken into account that the means of communication with the syndicate can be changed according to changing circumstances and the proximity of the prosecution headquarters to the headquarters of the subsidiary syndicate[1544].

([1542]) Appeal No. 1021 of 46 s issued at the session of February 14, 1977 and published in the first part of the book of the Technical Office No. 28 page No. 257 rule No. 56, Appeal No. 56 of 5 s issued at the session of November 5, 1934 and published in the first part of the set of legal rules No. 3 page No. 386 rule No. 289.

([1543]) Articles 64, 93, 94, 121/b of the Advocacy Law.

([1544]) Attorney General's Circular No. 11 of 2006, and attached to this Circular is a proposed form for notification

(Proposed Form of Notice)

Public Prosecution

Prosecution __________

Case No.: _______

Subject of the case: _______

Name of Accused: _______

We would like to inform you that the decision of the Public Prosecution has been issued to assign a lawyer to attend with the accused/ ____________ in the above case. The session of __/ __/ ____ corresponding to ________ has been set at ______ at ______ in the Office of the Prosecution ___________ located _________________________________ to initiate the investigation procedures before Mr. ______________ Prosecutor.

The branch bar association has full freedom to choose any lawyer registered with it, and therefore the member of the prosecution does not have the right to object to the presence of a lawyer appointed by these lawyers before him, except for the following:

If the lawyer is assigned to another defendant in the same case, which raises a conflict of interest.

If the lawyer does not violate the proper conduct of the investigations, such as deliberately disrupting the progress of the case or disclosing the confidentiality of the investigations.

If the lawyer makes statements or media statements about the case in which he is defending that will affect its progress.

It is worth mentioning that the Advocacy Law allows the lawyer, even if he is under training, to attend the investigations regardless of the type of case, that is, whether it is a felony or a misdemeanor.

It is preferable, despite the above, that the assigned lawyer is qualified to plead before the court that will finally hear the case[1545].

The law or the instructions of the prosecution did not impose a specific period for the prosecutor to wait for the presence of the assigned lawyer, as this matter is relative and varies from one case to another and depends on many determinants, including the distance between the headquarters of the prosecution and the headquarters of the subordinate syndicate, the date of conducting the investigation morning or evening, the place of conducting the investigation in the headquarters of the prosecution or elsewhere, the availability of means of transportation, and others. In the end, the matter is subject to the discretion of the prosecution member and in this regard it is subject to the control of the trial court. Therefore, the prosecution member must always record the measures taken in this regard in the investigation record and cause each of them so that the trial court can enforce its right to control the integrity of those procedures [1546].

The prosecutor may initiate the investigation even if the delegated lawyer is not present, but it is necessary to follow the following steps:

Notify the competent sub-union of the decision of the Public Prosecution with a legal mandate.

Verify that the subordinate union has received the said notification form.

Waiting for the appropriate time for the presence of the delegated lawyer.

Call the subordinate syndicate if possible to confirm the request and find out the reasons for the lawyer's non-attendance, or whether there is another lawyer who can be hired.

If the member of the prosecution is unable to contact the subordinate syndicate or obtain confirmation that the lawyer has been sent, he must seek the assistance of any other lawyer who may be present at the prosecution and accept his assignment to attend with the accused.

It is required to send one of the lawyers registered in the _____ sub-union to attend the investigation procedures that are initiated before the aforementioned accused on the date specified above.

Issued on __/ __/ ____ at ____ Member of the Prosecution

____

Recipient
Name: ______________________
Title: _____________________
Signature: _____________________
Date and time: ________________.

([1545]) Articles 26, 65, 70 of the Advocacy Law.

([1546]) Article 603 of the Judicial Instructions of the Public Prosecution, Circular Letter of the Attorney General No. 11 of 2006.

Proving all previous procedures in the investigations with attaching the supporting documents to the case file so that the trial court can exercise its control authority.

In addition to the above, the prosecution member must notify the concerned sub-union that the delegated lawyer is not present until the union takes the necessary measures against him.

It is worth mentioning that the matter is mainly subject to the discretion and discretion of the prosecutor. He may consider postponing the interrogation of the accused until the next morning in the clear interest of the accused in the presence of a lawyer with him in the interrogation procedures, as in the case of a flagrant invalidity in the procedures. This is a procedural plea that the accused or his lawyer must adhere to. Therefore, the discretion requires that the accused be detained so that a lawyer can be assigned to attend the interrogation procedures. [1547].

The lawyer shall enjoy the following rights at the stage of preliminary investigation:

The right to access all files relevant to the investigation

The right to prove observations or make defenses and requests on behalf of the accused

The right to ask questions of the accused or witnesses

The right to assess how to defend the accused

The right to permanent contact with the accused

The right to obtain official copies of investigations

The right to be present with the accused during evidence-gathering proceedings

The right to delegate others to attend

The right to obtain an official certificate of attendance at investigations

The right not to deposit the general power of attorney

The right of the lawyer assigned by the Public Prosecution to apply for the estimation and payment of fees

The right to good treatment and assistance in the performance of his task [1548].

In Articles 124 and 125 of the Code of Criminal Procedure, the legislator has informed the interrogation of the accused as soon as he is investigated by the Public Prosecution with legal guarantees decided in his favor alone, including the lack of separation between him and his lawyer [1549].

During the preliminary investigation phase, the lawyer has the following substantive obligations:

Obligation to defend the interests of his client by providing all appropriate legal assistance

Preserving his client's secrets

Maintaining the confidentiality of the investigation

Refrain from making media statements or statements

Refraining from disclosing the statements made by the assignee regarding the case

---

([1547]) Articles 64 and 98 of the Advocacy Law.
([1548]) Articles 81, 84, 124, 125 of the Criminal Procedure Code and articles 49 to 57 of the Advocacy Law.
([1549]) Appeal No. 7954 of 86 S issued at the 10th session of December 2016 (unpublished).

The lawyer must also observe a number of procedural obligations, including paying the lawyer's stamp, dressing appropriately, and addressing the prosecution and other litigants appropriately.[1550].

The Ministry of Justice, in consultation with the General Syndicate Council, has set the schedule for estimating the fees of lawyers assigned to attend the investigations of the Public Prosecution and the trial at not less than one hundred pounds and not exceeding two hundred pounds in misdemeanor cases, and not less than two hundred pounds and not exceeding three hundred pounds in felony cases. The fees shall be disbursed from the treasury of the Court of First Instance of its circuit, the prosecution, which initiated the investigation [1551].

As for the procedures to be followed regarding the payment of fees, there are a set of steps to be followed so that the assigned lawyer can pay his legally prescribed fees, namely:

The assigned lawyer shall submit a request to pay his fees to the competent prosecution after the final disposal of the case, whether by filing it or referring it.

The competent member of the Public Prosecution shall estimate the fees of the assigned lawyer, write this in his handwriting at the end of the investigations, and sign it with a legible signature in his triple name.

The competent investigation clerk shall write a memorandum of payment of the fees of the assigned lawyer, as well as "Form No. 38b Prosecution " regarding the order of estimating the fees of the assigned lawyer from the prosecution in criminal cases, and it shall be signed by the competent prosecution member.

At the end of the investigations, the head of the criminal registry shall indicate that the disbursement note and the estimation order have been drawn up so that the disbursement is not repeated. The papers shall be recorded in a book recording the estimation orders of the fees of the lawyers assigned by the Public Prosecution on behalf of the District Attorney.

The papers shall be sent to the competent college prosecution, and they shall be recorded in the register of procedures for disbursing the fees of lawyers assigned by the public prosecution on behalf of the college.

The Chief Prosecutor shall approve the disbursement note and the appreciation order.

The Chief Criminal Registrar shall issue the exchange approval form.

The fees for the lawyer shall be paid from the treasury of the competent court of first instance[1552].

Criteria for estimating attorneys' fees

The prosecutor's estimate of the fees of the assigned lawyer shall include several criteria, for example:

The number of investigation sessions attended by the assigned lawyer in which the accused was interrogated or confronted with other accused or witnesses.

Defenses, requests or observations made by him and proven in the minutes of the investigation.

The number of requests he made to see what was done in the case.

([1550]) Articles 62 to 76 of the Advocacy Law.

([1551]) Law No. 74 of 2007 amending Article 124 of the Criminal Procedure Law, Ministerial Decision No. 8126 of 2007 setting the indicative schedule of the attorney's fees report for lawyers assigned to attend investigations before the Public Prosecution, the letter of the Minister of Justice No. (1411) dated 3/10/2007, and the periodic letter of the Attorney General No. 34 of 2007.

([1552]) Attorney General's Circular No. 34 of 2007.

The size and importance of the documents submitted to support the position of his client. [1553].

The right to seek the assistance of a defender is one of the special guarantees of interrogation, whose failure to observe the nullity of the interrogation as well as the nullity of the evidence derived from this interrogation. The confession of the accused resulting from this interrogation is null and void, considering that the confession relied upon as evidence may only be made after a valid interrogation by the investigating authority. [1554].

From the above, it is clear that the investigator must:

Informing the accused of his right to use a defender as soon as he appears before you for interrogation.

The defendant is notified of the name of a lawyer in one of two ways:

A written declaration submitted to the clerk's office on behalf of the competent authority or to the prison warden, or

2- Notify the investigator directly if he is questioned.

Allowing the lawyer to attend the investigations as long as he is registered with the Bar Association, even if he is under training.

Allowing the lawyer to view the investigation the day before the interrogation or confrontation.

Always wait for the presence of the defendant's lawyer unless he deliberately fails to attend or disrupts the course of investigations.

Assigning the accused in every felony or misdemeanor punishable by mandatory imprisonment as a lawyer if he does not have a lawyer, except for cases of flagrante delicto or speeding due to fear of losing evidence.

Contacting the Bar Association directly when requesting the assignment of a lawyer, as it is concerned with this matter.

Observing the requirements that must be met in notifying the concerned bar association.

Proving in investigations the exception to the right to seek the assistance of a defender and its justifications, as this is subject to the control of the trial court.

Proof of all procedures for summoning the defendant's lawyer or assigning a lawyer to him with the investigation minutes, as these procedures are subject to the control of the trial court.

Taking into account the conflicting interests of the accused when assigning a single lawyer to represent them.

Enabling the assigned lawyer to pay his legally prescribed fees after the final disposition of the case and taking the necessary legal procedures.

The investigator is prohibited from:

Depriving the accused of his right to seek the assistance of a defender in any criminal offence.

Depriving the accused of his right to seek the assistance of a defender at any stage of the investigation.

Violation of the right of the accused to seek the assistance of a defender, as this leads to the invalidity of the interrogation of the accused and the consequent procedures.

([1553]) Attorney General's Circular No. 34 of 2007.
([1554]) Articles 331 to 336 of the Criminal Procedure Code.

Attacks on the freedom of the accused to choose his lawyer, as his right to this is based on the right of the prosecution to appoint a lawyer for him.

Depriving the accused of his permanent right to contact his lawyer.

Start the investigation before waiting for the right time for the arrival of the defendant's protector.

Starting the interrogation of the accused or confronting him with other accused or witnesses before the presence of the assigned lawyer except after taking the necessary legal procedures.

Depriving the lawyer of his right to prove his defenses and requests at the end of the investigations.

Accepting the waiver of the right to use a defender in every felony or misdemeanor punishable by mandatory imprisonment.

Expanding the exception to the right to use cannons.

The fees of the assigned lawyer exceeded the legally prescribed limits.

Also, if the accused refuses to have his lawyer with him during the investigation despite his presence, the investigator is not obliged to appoint a lawyer for him [1555].

The Court of Cassation ruled that the prohibition of interrogating the accused in a felony or misdemeanor punishable by mandatory imprisonment or confronting him with others except in the presence of his lawyer, if any, or in the presence of a lawyer assigned to him by the investigator, is a right decided in the interest of the accused himself, he may waive him by requesting his interrogation without the presence of a lawyer, and he has the right, if he wishes, to amend this waiver at any time during the course of the investigation [1556].

The investigator may conduct an investigation into the absence of the litigants whenever he deems it necessary to do so to reveal the truth in view of the type of case or fear of influencing the witnesses, as well as in the case of urgency. Once that necessity is over, he may allow them to view the investigation, and he may initiate some investigation procedures in the absence of the litigants, while allowing them to view the documents proving these procedures.

The members of the prosecution must intentionally use their right to conduct the investigation in the absence of the litigants or their agents, and it is not necessary, even in the cases where it is decided to do so, to continue to prevent them from attending the investigation sessions until the end of their roles. The accused always has the right to accompany his lawyer whenever he is invited to investigate, even in cases where the member of the prosecution decides to conduct the investigation in the absence of[1557] the litigants.

If the Legal Aid Committee deputizes a lawyer to initiate the lawsuit for a litigant whom the committee decides to exempt from judicial fees, it is not permissible to pay the expenses of the transfer of the delegated lawyer, and the representative of the prosecution from its members in the Legal Aid Committee must ask the judge to limit the assignment to those of the lawyers residing in the court circuit[1558].

([1555]) Appeal No. 44160 of 85 S issued at the 9th session of May 2016 and published in the letter of the Technical Office No. 67 page No. 511 rule No. 58.

([1556]) Appeal No. 4930 of 81 S issued on January 10, 2013 (unpublished).

([1557]) Article 224 of the Judicial Instructions of the Public Prosecution.

([1558]) Article 290 of the Judicial Instructions of the Public Prosecution.

9.2.2 Within the framework of international Law

Persons suspected of, or charged with, criminal offences have the right to be assisted by a lawyer during the investigation and the right to remain silent and not to be compelled to incriminate themselves.

Persons suspected of or charged with a criminal offence have the right to have a lawyer present at their interrogation sessions and to be assisted by a lawyer, which is one of the most fundamental safeguards against torture and ill-treatment. Not only does a lawyer's presence deter ill-treatment or coercion and facilitate corrective action in the event of ill-treatment, it can also protect those responsible from facing unfounded allegations of improper conduct.

Access to a lawyer must be provided immediately after the moment of deprivation of liberty, and certainly before being questioned by the relevant authorities. All interrogations must be attended by a lawyer in their entirety. This right applies, inter alia, to detention on criminal charges, to prisoners of war, criminal detention related to armed conflict, detention of individuals considered to be civilian internees under international humanitarian law, and administrative detention outside of armed conflict.

The Special Rapporteur is concerned that in many jurisdictions the use of a lawyer is routinely ignored or unduly delayed during interrogation until incriminating confessions or statements are extracted. The protocol should make it clear that interrogation of persons without the presence of a lawyer is prohibited, except in compelling circumstances or when the person being interrogated knowingly and voluntarily agrees to waive this right, and stress that all persons deprived of liberty must have the right to counsel, regardless of whether the offence in question is considered a “minor” or “serious” offence.

Therefore, in the view of the Special Rapporteur on torture, force majeure circumstances that preclude access to a lawyer must be carefully defined in domestic law and be consistent with situations that require the avoidance of serious negative repercussions that may affect the life, liberty or physical integrity of persons, or where the immediate action of investigators is necessary to prevent the destruction or alteration of essential evidence, or to prevent the handling of witnesses. Even in these cases, the required guarantees must be provided during the interrogation of suspects in the absence of a lawyer, and the interrogation must be limited to what is necessary to achieve its sole purpose (that is, to obtain information to take into account urgent circumstances), and the interrogation cannot unduly affect the right to defense. The right to a defense is irreparably impaired when statements made during interrogation in the absence of a lawyer are used for the purposes of conviction.

When a person waives the right to counsel, means of verification should be used to ensure that he or she has received clear and sufficient information about the content of the right and the effects that may result from such waiver, and to ensure that the waiver was voluntary and conclusive. When a person requests the use of his or her right to counsel during interrogation, the waiver of this right cannot be demonstrated by proving that the person in question has answered further questions during interrogation in the absence of counsel, even if he or she has previously been informed of his or her right to remain silent. In such cases, the interrogation cannot continue until it is assisted by a lawyer, unless the person questioned takes the initiative to continue talking with the interrogators [1559].

Special [1559]Rapporteur on the independence of judges and lawyers, United Kingdom, § §47 (1998) UN Doc E/CN. 4/1998/39/add. 4; see A/71/298, 5 August 2016, § § 68-72; see A/68/295, WGAD/CRP. 1/2015), see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in its resolution 67/187; and the Human Rights Committee, Communication No. 770/1997, Gidin v. Russian Federation, views

The right to counsel entails the right to meet in private and to consult and communicate in full confidentiality prior to any interrogation, which is necessary to preserve the right to defense and to enable detainees to raise questions about the treatment they receive while in detention.

Further practical guidance should be provided on the role, rights and responsibilities of lawyers in relation to questioning, including, for example, advice on the exercise of the right to remain silent - and a list of the consequences this may have.

The presence and authority of the investigator is required to intervene during interrogations with a view to protecting the rights of the persons questioned and ensuring their fair treatment. Lawyers should be allowed to ask questions, seek clarifications, object to improper or unfair questioning, and advise their clients without intimidation, hindrance, harassment, or improper interference. But lawyers cannot prevent interviewees from answering the questions they would like answered, answering on their behalf, or interfering in the interrogation without justification

The accused should be informed of the guidance on the right to free legal aid.

The Special Rapporteur on torture has found it regrettable that many countries still lack the necessary resources and capacity to provide legal assistance.

Therefore, in the absence of a sufficient number of accredited lawyers, and a complete legal aid system covering all stages of deprivation of liberty, the authorities should, as an interim measure, grant detainees the right to have a trusted third-party present during their interrogation at the initial stage of detention.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, while stressing that lawyers are the first providers of legal aid, affirmed that each of the other stakeholders may intervene to fulfill this task, including non-governmental organizations, community-based organizations, professional bodies and associations, and academic institutions [1560].

They should be notified of these rights before their interrogation begins [1561].

Individuals who are unable to communicate in the language used by their lawyer are entitled to the assistance of an interpreter (paid for by the state)[1562].

Both the Inter-American Court and the European Court have made it clear that suspects have the right to a lawyer during police interrogation [1563].

While the Human Rights Committee and the Committee against Torture have repeatedly called on States to ensure the right of all detainees, including those suspected of links to terrorist

---

adopted on 20 July 2000, see A/68/295 and E/CN. 4/813 and Corr. 1), (EU Directive 2013/48/EU), (European Court of Human Rights, Salduz v. Turkey), (European Court of Human Rights, Pishchalnikov v. Russia)..

([1560]) (A/71/298, 5 August 2016, § §73-75), (see United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems); (see CAT/OP/Ben/1).

([1561]) Principle 29§ 8 of the Principles of Legal Aid..

([1562]) General Comment 32 of the Human Rights Committee, §32..

([1563]) Inter-American Court: Pareto Leyva v. Venezuela, Inter-American Commission 64- §62 (2009), Cabrera-García and Montel-Floresv. Mexico, (2010) 155- § §154; see Inter-American Commission, Report on Terrorism and Human Rights (2002), section 3(d) (1) (d) §237.

European Court: Salduz v. Turkey (36391/ 02), Grand Chamber §54- §55 ,(2008); see also, Nichiboruk and Yunalu v. Ukraine § 262- §263 (2011) ,(04/42310), John Marie v. United Kingdom (91/18731), Grand Chamber 66 § (1996), Dayanan v. Turkey (7377) / 03), §32- §33 (2009), Turkan v. Turkey (33086), 42 § (2008).

crimes, to have access to a lawyer prior to interrogation, and to have a lawyer present during interrogation sessions [1564].

The Principles on Legal Aid state that, unless compelling circumstances arise, States should prohibit police interviews of suspects in the absence of their lawyer, unless they have voluntarily and knowingly given up their right to the presence of a lawyer. Such a prohibition should be absolute if the person is under the age of 18 [1565].

The Special Rapporteur on torture has stressed that any statements or confessions made by a person deprived of liberty should have no probative value in court, unless they are made in the presence of a lawyer or a judge, except as evidence against the person accused of obtaining the statements by unlawful means [1566].

Principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: «1. It is prohibited to improperly exploit the situation of a detained or imprisoned person for the purpose of extracting a confession from him, forcing him to incriminate himself in any other way, or testifying against any other person.

2. No person during interrogation shall be subjected to violence, threats or interrogation methods that affect his ability to make decisions or to judge matters[1567].

9.3 Prohibition of Coercion to Confess

9.3.1 Under Egyptian law

Right not to be coerced into confessing guilt

A confession is a self-confession by the accused to commit the facts constituting the crime in whole or in part [1568].

Any person charged with a criminal offence has the right not to be coerced or compelled to confess guilt, testify or produce evidence against himself, including all forms of coercion or coercion, direct or indirect, physical or psychological, by torture or other ill, inhuman or degrading treatment.

Prohibited interrogation or investigation methods include, for example, immobilizing handcuffs, keeping the person in a painful physical position, blindfolding, stuffing the heads in bags or masks, sleep deprivation, or threats, such as threats to kill or torture, as well as beating, electrocution, or burning with cigarette butts. It is also prohibited to insult, humiliate, or humiliate the accused in any way, including insulting their beliefs, sanctities, honor, or consideration.

It is not permissible to use a lie detector to obtain the confession of the accused, because this means hides some doubt in its results, and therefore it will not have a scientific value that suggests a sufficient degree of confidence in the accuracy of the results ofthis device[1569] .

Concluding [1564]observations of the Human Rights Committee: Ireland, / UN Doc. CCPR/C §14 (2008) IRL/CO/3, Republic of Korea UN Doc. CCPR/C/KOR/CO/3 §14 (2006), Netherlands §11 (2009) UN Doc. CCPR/C/NLD/CO/4; see Concluding Observations of the Committee against Torture: Turkey, / UN Doc. CAT/C/TUR. §11 (2010) CO/3.

([1565]) Guidelines 43§ 3 (b) and 53§ 10 (b) of the Principles of Legal Aid.

([1566]) Special Rapporteur on Torture, 68/2003/2002) UN Doc. E/CN. 4) §26 (e)..

([1567]) Adopted and made public by United Nations General Assembly resolution 43/173 of 9 December 1988.

([1568]) Guarantees of the accused in the stage of criminal investigation - Dr. Abdul Hamid Al-Shawarbi - Al Maaref Establishment in Alexandria - page 415.

([1569]) Article 220 of the Judicial Instructions of the Public Prosecution.

If the accused in the investigation confesses to the charge against him, he is not satisfied with this confession, but the investigator must search for evidence that supports him because the confession is only evidence that can be discussed like other evidence [1570].

One of the conditions for the validity of the confession as evidence is that the accused has made the confession in his full will and that it is issued by him voluntarily, of his choice and of his free will. The last paragraph of Article 55 of the 2014 Constitution stipulates that: "... The accused has the right to silence, and every statement that proves that it was made by a detainee under the weight of any of the foregoing or the threat of any of it, is wasted and unreliable."

The accused must have made the confession at will, away from any pressure that defects or affects his will. Any impact on the accused, whether it is violence, threat or promise, defects his will and thus corrupts his confession.

A confession is irrelevant, even if it is true, if it is the result of material or moral coercion, whatever its value, because of its impact on the will of the accused and his freedom to choose between denial and confession. The last paragraph of Article 302 of the Code of Criminal Procedure stipulates that: "... Every statement that proves that it was made by one of the accused or witnesses under duress or threat of coercion is wasted and unreliable"..

The hypnosis of the accused and his interrogation is considered a form of material coercion that invalidates his confession and does not change the consent of the accused in advance [1571].

Narcotic drugs may not be used to induce the accused to confess, considering such action as physical coercion that invalidates the interrogation conducted through it and wastes the resulting confession [1572].

The Court of Cassation ruled that: [A reliable confession must be optional, and it is not considered so even if it is true if it was issued under coercion or threat of coercion, whatever its fate, and the principle is that the court must, if it decides to rely on the evidence derived from the confession, examine the link between it and the coercion said to have been obtained and deny the existence of this coercion in a reasonable inference][1573] .

([1570]) Article 217 of the Judicial Instructions of the Public Prosecution.

([1571]) Article 219 of the Judicial Instructions of the Public Prosecution.

([1572]) Article 218 of the Judicial Instructions of the Public Prosecution.

([1573]) Appeal No. 26806 of Judicial Year 84, issued in the session of January 1, 2015, published in Technical Office Book No. 66, Page 25, Principle No. 1; Appeal No. 67463 of Judicial Year 74, issued in the session of May 15, 2012 (unpublished); Appeal No. 9801 of Judicial Year 80, issued in the session of February 13, 2011, published in Technical Office Book No. 62, Page 59, Principle No. 10; Appeal No. 737 of Judicial Year 73, issued in the session of April 18, 2010 (unpublished); Appeal No. 4923 of Judicial Year 78, issued in the session of April 7, 2009, published in Technical Office Book No. 60, Page 201, Principle No. 26; Appeal No. 34525 of Judicial Year 77, issued in the session of March 8, 2009 (unpublished); Appeal No. 34150 of Judicial Year 77, issued in the session of June 11, 2008 (unpublished); Appeal No. 7555 of Judicial Year 69, issued in the session of January 27, 2008 (unpublished); Appeal No. 34294 of Judicial Year 77, issued in the session of January 20, 2008 (unpublished); Appeal No. 1114 of Judicial Year 67, issued in the session of February 16, 2006 (unpublished); Appeal No. 26783 of Judicial Year 67, issued in the session of January 19, 2006 (unpublished); Appeal No. 10854 of Judicial Year 75, issued in the session of May 16, 2005 (unpublished); Appeal No. 51867 of Judicial Year 74, issued in the session of January 6, 2005 (unpublished); Appeal No. 30639 of Judicial Year 72, issued in the session of April 23, 2003, published in Technical Office Book No. 54, Page 583, Principle No. 74; Appeal No. 14847 of Judicial Year 63, issued in the session of November 7, 2002 (unpublished); Appeal No. 9496 of Judicial Year 63, issued in the session of September 26, 2002 (unpublished); Appeal No. 23449 of Judicial Year 71, issued in the session of February 5, 2002, published in Technical Office Book No. 53, Page 224, Principle No. 41; Appeal No. 3721 of Judicial Year 70, issued in the session of December 3, 2000, published in Technical Office Book No. 51, Page 784, Principle No. 156; Appeal No. 3943 of Judicial Year 65, issued in the session of January 10, 1996, published in Part 1 of Technical Office Book No. 47, Page 55, Principle No. 6; Appeal No. 7979 of Judicial Year 64, issued in the session of January 5, 1995, published in Part 1 of Technical Office Book No. 46, Page 94, Principle No. 9; Appeal No. 23377 of Judicial Year 59, issued in the session of April 12, 1990, published in Part 1 of Technical Office Book No. 41, Page 625, Principle No. 107; Appeal No. 23758 of Judicial Year 59, issued in the session of March 8, 1990, published

The plea of nullity of the confession due to its issuance under the influence of coercion is a substantive plea that the trial court must discuss and respond to. In this regard, the Court of Cassation ruled that: [The plea of nullity of the confession due to its issuance under the influence of coercion is a substantive plea that the trial court must discuss and respond to, equal to the fact that the defendant was the one who pleaded the nullity or that one of the other defendants in the case has adhered to it][1574] .

---

in Part 1 of Technical Office Book No. 41, Page 504, Principle No. 84; Appeal No. 3523 of Judicial Year 59, issued in the session of October 2, 1989, published in Part 1 of Technical Office Book No. 40, Page 717, Principle No. 120; Appeal No. 3725 of Judicial Year 58, issued in the session of October 4, 1988, published in Part 1 of Technical Office Book No. 39, Page 853, Principle No. 128; Appeal No. 4114 of Judicial Year 57, issued in the session of January 7, 1988, published in Part 1 of Technical Office Book No. 39, Page 112, Principle No. 10; Appeal No. 1281 of Judicial Year 57, issued in the session of May 20, 1987, published in Part 1 of Technical Office Book No. 38, Page 709, Principle No. 125; Appeal No. 4985 of Judicial Year 55, issued in the session of January 22, 1986, published in Part 1 of Technical Office Book No. 37, Page 114, Principle No. 25; Appeal No. 4421 of Judicial Year 55, issued in the session of January 20, 1986, published in Part 1 of Technical Office Book No. 37, Page 105, Principle No. 24; Appeal No. 5925 of Judicial Year 54, issued in the session of May 2, 1985, published in Part 1 of Technical Office Book No. 36, Page 601, Principle No. 106; Appeal No. 256 of Judicial Year 55, issued in the session of February 25, 1985, published in Part 1 of Technical Office Book No. 36, Page 300, Principle No. 51; Appeal No. 951 of Judicial Year 53, issued in the session of June 2, 1983, published in Part 1 of Technical Office Book No. 34, Page 730, Principle No. 146; Appeal No. 275 of Judicial Year 51, issued in the session of November 1, 1981, published in Part 1 of Technical Office Book No. 32, Page 795, Principle No. 137; Appeal No. 488 of Judicial Year 51, issued in the session of November 1, 1981, published in Part 1 of Technical Office Book No. 32, Page 801, Principle No. 138; Appeal No. 532 of Judicial Year 50, issued in the session of June 16, 1980, published in Part 1 of Technical Office Book No. 31, Page 800, Principle No. 154; Appeal No. 1193 of Judicial Year 45, issued in the session of November 23, 1975, published in Part 1 of Technical Office Book No. 26, Page 726, Principle No. 160; Appeal No. 805 of Judicial Year 45, issued in the session of June 22, 1975, published in Part 1 of Technical Office Book No. 26, Page 528, Principle No. 123; Appeal No. 1148 of Judicial Year 42, issued in the session of December 25, 1972, published in Part 3 of Technical Office Book No. 23, Page 1459, Principle No. 327; Appeal No. 1248 of Judicial Year 42, issued in the session of December 25, 1972, published in Part 3 of Technical Office Book No. 23, Page 1472, Principle No. 330; Appeal No. 853 of Judicial Year 42, issued in the session of October 15, 1972, published in Part 3 of Technical Office Book No. 23, Page 1049, Principle No. 234; Appeal No. 1056 of Judicial Year 41, issued in the session of December 26, 1971, published in Part 3 of Technical Office Book No. 22, Page 805, Principle No. 193; Appeal No. 506 of Judicial Year 40, issued in the session of June 22, 1970, published in Part 2 of Technical Office Book No. 21, Page 905, Principle No. 214; Appeal No. 1712 of Judicial Year 38, issued in the session of January 12, 1970, published in Part 1 of Technical Office Book No. 21, Page 80, Principle No. 20; Appeal No. 558 of Judicial Year 37, issued in the session of May 15, 1967, published in Part 2 of Technical Office Book No. 18, Page 651, Principle No. 127; Appeal No. 914 of Judicial Year 35, issued in the session of October 25, 1965, published in Part 3 of Technical Office Book No. 16, Page 739, Principle No. 140; Appeal No. 29 of Judicial Year 27, issued in the session of March 26, 1957, published in Part 1 of Technical Office Book No. 8, Page 288, Principle No. 83.

([1574]) Appeal No. 21819 of 85 S issued at the hearing of 3 December 2015 (unpublished), Appeal No. 52 of 81 S issued at the hearing of 17 November 2012 (unpublished), Appeal No. 6021 of 81 S issued at the hearing of 21 February 2012 (unpublished), Appeal No. 34525 of 77 S issued at the hearing of 8 March 2009 (unpublished), Appeal No. 21237 of 71 S issued at the hearing of 20 January 2009 (unpublished), Appeal No. 34294 of 77 S issued at the session of January 20, 2008 (unpublished), Appeal No. 9496 of 63 S issued at the session of September 26, 2002 (unpublished), Appeal No. 4923 of 78 S issued at the session of April 7, 2009 and published in the letter of the Technical Office No. 60 page No. 201 rule No. 26, Appeal No. 16181 of 69 S issued at the session of October 2, 2007 and published in the letter of the Technical Office No. 58 page No. 536 rule No. 104, Appeal No. 42103 of 75 S issued at the session of April 4, 2006 and published in the letter of the Office Technical No. 57 Page No. 470 Rule No. 55, Appeal No. 3721 of 70 S issued at the session of December 3, 2000 and published in the Technical Office's letter No. 51 Page No. 784 Rule No. 156, Appeal No. 7979 of 64 S issued at the session of January 5, 1995 and published in the first part of the Technical Office's letter No. 46 Page No. 94 Rule No. 9, Appeal No. 3523 of 59 S issued at the session of October 2, 1989 and published in the first part of the Office's letter Technical No. 40 Page No. 717 Rule No. 120, Appeal No. 3725 of 58 S issued at the session of October 4, 1988 and published in the first part of the Technical Office's letter No. 39 Page No. 853 Rule No. 128, Appeal No. 2434 of 58 S issued at the session of June 8, 1988 and published in the first part of the Technical Office's letter No. 39 Page No. 772 Rule No. 116, Appeal No. 4114 of 57 S issued at the session of January 7, 1988 and published in the first part of the Technical Office's letter No. 39 Page No. 112 Rule No. 10, Appeal No. 1281 of 57 S issued at the session of 20 May 1987 and published in Part I of Technical Office Letter No. 38 Page 709 Rule No. 125, Appeal No. 4985 of 55 S issued at the session of 22 January 1986 and published in Part I of Technical Office Letter No. 37 Page 114 Rule No. 25, Appeal No. 4421 of 55 S issued at the session of 20 January 1986 and published in Part I of Technical Office Letter No. 37 Page 105 Rule No. 24, Appeal No. 5925 of 54 s issued at the session of May 2, 1985 and published in the first part of the technical office book No. 36 page No. 601 rule No. 106, Appeal No. 6241 of 52 s issued at the session of February 16, 1983 and published in the first part of the technical office book No. 34 page No. 244 rule No. 46,

If the court decides to rely on the evidence of guilt derived from the confession of the accused to examine the link between that confession and the injuries said to have been obtained to coerce the accused against him, otherwise its judgment is tainted by invalid deficiencies, and is not immune from that invalidity and the other evidence on which its judgment is based, the Court of Cassation ruled that: [It is decided that the confession relied upon as evidence in the case must be optional issued by free will, so it is not valid to rely on the confession - even if it is true - when it is the result of coercion, no matter what Whereas, the principle is that the court, if it deems it necessary to rely on the evidence derived from the confession, to examine the link between it and the injuries said to have occurred to coerce the appellant, and to deny that it has made a reasonable inference, and since it is established from the records of the contested judgment that the court presented the appellant's defense of the invalidity of his confession based on the statement of its confidence in him and the absence of evidence from the papers without being exposed to the link between this confession and the fact that the appellant raised the minutes of the trial session that he suffered a fracture in his right arm as a result of the physical coercion that he signed without the court referring to those The injury and exposure to the link between it and the confession, its judgment is tainted by the invalid deficiency and is not immune from the invalidity of the other evidence on which it is based, as the evidence in the criminal articles is supportive and complements each other, including collectively the doctrine of the judge is formed so that if one of them falls or is excluded, it is not possible to identify the amount of impact that the invalid evidence had in the opinion reached by the court or to determine what result it would have reached if it had realized that this evidence does not exist][1575] .

The Court of Cassation argued that the plea of nullity of the confession because it was issued under the influence of coercion is an objective plea, which does not fall among the defenses related to public order, and it follows that it may not be raised for the first time before the Court of Cassation: [It is decided that the plea of nullity of the confession may not be raised before the Court of Cassation - as long as the records of the judgment do not bear its elements - because it is one of the legal defenses that mix with reality and require an objective investigation that distances from the function of the Court of Cassation, and therefore it is not accepted by the appellants after the obituary on the court to respond to a defense that was not raised before it and it is not challenged for the first time before the Court of Cassation][1576] .

Appeal No. 275 of 51 s issued at the session of November 1, 1981 and published in the first part of the technical office book No. 32 page No. 795 rule No. 137, Appeal No. 324 of 44 S issued at the hearing of April 14, 1974 and published in Part I of Technical Office Book No. 25 Page 408 Rule No. 87, Appeal No. 853 of 42 S issued at the hearing of October 15, 1972 and published in Part III of Technical Office Book No. 23 Page 1049 Rule No. 234, Appeal No. 1056 of 41 S issued at the hearing of December 26, 1971 and published in Part III of Technical Office Book No. 22 Page 805 Rule No. 193, Appeal No. 1712 of 38 S issued at the hearing of January 12, 1970 and published in Part I of Technical Office Book No. 21 Page 80 Rule No. 20, Appeal No. 558 of 37 S issued at the hearing of May 15, 1967 and published in Part II of Technical Office Book No. 18 Page 651 Rule No. 127, Appeal No. 1035 of 24 S issued at the hearing of October 25, 1954 and published in Part I of Technical Office Book No. 6 Page 124 Rule No. 43.

([1575]) Appeal No. 7555 of 69 S issued on January 27, 2008 (unpublished).

([1576]) Appeal No. 2470 of Judicial Year 85, issued in the session of March 9, 2016, published in Technical Office Book No. 67, Page 302, Principle No. 38; Appeal No. 12589 of Judicial Year 83, issued in the session of January 2, 2016, published in Technical Office Book No. 67, Page 13, Principle No. 1; Appeal No. 15915 of Judicial Year 84, issued in the session of January 12, 2015, published in Technical Office Book No. 66, Page 144, Principle No. 11; Appeal No. 15963 of Judicial Year 84, issued in the session of January 12, 2015, published in Technical Office Book No. 66, Page 149, Principle No. 12; Appeal No. 5173 of Judicial Year 4, issued in the session of May 20, 2014, published in Technical Office Book No. 65, Page 442, Principle No. 50; Appeal No. 26503 of Judicial Year 75, issued in the session of January 6, 2013, published in Technical Office Book No. 64, Page 33, Principle No. 4; Appeal No. 36048 of Judicial Year 74, issued in the session of November 27, 2012, published in Technical Office Book No. 63, Page 790, Principle No. 143; Appeal No. 37273 of Judicial Year 74, issued in the session of November 25, 2012, published in Technical Office Book No. 63, Page 777, Principle No. 139; Appeal No. 3746 of Judicial Year 80, issued in the session of January 2, 2012, published in Technical Office Book No. 63, Page 41, Principle No. 4; Appeal No. 12795 of Judicial Year 80, issued in the session of July 25, 2011 (unpublished); Appeal No. 23979 of Judicial Year 73, issued in the session of March 16, 2010 (unpublished); Appeal No. 20251 of Judicial Year 72, issued in

The Court of Cassation has even gone further by ruling that the defendant's statement that "the defendant's statements in the investigations were affected by his threat and intimidation by the police" without showing the face of what makes him confess and that it cannot be said that this phrase constitutes a defense to the invalidity of the confession or refers to the invalidated coercion: [Since it was established from the trial minutes that the appellant or his defender did not defend the invalidity of his confession to the investigation of the prosecution because it was the result of coercion, and the ends of what the defender of the appellant said that "the statements of the accused in the investigations were affected by his threat and intimidation by the police and that they told him to confess in order to be a fraud case" without showing the face of what he attributes to his confession and that it cannot be said that this phrase constitutes a defense to the invalidity of the confession or refers to the invalidated coercion. Whereas, the contested judgment relied in its conviction on the appellant's confession after he was assured of his safety - and it was not acceptable for the appellant to raise the forced plea in his regard for

---

the session of November 23, 2009 (unpublished); Appeal No. 1593 of Judicial Year 77, issued in the session of March 8, 2009 (unpublished); Appeal No. 19849 of Judicial Year 67, issued in the session of December 10, 2006 (unpublished); Appeal No. 51030 of Judicial Year 74, issued in the session of July 10, 2006 (unpublished); Appeal No. 24044 of Judicial Year 66, issued in the session of January 19, 2006 (unpublished); Appeal No. 10534 of Judicial Year 70, issued in the session of December 2, 2004 (unpublished); Appeal No. 36732 of Judicial Year 73, issued in the session of May 10, 2004 (unpublished); Appeal No. 10118 of Judicial Year 78, issued in the session of November 21, 2009, published in Technical Office Book No. 60, Page 477, Principle No. 64; Appeal No. 14527 of Judicial Year 72, issued in the session of October 21, 2009, published in Technical Office Book No. 60, Page 354, Principle No. 49; Appeal No. 7961 of Judicial Year 78, issued in the session of May 14, 2009, published in Technical Office Book No. 60, Page 246, Principle No. 33; Appeal No. 10938 of Judicial Year 77, issued in the session of March 2, 2008, published in Technical Office Book No. 59, Page 172, Principle No. 29; Appeal No. 50614 of Judicial Year 74, issued in the session of December 7, 2005, published in Technical Office Book No. 56, Page 691, Principle No. 105; Appeal No. 22878 of Judicial Year 73, issued in the session of January 6, 2004, published in Technical Office Book No. 55, Page 86, Principle No. 4; Appeal No. 4184 of Judicial Year 73, issued in the session of September 29, 2003, published in Technical Office Book No. 54, Page 884, Principle No. 120; Appeal No. 29650 of Judicial Year 70, issued in the session of April 17, 2003, published in Technical Office Book No. 54, Page 569, Principle No. 71; Appeal No. 7981 of Judicial Year 70, issued in the session of February 8, 2002, published in Technical Office Book No. 52, Page 243, Principle No. 39; Appeal No. 5223 of Judicial Year 70, issued in the session of February 4, 2001, published in Technical Office Book No. 52, Page 205, Principle No. 35; Appeal No. 26293 of Judicial Year 67, issued in the session of March 13, 2000, published in Technical Office Book No. 51, Page 288, Principle No. 53; Appeal No. 8744 of Judicial Year 66, issued in the session of April 22, 1998, published in Part 1 of Technical Office Book No. 49, Page 608, Principle No. 79; Appeal No. 29653 of Judicial Year 67, issued in the session of March 10, 1998, published in Part 1 of Technical Office Book No. 49, Page 388, Principle No. 53; Appeal No. 25649 of Judicial Year 64, issued in the session of December 17, 1996, published in Part 1 of Technical Office Book No. 47, Page 1362, Principle No. 196; Appeal No. 21539 of Judicial Year 64, issued in the session of November 3, 1996, published in Part 1 of Technical Office Book No. 47, Page 1131, Principle No. 163; Appeal No. 9837 of Judicial Year 64, issued in the session of April 14, 1996, published in Part 1 of Technical Office Book No. 47, Page 519, Principle No. 73; Appeal No. 2024 of Judicial Year 63, issued in the session of January 16, 1995, published in Part 1 of Technical Office Book No. 46, Page 163, Principle No. 22; Appeal No. 3838 of Judicial Year 62, issued in the session of February 6, 1994, published in Part 1 of Technical Office Book No. 45, Page 221, Principle No. 33; Appeal No. 3271 of Judicial Year 62, issued in the session of January 12, 1994, published in Part 1 of Technical Office Book No. 45, Page 151, Principle No. 22; Appeal No. 6840 of Judicial Year 60, issued in the session of October 3, 1991, published in Part 1 of Technical Office Book No. 42, Page 958, Principle No. 133; Appeal No. 557 of Judicial Year 60, issued in the session of May 21, 1991, published in Part 1 of Technical Office Book No. 42, Page 851, Principle No. 118; Appeal No. 2534 of Judicial Year 59, issued in the session of February 6, 1990, published in Part 1 of Technical Office Book No. 41, Page 275, Principle No. 48; Appeal No. 4537 of Judicial Year 57, issued in the session of January 14, 1988, published in Part 1 of Technical Office Book No. 39, Page 164, Principle No. 19; Appeal No. 6261 of Judicial Year 56, issued in the session of February 18, 1987, published in Part 1 of Technical Office Book No. 38, Page 301, Principle No. 43; Appeal No. 2455 of Judicial Year 55, issued in the session of October 27, 1985, published in Part 1 of Technical Office Book No. 36, Page 935, Principle No. 170; Appeal No. 882 of Judicial Year 52, issued in the session of April 6, 1982, published in Part 1 of Technical Office Book No. 33, Page 441, Principle No. 90; Appeal No. 1175 of Judicial Year 48, issued in the session of March 15, 1979, published in Part 1 of Technical Office Book No. 30, Page 346, Principle No. 71; Appeal No. 649 of Judicial Year 44, issued in the session of January 6, 1975, published in Part 1 of Technical Office Book No. 26, Page 20, Principle No. 5; Appeal No. 1947 of Judicial Year 39, issued in the session of April 6, 1970, published in Part 2 of Technical Office Book No. 21, Page 532, Principle No. 128; Appeal No. 1009 of Judicial Year 30, issued in the session of November 7, 1960, published in Part 3 of Technical Office Book No. 11, Page 756, Principle No. 145.

the first time before the Court of Cassation, as it requires an investigation to be conducted in which the function of this court is reduced, and then the obituary in this regard is not valid][1577] .

It also ruled that the defendant's statement that his confession was the result of moral coercion represented by the arrest of his family is not a defense to the invalidity of the confession, the trial court must examine it and respond to it: [Whereas it was clear from reference to the minutes of the trial session that the defense of the appellants did not defend the invalidity of the confession because it was the result of coercion, and all that was stated by the defender of the first appellant in this regard was that he was subjected to moral coercion and the arrest of his family, as stated by the defender of the second appellant, a phrase sent is the invalidity of the confession of the seizure record, without any of them showing the face of what challenges him to this confession, which calls into question his safety. It cannot be said that these two sent statements that he made constitute a defense of the invalidity of the confession or refer to the invalidated coercion, and all that can be done is to question the evidence derived from the confession, so that the court does not rely on it, it is not acceptable for the appellant to raise it for the first time before the Court of Cassation, as it requires an objective investigation that recedes The function of the Court of Cassation][1578] .

This is what is required by procedural legitimacy, and considering nullity as absolute nullity or invalidity of public order entails several consequences, namely:

It is not permissible to waive the claim to nullity.

It is the duty of the trial court to rule on its own initiative and without a request.

It is permissible to adhere to the nullity in any case in which the lawsuit is pending, even for the first time before the Court of Cassation.

The plea of nullity of the confession due to its issuance due to coercion or of an unfree will to public order is a consolidation of the origin of the innocence in the accused. The origin of the innocence is presumed to be associated with the person in any need of the case until a final judgment is issued to convict him. On the other hand, if the confession is evidence of criminal evidence and the evaluation of evidence is within the jurisdiction of the trial court and may not be discussed before the Court of Cassation, it does not mean that this plea cannot be raised for the first time before the Court of Cassation in all cases.

There is also no evidence related to the plea of nullity of the confession because it was issued under the influence of coercion to public order from the text of the last paragraph of Article 55 of the 2014 Constitution: "... Every statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable. "

Prosecutors must avoid the presence of police officers during the investigation, so that their presence does not affect the will of the opponents during their statements. However, the mere presence of the police officer during the investigation is not considered coercion that affects the confession of the cast, unless it is proven that the fear of him has actually affected his will, so I urged him to give what he said [1579].

([1577]) Appeal No. 29650 of 70 BC issued at the session of April 17, 2003 and published in the book of the Technical Office No. 54 page No. 569 rule No. 71.

([1578]) Appeal No. 26293 of 67 S issued at the session of March 13, 2000 and published in the book of the Technical Office No. 51 page No. 288 rule No. 53.

([1579]) Article 226 of the Judicial Instructions of the Public Prosecution.

The defendant's confession in the presence of the police officer - assuming that it occurs - does not affect his health because the authority of the job in itself is not considered coercion as long as this authority does not inquire of the accused of material or moral harm [1580].

Prosecutors must be strong observers in tracking the actions of the accused and witnesses. If it is realized that there is an influence on them from the presence of one of the authority's men or one of the opponents, they must temporarily remove the influential person from the place of investigation, while placing reassurance in the heart of the person being interrogated or asked that the information he gives will not come out of the investigation papers [1581].

Also, the mere prolongation of the investigation time to complete its procedures does not affect the integrity of the will of the accused and does not defect his confession [1582].

The length of the interrogation of the appellants or their questioning and the witnesses late at night and taking long continuous hours is not considered coercion as long as the accused or the witnesses are not physically or morally harmed, as the mere length of these procedures is not considered a coercion invalidating the confession or the statements of the witnesses. It does not make sense or a judgment unless the court deduces from the circumstances and circumstances of the case that the will of the accused or the witnesses is affected, however, and the reference in this matter is to the trial court [1583].

9.3.2 Within the framework of international covenants

No person charged with a criminal offence may be compelled to testify against himself or to plead guilty, on the basis of the principle of the presumption of innocence.

No person accused of committing a criminal act may be forced to confess guilt or testify against himself [1584].

The right not to be compelled to incriminate oneself or to confess guilt is widespread. It prohibits any form of coercion, whether direct or indirect, physical or psychological. Coercion includes, inter alia, torture and other cruel, inhuman or degrading treatment. The Human Rights Committee has declared that the prohibition of coerced confessions requires that "the accused shall not be subjected to any undue psychological pressure or direct or indirect physical pressure by the investigating authorities in order to extract a confession of guilt"[1585].

Prohibited investigation methods include sexual humiliation, "waterboarding", "immobilizing handcuffing", keeping a person in a painful physical position, and exploiting his phobias to intimidate him [1586].

([1580]) Appeal No. 6068 of 81 S issued at the session of March 9, 2013 and published in the book of the Technical Office No. 64 page No. 332 rule No. 40.

([1581]) Article 227 of the Judicial Instructions of the Public Prosecution.

([1582]) Appeal No. 6068 of 81 s issued at the session of March 9, 2013 and published in the Technical Office's letter No. 64, page No. 332, rule No. 40, Appeal No. 69824 of 75 s issued at the session of March 13, 2006 (unpublished), Appeal No. 22878 of 73 s issued at the session of January 6, 2004 and published in the Technical Office's letter No. 55, page No. 86, rule No. 4, Appeal No. 54 of 60 s issued at the session of January 15, 1991 and published in the first part of the Technical Office's letter No. 42, page No. 67, rule No. 12.

([1583]) Appeal No. 2291 of 85 S issued on October 4, 2015 (unpublished).

([1584]) Article 14 (3) (g) of the International Covenant, article 20 (2) (b) (iv) of the Convention on the Rights of the Child, article 18 (3) (g) of the Migrant Workers Convention, article 8(2) (g) of the American Convention, article 16 (6) of the Arab Charter, principle 21 (1) of the Body of Principles, section n(6) (d) of the Fair Trial Principles in Africa, principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, articles 55 (1) (a) - (b) and 67 (1) (g) of the Rome Statute, article 20 (4) (g) of the Statute of the Rwanda Tribunal, and article 21 (4) (g) of the Statute of the Yugoslavia Tribunal.

([1585]) General Comment 32 of the Human Rights Committee, § §41 and 60.

([1586]) Concluding observations of the Committee against Torture: United States of America, §24 (2006) UN Doc. CAT/C/USA/CO/2..

It should also be prohibited to blindfold and stuff the heads in masks, as well as exposure to loud music for long periods, sleep deprivation for long periods, threats, including threats of torture and death threats, violent shaking of the body, use of cold air to freeze the detainee's limbs, electrocution, suffocation with plastic bags, beatings, removal of fingernails and toenails, burning with cigarettes, and forcible dumping of human waste and urine by the detainee[1587].

Forms of coercion also include interrogation techniques designed to offend personal, cultural or religious sensitivities [1588].

Pressure is exerted to coerce detainees to respond through detention in conditions designed to "paralyze resistance". Prolonged incommunicado detention and secret detention constitute a violation of the prohibition against torture and other cruel treatment, and therefore are prohibited forms of coercion [1589].

Furthermore, the principles of fair trial in Africa stipulate that "any confession or confession obtained during incommunicado detention is the result of coercion" and is therefore inadmissible in any judicial proceedings [1590].

Pretrial detention in solitary confinement may be considered a form of coercion and, when used intentionally to obtain information or a confession, amounts to torture or other ill-treatment [1591].

Examining Peru's anti-terrorism law, which allows incommunicado detention for 15 days, the Inter-American Court concluded that the law "created conditions that allowed the systematic torture of persons under investigation in connection with terrorist crimes"[1592].

Other methods that can violate the rights of detainees include depriving them of clothing or personal hygiene items, keeping the light in the cells permanently, and disrupting the senses [1593].

The European Court has clarified that the right not to be forced to convict oneself does not prohibit the authorities from taking samples of breath, blood, urine, and body tissues, to conduct DNA tests, without the consent of the suspects. However, to comply with the provisions of the European Convention, such samples must be provided for in the law, and it is also necessary to provide convincing justifications for taking such samples in a way that respects the rights of the suspect. The same applies to audio samples (except for statements condemning their owners), even if they were obtained in secret[1594].

[1587]See Special Rapporteur on Torture, 156/2001 (UN Doc. A/56) §39 (f); SPT Standards, General Report CPT/ ,12 §38 ,Inf (2002) (15); CAT Concluding Observations: Israel, § §5 (1997) UN Doc. CAT/C/SR. 297/Add. 1 and 8(a), / UN Doc. CAT/C/ISR §14 (2009) CO/4, USA, / UN Doc. CAT/C/USA §24 (2006) CO/2, Concluding observations of the Human Rights Committee: United States, §13 (2006) UN Doc. CCPR/C/USA/CO/3/Rev. 1; and UN Special Rapporteur on Human Rights and Counter-Terrorism: United States of America, §33- §35 (2007) UN Doc A/HRC/6/17/add. 3 and 61-62; Joint Report of the UN Mechanisms on Guantánamo Bay Detainees, §46- §52 (2006) UN Doc. E/CN. 4/2006/120. Kaing Guek Eav aka Duch, Extraordinary Chambers in the Courts of Cambodia, Judgment, (26) July §36 ,(2010); Gavgin v. Germany (22978) / 05) Grand Chamber of the European Court, (91- §90 ,(2010).

Joint [1588]Report of the UN Mechanisms on Guantánamo Bay Detainees, 120/2006/ §60 (2006) UN Doc. E/CN. 4..

Joint [1589]Report of the UN Mechanisms on Guantánamo Bay Detainees, §53 (2006) UN Doc. E/CN. 4/2006/120; Special Rapporteur on Torture, §56 (2006) UN Doc. A/61/259; Special Rapporteur on human rights and counter-terrorism, 223 / § §33 (2008) UN Doc. A/63 and 45 (d); Asensios Lindo et al. v. Peru (11). 182), Report 49/00 of the Inter-American Commission (2000) §103; see Human Rights Committee General Comment 20, §11.

([1590]) Section N(6) (d) (1) of the Principles of Fair Trial in Africa..

Special [1591]Rapporteur on Torture, 268 / § §73 (2011) UN Doc. A/66 and 85.

([1592]) Asensios Lindo et al. v. Peru (11). 182), Report 49 / 00 of the American Commission 103 § (2000).

[1593]See Joint Report of the UN Mechanisms on Guantánamo Bay Detainees, 120/2006/ §53 (2006) UN Doc. E/CN. 4..

([1594]) European Court: Schmidt v. Germany (32352/ 02), Decision (2006), Gloux v. Germany (54810/ 00), Grand Chamber (P. G. and ‹83- § §67 (2006) §80 (2001) ‹(98/44787) J. H. v United Kingdom..

The prohibition on medical personnel engaging in torture or other ill-treatment goes beyond these practices to include screening detainees to determine their "physical fitness for interrogation" and treating detainees to prepare them to withstand further abuse [1595].

Judicial systems that frequently rely on confessions as evidence against defendants create compelling incentives for investigating officers - who, in many cases, feel pressured to draw conclusions from their investigations - to use physical and psychological coercion [1596].

In such systems, performance appraisal based on the percentage of cases resolved encourages the continued use of coercion. The Human Rights Committee has called for changes to eliminate incentives to obtain confessions [1597].

The Human Rights Committee and the European Committee for the Prevention of Torture have recommended reducing reliance on confession-based evidence by developing other methods of investigation, including scientific methods [1598].

The Special Rapporteur on torture stressed that confessions alone should not be sufficient for a guilty verdict; other corroborating evidence should be required [1599].

The United Nations Special Rapporteur on Torture has stated that: "If allegations of torture or other forms of ill-treatment by a defendant arise during a trial, the burden of proof shifts to the prosecution, to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and other ill-treatment"[1600].

The UN Guiding Principles spoke of the role of the prosecution in Article 16: "When it comes to the knowledge of the prosecution that evidence against suspects has been obtained by resorting to unlawful means, which is a serious violation of the suspect's human rights, in particular torture or inhuman, cruel or degrading treatment or punishment, or through other human rights violations, the prosecution shall refuse to use such evidence against anyone except those who used such methods, or notify the court of what has been found, taking all necessary steps to ensure that those responsible for such methods are brought to justice."[1601].

The Convention against Torture states that statements extracted under torture shall not be invoked as evidence in any proceedings "except against a person accused of torture, as evidence that the statement was taken" [1602].

In its General Comment No. 20, the UN Human Rights Committee stated: "In order to thwart breaches of Article 7, it is important to prohibit by law the use in court of statements, or confessions, obtained by torture or other prohibited treatment" [1603].

Principles [1595]2 and 4 of the Principles of Medical Ethics, Special Rapporteur on Torture, 156/2001) UN Doc. A/56) . (1) §39.
([1596]) General Report 12 of the Committee for the Prevention of Torture, 15) §35 ,CPT/Inf2002.
([1597]) Concluding observations of the Committee against Torture: Kazakhstan,. UN Doc CAT/C/KAZ/CO/2 (2002) §7 (c), Russian Federation, 4/ UN Doc. CAT/CR/28 §6 (2000) (b)..
([1598]) Concluding observations of the Committee against Torture: Japan,. UN Doc §19 (2008) CAT/C/jap/CO/5, CPT Standards, General Report 12, §35 ,CPT/Inf2002(15).
Special [1599]Rapporteur on Torture, UN Doc A/HRC/13/39/Add. 5 §100- §101 (2010); see HRC Resolution 13/19, 7 § (2010).
([1600]) General Recommendations of the Special Rapporteur on Torture, E/CN. 4/2003/68, para. 26.
([1601]) See: United Nations Guidelines for the Role of the Prosecution, adopted at the Eighth United Nations Meeting on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
([1602]) Egypt: Halt Execution of Accused Taba Bombers: Government Should Give Alleged Attackers a Fair Trial, "Human Rights Watch news release, June 10, 2007.
([1603]) Human Rights Committee, General Comment No. 20: Replaces general comment 7concerning prohibition of torture and cruel treatment or punishment (Art. 7), October 3, 1992.

1. The right not to be compelled to testify against oneself or to confess guilt

No person charged with a criminal offence shall be compelled to testify against himself or confess his guilt. This prohibition is an essential component of the principle of presumption of innocence, which places the burden of proof on the prosecution. It also reinforces the prohibition on torture and other cruel, inhuman or degrading treatment, and the requirement to exclude evidence obtained as a result of ill-treatment from case proceedings [1604].

The European Court has affirmed that "the right to remain silent during police interrogation and the privilege not to incriminate oneself are generally recognized criteria that lie at the heart of the idea of procedural fairness"[1605].

The prohibition of coercing the accused to testify against himself or to plead guilty is a broad principle. It prevents the authorities from carrying out any form of coercion, whether directly or indirectly, physical or psychological. Such coercion includes, but is not limited to, the use of torture or cruel, inhuman or degrading treatment [1606].

This right also prohibits the inclusion of statements or confessions obtained under duress in the list of evidence admissible by the court.

It is also prohibited to impose judicial penalties for the purpose of forcing the accused to make a statement [1607].

The prohibition of coercing the accused to testify against himself or to confess guilt during police interrogation and during trial applies.

Prolonged incommunicado detention or secret detention constitutes a violation of the prohibition against torture and other ill-treatment [1608].

The principles of fair trial in Africa stipulate that "any confession or confession obtained during incommunicado detention shall be considered a coerced confession"[1609].

Detaining the accused in solitary confinement during the period of pre-trial detention also imposes psychological pressures on him that may amount to coercion to confess. The Special Rapporteur on torture has confirmed that deliberately holding an individual in solitary confinement while awaiting trial for the purpose of obtaining information or a confession amounts to torture or other ill-treatment [1610].

([1604]) Article 14 (3) of the International Covenant, Article 40 (2) (b) (iv) of the Convention on the Rights of the Child, Article 18 (3) (g) of the Migrant Workers Convention, Article 8(2) (g) of the American Convention, Article 16 (6) of the Arab Charter, Principle 21 of the Body of Principles, Section n(6) (d) of the Principles of Fair Trial in Africa, Article 67 (1) (g) of the Rome Statute, Article 20 (4) (g) of the Statute of the Rwanda Tribunal, and Article 21 (4) (g) of the Statute of the Yugoslavia Tribunal.

([1605]) European Court: John Marie v. United Kingdom (18731/ 91), Grand Chamber 45 § (1996), Allan v. United Kingdom (48539/ 99) (2002) §44.

([1606]) General Comment 32 of the Human Rights Committee, §41, Perry v. Jamaica, 7/ §11 (1994) UN Doc. CCPR/C/50/D/330/1988.

([1607]) See M. Nowak, The United Nations International Covenant on Civil and Political Rights: A Commentary on the International Covenant, Second Revised Edition, Engel, 2005, §75 p. 345.

([1608]) Joint Study of UN Mechanisms on Secret Detention, UN 2010) Doc. A/HRC/13/42), pp. 2, § 6 (f),§ §27, 28 and 292 (f); Special Rapporteur on human rights and counter-terrorism, 223 / UN Doc. A/63 § §33 (2008) and 45 (d); Asensios Lindo et al. v. Peru (11). 182), U.S. Commission § 97- §103 (2000).

([1609]) Section N 6(d) (i) of the Principles of Fair Trial in Africa.

([1610]) Special Rapporteur on Torture, 268 / §73 ,(2011) UN Doc. A/66.

The rules requiring the accused to disclose, before trial, his defenses or evidence on which he intends to rely (such as an alibi) must be applied in a manner consistent with the prohibition on self-incrimination and with the right to silence [1611].

The prohibition on forcing a person to convict himself requires the courts to prove, before admitting a person's confession of guilt, that this confession was voluntary (without being pressured to confess guilt), and that the accused has understood the nature of the charges against him and the consequences of the confession of guilt, and that he has the capacity to do so[1612].

2. Allegations of Coercion

If the accused alleges that he was subjected to a form of coercion during the proceedings to induce him to make a statement or confess guilt, the judge should have the authority to consider these allegations at any stage of the litigation.

Consistent with the principle of the presumption of innocence, the weight of proof remains with the prosecution, which must show that the accused made his statements voluntarily [1613].

The standard of proof in relation to this aspect should, in principle, be the same as that applicable to criminal prosecution as a whole: beyond reasonable doubt. When coercion takes the form of torture or other ill-treatment, the right of the accused not to convict himself intersects with the separate rule that specifically prohibits the admission into evidence of statements obtained by means of such abuse (except in proceedings against the alleged perpetrator of the abuse). This prohibition is guaranteed, inter alia, by article 15 of the Convention against Torture and article 7 of the International Covenant, as interpreted by the Human Rights Committee [1614].

The Human Rights Committee has stated that the prosecution should bear the burden of proving that the confession was voluntary. This burden begins to apply as soon as the accused makes a prima facie case, or provides a good reason, or a reasonable complaint or evidence, about the ill-treatment[1615].

In this regard, the Special Rapporteur on human rights and counterterrorism said that if there are doubts about the voluntariness of statements made by the accused or witnesses - when information about the circumstances surrounding this is not provided, for example, or if a person is arbitrarily or secretly detained - statements should be excluded regardless of whether or not there is direct evidence of physical abuse[1616].

9.4 The Right to Remain Silent

9.4.1 Under Egyptian law

The right to silence means the right of the accused to remain silent and not to speak, either negatively or affirmatively, whether at the stage of gathering evidence before the police or at the stage of the preliminary investigation before the prosecution or the investigating judge, without considering this silence in any way as evidence or evidence against him. This right allows the

---

([1611]) See Prosecutor v. Lubanga (1235) - 06/01 - 04 / ICC-01 (ICC Trial Chamber, Decision on Disclosure of Information by the Defence (20) March 2008).

Jan [1612]Kambanda v. The Prosecutor (ICTR-97-23-A), ICTR Appeals Chamber 61 § (2000).

([1613]) General Comment 32 of the Human Rights Committee, §41; Human Rights Committee: Singarasa v. Sri Lanka, 2001/2004) UN Doc. CCPR/C/81/D/1033) 4/ §7, Curiba v. Belarus, 2005/2010) UN Doc. CCPR/C/100/D/1390) . 3/ §7.

([1614]) Human Rights Committee, General Comment §12 ,20, General Comment §41 ,32.

Commission [1615]on Human Rights: Deolall v. Guyana, / UN Doc. CCPR 2/5-1/ §5 (2004) C/82/D/912/2000, Singarasa v. Sri Lanka, UN Doc 4/ §7 (2004) CCPR/C/81/D/1033/2001; see Special Rapporteur on Torture, 529 / §65 (2006) UN Doc. A/61.

Special [1616]Rapporteur on human rights and counter-terrorism, UN Doc §45 (2008) A/63/223 (d).

accused, when asked or questioned, to refuse to answer the questions directed to him, without taking this abstention as evidence that the accusation against him is proven, and it must be proven in the investigation record that the accused has been notified by the investigation authority that he is not obliged to say anything unless he has the desire to do so, and that what he will say will be taken as evidence against him.

The right to silence is related to the fundamentalist jurisprudence rule that it is not attributable to silent saying, and to the rule that the origin of the accused is innocence, considering that the accused does not have the burden of proving the accusation, and therefore there will be no need to ask him to provide evidence of his innocence, but only as he wishes on his own initiative, he may refute his conviction in all the ways he deems appropriate, and this may include exercising his right to silence, in addition to this right being linked to the individual's right to the inviolability of his private life, which requires that a person has the right not to invade that area of privacy that surrounds himself, and then individuals must be granted the right to keep secret what they want to keep from others.

The right of the accused to remain silent is applicable in comparative laws. In US law, this right is known as the Miranda Law, in relation to the defendant in the lawsuit he filed against the State of Arizona, in which the court relied on the Fifth American Constitutional Amendment, which includes protection against a person's self-incrimination. Therefore, the court ruled that the detained person must be informed by the detention authority of this privilege, which includes that he has the right to remain silent, not to speak, and that everything he says can be used as evidence against him. English law stipulated the right to silence in 1912, which obligated the accused to notify from the point of view of inference or investigation that he is not obliged to say anything unless he has the desire to say it, but everything he will say will be taken as evidence. Article 114 of the French Code of Criminal Procedure obligated the investigating judge to warn the accused that he has the right to silence, and that the omission of this leads to the invalidity of the interrogation and subsequent procedures. The Twelfth International Conference on Penal Law held in Hamburg in 1979 was one of its most prominent recommendations that the accused has the right to remain silent, and should be alerted to this right.

The Egyptian Constitution also recognized the right of the accused to silence in the third paragraph of Article 55, which stipulates that: «... The accused has the right to remain silent. Every statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable. "

The right to remain silent means that the accused is free to speak or remain silent. This right is closely related to the principle of the presumption of innocence of the accused until proven guilty by a final judicial ruling.

The accused has the right to silence, and any statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable [1617].

The Court of Cassation ruled that: [The accused may, if he wishes, refrain from answering or from continuing in it, and this abstention is not considered a presumption against him. If he speaks, he is only entitled to express his defense, and he has the right to choose the time and manner in which he expresses this defense. It is not correct for the judgment to take from the accused's refusal to answer in the investigation initiated by the Public Prosecution after referring

---

([1617]) The third paragraph of Article 55 of the Arab Republic of Egypt amended for the year 2014, and item (g) of paragraph 3 of Article 14 of the International Covenant on Civil and Political Rights.

the case to the Criminal Court and losing the file because he believes that this investigation is null and void, a presumption of proof of the charge before him.][1618] .

9.4.2 Within the framework of international covenants

The right of the accused to remain silent during police interrogation and during the trial shall be deemed to include two of the rights guaranteed under international covenants, namely the right to be presumed innocent and the right not to be compelled to testify or confess guilt.

The right to silence is explicitly guaranteed in the Rome Statute, the Rules of the Tribunals for Rwanda and Yugoslavia, and the principles of fair trial in Africa. This right applies even when a person is accused of committing the most serious crimes [1619].

While neither the International Covenant nor the European Convention explicitly guaranteed the right to remain silent, the Human Rights Committee and the European Court considered that this right was guaranteed by the guarantees inherent in a just court [1620].

The right of the accused to remain silent during the interrogation phase and at trial is closely related to the principle of presumption of innocence, and is an important safeguard of the right not to be compelled to incriminate oneself. While the person is being interrogated by the police, this right helps to protect the freedom of the suspect to choose to speak or remain silent. The right to remain silent remains subject to violation during interrogations by law enforcement officials

A number of national legal systems have included the right to remain silent in their legislation and this right is explicitly enshrined in the principles of fair trial in Africa, in the Rome Statute and in the rules of Yugoslavia and Rwanda [1621].

Although the International Covenant and the European Convention do not explicitly guarantee this right, it is implicitly guaranteed in both treaties.

The Human Rights Committee has emphasized that “anyone arrested on a criminal charge should be informed of his right to remain silent during police interrogation, in accordance with article 14, paragraph 3(g), of the International Covenant on Civil and Political Rights”[1622].

The European Court ruled that the inclusion of written recordings of statements made by the accused under duress, to unrelated inspectors, among the evidence in a criminal case, constituted a violation of the right not to convict oneself [1623].

In another case, the court, while prosecuting a man for refusing to hand over documents to customs officials, found that this violated the right of anyone accused of a criminal offence to remain silent and not to incriminate themselves [1624].

([1618]) Appeal No. 1743 of 29 S issued at the session of May 17, 1960 and published in the second part of the book of the Technical Office No. 11 page No. 467 rule No. 90, Appeal No. 1107 of 5 S issued at the session of May 13, 1935 and published in the set of legal rules Book III Part I page No. 471 rule No. 369, Appeal No. 1845 of 3 S issued at the session of May 29, 1933 and published in the set of legal rules Book III Part I page No. 188 rule No. 134.

Principle n6 (d[1619]) (2) of the Fair Trial Principles in Africa, article 55 (2) (b) of the Rome Statute, rule 42 (a) (3) of the ICTR Rules, and rule 42 (a) (3) of the ICTY Rules.

John [1620]Marie v. United Kingdom (18731/ 91), Grand Chamber of the European Court 45 § (1996); Concluding Observations of the Human Rights Committee: France, §14 (2008) UN Doc. CCPR/C/FRA/CO/4, Algeria, / UN Doc. CCPR/C. §18 (2007) DZA/CO/3.

Section N (6[1621]) (d) (ii) of the Principles of Fair Trial in Africa, Article 55 (2) (b) of the Rome Statute, Rule 42 (a) (iii) of the Rwanda Rules, and Rule 42 (a) (iii) of the Yugoslavia Rules.

Concluding [1622]observations of the Human Rights Committee: France, / UN Doc. CCPR/C. §14 (2008) FRA/CO/4.

[1623]Saunders v. United Kingdom (19187) / 91), Grand Chamber of the European Court §75- §76 (1996).

([1624]) Funke v. France (10828) / 84), ECt 44 § (1993); see ECt: Heaney and McGuinness v. Ireland (34720) / 97), (2000) §65-§71 (2001) ,(96/31827) J. B. v Switzerland، 59§- §55.

Persons arrested or detained on criminal charges must be informed of their right to remain silent when questioned by law enforcement officials, in accordance with the International Covenant on Civil and Political Rights (article 14 (3) (g)). This right is rooted in the presumption of innocence and plays a key role in efforts to prevent torture, as interrogators who respect this right are unlikely to use arbitrary means of interrogation. Suspects should be warned at the beginning of each interrogation that their statements may be used as evidence against them. The consent of persons to be prepared to give statements during interrogation after receiving this warning cannot be considered a fully informed choice when they have not been clearly informed of their right to remain silent or when they make their decision without the assistance of a lawyer.

The Special Rapporteur on torture has expressed concern about drawing negative conclusions from a person's failure to answer questions, so it is recommended that no conclusions be drawn “at least in a situation where the accused has not had recourse to counsel at a prior stage”. The Rome Statute and the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa clearly prohibit drawing negative conclusions during trial from a suspect's exercise of the right to remain silent, as anything to the contrary may erroneously mean that the suspect's silence is an admission of guilt and threatens to undermine the presumption of innocence.

The right to remain silent should also apply, in law and policy, to prisoners of war, criminal detention related to armed conflict, detention of individuals considered to be civilian internees under international humanitarian law, and administrative detention outside of armed conflict. With regard to witness and victim interviews in the criminal justice system, only the courts may require witnesses to testify. As a preventive measure against coercion and as a good practice, witnesses and victims should not be forced to answer individual questions with which they can incriminate themselves during interrogations[1625].

The Commission on Human Rights called for the right to remain silent to be enshrined in law and applied in practice [1626].

The European Court said that «there is no doubt that the right to remain silent during police interrogation, and the right not to incriminate oneself, are generally internationally recognized standards that are at the heart of the idea of fair procedures contained in Article (6) of the European Convention» However, the Court considers that the right to remain silent is not absolute, and contrary to the principles of fair trial in Africa and the Rome Statute, it considers that the silence of the accused during the investigation can, in some circumstances, lead to adverse conclusions during the trial [1627].

The European Court found that the right to remain silent was undermined when the police used devious methods to elicit confessions from the accused or other statements condemning him. Although the suspect remained silent during the police investigation, an informant working with the police was planted in his cell to obtain information from him and the presentation of evidence obtained in secret in this way before the court constituted a violation of the accused's rights to a fair trial [1628].

Is it possible to draw evidence that convicts the accused based on his silence?

([1625]) (A/71/298, 5 August 2016, § §76-78), see CCPR/C/IRL/CO/3, (Luanda Guidelines), Vivienne O'Connor and Colette Rausch, eds. Model Codes for Post-Conflict Criminal Justice, vol. II, Model Code of Criminal Procedure (Washington, D. C. , USIP Press, 2008), art. 110 (1); (European Court of Human Rights, Stojkovic v. France and Belgium).

Concluding [1626]observations of the Human Rights Committee: Algeria, / UN Doc. CCPR/C. §18 (2007) DZA/CO/3.

([1627]) European Court: John Marie v. United Kingdom (18731) / 91), § §45 (1996) and 47-58, but see O'Halloran and Francis v. United Kingdom (15809) / 02), (63- §43 (2007).

([1628]) Allan v. United Kingdom (48539/ 99), European Court (2002) . 53- § §50.

The Rome Statute and the principles of fair trial in Africa explicitly prohibit the drawing of any evidence condemning the accused based on his exercise of his right to remain silent [1629].

The Human Rights Committee has raised concerns about laws in the United Kingdom that allow evidence of guilt during the trial to be extracted from the silence of the accused [1630].

The European Court took a somewhat different position, arguing that drawing inferences against the accused because of his silence would violate the presumption of innocence and the privilege not to incriminate oneself, if the conviction were based solely or mainly on the accused's silence or refusal to give evidence. While the European Court has repeatedly stressed that courts must be particularly vigilant before allowing the use of silence against the accused, it has said that the right to remain silent is not absolute. On the contrary, the European Court is of the opinion that the decision as to whether an infringement of fair trial rights has occurred if the Court draws negative connotations from the silence of the accused remains subject to and in the light of all the circumstances of the case. Factors I have considered include: a person's opportunities to contact and receive assistance from their lawyer during the investigation; warnings given to the accused about the consequences of remaining silent; and the acceptable weight given to silence during the evaluation of evidence [1631].

9-5 The Right to Use Translators

9-5-1 Within the framework of Egyptian law

The principle is that the trial shall be conducted in the official language of the state, which is Arabic, unless one of the investigation or trial authorities is unable to initiate the investigation procedures without the assistance of an intermediary who performs the translation or the accused requests it and his request is subject to its discretion - it is not a shame for the investigation procedures that the authority in charge of it has hired a translator to undertake the translation work, as it is related to its circumstances and requirements, and it is always subject to the discretion of the person who performs it[1632].

Section N (6[1629]) (d) (ii) of the Principles for a Fair Trial in Africa and Article 67 (1) (g) of the Rome Statute.

([1630]) Concluding observations of the Human Rights Committee: United Kingdom, §17 (2001) UN Doc. CCPR/C/CO/73/UK, see also Human Rights Committee Concluding Observations: Ireland, §14 (2008) UN Doc. CCPR/C/IRL/CO/3; Malawi African Society et al. v. Mauritania (54/91 et al.), African Commission 95 § (2000).

([1631]) Regarding the specific factors that the European Court says should be taken into account, see: John Marie v. United Kingdom (91/18731), Grand Chamber of the European Court §46- §70 (1996), Condron v. United Kingdom (35718) / 97), §55- §68 (2000), Heaney and McGuinness v. Ireland (34720) / 97), (58- §55 (2000), Funke v. France (10828) / 84), European Court §41- §44 (1993)..

([1632]) Appeal No. 20640 of 67 S issued at the 25th session of March 2007 and published in Technical Office Letter No. 58, page No. 311, rule No. 59, Appeal No. 5822 of 61 S issued at the 24th session of December 1992 and published in Part I of Technical Office Letter No. 43, page No. 1222, rule No. 190, Appeal No. 5522 of 59 S issued at the 25th session of December 1989 and published in Part I of Technical Office Letter No. 40, page No. 1313, rule No. 213, Appeal No. 152 of 59 S issued at the 4th session of April 1989 and published in Part I of Technical Office Letter No. 40, page No. 491, rule No. 81

It also ruled that: [The original is that the trial shall be conducted in the official language of the state, which is Arabic - unless one of the investigation or trial authorities is unable to initiate the investigation procedures without the assistance of an intermediary who does the translation or the accused requests it and his request is subject to its discretion, it is not defective in the investigation procedures that the party conducting it has used a representative from the US Embassy who attended with the accused and agreed to be its translator without the translator assigned by the Public Prosecution from the Information Authority or the Foreign Correspondents Department to carry out the translation work, as it is related to the circumstances and requirements of the investigation and is always subject to the discretion of those who carry it out.], Appeal No. 10015 of 63 s issued at the session of January 19, 1995 and published in the first part of the Technical Office's book No. 46, page No. 211, rule No. 30

It also ruled that: [Whereas the original is to conduct the trial in the official language - which is Arabic - unless one of the investigation or trial authorities is unable to initiate the procedures of that investigation without the assistance of an intermediary who does the translation or the accused requests it and his request is subject to its discretion, and as long as it is

There is no shame in the investigation procedures that the party conducting it has used two mediators, one of which translated the defendant's statements from Hindi into English and then the other transferred them from English to Arabic [1633].

9.5.2 Within the framework of international covenants

Any person who does not understand or speak the language used by the authorities is entitled to the assistance of an interpreter during the proceedings following his arrest, including during the investigation, free of charge. The interpreter should be independent of the authorities [1634].

With regard to witnesses, victims, suspects, and persons deprived of their liberty who do not speak or understand well the language in which the interrogation is conducted, they should have the right to receive free assistance from a qualified and competent independent interpreter during interrogations and, where appropriate, during consultations with counsel. Persons with sensory impairments are also entitled to the services of interpreters. Where interpreters are not available, a person who knows the interviewee and is able to communicate with him/her appropriately may be invited to replace the interpreter; alternatively, the interviewee should be asked to answer questions in writing or in the language he/she prefers and/or is allowed to do so.

The role of the interpreter during interrogation is to facilitate communication in an impartial and objective manner. Its existence is considered a safeguard against ill-treatment and coercion. The Special Rapporteur on torture has emphasized practical guidance regarding the role, rights and responsibilities of interpreters during interrogations, and stresses that the right to

---

established that the appellant or his defender did not request this from the court, Such a request was related to his own interest and he was not alerted to it. He does not accept the objection to the court that it proceeded in his trial proceedings without the assistance of an intermediary as long as it did not see a place for it. It has found out the meaning of the appellant's response to what it addressed to him, which is an objective matter that is solely up to it to assess the need for it without commenting on it. This is because the presence of a lawyer who defends the appellant is sufficient to ensure his defense. He is the one who follows the trial proceedings and provides what he wants of the defenses that the court did not prevent him from presenting. Therefore, the court's failure to use an interpreter does not invalidate the trial proceedings.] Appeal No. 3053 of 54 BC issued at the 14 March session For the year 1985 and published in the first part of the Technical Office letter No. 36 Page No. 403 Rule No. 69, Appeal No. 2821 of 32 S issued in the hearing of May 13, 1963 and published in the second part of the Technical Office letter No. 14 Page No. 392 Rule No. 77

It ruled that: [The original is that the trial shall be conducted in the official language of the state - the Arabic language - unless one of the investigation or trial authorities is unable to initiate the procedures of that investigation without the assistance of an intermediary who performs the translation or the accused requests it, and his request is subject to its discretion. If the prosecutor who conducted the investigation has proven in his report his familiarity with the English language spoken by the victim, and the appellant does not claim in the reasons for his appeal that he asked the investigating authority to seek the assistance of an intermediary to translate when the victim was asked, and such a request was related to his own interest and he was not alerted to it, he does not accept what he complains about in this regard as long as the aforementioned authority did not see its side as a place for that, and it has found out the meaning of the victim's statements and responses to the questions addressed to him, which is an objective matter that he refers to in estimating the need for it], Appeal No. 175 of 43 s issued at the session of April 9, 1973 and published in the second part of the Technical Office's book No. 24 page No. 510 rule No. 106.

([1633]) General Authority for Criminal Materials, Appeal No. 3172 of 57 S issued at the session of February 24, 1988 and published in the first part of the Technical Office's letter No. 39 page No. 5.

([1634]) This provision expressly applies at the pretrial stages in the following criteria: Article 16 (8) of the Migrant Workers Convention, Article 16 (4) of the Arab Charter, Principle 14 of the Body of Principles, Guideline 43§ 3 of the Principles on Legal Aid, Section n(4) of the Principles on Fair Trial in Africa, Principle 5 of the Principles relating to Persons Deprived of their Liberty in the Americas, Article 55 (1) (a) of the Rome Statute, Article 17 (e) of the Rwanda Statute, Article 18 (3) of the Yugoslavia Statute, Rule 42 (a) (2) of the Rwanda Rules, and Rule 42 (a) (2) of the Yugoslavia Rules.

It applies during penal proceedings and should be applied at the pre-trial stages for the following criteria: Article 14 (3) (f) of the International Covenant, Article 20 (2) (6) of the Convention on the Rights of the Child, Article 18 (f) of the Migrant Workers Convention, Article 8(2) (a) of the American Convention, Article 6(3) (e) of the European Convention, and Article 26 (2) of the European Convention on Migrant Workers.

Kamsinsky v. Austria (9783) / 82), ECJ 74 § (1989)..

interpretation applies to the interrogation of all persons arrested or deprived of liberty, including during armed conflicts and in administrative detention [1635].

Furthermore, translations of key written documents that an individual needs to understand to ensure justice should be provided, including written transcripts that the accused has been asked to sign which is important not only for people who do not speak the language, but also for people who do not read the written language (even if they do speak it[1636].

The right to interpretation and translation of documents should be extended to include accessibility for persons with disabilities, including those with visual or hearing impairments[1637].

The Human Rights Committee found that a conviction based on a confession allegedly made by the accused without the presence of an independent interpreter constituted a violation of the right to a fair trial; one of the two policemen present at the investigation acted as interpreter and typed the statement[1638].

The European Court concluded that the rights of a Kurdish woman who knows little of the Turkish language and cannot read or write in it were violated in a case in which she was interrogated before the start of the trial in Turkish without an interpreter present or assisted by a lawyer [1639].

9-6 Investigation Minutes

9.6.1 Under Egyptian law

The investigator must be accompanied in all his procedures by a clerk of the court who signs the minutes with him, and these minutes are kept with the orders and the rest of the papers in the court clerk's office [1640].

However, it is not required by law to refer misdemeanor cases to the courts competent to hear them that the Public Prosecution has conducted an investigation into them, so it is valid to refer them based on police investigations if the Public Prosecution deems it sufficient [1641].

In case of necessity, a person other than the competent investigation clerk may be assigned to record the investigation report and the assessment of this necessity shall be entrusted to the investigation authority under the supervision of the trial court.

Therefore, assigning the investigator when he moves the investigation to a person other than the investigation clerk and after taking the oath as an exception to the provision of Article 73 of the Code of Criminal Procedure is legally permissible as long as the assignment and oath taken by the prosecution member means proving the state of necessity to assign a clerk other than the investigation clerk [1642].

([1635]) (A/71/298, 5 August 2016, § §82-83), (ICCPR, art. 14 (3) (f)), (Body of Principles, para. 14).

([1636]) Guiding Principle 43§ 3 (f) of the Principles of Legal Aid, Article 8(2) (a) of the American Convention, Section N(4) (d) of the Principles of Fair Trial in Africa, Article 67 of the Rome Statute, Rule 187 of the Rules of Procedure and Evidence of the International Criminal Court, Article 17 (e) of the Rwanda Statute, Article 18 (3) of the Yugoslavia Statute, see: Ludic, Balkassm and Koch v. Germany (6210) / 73, 6877/75, 7132/75), European Court 48 § (1978).

([1637]) See Article 13 of the Convention on the Rights of Persons with Disabilities.

Singarasa [1638]v. Sri Lanka, Human Rights Commission,. UN Doc . 2/ §7 (2004) CCPR/C/81/D/1033/2001.

([1639]) Saman v. Turkey (35292) / 05), European Court (37- § §31 (2011)).

([1640]) Articles 73 and 199 of the Criminal Procedure Code.

([1641]) Appeal No. 237 of 7 S issued at the session of January 11, 1937 and published in the letter of the Technical Office No. 4 P. Part No. 1 Page No. 32 Rule No. 35.

([1642]) Appeal No. 358 of 31 S issued on May 29, 1961 and published in the second part of the Technical Office's letter No. 12, page No. 622, rule No. 119, and see: Article No. 208 of the Judicial Instructions of the Public Prosecution

Whereas the principle in the procedures is correct and that it is permissible in case of necessity to assign the competent investigation clerk to record the investigation report, the absence of the investigation record from the statement of the circumstances that called for the investigator to assign other than the competent clerk does not negate the necessity to assign others and the assessment of this necessity is entrusted to the investigation authority under the supervision of the trial court [1643].

The minutes of the investigation must be written by a clerk from the criminal registry on behalf of the competent authority, who must ensure accuracy, clarity and cleanliness in recording the minutes [1644].

Whereas the law requires the presence of a clerk with the member of the prosecution who is conducting the investigation is the principle to be followed, but the failure to follow it does not result in the invalidity of what the prosecutor takes in the case of urgency and before the investigation clerk attends, as the prosecution member, as the holder of the right to conduct the investigation and the head of the judicial police, has the competence to what the law granted to other judicial officers in Articles 24 and 31 of the Code of Criminal Procedure to prove what he deems necessary to prove himself before the presence of the investigation clerk, but this is the duty that he must do[1645].

Whereas the editing of the minutes of the investigation is carried out by a clerk of the criminal registry staff acting on behalf of the competent, and the legislator stipulated in Article 147 of the Judicial Authority Law that: «The president of each court shall distribute the works to its clerk,

---

The Court of Cassation ruled that: [What I went to - the court whose judgment is contested - that that record was devoid of a statement of the circumstances that called for the prosecution to assign other than the competent clerk, this does not negate the necessity to assign others, and the fact that the investigator did not explicitly refer in his record to the excuse that called for this assignment does not change the situation], Appeal No. 488 of 29 BC issued at the session of 18 May 1959 and published in the second part of the book of the Technical Office No. 10 page No. 535 rule No. 118

It ruled that: [The original of the valid procedures and it was permissible, in case of necessity, to delegate someone other than the court clerk to record the investigation record. The assessment of this necessity was entrusted to the investigating authority. The judgment in response to the plea that the investigation record prior to the search warrant was null and void because it was not edited by one of the clerks of the court recognized this consideration and did not take any action on the investigation authority regarding its ability to invite it to this procedure. The appellant did not claim that what was stated in the record contradicted by the prosecutor. What the appellant raises is [Appeal No. 342 of 56 s issued at the session of May 1, 1956 and published in Part II of the Technical Office's letter No. 7, page 708, rule No. 199, Appeal No. 1262 of 25 s issued at the session of February 20, 1956 and published in Part I of the Technical Office's book No. 7, page 207, rule No. 66.

([1643]) Appeal No. 20336 of 64 S issued at the session of October 17, 1996 and published in the first part of the technical office book No. 47 page No. 1047 rule No. 149, Appeal No. 1226 of 39 S issued at the session of December 29, 1969 and published in the third part of the technical office book No. 20 page No. 1479 rule No. 305, Appeal No. 21 of 25 S issued at the session of March 22, 1955 and published in the second part of the technical office book No. 6 page No. 692 rule No. 224

The Court of Cassation also ruled that: [The origin of the procedures is health and it is permissible in case of necessity to delegate other than the competent investigation clerk to record the investigation record, and the absence of the investigation record from the statement of the circumstances that called for the prosecution to delegate other than the competent clerk does not negate the necessity to delegate others and the assessment of this necessity is entrusted to the investigation authority under the supervision of the trial court, and when the court has approved the authority of the investigation over this procedure, and the appellant does not claim that what is stated in the investigation record is contrary to the truth, and his prohibition of not editing an independent record of the incident of the oath of the assigned police secretary is not permissible, as the editing of this record requires the presence of a clerk to record it and assumes that this writer does not exist for the excuse that called for the assignment of others and the power of the police secretary as a clerk to attach it only after taking the oath, and therefore the subsequent reference to the oath in the investigation record - which is acknowledged by the appellant - is the way to prove this procedure] Appeal No. 1394 of the year 51 Q issued at the session of November 10, 1981 and published in the first part of the Technical Office Book No. 32 page 843 rule No. 146.

([1644]) Article 201 of the Judicial Instructions of the Public Prosecution.

([1645]) Appeal No. 1129 of 45 S issued at the session of November 2, 1975 and published in the first part of the technical office book No. 26 page No. 659 rule No. 144, Appeal No. 984 of 22 S issued at the session of November 24, 1952 and published in the first part of the technical office book No. 4 page No. 146 rule No. 60.

determine the place of each of them, appoint the chief clerks and the first clerk in the district courts, as well as transfer the clerks and assign them within the court circuit.

The president of each prosecution shall undertake these works in relation to his prosecution clerks. "

However, the distribution of works between the clerks of each court or prosecution is nothing more than an internal organization entrusted by the street to the president of each court or prosecution in its jurisdiction, including the magistrates' courts and the magistrates' prosecutions of each of them. Whereas the street did not set the penalty for nullity for the prosecution clerk to do other work in the same department of the total prosecution, and the meaning of Articles 73 and 199 of the Code of Criminal Procedure is that a clerk must be accompanied by the clerk of the court or the prosecution only, never without specialization or the requirement of necessity [1646].

The law does not require the investigation procedures to be carried out by a single clerk throughout the investigation period, and that the investigator's replacement of the investigation clerk with another without disclosing his name, capacity or legal oath is correct [1647].

The minutes of the investigation shall be addressed by the statement of the prosecution that it carries out and shall be issued on the date of the day and hour, the place of investigation, the name of the investigator, his job, the name of the prosecution in which he originally works, the name of the prosecution to which he is assigned if he is assigned, the name of the investigation clerk, whether he is from the prosecution book or the last assigned by the investigator after taking the oath, then he shall mention the incident report, the date and hour of his arrival to the member of the prosecution, and the time of the latter's investigation [1648].

The lesson in proving the date of the investigation report is the fact of reality, not what the investigation clerk inadvertently proved [1649].

The investigation report shall be written in a clear line without scraping, writing off or cramming, and its pages shall be numbered with consecutive numbers. The investigator and the clerk shall sign his signature after the completion of hearing the statements of each witness or accused and after reading them to him and acknowledging that he insists on them and signing them at the end. If the witness or accused refuses to put his signature or stamp or cannot do so, it shall

---

([1646]) Appeal No. 2256 of 38 S issued at the session of March 31, 1969 and published in the first part of the book of the Technical Office No. 20 page No. 428 rule No. 91.

([1647]) The Court of Cassation ruled that: [Whereas the contested judgment was presented to the appellant's defense regarding the substitution of the investigating prosecutor for the investigation clerk without disclosing his name, capacity or legal oath, and he put it in his statement: " Whereas it is about the plea to replace one secretary with another In the investigations of the Public Prosecution without proving his name and his legal oath, it is inappropriate as it is clear from the investigations that the person who completed the investigation is another secretary among the secretaries legally specified in the Prosecution competent to investigate, and therefore the failure to prove his name does not invalidate the investigation, which is an omission and his oath at each investigation is not necessary, as he took the oath at the beginning of his work, and that the defense did not dispute that the investigation was carried out by the Public Prosecution and that the member of the competent prosecution accompanied him with a clerk who wrote the investigation pursuant to Articles 199 and 173 of the Criminal Procedure Code. Therefore, the court considers all the procedures that were carried out in the investigation to be legal procedures." The response of the court to the appellant's defense in this regard was sufficient and justified to reject his defense, and since the court was satisfied with the health and safety of the Investigations and proceeding with them with the knowledge of the competent prosecutor and editing them with the knowledge of the secretary and signing them from them – which is not disputed by the appellant - the appellant's contention is wrong, in addition to the fact that it is no more than a defect of the procedures preceding the trial in a way that does not serve as a reason to appeal the judgment, as the lesson in the judgments is the trial procedures and the investigations that take place before the court], Appeal No. 32919 of 83 s issued at the session of January 6, 2015 and published in the book of the Technical Office No. 66 page No. 67 rule No. 3.

([1648]) Article 202 of the Judicial Instructions of the Public Prosecution.

([1649]) Appeal No. 2060 of 24 S issued in the session of January 10, 1955 and published in the second part of the book of the Technical Office No. 6 page No. 387 rule No. 128.

be recorded in the report with a statement of the reasons he gives. The clerk shall place his signature with the member of the prosecution on all the newspapers of the report and on each correction first-hand. If the correction, writing off or graduation is related to the statements of a witness or accused, it shall be approved by his signature with them[1650].

The legislator had required that the investigator be accompanied in all his procedures by a letter from a court book signed with him on the minutes, but he did not arrange for the writer's failure to sign the minutes of the investigation to invalidate them and turn them into just a record of collecting evidence, as if the street wanted to arrange the invalidity on not signing, he would not have missed to explicitly provide for this, as the law did not arrange the invalidity on the mere fact that the investigation clerk did not sign his minutes, but rather it has its legal basis with the signature of the investigating prosecutor [1651].

The mere failure to sign each page does not result in the invalidity of the procedures, and as long as the accused does not claim that anything recorded in the investigation report is contrary to the reality of reality, it is not acceptable for him to adhere to the invalidity of the investigation procedures based on the mere lack of signature by the writer on the pages of the investigation report [1652].

The name of the accused, the name of the surname, if any, the date of birth on the day, month, year, the destination of birth, the governorate in which it is located, the nationality from the personal or family cards, passports or any other official document, the name of the witness, his surname, industry, residence and his relationship with the accused, the printed number of the card and the code associated with it, the serial number given to the card from the issuing side, and the names of those whose statements were heard are recorded in the margins of the minutes, the beginning of each of their statements, noting whether he is a witness of evidence, a witness of defense or an accused.

The investigator must take the necessary measures to ensure the validity of the personal data before him when initiating the investigation [1653].

It must also prove the questions directed to the accused and witnesses as well as answer them in the investigation report in full without shortening, deletion or revision, under the supervision of the investigator [1654].

The investigator may perceive the meanings of the signs of the dumb and deaf without the assistance of an expert as long as it is possible to clarify the meaning of those signs [1655].

([1650]) Article 203 of the Judicial Instructions of the Public Prosecution.

([1651]) Appeal No. 4298 of 61 s issued at the session of December 20, 1999 and published in the first part of the Technical Office book No. 50 page No. 709 rule No. 158, Appeal No. 5731 of 63 s issued at the session of July 5, 1995 and published in the first part of the Technical Office book No. 46 page No. 910 rule No. 140, Appeal No. 24657 of 62 s issued at the session of December 22, 1994 and published in the first part of the Technical Office book No. 45 page No. 1222 rule No. 191, Appeal No. 7601 of 61 s issued at the session of June 6, 1993 and published in the first part of the Technical Office book No. 44 page No. 563 rule No. 83

The Court of Cassation also ruled that: [Since the law did not provide for nullity merely because the investigation clerk did not sign his report, but rather that it has its legal basis with the signature of the investigated prosecutor, and it was clear from the minutes of the investigation of the Public Prosecution that the investigated prosecutor had signed each newspaper, what the two defendants raise in this regard has no place], Appeal No. 21097 of 63 S issued at the session of November 20, 1996 (unpublished).

([1652]) Appeal No. 5096 of 65 S issued at the hearing of April 14, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 466 rule No. 69.

([1653]) Article 204 of the Judicial Instructions of the Public Prosecution.

([1654]) Article 205 of the Judicial Instructions of the Public Prosecution.

([1655]) Article 229 of the Judicial Instructions of the Public Prosecution.

The role of the employee as secretary of the investigations of the Public Prosecution is limited to recording what he hears or dictates to him from the investigator, and his will has nothing to do with what he hears or is tasked with proving. What he records is not considered forgery by imposing his knowledge of a violation of what was dictated to him of the truth, although it is correct to accuse him knowingly of a crime that he did not report to the competent authorities and not about forgery in an official document [1656].

The names of the civil plaintiffs, their capacity in the lawsuit, the value of the amounts claimed, and the place taken by the litigants of the civil prosecution in the town where the court center where the investigation is being conducted must be proven in detail if they are notresident there[1657] .

The investigating prosecutor shall verify that the investigation clerk has notified the litigants of the day and place specified for the investigation and that he has notified the required witnesses. The investigation minutes shall be recorded in the margin of the postponement decisions that have been implemented, with clarification of the date and number of the clerk under which the decision was implemented. It shall always be taken into account that the implementation of the decisions shall be in original letters and a copy and the copy shall be kept in the case [1658].

Whenever the investigator feels embarrassed to use a writer from the prosecution's book on the suspicion of the possibility of harming the proper conduct of the investigation or harming the interest of justice in any way for considerations related to the subject of the investigation and its circumstances, time or place, it is permissible to assign others to this task based on the fact that this assignment is a necessity in the public interest, as what is necessarily intended in this place is the excuse that allows the duty to be left to defend the investigator from embarrassment in order to meet the need required by the interest of the investigation [1659].

The law requires the investigation to be carried out by the authority that initiates it to take a clerk to record it. Therefore, the report written by the judicial officer with a mandate from the Public Prosecution without accompanying the clerk is not an investigation report, but it is referred to the record of collecting evidence [1660].

The law did not require the writer to accompany the investigator except in the investigation procedures that require the writing of a report, such as hearing the testimony of witnesses, interrogating the accused, and conducting the inspection, as these procedures require the investigator to go with an idea to the investigation so that it does not hinder him from writing the report. As for other investigation procedures, such as orders issued for detention, arrest, and search, they do not by their nature require the writing of minutes of the conduct of the investigator's thought about his task and therefore do not require that he be accompanied by a writer who signs them [1661].

([1656]) Appeal No. 45169 of 72 S issued at the 4th session of May 2004 and published in the letter of the Technical Office No. 55, page No. 472, rule No. 63.
([1657]) Article 206 of the Judicial Instructions of the Public Prosecution.
([1658]) Article 207 of the Judicial Instructions of the Public Prosecution.
([1659]) Article 209 of the Judicial Instructions of the Public Prosecution.
([1660]) Article 210 of the Judicial Instructions of the Public Prosecution.
([1661]) Appeal No. 612 of 31 S issued on October 23, 1961 and published in the third part of the Technical Office's letter No. 12 page No. 841 rule No. 165, and see: Article No. 211 of the Judicial Instructions of the Public Prosecution
The Court of Cassation ruled that: [The text of Article 73 of the Code of Criminal Procedure, which is contained in Chapter Two of Chapter Three of the investigation by the investigating judge, is that the records that this article stipulates must be signed by the clerk are those of the investigations carried out by the investigating judge himself, such as hearing witnesses, conducting examinations and interrogating the accused without search warrants issued by the investigator, because the search warrant, although it is considered a procedure related to the investigation, but it is not one of the records referred to in that article] Appeal No. 235 of 31Q issued at the session of 8 May 1961 and published in Part II of the Technical Office's book No. 12 page No. 541 Rule No. 101.

If it is necessary to question an accused or hear a witness without an oath, and the prosecution member himself did so on the back of the evidence report, and without the presence of a clerk, this is not an investigation report, but only a hearing of statements to complete the evidence [1662].

Prosecutors must monitor the investigation clerks in the implementation of the decisions they issue in the investigation and verify their implementation immediately after their issuance [1663].

It is noted that: In car accidents that result in the death or injury of a person, the number of the insurance policy for the car and the name of both the insured and the insurer must be recorded in the investigation report based on the data contained in its license and the notification of the latter of the accident. The member of the prosecution must fulfill this in the minutes presented to him relating to this type of accidents.

It is always taken into account to use the expertise of technical engineers with traffic pens and make their accident planning drawings [1664].

9.6.2 Within the framework of international covenants

Recording interrogations is a fundamental safeguard against torture, ill-treatment and coercion, and should be applied in the criminal justice system in relation to any form of detention. Every reasonable effort shall be made to record interrogations in their entirety, audio or video. Where circumstances permit or where the interviewee objects to electronic recording, the reasons should be stated in writing, and a comprehensive written interrogation record kept. Accurate records of all interrogations must be kept, stored in a safe place, evidence from unrecorded interrogations must be excluded from court proceedings, and the recording should not be limited to the suspect's confessions or other incriminating statements. Whatever the form, several elements must be recorded during the interrogation, including: the place, date, time and duration; the intervals between sessions; the identity of the interrogators and all other persons present, and any changes in the individuals present during the interrogation; confirmation that the interrogated person was informed of his/her rights and took advantage of the opportunity to exercise them, and confirmation of any voluntary waiver; the substance and content of the questions and answers, as well as any other information provided by the interrogator/s or suspect, the time and reasons for any interruption, and the time of resumption of the interrogation[1665].

The minutes of any interrogation of the detainee or prisoner must be kept and must include: the place (s) and time (s) of the interrogation; the place (s) of detention, if any; the hour at which each interrogation session begins and ends; the intervals between each interrogation (including breaks); and the identity of the staff in charge of it and others present. These minutes must be available for review by the detainee and his lawyer [1666].

The Robben Island Guidelines and a range of human rights bodies and mechanisms recommend electronic recording of investigative hearings, as required by the rules of international criminal tribunals[1667].

([1662]) Article 212 of the Judicial Instructions of the Public Prosecution.

([1663]) Article 250 of the Judicial Instructions of the Public Prosecution.

([1664]) Article 279 of the Judicial Instructions of the Public Prosecution.

([1665]) (A/71/298, 5 August 2016, §84 , §86); see A/56/156, Human Rights Council resolution 31/31; Luanda Guidelines, Guideline 9(e); ICC Rules of Procedure and Evidence, paragraph 112 (1).

Principle [1666]23 of the Set of Principles, Guideline 28 of the Robben Island Guidelines, and Rule 111 (1) of the Rules of Procedure and Evidence of the International Criminal Court; see also Guideline 4(4) of the Council of Europe Guidelines on the Eradication of Impunity, see: Second General Report of the Committee for the Prevention of Torture, 3) §39 ,CPT/Inf92.

([1667]) Guideline 28 of the Robben Island Guidelines, Rule 112 of the Rules of Procedure and Evidence of the International Criminal Court, Rule 43 of the Rwanda Rules, and Rule 43 of the Yugoslavia Rules.

All interrogations of suspects must be recorded at least acoustically, preferably by video recording. Video recording devices should cover the entire interrogation room, including all persons present. Videos discourage torture by providing a complete and authentic recording that can be reviewed during an investigation and used for training purposes. However, they cannot be used as a substitute for the presence of a lawyer. The Special Rapporteur on torture acknowledges the financial implications associated with the use of video recording equipment. Alternative solutions can be used, such as limiting the mandatory use of audiovisual recording to interrogations of suspects, vulnerable victims, or witnesses [1668].

The aim of these minutes is to protect individuals from ill-treatment and to protect the police from fabricated allegations of ill-treatment. The European Committee for the Prevention of Torture has stressed the importance of ensuring that registration continues uninterrupted (by automatically recording the time and date) of all persons present in the room during the investigation [1669].

These records should be made available to the accused and his counsel, and recordings should be made available to the person questioned and his counsel. The interviewee should have the opportunity to verify that the written record, if used, accurately reflects his or her statements. As a good practice, all persons present during an interrogation can be required to sign the written record to establish their presence and the accuracy of the record. Audiovisual recordings must be clearly identified, duly marked, stored and kept in a safe place. Destruction or tampering of records proving the occurrence of ill-treatment should be criminalized under domestic law [1670].

The Special Rapporteur on torture declared that any unrecorded investigative material should be excluded from court proceedings [1671].

This protective measure should apply to interrogations carried out by all representatives of the State, including intelligence officers who interrogate individuals in connection with criminal offences, even if the investigation is carried out outside the territory of the State [1672].

The minutes of the interrogation or investigation must include the following basic data:

Proving the identity of the accused or detained person and stating his personal details in full.

The place, or places where the interrogation or investigation took place.

The time, or times, at which each investigative session began and ended.

The intervals between each interrogation or investigation and the duration of each.

Establishing the identity of the person or persons conducting the interrogation or investigation at each session, as well as the identity of the persons present.

Concluding observations of the Human Rights Committee: Japan, / UN Doc. CCPR/C §19 (2008) Jap/CO/5, Hungary, 2010) UN Doc. CCPR/C/Hun/CO/5 §13; Concluding observations of the Committee against Torture: France,. UN Doc §23 (2010) CAT/C/FRA/CO/4-6, Israel, UN Doc. CAT/C/ISR/CO/5 §16 (2009); CPT General Report, 15) §36 ,CPT/Inf2002.

[1668](A/71/298, 5 August 2016, §85), (see A/HRC/4/33/Add. 3 and A/68/295) (see CAT/C/aut/CO/3 and A/HRC/25/60/Add. 1).

([1669]) Committee for the Prevention of Torture: (Turkey), 13) §33 ,CPT/Inf2011. (Ireland) §18 ,CPT/Inf2011(3).

[1670](A/71/298, 5 August 2016, §87), Concluding observations of the Committee against Torture: Algeria,. UN Doc. §5 (2008) CAT/C/DZA/CO/3.

([1671]) Special Rapporteur on Torture 156//2001) UN Doc. A/56) §39 (f)..

([1672]) Special Rapporteur on human rights and counter-terrorism,. UN Doc 2010 (A/HRC/14/46), Practice 29 and§43; Concluding observations of the Committee against Torture: United States of America, / UN Doc. CAT/C/USA. §16 (2006) CO/2.

9-7 Interrogation Rules and Customs

9.7.1 Within the framework of international Law

The rules of investigation should be uniform, formal and public [1673].

States should regularly and systematically review these rules and interrogation methods [1674].

The rules should address, inter alia: informing the person of the identity (names or numbers) of all those present during the investigation; the permissible duration of the interrogation process as well as of the interrogation session (which should be strictly limited in both cases); the required breaks between sessions and pauses during the same session; the places where the interrogation can take place; and the interrogation of persons under the influence of drugs or alcohol [1675].

The identity of each person conducting the investigation should be known [1676].

The United Nations General Assembly and international human rights bodies have stressed the duty of States to provide training on human rights standards to persons who participate in the interrogation of suspects [1677].

The Convention against Torture requires such training [1678].

Not only should the law punish those who use unlawful force, threats or other prohibited methods to extract confessions, but also provide penalties for those who violate interrogation rules, including time limits [1679].

Chapter Ten: The Right to Humanitarian Conditions in Detention and Freedom from Torture and Other Cruel Treatment

10.1 The Right to Humane Conditions of Detention and Imprisonment

10-1-1 Within the framework of Egyptian law

The Egyptian legislator stipulated several guarantees to prevent arbitrary arrests:

CPT [1673]Standards, Second General Report of the Committee for the Prevention of Torture, §39 ,CPT/Inf92 (3), Concluding Observations of the Committee against Torture: Kazakhstan, §11 (2008) UN Doc. CAT/C/KAZ/CO/2, Latvia,. UN Doc §7 (2003) 3/CAT/C/CR/31 (h), Greece, 2/2004) UN Doc. CAT/C/CR/33) §6 (e), USA, 2006) UN Doc. CAT/C/USA/CO/2) § §19 and 24.

([1674]) Article 11 of the Convention against Torture.

Committee [1675]for the Prevention of Torture Standards, Second General Report of the Committee for the Prevention of Torture, §39 ,CPT/Inf92(3); Concluding Observations of the Human Rights Committee: Japan,. §19 (2008) UN Doc. CCPR/C/JAP/CO/5.

Principle [1676]4(4) of the Council of Europe Guidelines on the Eradication of Impunity.

Resolution [1677]65/205 of the United Nations General Assembly, §8; Resolution 2005/39 of the Office of the High Commissioner for Human Rights, 14 §; General Report 12 of the Committee for the Prevention of Torture, §34, CPT/Inf2002 (15).

([1678]) Article 10 of the Convention against Torture.

([1679]) Concluding observations of the Committee against Torture: The former Yugoslav Republic of Macedonia, 44 / §110 (1999) UN Doc. A/54 (b), Japan. § §16 (2007) CAT/C/JPN/CO/1.

It is prohibited to arrest or imprison any person except by order of the legally competent authorities

Article 40 of the Criminal Procedure Law stipulates that: "No person may be arrested or imprisoned except by order of the legally competent authorities. He must also be treated in a manner that preserves human dignity, and he may not be harmed physically or morally."

In this regard, the Court of Cassation ruled that since the principle prescribed under Article 40 of the Criminal Procedure Law is that no person may be arrested or imprisoned except by order of the legally competent authorities, and Article 126 of the aforementioned Law - which applies to the investigation conducted by the Public Prosecution - allows the investigating authority in all articles to issue a warrant as the case may be for the presence of the accused or for his arrest and arrest. Article 127 of the same Law required that every arrest warrant issued by the investigating authority include the name of the accused, his surname, industry, place of residence, the charge attributed to him, the date of the order, the signature of the person who issued it, and the official seal. This meant that the request to the police from the Public Prosecution to search for and investigate the offender - unknown - and seize him is not considered a valid arrest warrant, because the text of Article 127 of the Criminal Procedure Law explicitly stated that the person of the accused who was issued with an arrest warrant must be identified and brought who legally owns them[1680].

Prohibition of the imprisonment of any person except in reform centers designated for this purpose

Every person deprived of liberty has the right to be detained in conditions consistent with human dignity and no one shall be subjected to torture or other forms of ill-treatment, under any circumstances

Conditions of detention that unreasonably impede defendants' opportunities to effectively prepare their defense violate the right to a fair trial

Article 41 of the Code of Criminal Procedure stipulates that: "No one may be imprisoned except in the prisons designated for this purpose.

It is not permitted for the warden of any prison to accept any person in it except by virtue of an order signed by the competent authority, and not to keep him after the period specified in this order.

It is prohibited to place any person in community reform and rehabilitation centers (prisons) without a written order signed by the competent authorities. Article 5 of the Egyptian Law on the Organization of Community Reform and Rehabilitation Centers affirmed the need for a written order signed by the competent authorities to place the person in the reform center designated for that purpose. It is also prohibited to place any person in the labor institution for repeat offenders except by a written order signed by the legally competent authorities and remains in it until the Minister of Justice orders his release based on the proposal of the institution's management and the approval of the Public Prosecution. The court enforcement clerk must

---

([1680]) Appeal No. 1457 of 48 BC issued at the session of 31 December 1978 and published in the first part of the book of the Technical Office No. 29 Page No. 993 rule No. 206.

It ruled that: [The request addressed to the Center by the prosecutor to ask the accused and make a fish and an analogy to him is not considered a warrant of arrest, nor a summons, and it is not valid to justify the validity of arrest and search because of a violation of the text of Article 40 of the Code of Criminal Procedure] Appeal No. 1199 of 24 S issued at the session of December 13, 1954 and published in the first part of the Technical Office's book No. 6, page No. 292, rule No. 89.

send adult convicts with their implementation forms to the reform centers specified for the implementation of the punishment according to the different type and degree of punishment[1681].

The director of the reform center or the employee appointed for this purpose shall receive a copy of the deposit order, after he signs the original receipt, provided that the original is returned to those who brought the inmate and a signed copy is kept by those who issued the order in the reform center.

The competent prosecution officer, upon placing the accused in the correctional center based on a detention order, must deliver a copy of the detention order to the director of the correctional center or the designated officer for this purpose, after obtaining their signature on the original as proof of receipt. It must be ensured that the copy is signed by the issuing authority and stamped with the Seal of the Republic[1682].

The Public Prosecutor and his agents in their jurisdictions have the right to enter all places of correction centers at any time to verify that there is no illegal inmate [1683].

The places designated for detaining detainees, as specified by a decision from the Minister of Interior, may not be entered except by those delegated by the Public Prosecutor from among the Chief Prosecutors or the heads of local prosecution offices. The heads of these places are required to notify the Public Prosecutor, through the Chief Prosecutors or the heads of the major prosecution offices, of the locations of such places within their respective jurisdictions [1684].

On the other hand, all international conventions have prohibited the admission of any person to prison without a legitimate detention order, and it is prohibited to keep any person detained pending investigation or trial except based on a written order issued by a competent authority [1685].

It is also prohibited to receive any juvenile in a detention institution without a valid detention order issued by a judicial, administrative or any other public authority, provided that the details of the detention order are recorded in the records of the institution immediately, and no juvenile may be detained in any institution or facility without records [1686].

Therefore, it is necessary for a detained person accused of committing a criminal offense to be brought promptly before a judicial authority or any other competent authority following their arrest. This authority must decide on the legality and necessity of their detention without delay, and the detained person has the right to provide testimony regarding the treatment they received during their detention[1687].

The International Convention for the Protection of All Persons from Enforced Disappearance prohibits subjecting anyone to enforced disappearance. It also forbids invoking any exceptional

---

([1681]) Articles No. 5 and 6 of the Law on the Organization of Reform and Community Rehabilitation Centers, Articles No. 2 and 3 of the Internal Regulations of the Reform and Community Rehabilitation Centers, Article No. 3 of the Internal Regulations of the Military Reform Centers, Article No. 1047 of the written, financial and administrative instructions of the Public Prosecution, and Articles No. 2 and 3 of the Presidential Decree No. 82 of 1984.

([1682]) Article 1044 of the written, financial and administrative instructions of the Public Prosecution.

([1683]) Article 85 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015 and Law No. 14 of 2022.

([1684]) Article 1750 of the Judicial Instructions of the Public Prosecution.

([1685]) The first paragraph of Rule 7 of the Nelson Mandela Rules, Principles Nos. 2, 4 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1686]) Rule No. 20 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

([1687]) Principle No. 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

circumstances, such as a state of war, the threat of war, internal political instability, or any other public emergency, as a justification for enforced disappearance[1688].

Every detainee has the right to have their family informed immediately of their arrest or transfer to another prison [1689].

It is prohibited to use pretrial detention of juveniles - pre-trial detention - except as a last resort and for the shortest possible period of time, and it is replaced whenever it is secured by alternative measures such as close monitoring, intensive care or placement with a family or one of the institutions or educational homes, provided that the detained juvenile enjoys all the rights and guarantees mandated by the Standard Minimum Rules for the Treatment of Prisoners [1690].

Cases involving juvenile defendants must be addressed urgently without any unnecessary delay[1691].

Upon the arrest of a juvenile, their parents or guardian must be notified immediately. If immediate notification is not possible, it must occur within the shortest possible time after the arrest. A judge or competent official must promptly review the matter of the juvenile's release[1692].

The constitution stipulates that no one may be arrested, searched, detained, or have their freedom restricted except by a reasoned judicial order necessary for an investigation[1693].

The rulings of the Supreme Constitutional Court have affirmed the right of every arrested or detained person to contact others to inform them of their situation or seek assistance as regulated by law. This includes the right to obtain legal advice from a lawyer of their choice, as it ensures a sense of security and provides the necessary support to counteract any suspicions against them and manage the consequences of the restrictions imposed on their personal freedom. It is impermissible to separate the person from their lawyer in a manner that undermines their legal standing, whether during or before preliminary investigations[1694].

The International Covenant on Civil and Political Rights prohibits the arrest, detention, or deprivation of liberty of any individual except on grounds and procedures prescribed by law. Anyone detained must be tried within a reasonable time or released. Pretrial detention should not be the general rule for those awaiting trial. [1695].

Anyone arrested must be informed at the time of their arrest of the reasons and promptly of any charges against them[1696].

Anyone arrested, detained, imprisoned, or accused of committing a criminal offense must be informed of their right to legal representation and assistance from a lawyer of their choice[1697].

([1688]) Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([1689]) Paragraph No. 3 of rule No. 44 of the Standard Minimum Rules for the Treatment of Prisoners.

([1690]) Rule No. 13 of the Beijing Rules, Article No. 17 of the African Charter on the Rights and Welfare of the Child.

([1691]) Rule No. 20 of the Beijing Rules.

([1692]) Rule No. 10 of the Beijing Rules.

([1693]) Article 54 of the Constitution.

([1694]) Case No. 6 of 13 S, issued at the session of May 16, 1992, and published in the first part of the book of the Technical Office No. 5, rule No. 37, page No. 344.

([1695]) Article 9 of the International Covenant on Civil and Political Rights, Principle No. 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1696]) Principle No. 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1697]) Principle No. 5 of the Basic Principles on the Role of Lawyers.

Anyone without a lawyer has the right to have an experienced and competent lawyer appointed to provide effective legal assistance without charge if they lack sufficient means to pay for it[1698].

No person may be kept in detention without being given a genuine opportunity to provide testimony before a judicial or other competent authority as soon as possible. The detained person has the right to defend themselves or obtain legal assistance and must be provided with all information about their detention order and its reasons. They also have the right to have the continuation of their detention reviewed by a judicial or other competent authority[1699].

A detainee or their lawyer may, at any time, file a simple and urgent petition under local law before a judicial or other competent authority to challenge the legality of their detention and seek an order for their release without delay if the detention is unlawful. This petition must be cost-free for those who lack sufficient resources. The detaining authority is required to present the detainee promptly before the reviewing authority without undue delay[1700].

A juvenile has the right to be represented by legal counsel throughout judicial proceedings and to request the court to appoint a lawyer for free. Their parents or guardian have the right to participate in all judicial procedures. The competent authority may require their presence for the benefit of the juvenile unless the authority deems it necessary to exclude them for the juvenile's best interest[1701].

No orders or instructions issued by any public authority, whether civil, military, or otherwise, may be invoked to justify an act of enforced disappearance. Every individual who receives such orders or instructions has the right and duty to refuse to obey them[1702].

The International Convention for the Protection of All Persons from Enforced Disappearance defines it as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law"[1703].

The Declaration on the Protection of All Persons from Enforced Disappearance considers any act of enforced disappearance as a crime against human dignity and a serious violation of human rights and fundamental freedoms as outlined in the Universal Declaration of Human Rights. Enforced disappearance results in the denial of legal protection to its victims and inflicts severe suffering on them and their families, violating international law that guarantees every individual the right to liberty, security, and protection from torture or other cruel, inhuman, or degrading treatment or punishment, as well as the right to life or poses a serious threat to it[1704].

Any act of enforced disappearance is considered a crime that must be punished with appropriate penalties. Criminal responsibility for the act of enforced disappearance shall be borne by whoever commits the crime himself, orders, recommends, conspires, or participates in its commission. No orders or instructions issued by public, civil, military, or other authorities may

---

([1698]) Principle No. 6 of the Basic Principles on the Role of Lawyers..

([1699]) Principle No. 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Principle No. 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1700]) Principle No. 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Articles No. 14, 16 of the Arab Charter on Human Rights.

([1701]) Rule No. 15 of the Beijing Rules.

([1702]) Article 6 of the Declaration on the Protection of All Persons from Enforced Disappearance, and Article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1703]) Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1704]) Article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance.

be invoked to exempt from responsibility for the commission of that crime, with the possibility of providing in national legislation extenuating circumstances for anyone who, after participating in acts of enforced disappearance, facilitates the appearance of the victim alive, or voluntarily provides information on cases of enforced disappearance, taking into account that the perpetrators of the crime do not benefit from any special amnesty law or any similar procedure that may result in their exemption from any criminal trial or punishment.

Every act of enforced disappearance is an ongoing crime whose perpetrator continues to conceal the fate and whereabouts of the victim of disappearance [1705].

In addition to the civil responsibility of the perpetrators of enforced disappearance, the state also bears civil responsibility for the authorities that organized, approved or condoned enforced disappearances, with the victims of enforced disappearance and their families being compensated with appropriate compensation, including the means for their rehabilitation to the fullest extent possible [1706].

Each State shall investigate complaints that a person has been subjected to enforced disappearance, promptly and impartially examine that allegation and take appropriate measures to ensure the protection of the complainant, witnesses, relatives and defenders of the disappeared[1707] .

States are obligated to provide access to information for any person with a legitimate interest, including details about the authority that ordered the deprivation of liberty, the date, time, and place of detention, entry into the place of detention, the authority overseeing the deprivation of liberty, the location of the detained individual (including details of any transfers), and information on the person's health status. In the event of the death of the detained individual, information must be provided on the circumstances and causes of death and the whereabouts of their remains. Measures must also protect those seeking such information from mistreatment, intimidation, or punishment[1708].

It is prohibited to restrict the right to obtain information related to the person deprived of his liberty, while guaranteeing the right to a prompt and effective judicial appeal to obtain all the prescribed information at the earliest [1709].

Each State must take the necessary measures to prevent and punish the refusal to provide information on a case of deprivation of liberty, or the provision of incorrect information, at a time when the legal requirements for providing such information are met [1710].

Any person detained without adherence to established rules must be released immediately. The state must ensure their release, physical safety, and ability to fully exercise their rights upon release [1711].

Therefore, detaining or imprisoning a person in locations not designated for such purposes, or failing to provide them with information about their detention, constitutes a form of internationally

---

([1705]) Articles 4, 17 and 18 of the Declaration on the Protection of All Persons from Enforced Disappearance, and article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1706]) Articles 5 and 19 of the Declaration on the Protection of All Persons from Enforced Disappearance,.

([1707]) Articles 12, 17 of the International Convention for the Protection of All Persons from Enforced Disappearance, and articles 13, 12 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([1708]) Article 18 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1709]) Article 20 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article 9 of the Declaration on the Protection of All Persons from Enforced Disappearance.

([1710]) Article 22 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1711]) Article 21 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article 11 of the Declaration on the Protection of All Persons from Enforced Disappearance.

criminalized enforced disappearance. Detention must take place in legally designated locations known to the detainee and their family.

The right of members of the Public Prosecution, presidents, and deputies of primary and appellate courts to visit correctional facilities within their jurisdiction

Article 42 of the Code of Criminal Procedure stipulates that: "Members of the Public Prosecution and the presidents and agents of the courts of first instance and appeal may visit the public and central prisons in their jurisdictions and ensure that there is no illegal detainee. They may view the prison books and arrest and detention orders, take copies of them, contact any detainee and hear from him any complaint he wants to make to them. The director and staff of prisons shall provide them with all assistance to obtain the information they request."

When conducting inspections of correctional centers, whether public or geographical, the Public Prosecution shall verify that the orders of the prosecution and the investigating judge in the cases that he is assigned to investigate and the decisions of the courts are being implemented in the manner indicated therein, and that there is no inmate unlawfully [1712].

This is achieved by reviewing detention, arrest, or written orders of placement for detainees, as well as execution forms, ensuring that summaries are recorded in the correctional facility's registers. If an arrest order is missing, a copy of the detention order must be requested. Should the prosecution member find any individual detained or held unlawfully, they must immediately order their release, recording the incident in an official report detailing the time and date of the action, along with the name and signature of the person receiving the release order.

If a prosecution member finds a detainee held in an unauthorized location, they must promptly document the violation in a report and order the detainee to be moved to the appropriate facility, recording the time and date of the action and the name and signature of the person receiving the transfer order. The member may complete their inspection report upon returning to the prosecution office, including observations of any crimes or violations. They must immediately notify the public prosecutor of these violations and crimes, sending the inspection report for review. The public prosecutor assigns a member of the primary prosecution office to investigate the reported crimes and violations, sending the case with recommendations to the Assistant Public Prosecutor through the Chief Public Prosecutor of the Appellate Prosecution[1713].

A penalty of imprisonment or a fine not exceeding two hundred Egyptian pounds shall be imposed on anyone who arrests, imprisons or detains any person without the order of one of the competent rulers and in cases other than those authorized, and the punishment shall be imprisonment in the event that the arrest is made by a person who unlawfully dresses as a government employee or is characterized by a false status or presents a forged order claiming to be issued by the government, he shall be punished by imprisonment [1714].

In all cases, anyone who unlawfully arrests another person and threatens them with death or tortures them physically shall be punished with rigorous imprisonment[1715].

Additionally, anyone who knowingly lends a facility for unlawful detention or imprisonment shall be punished with imprisonment for a term not exceeding two years[1716].

The Right of Inmates to Submit Complaints and the Obligation to Notify the Public Prosecution of Any Knowledge of Unlawful Detention

(1712) Article 1748 of the Judicial Instructions of the Public Prosecution.
(1713) Articles 1749 and 1749 bis of the Judicial Instructions of the Public Prosecution.
(1714) Article 280 of the Penal Code, as amended by Law No. 29 of 1982.
(1715) Article 282 of the Penal Code.
(1716) Article 281 of the Penal Code.

Article 43 of the Code of Criminal Procedure stipulates that: "Every prisoner has the right to submit at any time to the prison warden a written or verbal complaint and ask him to report it to the Public Prosecution - and the warden must accept it and report it immediately after proving it in a record prepared for that in the prison

Anyone who learns of the existence of an illegal detainee or in a place not designated for imprisonment may notify a member of the Public Prosecution - and as soon as he learns of this, he must immediately move to the place where the detainee is held, conduct the investigation, and order the release of the illegal detainee - and he must draw up a record of this. "

The director of the correctional and rehabilitation center is required to accept any serious complaint from inmates, whether verbal or written, and report it to the Public Prosecution or the relevant authority after recording it in the complaints register. Relevant administrative departments, in coordination with the Human Rights Department within the Community Protection Sector, are tasked with receiving complaints from inmates, examining them, and notifying the complainant of the findings[1717].

The Public Prosecution staff responsible must comply with directives from the head of the prosecution office to forward grievances submitted by detainees regarding their transfer to a correctional facility or another center to the Assistant Attorney General for necessary action[1718].

In military prisons, the warden is obligated to accept serious complaints submitted by prisoners, verbally or in writing. However, neither the law nor internal regulations explicitly require the warden to report these complaints to any other authority, leaving this to the warden's discretion based on the circumstances of each complaint[1719].

Within the framework of international conventions, any detained or arrested person may file a grievance against the exercise of the powers of arrest or detention before a judicial authority or any other authority [1720].

The detained individual accused of a criminal offense also has the right to express their grievances regarding their treatment during detention to the investigating authority[1721].

Additionally, any detainee, prisoner, their lawyer, family members, or any other person knowledgeable about the case—if the detainee or their lawyer is unable to do so—may submit a request or complaint regarding their treatment to the authority responsible for the place of detention, or higher authorities, especially in cases of torture or other forms of cruel, inhuman, or degrading treatment. In such cases, these requests or complaints may also be directed to authorities with the power to review or address grievances.

The complainant has the right to confidentiality regarding their request or complaint if they so request. Authorities are required to process all requests and complaints promptly and respond without undue delay. If a request or complaint is rejected or excessively delayed, the complainant has the right to escalate the matter to a judicial or alternative authority.

Detainees, prisoners, or complainants must not face harm as a result of submitting a request or complaint[1722].

([1717]) Article 80 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015, and Article No. 85 bis 1 of the Internal Regulations of Correction and Rehabilitation Centers, added by the Minister of Interior Resolution No. 3320 of 2014.

([1718]) Article 1049 of the written, financial and administrative instructions of the Public Prosecution.

([1719]) Article 56 of the Internal Regulations of Military Prisons.

([1720]) Principal No. 9 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1721]) Principal No. 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Each prisoner or their lawyer must have the opportunity to submit a request or complaint to the prison director or their designee on any day. Prisoners must also have the opportunity to submit requests or complaints during the inspector's rounds in the prison, and they must be able to communicate freely and confidentially with the inspector without the presence of the prison director or any staff.

Prisoners or their lawyers may submit requests or complaints regarding their treatment to the central prison administration, judicial authorities, or other competent entities, including bodies authorized to review or amend grievances. If the prisoner or their lawyer cannot act, a family member or any other person knowledgeable about the case may submit such requests or complaints[1723].

Individuals who are detained unlawfully or mistreated are entitled to compensation for any harm caused by acts or omissions of public officials that contravene their rights [1724].

Each juvenile must also be given the opportunity to submit requests or complaints to the director of the custodial institution or whoever they authorizes to do so [1725].

Every juvenile should also have the right to submit a request or complaint to the central administration, the judicial authority or other competent authorities through the approved channels, and to be notified of what has been done in their regard without delay [1726].

Efforts must be made to establish an independent office (Ombudsman) to receive and examine complaints submitted by juveniles deprived of their liberty and to help reach fair settlements for them[1727].

Every juvenile shall have the right to seek assistance, where possible, from family members, legal advisors, charitable or other groups in order to file a complaint. Assistance is provided to illiterate juveniles if they need the services of public or private bodies and organizations that provide legal advice or are competent to receive complaints [1728].

Although Egyptian law requires the director of a correctional facility to report an inmate's complaint to the Public Prosecution or relevant authorities, it stipulates that such complaints must be deemed serious. The determination of the seriousness of a complaint is left to the director's discretion, depending on the circumstances of each case.

10-1-2 Within the framework of international Law

States must ensure that all persons deprived of their liberty are treated with respect for the inherent dignity of the human person and are not subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Except for the proportionate restrictions required by their deprivation of liberty, the human rights of detainees and prisoners must be respected and guaranteed[1729].

(1722) Principle No. 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(1723) Rule No. 36 of the Standard Minimum Rules for the Treatment of Prisoners, Rules No. 56, 57 of the Nelson Mandela Rules.

(1724) Principle No. 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(1725) Rule No. 75 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

(1726) Rule No. 76 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

(1727) Rule No. 77 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

(1728) Rule No. 78 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

(1729) Principle 5 of the Basic Principles for the Treatment of Prisoners, Principle 8 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 2 of the European Prison Rules.

Any restrictions on the rights of detainees and prisoners - such as the right to privacy and family life, and to freedom of expression or the public practice of religious teachings or other beliefs - must be provided for in law and must be both necessary and proportionate in order to achieve a legitimate purpose under international standards [1730].

The duties of States to guarantee the rights of persons deprived of their liberty apply to all detainees and prisoners, without discrimination. It also applies regardless of nationality or immigration status [1731].

Regardless of whether the person is detained within the territory of his state or elsewhere under the effective control of this state [1732].

States' duties to ensure the rights of persons deprived of their liberty also apply in detention facilities and prisons owned by private companies [1733].

States remain responsible, even when employees of private security companies act in excess of or contrary to the authority delegated to them [1734].

Police officers and staff working in detention facilities and prisons should receive training on international human rights standards, including those related to the use of force and physical control. States should ensure that the prohibition of torture and other ill-treatment is included in training programs and in their instructions to anyone involved in the detention, interrogation or handling of detainees [1735].

Law enforcement officials and others, including health professionals, lawyers and judges, should be trained to recognize signs of torture and other ill-treatment and to prevent all forms of ill-treatment [1736].

They should also be specially trained to recognize and meet the special needs of all categories of persons, such as foreign nationals, women, children, persons with disabilities and persons with mental disorders [1737].

[1730]See General Comment 34 of the Human Rights Committee, § §18 and 21-36, and General Comment 22 of the Human Rights Committee, §8.

Principles 8 and 15-21 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 3 of the European Prison Rules.

([1731]) General Comment 15 of the Human Rights Committee.

([1732]) General Comment 31 of the Human Rights Committee, §10; General Comment 2 of the Committee against Torture, §16; Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Organization of Justice (2004), §111; see Concluding Observations of the Committee against Torture: United States of America, §15 (2006) UN Doc. CAT/C/USA/CO/2; Al-Sakini v. United Kingdom (55721) / 07), Grand Chamber of the European Court 149 § (2011); Report of the Inter-American Commission on Terrorism and Human Rights (2002), Section 2(b) §44.

([1733]) See Rule 88 of the European Prison Rules.

General [1734]Comment 2 of the Committee against Torture, §17; Articles 5 and 7 of the Articles on State Responsibility for Internationally Wrongful Acts, of the International Law Commission (2001) Recommended to Governments by Resolution 65/19 of the United Nations General Assembly; Cabal and Pasini Bertrand v. Australia, Commission on Human Rights, 2/ §7 (2003) UN Doc. CCPR/C/87/D/1020/2001, Concluding observations of the Human Rights Committee: New Zealand, §11 (2010) UN Doc. CCPR/C/NZL/CO/5..

([1735]) General Comment 20 of the Human Rights Committee, §10; Second Report of the Committee for the Prevention of Torture, CPT/Inf92(3، §59.

General Comment[1736] 2 of the Committee against Torture, §25, Concluding Observations of the Committee against Torture: Burundi, 2006) UN Doc. CAT/C/BDI/CO/1) §16, Estonia, 5/ §6 (2002) UN Doc. CAT/C/CR/29 (b).

([1737]) Articles 10 and 11 of the Convention against Torture, article 7 of the Inter-American Convention against Torture, rules 33-35 of the Bangkok Rules, guidelines 45-46 of the Robben Island Guidelines, principle 20 of the Principles on All Persons Deprived of their Liberty in the Americas, and rules 66 and 81 of the European Prison Rules.

All places where persons are deprived of their liberty (including facilities under special administration) must be subject to monitoring by bodies independent of the detention authority[1738].

Visits and inspections should be regular and unrestricted, and observers should be able to meet all inmates in private and face-to-face, and to examine the records kept [1739].

Independent mechanisms must be established that can be contacted for individuals to complain about the treatment they receive while deprived of their liberty, and national law should recognize their right to do so [1740].

Conditions of detention shall not unreasonably adversely affect the ability of the accused to prepare their defense or to present such a defense in court.

10-2 Places of Detention

10-2-1 Within the framework of Egyptian law

The Egyptian Constitution prohibits the detention or imprisonment of any person except in places designated for that purpose and stipulates that the places in which a person is detained must be humanly and healthily decent, and prohibits everything that is contrary to human dignity or endangers his health [1741].

This was confirmed by the Code of Criminal Procedure, which stipulates that no person may be imprisoned except in the prisons designated for this purpose. It also prohibited the warden of any prison from accepting any person into it except by virtue of an order signed by the competent authority and not to keep him after the period specified in this order [1742].

The Egyptian legislator stipulated that the penalty of imprisonment shall be imposed on every public official or person assigned to a public service who has deposited or ordered the deposition of any person deprived of his liberty in any way, in other than reform centers and the places indicated in the Egyptian Law on the Organization of Reform and Community Rehabilitation Centers [1743].

([1738]) General Comment 2 of the Committee against Torture, §13; Resolution 21/4 of the Human Rights Council 18 § (2012) (a).

Among others, Article 17 (2) (e) of the Convention on Enforced Disappearances, the Optional Protocol to the Convention against Torture, Article 2 of the European Convention for the Prevention of Torture, Principle 29 of the Body of Principles, Guidelines 41-42 of the Robben Island Guidelines, Section M(8) (a) of the Principles of Fair Trial in Africa, Principle 24 of the Principles Relating to All Persons Deprived of their Liberty in the Americas, and Rules 9 and 92-93 of the European Prison Rules.

([1739]) Articles 12, 14 - 15 and 19 - 21 of the articles of the Optional Protocol to the Convention against Torture, article 8 of the European Convention for the Prevention of Torture, section M(8) of the principles of fair trial in Africa, and principle 24 of the principles relating to persons deprived of their liberty in the Americas.

See Subcommittee on Prevention: Honduras, / UN Doc. CAT/OP . 26- § §25 (2013) HND/3.

Principle [1740]33 of the Set of Principles, Guidelines 17 and 40 of the Robben Island Guidelines, Section M(7) (g) - (h) of the Fair Trial Principles in Africa, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Rule 70 of the European Prison Rules, and Rule 44 of the European Prison Rules.

See General Comment 20 of the Human Rights Committee, §14; General Comment 2 of the Committee against Torture, §13; Human Rights Council resolution 21/4 18 § (2012) (a); Concluding observations of the Human Rights Committee: Kenya, / UN Doc. CCPR/Co/83 §18 (2005) Ken; Mikheev v. Russia (77617) / 01), European Court. §140 (2006).

([1741]) Article 55 of the Constitution..

([1742]) Article 41 of the Criminal Procedure Law.

([1743]) Article 91 bis of the Law on the Organization of Correction and Community Rehabilitation Centers, added by Law No. 57 of 1968, as amended by Law No. 14 of 2022.

Detention Records

The Egyptian legislator mandated that a summary of the detention order be recorded in the general registry for inmates in the presence of the person who brought the inmate, who must sign the registry next to the recorded data[1744].

The acting competent employee shall indicate the registration numbers of those sentenced to life imprisonment, aggravated imprisonment, or imprisonment in the register of correction and rehabilitation centers, with any change in these numbers as soon as notification is received from these authorities, so that they can be notified of the guardianship and claim procedures, etc.[1745].

The Public Prosecution shall, when inspecting public reform centers or the geography of the establishment, ensure that the records imposed in accordance with the law are used in a regular manner and shall generally take into account what is required by laws and regulations and take what it deems necessary regarding the violations that occur [1746].

In military prisons, the summary of the detention order shall be recorded when the prisoner enters the prison in the public register of prisoners in the presence of the person who brought the prisoner and who signs the register, with proof of the registration number in the register on the detention order, and the name and number of the prisoner shall be recorded in the register of the release journal on the date specified for the end of their sentence and on the date of his fulfillment of three quarters of the period if it exceeds nine months [1747].

Each military prison shall have the following records: a public record of the registration of prisoners, a record of the daily incidents of imprisonment, a record of the registration of the luggage, clothing, and secretariats of prisoners, a record of the daily release, hearings, and deportations, a record of the health of prisoners, a record of visits by prisoners, a record of prisoners' sanctions, a record of complaints and requests submitted by prisoners, a record of the registration of escapees, a record of visits by visitors who have an official status, a record of proving the passage of guards and the search of prisoners, their luggage, and rooms, provided that all these records are under the supervision and control of the prison warden [1748].

10.2.2 Within the framework of international covenants

No person shall be detained except in an officially recognized place designated for this purpose[1749].

States must ensure that no one is held incommunicado, whether in officially recognized detention facilities or elsewhere, including ships, hotels and private accommodations [1750].

([1744]) Article No. 4 of the bylaws of the geographical reform centers issued by the Minister of Interior Decree No. 1654 of 1971, and Article No. 4 of the Presidential Decree No. 82 of 1984 regarding the establishment of a labor institution in which repeat offenders are placed.

([1745]) Article 1058 of the written, financial and administrative instructions of the Public Prosecution..

([1746]) Paragraph No. 5 of Article No. 1748 of the Judicial Instructions of the Public Prosecution.

([1747]) Article 4 of the Internal Regulations of Military Prisons issued by the Minister of Interior Resolution No. 721 of 1970.

([1748]) Article 58 of the Internal Regulations of Military Prisons.

([1749]) General Comment 20 of the Human Rights Committee, §11; Special Rapporteur on Torture, 68/2003 / §26 (2002) UN Doc. E/CN. 4 (e); see Peteva and S. v. Russian Federation (57953/ 00 and 37392/ 03), EC 118 § (2007).

Article 17 (2) (c) of the Convention on Enforced Disappearances, Article 11 of the American Convention on Disappearances, Article 10 (1) of the Declaration on Disappearances, Section M(6) (a) of the Principles for a Fair Trial in Africa, and Principle 3(1)of the Principles Relating to Persons Deprived of their Liberty in the Americas.

([1750]) Article 17 (1) of the Convention on Enforced Disappearances, and Guideline 23 of the Robben Island Guidelines.

Al-Masri v. The former Yugoslav Republic of Macedonia (39630/ 09), Grand Chamber of the European Court (204- §200 (2012) and 230 - 241; Joint Study of UN Mechanisms on Secret Detention,. UN Doc §17- §35 (2010) 42/A/HRC/13; Concluding observations of the Committee against Torture: United States of America, 2006) UN Doc. CAT/C/USA/CO/2)

This duty applies both within the territory of the State and to virtually all places under its control. The family of the detained person or another third party should be notified of the place of detention, as well as of any transfer. Detainees have the right to contact a court. Detainees and prisoners alike have the right to contact the outside world, in particular their families and lawyers, and to receive appropriate health care.

To protect the arrested person from ill-treatment, the first hearing before a judge or judicial officer should mark the end of his/her detention in police custody and unless released, he/she should be transferred to a detention centre (pretrial detention) that is not under the control of the investigating authorities

The place of detention should be as close as possible to the place of residence of the detained person, to facilitate his visit by his lawyer and family [1751].

The authorities must ensure that there are safe and appropriate places of detention for women throughout the country [1752].

The UN Special Rapporteur on Human Rights and Counter-Terrorism expressed concerns about the dispersal of persons detained in connection with terrorism-related crimes in places far from Spain, as this dispersal created problems that prevented detainees from preparing their defense and placed a heavy economic burden on family members who were visiting them [1753].

There is an obligation on all States not to detain any person incommunicado, and the family of the detained person, or any third party of his choice, should be notified of the place of detention, and of any transfers from this place.

Places of detention should be as close as possible to the detainee's residence to facilitate visits by his family and lawyers. The competent authorities shall separate places of detention temporarily from those sentenced to imprisonment, and provide places of detention for women as well as children, and these places shall be safe and separate from places of detention for men. No person may be admitted to places of detention except by virtue of an order signed by the competent authority and shall not remain after the period specified in this order.

International covenants oblige to consider several points when placing a prisoner in a detention or confinement facility, such as the proximity of the prison to the community to which the prisoner belongs or to the whereabouts of his family or the place of his reintegration into society, and to ensure, whenever possible, that the environment is compatible with any cultural or linguistic needs. These issues should also be taken into account in any decisions related to the transfer of prisoners to different places of detention. The continued contact of prisoners with family and community support systems in the community during the period of detention is often an important positive factor in supporting their reintegration into society. Some research has concluded that visits, especially regular visits during detention, are linked to the lack of misconduct in prison.

---

§17; Syria, §15 (2010) UN Doc. CAT/C/SYR/CO/1, Israel,. UN Doc §26 (2009) CAT/C/ISR/CO/4; Resolution 65/205 of the United Nations General Assembly..

Principle [1751]20 of the Body of Principles, Rule 4 of the Bangkok Rules, Principle 9(4) of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 17 of the European Prison Rules.

Recommendation of the Committee of Ministers of the Council of Europe (12) §16 ,Rec)2012..

([1752]) General Report 10 of the Committee for the Prevention of Torture 13) §21 ,CPT/Inf2000..

([1753]) Special Rapporteur on Human Rights and Counter-Terrorism, Spain,. §20 (2008) UN Doc. A/HRC/10/3/Add. 2.

Per the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a detainee or prisoner shall be placed in a place of detention or imprisonment reasonably close to his habitual residence, if he so requests and it is possible to do so[1754].

The Nelson Mandela Rules stipulated that prisoners must be distributed, as far as possible, to prisons close to their homes or places of social rehabilitation [1755].

The Bangkok Rules recognize the right of women to remain in contact with their families, especially when it comes to children. They oblige women prisoners, whenever possible, to be placed in prisons close to their homes or social rehabilitation centers. Often, women prisoners may be placed in prisons far from their homes due to the small number of women prisoners, and thus the lack of prisons for women in reform and discipline systems around the world. It follows that many women prisoners may receive fewer visits than their male counterparts due to the difficulties faced by families and the costs they bear due to the length of travel to visit. However, the Bangkok Rules emphasize the importance of consulting with women about the determination of the prison and placing them in it, recognizing that women may wish to be referred to a facility far from their place of residence to protect their safety if they are victims of violence committed by their husbands or family members[1756].

Their responsibility for the care of their children, their personal choices and the appropriate programs and services available to them must be considered[1757].

Detainees also have the right to contact a judicial authority, to maintain contact with the outside world, especially with their families and lawyers, and to receive necessary and appropriate health care.

Detention Records

The authorities shall maintain official and continuously updated records of all detainees under their effective control, in all places of detention, along with their central records [1758].

All international covenants also stressed the need to register prisoners and establish a unified system for managing their files, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were called the Nelson Mandela Rules, which stated that a unified system for managing prisoners' files must be established in any place where people are imprisoned, and this system must be either an electronic database of records or a record whose pages are numbered and signed, provided that procedures are applied to ensure a safe tracking path to review the data and to prevent access to the information contained in the system or modify it without permission [1759].

The police and other legally authorized custodial actors are obliged to keep official records, constantly updated, of all detainees under their effective control and the information contained in these records must be accessible to all those who have a legitimate interest in accessing them, including the detainees, their lawyers and family members, as well as judicial and other

---

([1754]) Principle No. 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1755]) Rule No. 59 of the Nelson Mandela Rules.

([1756]) Thailand Institute of justice, Training Modules For correctional Staff on The management of Woman Prisoners in the ASEAN Region (Bangkok, 2015) ..

([1757]) Rule No. 4 of the Bangkok Rules.

([1758]) Concluding observations of the Human Rights Committee: Algeria,. UN Doc §11 (2007) CCPR/C/DZA/CO/3, Concluding observations of the Committee against Torture: Egypt, 44 / §213 (1999) UN Doc. A/54, Cameroon. UN Doc §5 (2003) CAT/C/CR/31/6 (e) and 9(d), USA, §16 (2006) UN Doc. CAT/C/USA/CO/2; Concluding observations of the Subcommittee on Prevention: Sweden, 2008) UN Doc. CAT/OP. SWE/1) §91; HRC Resolution 21/4, §18 (a); see HRC General Comment 20, §11; Special Rapporteur on Torture,. UN Doc. §51 (2010) A/HRC/13/39.

([1759]) Rule No. 6 of the Nelson Mandela Rules..

competent authorities, and recognized national or international human rights bodies and organizations.

The information it contains must be made available to all those who have a legitimate interest in accessing it, including detainees, their lawyers and family members, as well as judicial and other competent authorities and national and international human rights bodies and mechanisms, but the privacy of detained children must be respected [1760].

Records must include:

the identity of the detained person;

the place and time of deprivation of liberty;

the authority that ordered the deprivation of his liberty and on what grounds;

the place of detention of the detained person and the date and time of his admission;

The authority in charge of the detention facility;

Date the family was notified of his arrest;

the state of health of the detained person;

the date and time the person was brought before a court;

The date and time of release or transfer to another detention facility, the name of the new place of detention and the authority responsible for the transfer procedures [1761].

In this context, the European Court ruled that the failure to keep adequate records for each detained person that include the place, time and basis of his detention constitutes a violation of the right to liberty and security of person [1762].

Recording of information should start from the time when a person is actually deprived of liberty [1763].

An official record, constantly updated, of the names of all persons deprived of their liberty must be kept in any place of detention, and each country must take the necessary steps to establish central records for this, provided that the information contained in those records is made available to the family members of the detainees, their lawyers, or any other person with a legitimate interest in being informed of that information, as well as making that information available to any judicial or other competent authority or authorized to investigate the whereabouts of one of the detained persons [1764].

([1760]) Articles 17 (3) and 18 of the Convention on Enforced Disappearances, Article 11 of the American Convention on Disappearances, Principle 12 of the Body of Principles, Guideline 30 of the Robben Island Guidelines, Rule 7 of the Standard Minimum Rules, Section M(6) (b) - (d) of the Principles of Fair Trial in Africa, Principle 9(2) of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 15 of the European Prison Rules.

([1761]) Concluding observations of the Committee against Torture: Nicaragua,. UN Doc §20 (2009) CAT/C/NIC/CO/1, USA, / UN Doc. CAT/C §16 (2006) USA/CO/2, Tajikistan, 2006) UN Doc. CAT/C/TJK/CO/1) §7; Subcommittee on Prevention: Paraguay, UN Doc. CAT/OP/pry/1 §74 (2010), Maldives, §117 (2009) UN Doc. CAT/OP/MDV/1; Working Group on Arbitrary Detention, 4/ § §73 (2008) UN Doc. A/HRC/7 and 84.

([1762]) European Court: Çakşı v. Turkey (23657) / 94), Grand Chamber §105- §107 (1999), Orhan v. Turkey (25656) / § 371- §375 ,(94), Ahmet Azkan et al. v. Turkey (21689) / 93), (372- § §371 (2004)..

[1763]See Special Rapporteur on Torture, 39 / UN Doc. A/HRC/13 §87 (2010) Add. 5; Concluding observations of the Committee against Torture: Turkey, §7 (2003) UN Doc. CAT/C/CR/30/5 (e), Ukraine, / UN Doc. CAT/C §9 (2007) UKR/CO/5; Special Rapporteur on human rights and counter-terrorism, Tunisia, § §23 (2010) UN Doc. A/HRC/16/51/Add. 2 and 62..

([1764]) Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance.

The Standard Minimum Rules for the Treatment of Prisoners require the maintenance of a bound and numbered record, in which details of the identity of each detainee, the reasons for his imprisonment and the competent authority that decided to do so are recorded, as well as the day and hour of the prisoner's entry and the date of his release, and it is prohibited to admit any person to any penal institution without a legitimate detention order [1765].

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Nelson Mandela Rules require that the reasons for the arrest, the time of the arrest, the time of taking the arrested person to the place of detention and the time of his first appearance before a judicial or other authority, as well as the identity of the law enforcement officials concerned, and all information related to the place of detention be recorded, provided that this information is communicated to the detained person or his lawyer, if any, and this right is also stipulated in the Basic Principles on the Role of Lawyers [1766].

As for juveniles, a complete and secure record must be kept in every place designated for the detention of juveniles, provided that such record includes information regarding the identity of the juvenile, the incident of detention, its reason and the document authorizing it, the day and hour of admission, transfer and release, details of notices sent to parents or guardians regarding each case of admission, transfer or release related to the juvenile who was in their care at the time of detention, and details of known problems related to physical and mental health, including drug and alcohol abuse [1767].

All reports of juveniles, including legal records, medical records and records of disciplinary procedures, shall be placed in a confidential individual file that is updated, accessible only to authorized persons, and classified in a way that makes it easy to understand

Every juvenile has the right to object, to any incident or opinion contained in his file, so that inaccurate, unsupported or unfair data can be corrected. In order to exercise this right, there must be procedures that allow an appropriate third party to view the file upon request and seal juvenile files when they are released and then executed in a timely manner [1768].

Records of juvenile offenders must be kept confidential, and it is prohibited to view or access them from persons other than those concerned with the disposition of the case or duly authorized persons. It is also prohibited to use records of juvenile offenders in adult proceedings in subsequent cases in which the same offender is involved[1769].

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty require that, at the earliest opportunity following reception, complete reports and appropriate information relating to the circumstances and personal circumstances of each juvenile be made available to the administration.

All reports on juveniles, including legal records, medical records, records of disciplinary proceedings and all other documents related to the form, content and details of treatment, must be placed in a confidential individual file that is updated, accessible only to authorized persons, and classified in a way that makes it easy to understand

---

([1765]) Recommended for adoption by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and endorsed by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule No. 7 of the Standard Minimum Rules for the Treatment of Prisoners.

([1766]) Principle No. 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Rule No. 7 of the Nelson Mandela Rules, and Principle No. 21 of the Basic Principles on the Role of Lawyers..

([1767]) Rule No. 21 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

([1768]) Rule No. 19 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

([1769]) Rule No. 21 of the Beijing Rules.

Each juvenile may object, where possible, to any incident or opinion contained in his file, so that inaccurate, unsupported or unfair data can be corrected. In order to exercise this right, procedures must be in place to allow an appropriate third party to view the file upon request. Juvenile files shall be sealed when released and then executed in a timely manner[1770].

All information related to admission, location, transfer and release must be provided without delay to the parents, guardians or next of kin of the juvenile concerned [1771].

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) also require recording the number of children of women who enter prison and their personal data upon entering prison. These records must include - without prejudice to the rights of the mother - the names of the children, their ages, place of residence and their custody or guardianship status if they are not with their mothers, provided that all information related to the identity of the children remains confidential, and that such information is used only in the interest of the child [1772].

The recorded data on the prisoner throughout the period of his imprisonment must be updated according to the changes that may occur in his case, or his initial assessment and classification, as well as information on his behavior and discipline, and the requests and complaints submitted by the prisoner throughout his time in prison, especially allegations related to torture and other cruel, inhuman or degrading treatment or punishment, as well as the disciplinary sanctions imposed on them, and any circumstances or reasons for any injuries or deaths, as well as recording the party to which the remains of the prisoner were transferred in the event of their death [1773].

10.3 The Right to Humane Conditions of Detention

10.3.1 Within the Framework of Egyptian Law

Dignity is a right for every human being and must not be violated. The state is obligated to respect and protect it[1774].

Everyone who is arrested, detained, or whose freedom is restricted must be treated in a manner that preserves their dignity. They must not be tortured, intimidated, coerced, or physically or mentally harmed. Detention or imprisonment must only take place in designated facilities that are suitable in terms of human and health standards[1775].

10.3.2 Within the Framework of International Law

All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person [1776].

The right to humane treatment is a right that may not be expressly restricted under the American Convention and the Arab Charter [1777].

(1770) Rule No. 19 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
(1771) Rule No. 22 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
(1772) Rule No. 3 of the Bangkok Rules..
(1773) Rule No. 8 of the Nelson Mandela Rules..
(1774) Article 51 of the amended Constitution of the Arab Republic of Egypt for the year 2014.
(1775) Article 55 of the amended Constitution of the Arab Republic of Egypt for the year 2014.
(1776) Article 10 of the International Covenant, Article 17 (1) of the Migrant Workers Convention, Article 5 of the African Charter, Article 5 of the American Convention, Article 20 (1) of the Arab Charter, Principle 1 of the Basic Principles for the Treatment of Prisoners, Principle 1 of the Body of Principles, Section M(7) of the Principles of Fair Trial in Africa, Article 25 of the American Declaration, Principle 1 of the Principles Relating to All Persons Deprived of their Liberty in the Americas, and Rules 1 and 27/1 of the European Prison Rules.

This right is a principle of public international law: that is, it applies at all times, in all circumstances, including in states of emergency [1778].

The duty to treat detainees with humanity and respect for their dignity is a rule that applies everywhere in the world and in a comprehensive manner, does not depend on the availability of material resources, and must be applied without discrimination [1779].

The Human Rights Committee has pointed out the close link between the duty to treat humanely and the prohibition of cruel, inhuman and degrading treatment, enshrined in articles 10 and 7 of the International Covenant, respectively [1780].

Conditions of detention in violation of article 10 of the International Covenant can, in and of themselves, also constitute a violation of article 7

Deprivation of liberty places individuals in a situation of exposure to the authorities and dependence on them for their basic needs. It is the duty of States to ensure that detainees have access to their necessities and to services that meet their basic needs, including adequate and appropriate food, washing, sanitation, bedding, clothing, health care, natural light, entertainment, exercise, and facilities for practicing religion and communicating with others, including those in the outside world [1781].

This duty requires states to ensure that conditions in police custody, which should be short-term, meet requirements that include adequate space, light, ventilation, food, hygiene facilities, clean bedding and blankets, for those who stay overnight in custody [1782].

Spending time in detention in an overcrowded and unsanitary place, and lack of privacy, can amount to inhuman or degrading treatment [1783].

States should take steps to alleviate overcrowding, including by seeking alternatives to detention and confinement [1784].

In assessing conditions of detention, the European Court takes into account the cumulative effects of these conditions [1785].

The lack of adequate spatial space for each person can be so excessive that it is considered, in itself, a form of degrading treatment [1786].

If combined with other factors, such as lack of privacy, ventilation, daylight or cellular exercises, the lack of sufficient space can amount to degrading treatment [1787].

([1777]) Article 27 (2) of the American Convention, Article 4(2) of the Arab Charter, and Principle 1 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

Human [1778]Rights Committee General Comment 29, §13 (a); see Human Rights Committee General Comment 20, §3.

([1779]) See Rule 4 of the European Prison Rules.

Human Rights Committee General Comment 21, §4.

([1780]) General Comment 29 of the Human Rights Committee, §13 (a).

([1781]) Special Rapporteur on Torture, 215/2005) UN Doc. A/64) §55; see also the second general report of the Committee for the Prevention of Torture, 3) ,CPT. Inf)92 . 51- § §46

Rules 9-22 and 37-42 of the Standard Minimum Rules, Principles 19 and 28 of the Body of Principles, Rules 5-6, 10-17, 26-28, 48 and 54 of the Bangkok Rules, Principles 11-18 of the Principles on Persons Deprived of Liberty in the Americas, and Rules 29-18 and 39-48 of the European Prison Rules; see Guideline 33 of the Robben Island Guidelines.

([1782]) General Report 2 of the Committee for the Prevention of Torture, 3) §42 ,CPT. Inf)92..

([1783]) Weerawasna v. Sri Lanka, Human Rights Commission,. UN Doc 5/ § §2 (2009) CAT/C/95/D/1406/2005 and 7/4..

([1784]) Concluding observations of the Human Rights Committee: Botswana,. UN Doc §17 (2008) CCPR/C/BWA/CO/1, Tanzania, / UN Doc. CCPR/C/TZA §19 (2009) CO/4, Ukraine, §11 (2006) UN Doc. CCPR/C/UKR/CO/6; Concluding observations of the Committee against Torture: Hungary, / UN Doc. CAT/C/HUN. §13 (2006) CO/4

See Principle 17 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

([1785]) European Court: Doguz v. Greece (40907) / 98), 46 § (2001), Gavazov v. Bulgaria (54659) / 00), 116- § §103 (2008).

([1786]) See, e.g., Kalashnikov v. Russia (47095) / 99) European Court. §97 (2002).

The European Committee for the Prevention of Torture considers an area of 7 square meters as the reasonable minimum area for a solitary cell, while an area of 4 square meters is considered the minimum area that each person should occupy in collective cells [1788].

All detainees, regardless of the reasons for their detention, have the right to humane treatment and, in particular, that their inherent human dignity be respected. This right is absolute and should be respected at all times and in all circumstances, including circumstances of war, armed conflict and other exceptional circumstances.

One of the basic rights that must be guaranteed by the competent authorities to detained persons is the right to the highest possible level of physical and mental health. This is not limited to the provision of appropriate health services and care, but also to the provision of adequate food, water and personal hygiene for each detainee and adequate and suitable places for sleeping.

Among the important rights of detainees are the right to equal and non-discriminatory treatment for any reason, as well as the right not to be subject to any disciplinary sanctions other than those stipulated by law, as well as the right not to be isolated from the rest of the detainees, or held incommunicado for long periods, as well as the right of detainees not to use force against them except in cases, and to the extent permitted by law for the purpose of imposing order and control in legal places of detention or prisons [1789].

The Code of Conduct for Law Enforcement Officials obligated officials at all times to perform the duty imposed on them by law, by serving the community and by protecting all persons from illegal acts, in a manner consistent with the high degree of responsibility required by their profession [1790].

Any act of torture or other cruel, inhuman or degrading treatment or punishment shall be prohibited, instigated or condoned by any personnel

None of them may invoke superior orders or exceptional circumstances such as a state of war, the threat of war, a threat to national security, internal political instability, or any other public emergency, to justify torture or other cruel, inhuman, or degrading treatment or punishment[1791].

The International Covenant on Civil and Political Rights, as well as the Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, have each prohibited the torture of any human being in general, whether free or restricted, or the cruel, inhuman or degrading treatment or punishment of any human being [1792].

The Arab Charter on Human Rights prohibits the physical or psychological torture or cruel, degrading, degrading or inhuman treatment of any person, and requires all persons deprived of their liberty to be treated with humanity and respect for their dignity and prohibits violating this even in states of emergency [1793].

([1787]) See, for example, European Court: Tripashkin v. Russia (36898/ 03), §93- §95 (2007), Karamivicius v. Lithuania (53254/ 99), 36 § (2005).

([1788]) General Report 2 of the Committee for the Prevention of Torture, 3) §43 ,CPT/Info)92, Committee for the Prevention of Torture: Georgia: 27) CPT/Inf2010, Annex..

([1789]) Article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([1790]) The Code was adopted by United Nations General Assembly resolution 24/169, see: Articles 1 and 2 of the Code of Conduct for Law Enforcement Officials.

([1791]) Article 5 of the Code of Conduct for Law Enforcement Officials.

([1792]) Article 7 of the International Covenant on Civil and Political Rights, and Principle No. 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

([1793]) Articles 4, 8, and 20 of the Arab Charter on Human Rights.

Law enforcement officials are also prohibited from committing any act of corruption, and they must confront and combat all such acts with all rigor [1794].

Law enforcement officials are obligated to respect the law and must, to the best of their ability, prevent any violations. Law enforcement officials who have reason to believe that a violation has occurred or is about to occur must report the matter to their higher authorities and, if necessary, to other competent authorities and agencies that have the authority to review, and any person who has reason to believe that violations have occurred or are about to occur shall have the right to report the matter to the heads of the designated officials and to other appropriate authorities or agencies with the authority to review or remedy [1795].

Employees must be of an adequate level of culture and intelligence, provided that they are given training courses on an ongoing basis the best contemporary practices that prove effective in criminal sciences during service on all their public and private duties inside the prison, provided that this includes training on:

Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, whose provisions must guide prison staff in their work and dealings with prisoners;

The rights and duties of prison staff in the exercise of their functions, including respect for the human dignity of all prisoners and the prohibition of certain acts, in particular torture and other cruel, inhuman or degrading treatment or punishment;

Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and managing the handling of violent offenders, with due regard to methods of prevention and de-escalation, such as negotiation and mediation;

First aid and appropriate psychosocial needs of prisoners in the prison setting, as well as welfare and social assistance aspects, including early detection of mental health problems

Employees assigned to work with certain categories of prisoners, or those entrusted with other specialized tasks, must receive training that focuses on the appropriate topics in this regard, provided that all employees pass the theoretical and practical tests prescribed after the end of the training [1796].

Police officers who frequently deal with juveniles or are assigned to deal with them must also receive special education and training [1797].

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obliges each State to include education and information regarding the prohibition of torture fully in the training programs of public officials or others who may be involved in the detention, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment [1798].

The prison must include a sufficient number of specialized staff such as psychiatrists, psychologists, social assistants, teachers and vocational skills trainers [1799].

([1794]) Article 7 of the Code of Conduct for Law Enforcement Officials.

Principle [1795]7 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Article 8 of the Code of Conduct for Law Enforcement Officials.

([1796]) Rule No. 47 of the Standard Minimum Rules for the Treatment of Prisoners, Rules No. 75, 76 of the Nelson Mandela Rules.

([1797]) Rule No. 12 of the Beijing Rules.

([1798]) Articles 10 and 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

([1799]) Rule No. 49 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule No. 78 of the Nelson Mandela Rules.

The Standard Minimum Rules for the Treatment of Prisoners differ in the issue of the doctor's stay in prison. In very large prisons, at least one doctor must reside inside the prison or in direct proximity to it. In other prisons, it is sufficient for the doctor to make daily visits to the prison, if he makes his stay close enough to the prison so that he can attend without delay in emergency cases[1800].

10-4 Prohibition of Contact of Powerholders with the Prison Inmate

10-4-1 Within the framework of Egyptian law

The prison warden may not allow any member of the authority to contact the pretrial detainee inside the prison except with the written permission of the Public Prosecution, and he must record in the prison book the name of the person who was allowed to do so, the time of the interview, and the date and content of the permission [1801].

The Egyptian Constitution prohibited the initiation of the investigation of the pretrial detainee except in the presence of his lawyer, with the assignment of a lawyer to him if he does not have a lawyer[1802].

No one from the authority is allowed to contact the pretrial detainee inside the reform center except with the written permission of the Public Prosecution. The director of the reform and rehabilitation center must write in the daily book of the reform center the name of the person who was allowed to do so, the time of the interview and the date and content of the permission[1803].

As the law stipulates that the permission must be in writing, it is not sufficient to do so merely by verbal or telephone permission. The men of power are the policemen, the detectives, and anyone who holds the status of judicial officers. The legislator intended this to protect the pre-trial detainee from attempts to influence him or to be tortured by the men of power to force him to perform statements or confessions that affect the progress of the investigation. The Court of Cassation ruled that: [Article 79 of Law No. 376 of 1956 regarding the organization of prisons, as it was stipulated that no one of the men of power is allowed to contact the pre-trial detainee inside the prison except with written permission from the Public Prosecution. It indicated that this prohibition is limited to the pre-trial detainee in the same case, in order to prevent the pretext of influencing them, and to prevent the suspicion of being forced to confess while in the grip of public authority. Nor was anyone who was held in executive detention pending another case, in addition to the fact that the law did not invalidate the violation of the provision of this article, because it was intended only to regulate the procedures inside the prison, in the sense of its receipt in the door of administration and order inside the prison, denoting the link to the investigation procedures][1804] .

It is not permissible, in any case, to interview the pre-trial detainee or to investigate him from the men of the public authority or the prosecution without the presence of a defender. The Supreme Constitutional Court ruled that: «The Constitution regulates the right of defense, specifying some of its aspects, deciding to guarantee it as a preliminary guarantee not to violate personal freedom and to preserve all rights and freedoms, whether those stipulated in the Constitution or

---

([1800]) Rule No. 52 of the Standard Minimum Rules for the Treatment of Prisoners.

([1801]) Article 140 of the Criminal Procedure Law, and Article 404 bis of the Judicial Instructions of the Public Prosecution.

([1802]) The third paragraph of Article 54 of the Constitution.

([1803]) Article 79 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015.

([1804]) Appeal No. 5979 of 88S, issued at the session of November 21, 2018, Appeal No. 506 of 40, issued at the session of July 22, 1970, and published in the letter of the Technical Office No. 21 Part II, page 905, rule No. 214.

those established by the legislation in force. In this regard, it stated a categorical ruling when it stipulated in the first paragraph of Article 69 of the Constitution that the right The defense in person or by proxy is guaranteed, and then the error of the Constitution a step further by approving the second paragraph of it, which states that the state guarantees to those who are financially unable the means to resort to the judiciary and defend their rights, entitling the legislator to decide the appropriate means by which to assist the indigent to preserve their rights and freedoms by securing the guarantee of their defense, which is a necessary guarantee whenever the presence of the lawyer in itself is necessary as a deterrent to the men of public authority if they violate the law, reassuring the absence of control over their actions or their naps, which means that the guarantee of defense is not limited to its practical value. The trial stage alone, but also its umbrella and related aspects of protection extend to the previous stage, the outcome of which can determine the final fate of those arrested or detained and then make their trial a formal framework that does not harm them, especially whenever they admit to deceit or seduction of what they condemn, or are subjected to coercive means to induce them to make statements that contradict their interest, after extracting them from their surroundings and restricting their freedom in one way or another. In confirmation of this trend and within its framework, the Constitution, in Article 71, grants everyone who is arrested or detained the right to communicate with others to inform him of what happened or to seek his assistance in the manner regulated by law. [1805].

The communication of the incident officer with the accused in prison does not result in the invalidity of the procedures arising from this, and all it entails is the suspicion of influencing the accused and the appreciation of this is entrusted to the trial court [1806].

10.4.2 Within the framework of international covenants

The report of the Special Rapporteur on torture stated that: "Those who are lawfully arrested may not be detained in facilities under the control of their interrogators or interrogators for a period longer than the time necessary to obtain a judicial warrant for pre-trial detention, which in all cases should not exceed a period of 48 hours, and they must accordingly be transferred immediately to a pre-trial detention facility under a different authority, after which contact between them and the interrogators or investigators may not take place without supervision."[1807].

The Special Rapporteur on torture has pointed out that torture and ill-treatment during arrest or detention can also occur outside the interrogation room and lead to coerced confessions during subsequent interrogation [1808].

([1805]) The judgment of the Supreme Constitutional Court in Case No. 6 of 13 S, issued at the session of May 16, 1992, and published in the first part of the book of the Technical Office No. 5, rule No. 37, page No. 344.

([1806]) The Court of Cassation ruled that: [There is no point in the appellant raising the invalidity of his confession due to a violation of Article 140 of the Code of Criminal Procedure, as the addressee of this text by virtue of his inclusion in Chapter IX of Part Three of the investigation judge of the aforementioned law is the prison warden with the intention of warning him of the contact of the authority with the accused imprisoned inside the prison, and this contact itself does not result in the invalidity of the procedures and all it entails is the suspicion of influencing the accused and the assessment of this is entrusted to the trial court], Appeal No. 20355 of 86 s issued in a hearing 13 October 2018 (unpublished), Appeal No. 25649 of 86 s issued at the hearing of 5 September 2018 (unpublished), Appeal No. 10621 of 82 s issued at the hearing of 14 May 2014 and published in Technical Office Letter No. 65 Page 397 Rule No. 44, Appeal No. 62349 of 73 s issued at the hearing of 2 February 2008 and published in Technical Office Letter No. 59 Page 81 Rule No. 14, Appeal No. 250 of 40 s issued at the hearing of 22 March 1970 and published in Part I From the Technical Office Letter No. 21 Page No. 431 Rule No. 106, Appeal No. 2096 of 35 s issued at the session of 14 March 1966 and published in the first part of the Technical Office Letter No. 17 Page No. 286 Rule No. 56, Appeal No. 1970 of 30 s issued at the session of 7 March 1961 and published in the first part of the Technical Office Letter No. 12 Page No. 324 Rule No. 62.

A[1807]/50/156, para. 39 (f).

([1808]) (A/71/298، 5 August 2016، §61).

Judicial control of detention is therefore an essential safeguard for persons deprived of liberty in the context of criminal charges. Persons detained on criminal charges should not be detained in facilities under the control of their interrogators or interrogators for a period of time beyond what is legally required to hold a judicial hearing and obtain a judicial pre-trial detention order. This period should never exceed a period of 48 hours, except in the most exceptional and fully justified circumstances. Suspects shall be transferred immediately to a pre-trial detention facility under a different authority, after which no further contact with interrogators or investigators shall be permitted without supervision. With regard to best practice, States should entrust to different bodies under a separate chain of command the detention and interrogation of persons in order to protect detainees from ill-treatment and reduce the risk of conditions of detention being used to exert pressure on them during interrogation. All detainees must be properly registered from the moment of arrest, a public central detention record must be maintained, and the sequence of detention must be fully documented [1809].

The practice of detaining people in an isolated prison and interrogating them in unofficial or secret facilities raises many concerns as it puts individuals at high risk of torture. Secret detention itself is tantamount to torture or ill-treatment and should be abolished and criminalized under domestic law.

States must ensure that interrogation only takes place in official facilities that are accessible regardless of the form of detention.

In the criminal justice system, any evidence obtained from a detainee in an unofficial detention center and not confirmed by the detainee during the interrogation process in official places should not be accepted as evidence in court [1810].

10.5 Right to Health

10-5-1 Within the framework of Egyptian law

The Egyptian legislator obligated the doctor of the reform center to examine each inmate immediately after his placement in the reform and rehabilitation center and to prove his health condition and the work he can do, provided that this is not later than the next morning [1811].

The doctor must also vaccinate inmates when they are placed in the Correctional Center against epidemic diseases [1812].

Upon admission to the Correction and Rehabilitation Center, unless transferred from the public correction and rehabilitation centers, the inmate shall be placed under health examination for a period of ten days, during which he shall not mix with other inmates, nor shall he perform work, nor shall he be administered.

The necessary medical examinations and tests shall be carried out during that period, and then he shall be transferred to the department designated for him in the Correction and Rehabilitation Center unless the doctor deems otherwise [1813].

The doctor at the Correction and Rehabilitation Center must detect new inmates when passing through the prison, and this is done per the internal regulations of the geographical reform

---

[1809](A/71/298, 5 August 2016, §62), (see general comment No. 35) (see A/68/295) (see A/HRC/13/39/Add. 5).

([1810]) (A/71/298، 5 August 2016، §63)، (A/56/156).

([1811]) Article 27 of the Bylaws of Correction and Community Rehabilitation Centers.

([1812]) Article 30 of the bylaws of the reform and community rehabilitation centers, and Article 26 of the bylaws of the geographical reform and community rehabilitation centers, as amended by Minister of Interior Decree No. 3098 of 2001.

([1813]) Article 46 of the Internal Regulations of Correction and Rehabilitation Centers, as amended by Minister of Interior Decision No. 3320 of 2014.

centers twice a week, and the doctor himself records the data on their age and health condition, their injuries, impairments and diseases, and the procedures he deems necessary to take in their regard[1814].

In military prisons, the doctor supervising the prison vaccinates prisoners at the time of their placement when needed against smallpox and typhoid [1815].

We note that the Egyptian legislator did not grant this right to detainees in the places specified by a decision of the Minister of Interior, most of which are in police stations.

10.5.2 Within the framework of international covenants

Everyone, including detained persons, has the right to the highest attainable standard of physical and mental health [1816].

The right to health is not limited to appropriate health care when needed, but goes beyond that to addressing the factors underlying physical health, such as access to adequate food, water and personal hygiene [1817].

Law enforcement officials and prison authorities are responsible for protecting the health of persons in their custody [1818].

Health care should be provided free of charge [1819].

Detained persons should receive health care equivalent to that received by persons in the community outside the prison, and have access to health services available in the country without discrimination, including on the basis of their legal status or status [1820].

Health services in places of detention should include medical, psychological and dental care, and be organized in close cooperation with the country's public health services [1821].

Health care must also include health services appropriate to the sex of the detained person, according to what is available in the country [1822].

The State's duty to care for inmates includes prevention, examination and treatment, and this requires the authorities not only to ensure these matters, but also to provide appropriate

---

([1814]) Articles 23 and 24 of the Bylaws of the Geographical Reform Centers.
([1815]) Article 18 of the Internal Regulations of Military Prisons.
([1816]) Article 12 of the International Covenant on Economic, Social and Cultural Rights, Article 16 of the African Charter, Article 39 of the Arab Charter, Article 10 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, and Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas; see Section 1(11) and Article 11 of the Revised European Social Charter.
CESCR General Comment 14, § §34, 4, 11, 43 and 44.
([1817]) See the third general report of the Committee for the Prevention of Torture, 12) §53 ,CPT/Inf93.
([1818]) Article 6 of the Code of Conduct for Law Enforcement Officials, Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Rule 39 of the European Prison Rules, and Principle 103 of the ICC Guidelines; see Principle 31 of the Robben Island Guidelines..
Principle [1819]24 of the Body of Principles, Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Concluding Observations of the Committee against Torture: Cameroon,. UN Doc § §4 (2004) CAT/C/CR/31/6 (b) and 8(d).
Principle [1820]9 of the Basic Principles for the Treatment of Prisoners, Rule 40 of the European Prison Rules; see Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Third General Report of the Committee for the Prevention of Torture, 12) §31 ,CPT/Inf93. See Council of Europe Recommendation (EC) 12 (Rec)2010, Rule 31 of the Annex on Foreign Prisoners.
([1821]) Rule 22 of the Standard Minimum Rules, Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rules 40-41 of the European Prison Rules; see Rules 18-10 of the Bangkok Rules, Third General Report of the Committee for the Prevention of Torture, 12) § §35 ,CPT/Inf93, 38 and 41.
([1822]) Rule 10 (1) of the Bangkok Rules, Section M(7) (c) of the Principles of Fair Trial in Africa.

conditions of detention, as well as health-related education and information that should be provided to detainees, prisoners and employees [1823].

The lack of access to adequate health care for detainees was considered a violation of the right to respect for human dignity and to health, as well as a violation of the prohibition on inhuman or degrading treatment [1824].

The European Court found, in a number of cases, that the failure to provide timely medical care violated the right to freedom from inhuman and degrading treatment [1825].

The court said that the insufficient personal care provided to persons deprived of their liberty living with HIV, AIDS or tuberculosis, constituted a violation of the European Convention [1826].

If the authorities detain a person with a serious illness, they must ensure that he is detained in conditions that meet his individual needs [1827].

Prisoners in need of special treatment, including mental health care, should be transferred to specialized institutions, or to outpatient hospitals, when such treatment is not available in prison[1828].

Special measures must be taken for people with serious mental disorders commensurate with their condition [1829].

Health personnel have a moral duty to provide detainees and prisoners with the same level of health care that is provided outside the prison [1830].

The health care provided must respect the principles of privacy and obtain informed consent, including the right of the individual to refuse treatment [1831].

Physicians who provide health care should be independent of the police and public prosecution[1832].

([1823]) Concluding observations of the Committee against Torture: Ukraine,. UN Doc §25 (2007) CAT/C/UKR/31/5; CPT General Comment 11, §31 ,CPT/Inf2001 (16, CPT Report 3, 12) ,CPT/Inf93 . 56- § §52.

Ingo [1824]v. Cameroon, Commission on Human Rights, / UN Doc. CCPR . 1/ §7 (2009) C/96/D/1397/2005

Media Rights Agenda and Constitutional Rights Project v. Nigeria (93/105, 128/94, 152/96), African Commission, Annual Report 12 (1998) §91, pen International, Human Rights and International Rights Project on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria (94/137, 139/94, 154/96, 161/97) African Commission, Annual Report. §112 (1998) 12.

([1825]) See, e.g., European Court: Aleksanian v. Russia (46468) / 06), §158 (2008), Gavtadze v. Georgia (23204) / 07), (2009) Harutyunyan v. Armenia (34334) / 04), § §104 (2010), 114-116, Sarban v. Moldova §86- §87 (2005) ,(05/3456), 90-91, Kucherok v. Ukraine (2570) / 04), § 147- §152 (2007), Koutsavtis v. Greece (39780) / 06), (2008) . 61- § §47.

([1826]) European Court: Yakovenko v. Ukraine (15825) / 06), (2007) 102- § §90, Pokhlebin v. Ukraine (35581) / 06), (68- §61 (2010), Hamatov v. Azerbaijan (9852) / 03 and 13413/ 04), (121- §107 (2007), Aleksanian v. Russia (46468) / 06), (158- §133 (2008), Khodobin v. Russia §92- §97 (2006) ,(00/59696)..

([1827]) European Court: Varptohs v. Lithuania (4672) / 02), (20045) 61- §56, Kudla v. Poland (30210), Grand Chamber 90 § (2000)..

([1828]) Rule 22 (2) of the Standard Minimum Rules, and Rule 46 (1) of the European Prison Rules.

Paladi v. Moldova (39806) / 05), Grand Chamber of the European Court §70- §72 (2009); Third General Report of the Committee for the Prevention of Torture,) CPT/Inf93 §41- §43 ,12 and 57 - 59; see Slavomir Musial v. Poland (29806) / 05), Grand Chamber of the European Court (97- §96 (2009); Congo v. Ecuador (11). 427) American Commission, Report 63/99 (48- §47 (1998) and 63-68.

([1829]) Rules 12 and 47 of the European Prison Rules; see Rule 16 of the Bangkok Rules.

European Court: Reynolds v. France (5608) / 05), (- § §128 (2008) §38- §46 (2012) ,(08/24527) M. S. v United Kingdom ‘129..

([1830]) Principle 1 of the Principles of Medical Ethics..

([1831]) Rule 8 of the Bangkok Rules, Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

Third General Report of the Committee for the Prevention of Torture, 12) §45- §51 ,CPT/Inf93; Recommendation 7) R)98 of the Council of Europe, Annex 16- §13.

Even when doctors are appointed and paid by the authorities, they must not be required to act contrary to their professional judgment or ethics. Their primary concern should be the health needs of their patients, who owe them a duty of care and privacy. They must refuse to abide by any procedures that have no legitimate medical or therapeutic purpose and declare their opinion if the health services are contrary to professional ethics, abusive or insufficient [1833].

Any of the following shall be considered contrary to medical ethics for health personnel:

Participation in or complicity in torture or other ill-treatment;

Engage in a professional relationship with detainees or prisoners whose purpose is not, exclusively, to assess, protect or improve their health;

Provide investigative assistance in a manner that could adversely affect the health of individuals or contravene international standards;

participate in certification that persons are fit for health for any treatment or punishment that could have adverse effects on their health or contravene international standards;

Participating in restricting the movement of any person unless such action is necessary to protect the health and safety of the person or others, and does not pose any danger to his health[1834].

Detainees and prisoners should be offered independent medical examinations as soon as possible after being brought to any place where they are deprived of their liberty [1835].

Detainees have the right to request a second medical opinion [1836].

Detained persons who have not yet been tried may receive treatment (at their own expense) by their own doctor or dentist, if there is a reasonable basis for their request [1837].

States must ensure that the necessary facilities are in place for detainees to communicate with their doctor [1838].

If this request is denied, the reasons must be explained

Detainees and prisoners should be able to seek health care services at any time on a confidential basis; nor should prison officers scrutinize such requests [1839].

Healthcare personnel should inform the authorities if they observe that a detainee's mental or physical health is at serious risk due to continued detention or imprisonment or for any other reasons [1840].

Women have the right to be examined or treated by a female doctor, upon their request, wherever possible, except in cases that require urgent medical intervention and one of the

---

Committee [1832]against Torture: Mexico, (2003) UN Doc. CAT/C/75 §220 (j); see, CPT: Ukraine, 30) §27 ,CPT/Inf2012, Bulgaria, 32) §51 ,CPT/Inf2012.

([1833]) Principles 1-5 of the Principles of Medical Ethics.

Istanbul Protocol, §67- §66.

([1834]) Principles 2-5 of the Principles of Medical Ethics..

Principle [1835]24 of the Body of Principles, Guideline 20 (b) of the Robben Island Guidelines, Rule 24 of the Standard Minimum Rules, Principle 9(3) of the Principles for Persons Deprived of their Liberty in the Americas, and Rule 42 of the European Prison Rules; see Rule 6 of the Bangkok Rules.

([1836]) Principle 25 of the Set of Principles..

([1837]) Rule 91 of the Standard Minimum Rules.

Concluding observations of the Committee against Torture: Czech Republic, § §113 (2001) UN Doc. A/56/44 (e) and 82 (c), Georgia, 44 / UN Doc. A/56 § §81 (2001) (e) and 82 (c).

([1838]) Section M (2) (e) of the Principles of Fair Trial in Africa..

([1839]) The Third General Report of the Committee for the Prevention of Torture, 12) §34 ,CPT/Inf93.

([1840]) Rule 25 of the Standard Minimum Rules, and rule 43 of the European Prison Rules.

medical staff must be present at the time of examination of the detained or imprisoned woman contrary to her desire by a doctor or male nurse [1841].

Accurate and comprehensive records must be kept for each medical examination, in which the names of all persons present at the time of the examination must be included, and the person who underwent the examination must have access to these records [1842].

Where a detainee or prisoner alleges that he or she has been tortured or otherwise ill-treated, or there is reason to believe that an individual has been tortured or ill-treated, that person should be promptly examined by an independent physician who is able to issue his or her reports without interference by the authorities and in line with the duty to ensure independent, impartial and thorough investigations into such allegations, such investigations should be conducted by an independent medical body as required by the provisions of the Istanbul Protocol[1843].

Regular medical care for persons deprived of their liberty

International standards provide for prompt and regular access to medical care for persons deprived of liberty. States are obliged to ensure that prompt, independent, impartial, appropriate and consensual medical examinations are available upon arrest, and at regular intervals thereafter. Medical examinations must also be provided as soon as the detainee enters the detention or interrogation facility and at each transfer. Impartial, independent and prompt professional examinations shall be conducted in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment based on allegations of ill-treatment or any evidence of possible ill-treatment. It is worth recalling the well-established prohibition of the participation of medical personnel, either positively or negatively, in acts that may constitute participation in, complicity in, incitement to, or attempts to commit acts of torture or ill-treatment [1844].

Examples of other safeguards against ill-treatment and coercion during interrogation include ensuring that no interrogation is conducted without direct or indirect supervision, including through one-sided mirrors, live broadcasts, or review of audio recordings.

Apart from exceptional circumstances, strict domestic regulations must ensure that persons detained for more than two hours without interruption are not questioned, that adequate refreshment breaks are provided, and that periods of at least eight consecutive hours of rest - free from questioning or any activity related to the investigation - are allowed every 24 hours.

Except for compelling circumstances, no interrogation should be conducted at night [1845].

([1841]) Rule 10 (2) of the Bangkok Rules..

([1842]) Subcommittee on Prevention of Torture, Maldives, / UN Doc. Cat §111- §112 (2009) OP/MDV/1; see Zhiludkova v. Ukraine, Commission on Human Rights, 1996/4/ §8 (2002) UN Doc. CCPR/C/76/D/726; Istanbul Protocol, 84- §83.

Principle 26 of the Body of Principles, and Principle 9(3) of the Principles Relating to Persons Deprived of their Liberty in the Americas..

([1843]) Articles 12 and 13 of the Convention against Torture.

Third General Comment of the Committee for the Prevention of Torture, §25; see Istanbul Protocol, §69- §73 and 83; Principle 6 of the Principles of Inquiry on Torture; Concluding Observations of the Human Rights Committee: Hungary, / UN Doc. CCPR/C/HUN. §14 (2010) CO/5.

([1844]) (A/71/298, 5 August 2016, §88), see Principles of Medical Ethics Relating to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 37/194); and Tokyo Declaration, (see A/68/295 and E/CN. 4/2004/56) (see CAT/C/51/4).

([1845]) (A/71/298, 5 August 2016, §89), see the report to the Turkish Government on the visit to Turkey of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 17 June 2009 (CPT/Inf (2011) 13).

The Subcommittee on Prevention of Torture (SPT) has observed that when police mistreat a detainee, it is understandable that the individual may fear reporting such mistreatment while still in police custody.

In such cases, detainees may consider reporting abuse to a doctor, as medical professionals are presumed to operate independently of law enforcement, and consultations with doctors are expected to be private and confidential. Furthermore, if the detainee has sustained injuries, the doctor is in the best position to examine and document them.

From a preventive perspective, routine medical examinations of individuals deprived of their liberty by an independent doctor, conducted in private during pretrial police detention, could deter law enforcement officers from engaging in mistreatment. The SPT has emphasized that access to a doctor without the presence of police officers serves as an important safeguard against abuse.

The SPT has noted that the absence of medical examinations in police stations or detention centers, coupled with the constant presence of police officers during detainee-doctor interactions, indicates a lack of medical confidentiality in these consultations. Furthermore, the routine practice of presenting detainees to doctors while handcuffed is unacceptable and constitutes degrading treatment. Such practices erode the trust between the patient and the doctor.

The SPT has recommended that authorities promote regular medical examinations for all individuals held in police pretrial detention, ensuring these are conducted without any restrictive measures. The committee also advises that medical examinations be carried out under conditions of strict medical confidentiality, without the presence of non-medical personnel except for the patient. In exceptional cases, and only if requested by the doctor, special security arrangements—such as the presence of a police officer nearby—can be considered. The doctor should document this assessment, including the names of all individuals present during the examination. Police officers should avoid being present during medical examinations and should not be visible to others during such consultations.

In addition to adequate medical examination, the recording of injuries to persons deprived of their liberty by the police is an important safeguard that contributes to the prevention of ill-treatment as well as the fight against impunity. Comprehensive recording of injuries can deter persons who may otherwise resort to ill-treatment. The SPT recommends that each routine medical examination be conducted using a standardized form that includes (a) a person's medical history. (b) any account given by the person examining and relating to any violence committed (c) the results of the thorough physical examination, including a description of any injuries (d) and an assessment, where the training of the physician allows, of the consistency of the first three items mentioned above.

The detainee's medical record should be made available to the detainee and their legal counsel upon request [1846].

Under international conventions, an initial assessment of a prisoner's needs after admission should include an interview with and examination of a physician or other qualified health care professional in order to identify physical and mental health concerns that require immediate attention and can also affect long-term placement, such as acute or chronic health problems, signs of recent violence or abuse, indications of substance use disorders or cessation symptoms, medication needs, infectious diseases, or shelter-related material needs. A suicide and self-harm risk assessment should also be part of this review of immediate health needs.

([1846]) (CAT/OP/MDV/1, 26 February 2009, §§108 - 112).

The interview should take place as soon as possible after the detention of the prisoner (within 24 hours), and follow-up action should be taken as appropriate.

Every detainee or prisoner must be given an appropriate medical examination within the shortest possible time after entering the place of detention or prison. The prison doctor or other qualified health care professional shall meet each prisoner as soon as possible after entering the prison to talk to him and examine him, determine his fitness for work, exercise, and participate in other activities.

He shall also determine the prisoner's health care needs and take the necessary measures to provide him with treatment, medical care and treatment whenever needed, free of charge, as well as any ill-treatment to which the prisoner was subjected before entering prison, and any signs of psychological tension for the prisoner due to his imprisonment, or other risks of suicide, self-harm, or any symptoms resulting from the interruption of drug, drug, or alcohol use. The doctor or health care professional shall take the necessary individual or therapeutic measures.

The doctor or specialist assigned to examine the prisoner shall make arrangements for clinical isolation and treatment in the event that the prisoner is suspected of having any infectious diseases [1847].

If the doctor or any health care professional, while examining the prisoner upon entering the prison or while providing him with medical care, finds any signs of torture or other cruel, inhuman or degrading treatment or punishment, he must document these cases and inform the competent medical, administrative or judicial authority, provided that the correct procedural safeguards are applied to protect the prisoner from being exposed to him or his related persons from a foreseeable risk of causing harm [1848].

The doctor also examines the juvenile immediately after his placement in the detention institution, to identify any physical or mental condition that requires medical attention, as well as to record any evidence of ill-treatment prior to his admission to the institution [1849].

A detained or imprisoned person or his lawyer has the right to request or petition - from a judicial or other authority - to sign a medical examination on him a second time or to obtain a second medical opinion. His request must not be rejected except on reasonable grounds related to ensuring security and good order in the place of detention or imprisonment. The fact of conducting the medical examination of the detained or imprisoned person, the name of the doctor and the results of this examination must be recorded. It ensures access to these records[1850].

In the current circumstances, with the spread of the Covid-19 virus, people deprived of liberty, such as people in prisons and other places of detention, are likely to be more susceptible to the virus responsible for the Covid-19 pandemic than the general population due to the conditions of detention in which they live together for long periods of time. Within a few weeks, the Coronavirus disease (COVID-19) severely affected daily life, as many severe restrictions were imposed on the movement of people and personal freedoms, with the aim of enabling the authorities to better combat the pandemic through emergency measures in the field of public health.

([1847]) Principle No. 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Rule No. 24 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule No. 30 of the Nelson Mandela Rules.

([1848]) Rule No. 34 of the Nelson Mandela Rules.

([1849]) Rule No. 50 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

([1850]) Principles 25, 26 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Whereas persons deprived of liberty constitute a particularly vulnerable group, due to the nature of the restrictions already imposed on them and their limited ability to take preventive measures. Prisons and other places of detention, many of which are severely overcrowded and lack sanitary conditions, also suffer from increasingly serious problems.

In several countries, measures taken to combat the pandemic in places of deprivation of liberty have already led to disturbances inside and outside detention facilities and loss of life. In light of the above, it is imperative that State authorities take fully into account all the rights of persons deprived of their liberty and their families, as well as the rights of all staff and personnel working in detention facilities, including health care personnel, when taking measures to combat the pandemic.

Thus, transparency should be exercised in informing all persons deprived of their liberty, their families and the media of the measures taken and their reasons [1851].

Therefore, prison authorities and other detention authorities must ensure the respect of human rights for those in custody during the pandemic. It is essential to maintain their connection to the outside world, provide them access to information, and ensure adequate healthcare. The Subcommittee on Prevention of Torture has noted that preventive visits and inspections of detention facilities are likely to be significantly affected by necessary public health measures. However, this does not mean such visits should cease. On the contrary, the risk of mistreatment faced by individuals in detention facilities could increase due to these public health measures. The Subcommittee recommends that national preventive mechanisms continue conducting preventive visits, while respecting necessary restrictions on how these visits are carried out. It is crucial at this time for national preventive mechanisms to implement effective measures to reduce the likelihood of detainees being subjected to inhumane or degrading treatment as a result of the real pressures currently confronting detention systems and their officials [1852].

The state bears the responsibility for providing healthcare to prisoners. Prisoners should receive the same level of healthcare available in the community, with the right to access necessary health services free of charge and without discrimination based on their legal status. It is acknowledged that the state is responsible for providing healthcare to individuals under its detention and is also obligated to care for its staff and personnel working in detention facilities, including healthcare workers. As stipulated in Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), prisoners should receive the

---

[1851]See Committee on Economic, Social and Cultural Rights, General Comment No. 14(2000); and United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). See also Office of the High Commissioner for Human Rights, "High Commissioner

Update to the Human Rights Council on Human Rights Concerns and Progress Worldwide", 27 February 2020; Subcommittee Advice to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland on Mandatory Coronavirus (COVID-19) Quarantine (CAT/OP/9)

Who Regional Office for Europe, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance", 8 February 2021.

Protocol for National Preventive Mechanisms Conducting Field Visits during the Coronavirus Disease Pandemic, (CAT/OP/11), §6

See: Subcommittee Advice to States Parties and National Preventive Mechanisms on the Coronavirus Disease (COVID-19) Pandemic, 7 April 2020, (CAT/OP/10), adopted by the Subcommittee on 25 March 2020, pursuant to Article 11(b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, § §1-4.

([1852]) Criminal Law Reform International, "Coronavirus: Health Care and Human Rights of Prisoners," 16 March 2020, Protocol to the National Preventive Mechanisms Conducting Field Visits during the Coronavirus Disease Pandemic, (CAT/OP/11), §7, Subcommittee Advice to States Parties and National Preventive Mechanisms on the Coronavirus Disease (COVID-19) Pandemic, 7 April 2020, CAT/OP/10, §7.

same level of healthcare available in the community and have the right to access necessary health services free of charge and without discrimination based on their legal status[1853].

All measures taken to combat this pandemic have different impacts on various categories of persons deprived of liberty, particularly the most vulnerable groups in detention contexts. This includes women, children, the elderly, lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. Considering this, sufficient safeguards should be established when addressing the emergency situation caused by the COVID-19 pandemic in prisons and other detention facilities, including safeguards that ensure a gender-sensitive approach[1854].

Given the high risk of infection among prisoners and persons held in other detention facilities, the SPT urged all States to:

Undertake urgent assessments to identify the most vulnerable members of the detainee population, taking into account all particularly vulnerable groups;

To reduce the prison population and other persons in detention, where possible, by implementing plans for the early, conditional or provisional release of detainees when it is safe to do so, taking full account of the non-custodial measures referred to, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

To focus in particular on places of detention whose population exceeds their official capacity, and whose official capacity is based on the calculation of the number of square meters per person, which does not allow for social distancing in accordance with the unified guidance provided to the general population as a whole;

Review all cases of pre-trial detention in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail to all but the most serious cases;

Review the use of closed immigration detention centres and refugee camps with a view to reducing their population to the lowest possible level;

Be aware that the release of detainees should be subject to scrutiny in order to ensure that appropriate measures are taken for people who are either infected with or particularly vulnerable to COVID-19;

Ensure that any restrictions on existing systems are minimized, commensurate with the nature of the health emergency, and in accordance with the law;

Ensuring the continued functioning and effectiveness of existing complaints mechanisms;

Respect the minimum requirements for daily outdoor exercise, also taking into account measures to address the current pandemic;

To ensure that adequate facilities and supplies are provided free of charge to all persons remaining in detention, in order to enable detainees to have access to the same standard of personal hygiene that needs to be maintained by the population as a whole;

Provide adequate compensatory alternative methods, where visiting systems are restricted for health reasons, for detainees to remain in contact with families and the outside world, including telephone, Internet, email, video communication and other appropriate electronic means. These

---

([1853]) Protocol to the National Preventive Mechanisms Conducting Field Visits during the Coronavirus Disease Pandemic, (CAT/OP/11), §7, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 24, Advice from the Subcommittee to States Parties and National Preventive Mechanisms on the Coronavirus Disease (COVID-19) Pandemic, 7 April 2020, CAT/OP/10, §8.

([1854]) Protocol on National Preventive Mechanisms Conducting Field Visits during the Coronavirus Disease Pandemic, (CAT/OP/11), §10.

modes of communication should be both facilitated and encouraged, and should be made available frequently and free of charge;

Enable family members or relatives to continue to provide food and other supplies to detainees, in accordance with local practices and with due respect for necessary preventive measures;

To house the persons who pose the greatest risk among the rest of the detainees in such a way as to reflect this extreme risk, with full respect for their rights within the place of detention;

Prevent the use of medical isolation in the form of disciplinary solitary confinement; medical isolation must be based on an independent medical evaluation, be proportionate, be imposed for a limited period, and be subject to procedural safeguards;

Provide medical care to detainees in need, outside the detention facility, whenever possible;

Ensure that basic safeguards against ill-treatment, including the right to independent medical advice, the right to legal assistance, and the right to ensure that third parties are notified of detention, remain available and enforceable, despite access restrictions;

To ensure that all detainees and staff have access to reliable, accurate and up-to-date information on all measures taken and their duration and reasons;

Ensure that appropriate measures are taken to protect the health of staff and personnel working in detention facilities, including health care personnel, and that they are provided with appropriate equipment and support while carrying out their duties;

Provide appropriate psychological support to all detainees and staff affected by these measures;

Ensure that all of the above considerations are taken into account, as appropriate, in relation to patients involuntarily placed in psychiatric hospitals [1855].

The Subcommittee was informed of a number of measures adopted by States Parties to reduce the impact of the pandemic, which are consistent with the Subcommittee's previous advice, including:

Measures to reduce the number of detainees in places of deprivation of liberty

The following measures have been taken to reduce the number of detainees in places of deprivation of liberty:

Develop non-custodial measures to be applied in cases including:

Persons held in pre-trial detention for too long;

Persons serving sentences within prison for a term of up to three years;

Persons convicted of non-violent offences who have served a substantial part of their sentence;

Women who are pregnant or imprisoned with their children;

Detained persons at high health risk, including older persons and persons with disabilities.

Adopt and implement legislation on special or general amnesty, or other similar measures, covering certain categories of detainees;

Expanding the use of electronic means of surveillance, including house arrest;

Reduce the number of persons in police custody and the duration of their detention;

([1855]) Subcommittee Advice to States Parties and National Preventive Mechanisms on the Coronavirus Disease (COVID-19) Pandemic, 7 April 2020, CAT/OP/10, §9.

Temporary closure of detention centres or drastic reduction in the number of centres related to the expulsion of migrants.

Measures related to hygiene, medical and food aspects, and alternative ways to ensure family contact

The following measures have been taken with regard to hygiene, medical aspects, food and ensuring family contact:

Identify people at health risk;

Urgently procure sanitary equipment and medical materials for detention facilities, including personal protective equipment, provide inmates and prison staff with hygiene items, and promote cleaning and disinfection methods;

Limiting the transfer of detainees between places of deprivation of liberty;

Establish COVID-19-related isolation spaces for new prisoners and detainees with health risks, preventive isolation of suspected infected prisoners in order to provide them with an appropriate detention environment, and establish visiting spaces appropriate to the circumstances of the pandemic;

Expanding the provision of goods, food, water, vitamins and nutritional supplements to persons deprived of liberty;

Introducing new means of communication, including tablets, mobile phones and the use of video calls, increasing the duration of virtual contacts with the outside world, and increasing the use of postal contacts with relatives;

Improve and expand access to educational, recreational and sports activities, particularly for minors and young people;

Production of masks in detention facilities as professional activities of detainees;

Provide additional psychological support to detainees and families;

Providing remote psychosocial counselling to detainees and families;

Providing outpatient treatment for patients and/or inmates in psychosocial medical care institutions [1856].

On the other hand, the Sub-Committee noted other areas of concern, namely:

Insufficient attention is paid to detainees at risk in places of deprivation of liberty;

The disproportionate tightening of security in many places of deprivation of liberty, including long periods of confinement in cells, the excessive use of isolation measures, and the cessation of contact with the outside world, which in some areas has led to outbreaks of violence and riots;

Suspend all existing forms of family visitation leave for persons deprived of liberty;

Failure to provide adequate information to persons deprived of liberty, their families, staff, etc., on the situation caused by the pandemic and the measures taken in each place of deprivation of liberty;

Subcommittee [1856]on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Follow-up to the Subcommittee's Advice to States Parties and National Preventive Mechanisms on the Coronavirus Disease (COVID-19) Pandemic, 18 June 2021, (CAT/OP/12), § § 8-10.

Insufficient use of alternative measures to compensate for the suspension of family visits, including the prohibition of digital means of communication;

Restriction or suspension of complaint mechanisms;

Failure to implement alternative measures to imprisonment, particularly in cases of short-term custodial sentences;

Discontinue treatment programmes in places of deprivation of liberty;

Widespread and arbitrary arrests and excessive use of force by the police for the purposes of implementing pandemic-related restraint measures, which in some cases have involved the detention of groups of people without the necessary sanitary measures;

Limited provision of basic hygiene items, personal protective equipment and health advice to law enforcement, security and detention personnel, and inadequate health personnel dedicated to the care of staff and detainees;

Failure to establish formal mechanisms for the collection of health-related data in places of deprivation of liberty, including information on deaths, causes of death, infected or quarantined persons, and excessive use of force, including cases of torture and ill-treatment in connection with the pandemic[1857].

The Subcommittee therefore urged all States to:

To include in the national vaccination program, as a matter of priority, all persons deprived of liberty, all those working in places of deprivation of liberty, including medical, security, social, administrative and other personnel, and staff of the national preventive mechanism;

Periodically and comprehensively inform all persons deprived of liberty and their relatives about the vaccination program, including its benefits and possible side effects, and ensure that vaccination is voluntary and based on informed consent;

Continue to systematically screen for COVID-19 symptoms including all persons entering any detention facility, including new prisoners, staff and visitors, for as long as the pandemic continues;

Improve the environment in quarantine zones within places of deprivation of liberty so that they do not correspond to places of solitary confinement, and compensate for social isolation by using any means to improve social and family contact;

Continuing to raise standards of hygiene, accessibility and quality of health care;

Continue efforts to reduce the prison population through policies such as early release, parole and non-custodial measures;

Strengthen efforts to consider the special needs of women, juveniles, persons with disabilities, lesbian, gay, bisexual, transgender and queer persons deprived of liberty, and assess the possibility of alternatives to detention given the exacerbation of their vulnerability by the pandemic;

Ensure that persons deprived of their liberty whose mental health is affected by COVID-19 measures, including persons in quarantine, medical isolation units, psychiatric hospitals or places of detention, receive adequate counselling and psychosocial support;

Subcommittee [1857]on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Follow-up to the Subcommittee's Advice to States Parties and National Preventive Mechanisms on the COVID-19 Pandemic, 18 June 2021, (CAT/OP/12), §13.

Take effective measures to ensure the protection of patients with COVID-19 within care homes and psychiatric institutions, and provide them with basic emotional and practical support;

Continue to provide NPMs with all necessary support for visits to places of deprivation of liberty during the pandemic[1858].

It is not possible to accurately predict how long the current pandemic will last, or all of its effects. It is certain that it already has a profound impact on all members of society and will remain so for a long time to come. In carrying out their work, the Sub-Committee and the NPMs must be aware of the principle of 'do no harm'. This may mean that NPMs should adapt their working methods to respond to the situation caused by the pandemic in order to protect people; staff and personnel working in detention facilities, including health care staff; detainees; and their staff. The paramount criterion must be effectiveness in ensuring the prevention of ill-treatment of persons subject to detention measures. The range of prevention standards has been broadened by the extraordinary measures that States have been forced to take. It is the responsibility of the Subcommittee and NPMs to respond in innovative and creative ways to the new challenges they face in the exercise of their Optional Protocol mandates [1859].

10.6 Right to Freedom from Discrimination

10.6.1 Within the framework of international covenants

Every person deprived of his liberty has the right to be treated humanely and with respect for the inherent dignity of the human person, without discrimination on the basis of race, colour, ethnic, national or social origin, religion, political or other opinion, sexual orientation, gender identity, disability or any other situation or difference that makes it different. The authorities must ensure that the detention system respects the family rights and privacy of the detained person, and the right to religious freedom. This system should also take into account the cultural customs and religious rites of detainees and prisoners [1860].

The authorities must pay particular attention to respecting the rights of LGBTI women, men, transgender and bisexual people, who are at risk of discrimination and sexual abuse in custody or in prison [1861].

States must also ensure that detainees and prisoners do not suffer violations of their human rights or persecution because of their sexual orientation or gender identity, including for sexual abuse, unjustified and humiliating searches or the use of abusive words [1862].

The transgender person's choices and objective criteria in determining his or her gender identity should be taken into account when determining the place of detention or imprisonment with males or females [1863].

Subcommittee [1858]on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Follow-up to the Subcommittee's Advice to States Parties and National Preventive Mechanisms on the COVID-19 Pandemic, 18 June 2021, (CAT/OP/12), §15.

([1859]) Subcommittee Advice to States Parties and National Preventive Mechanisms on the Coronavirus Disease (COVID-19) Pandemic, 7 April 2020, CAT/OP/10, §14.

([1860]) General comment 31 of the Committee on the Elimination of Racial Discrimination, § §5 (f) and 26 (d).

([1861]) The Second General Comment of the Committee against Torture, 22- § §21; General Comment 31 of the Committee on the Elimination of Racial Discrimination; Report of the Special Rapporteur on Torture, 39 / §74- §75 ,(2010) UN Doc. A/HRC/13; Concluding observations of the Committee on the Elimination of Racial Discrimination: Czech Republic, / UN Doc. CERD/C §11 (2007) CZE/CO/7, Australia, 17-UN Doc. CERD/C/AUS/CO/15. §20 (2010).

Concluding [1862]observations of the Committee against Torture: Egypt, / UN Doc. CAT/C/§6 (2002) CR/29/4 (k); Recommendation 5 (CM/Rec)2010 of the Council of Europe, Supplement §1 (a) (4).

Principle [1863]9 of the Yogyakarta Principles; Recommendation 5 (CM/Rec)2010 of the Council of Europe, Supplement §4; Special Rapporteur on the independence of judges and lawyers,. §81 (2011) UN Doc. A/66/289.

States must ensure that there is no discrimination in treatment or conditions of detention, directly or indirectly, against persons with disabilities. The pain or suffering caused by discriminatory treatment can constitute torture or other ill-treatment [1864].

The authorities should provide protective detention for individuals without marginalizing them from the rest of the detainees more than their protection requires, and without exposing them to additional risks of ill-treatment [1865].

Individuals who are separated from others in their place of residence, for the purpose of their protection, should not be detained in conditions worse than those of other detainees in the detention facility, in any way [1866].

States have a duty to investigate persons responsible for acts of violence or abuse against detainees, and to bring them to justice, whether they are officials or other prisoners [1867].

The Committee against Torture affirmed that “the use of violence or psychological or physical abuse in a discriminatory manner (by a representative of the State or with his consent or complicity) is an important factor in determining whether an act constitutes torture”[1868].

10.7 Women in Detention

10.7.1 Within the framework of international covenants

Detained women must reside in a separate place of detention from men, either in separate institutions, or in separate facilities within the same institution, and under the supervision of female staff [1869].

Male employees should not occupy advanced positions close to places where women are deprived of their liberty, nor should they enter the part where women are detained except accompanied by a female employee [1870].

Only female staff should carry out physical searches of female detainees [1871].

International standards emphasize the duty of States to address the gender-specific needs of women deprived of their liberty [1872].

([1864]) Special Rapporteur on Torture, 175/2008) UN Doc. A/63) 54- §53; Hamilton v. Jamaica, Human Rights Commission, / UN Doc. CCPR 1/ §3 (1999) C/66/D/616/1995 and 8/2; Price v. United Kingdom (96/33394), European Court (30- §21 (2001)..

([1865]) Special Rapporteur on Torture, 165/2001) UN Doc. A/56) §39 (j) and 68/2003 / §26 (2002) UN Doc. E/CN. 4 (j); see Principle 9 of the Yogyakarta Principles; Recommendation 5 (CM/Rec)2010 of the Council of Europe, Supplement §4.

([1866]) Committee for the Prevention of Torture, Armenia,. CPT/Inf2004(25، §74.

([1867]) Concluding observations of the Committee against Torture: United States of America, 44 / §179- §180 (2000) UN Doc. A/55..

([1868]) General Comment 2 of the Committee against Torture, §20.

([1869]) Rules 8(a) and 53 of the Standard Minimum Rules, Guideline 36 of the Robben Island Guidelines, Section M(7) (c) of the Fair Trial Principles in Africa, Principles 20-19 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Guideline 105 of the ICC Guidelines.

Rule 53 (2[1870]) of the Standard Minimum Rules; see Principle 20 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

Concluding observations of the Human Rights Committee: Canada, / UN Doc. CCPR/C §18 (2005) can/CO/5, USA, / UN Doc. CCPR/C §33 (2006) USA/CO/3/Rev. 1, Zambia, UN Doc. CCPR/C/ZMB/CO/3 §20 (2007); Concluding observations of the Committee against Torture: Togo,. UN Doc §20 (2006) CAT/C/TGO/CO/1, Philippines, UN Doc. CAT/C/PHL/CO/2 §18 (2009); CEDAW concluding observations: Argentina, / UN Doc. CEDAW/C/§27- §28 (2010) ARG/CO/6; see general comment 2 of the Committee against Torture, §14.

([1871]) Rule 19 of the Bangkok Rules..

([1872]) The Bangkok Rules, Section M(7) (c) of the Fair Trial Principles in Africa, and Rule 34/1 of the European Prison Rules..

States are required to provide for the special needs of women in terms of personal hygiene and health care, including antenatal and postnatal care[1873].

Where possible, arrangements should be made for babies to be born in a hospital outside the prison[1874].

Women must be able to exercise their right to private and family life, as their communication with their families should be encouraged and facilitated, including unhindered communication with their children for long periods [1875].

Decisions must allow children to reside with their detained mothers in the best interests of the children, who should not be treated as prisoners, while special arrangements should be provided for them [1876].

Before women are detained or imprisoned, they should be allowed to make arrangements for their dependent children, taking into account the best interests of the child [1877].

Women who have suffered sexual abuse or other forms of violence must be informed of their right to seek redress; prison authorities must also assist them in obtaining legal assistance, and ensure that they receive specialized psychological support or advice [1878].

10.8 Additional Guarantees for Case-Related Detainees

10.8.1 Within the framework of international covenants

International standards provide additional safeguards for persons detained pending trial. They provide that anyone suspected of, charged with, arrested for, or detained in connection with a crime, who has not yet been tried, must be treated as innocent.

They must be treated in a manner commensurate with their status as persons who have not yet been convicted, so the treatment of persons who have not yet been tried should be different from the treatment of convicted prisoners, and their conditions and the system on which they are treated (including their contact with their families) should be at least equal to what convicted prisoners receive[1879].

During their detention, they should be subject only to such restrictions as are deemed necessary and proportionate to the investigation or administration of justice in their cases, and to the security of the institution in which they are detained [1880].

([1873]) Rules 5-18 of the Bangkok Rules, Principles 10 and 12 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 19/7 of the European Prison Rules.

CPT General Report 10, 13) §30- §33 ,CPT/Inf2000; see Special Rapporteur on Torture, 3/ §41 (2008) UN Doc. A/HRC/7..

([1874]) Article 24 (b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Rule 48 of the Bangkok Rules, Rule 23 (1) of the Standard Minimum Rules, Rule 3/34 of the European Prison Rules, and Guideline 104 of the ICC Guidelines.

General Report 10 of the Committee for the Prevention of Torture, 13) §27 ,CPT/Inf2000..

([1875]) Rules 26 - 28 and 44 of the Bangkok Rules..

([1876]) Article 3 of the Convention on the Rights of the Child, Rules 49-52 of the Bangkok Rules, Principle 10 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 36 of the European Prison Rules.

General Report 10 of the Committee for the Prevention of Torture, 13) §28- §29 ,CPT/Inf2000..

([1877]) Rule 2(2) of the Bangkok Rules..

([1878]) Rule 7 of the Bangkok Rules, and Rule 34/2 of the European Prison Rules.

([1879]) Article 10 (2) (a) of the International Covenant, Article 5(4) of the American Convention, Article 20 (2) of the Arab Charter, Rule 85 (1) of the Standard Minimum Rules, Guideline 35 of the Robben Island Guidelines, Principle 19 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 18 (8) of the European Prison Rules.

([1880]) General Comment 21 of the Human Rights Committee, §9.

Working Group on Enforced Disappearances, 6/2005 / UN Doc. E/CN. 4. §79 (2004).

Persons who have not yet been convicted by a court must be detained in places that separate them from persons who have been convicted and sentenced [1881].

Under the European Convention and the Arab Charter, this right is non-derogable (temporary restriction) in times of emergency

An important guarantee for pre-trial detainees is that the authorities responsible for detention are separate and independent from the authorities conducting investigations [1882].

Once a judicial authority decides that the accused should be detained pending the case, he or she should be arrested or detained in a detention center that is not under the authority of the police [1883].

If further investigations are necessary, it is preferable to do so in the prison or detention center, and not in police-controlled facilities [1884].

The rights of a person detained pending a case include the following:[1885].

Having facilities to communicate in private with their lawyers to prepare their defense;

receive assistance from an interpreter;

Receive the visit from their doctor and dentist, at their expense, and continue the necessary treatment;[1886] .

Receive visits and make additional phone calls;

wear their own clothing if it suits them, and wear good-looking civilian clothing when they appear in court;

Access to books, writing materials and newspapers;

The opportunity to work without being obliged to do so;

Staying in a cell alone, whenever possible, subject to court directives, local customs, or the choice of the same person.

The conditions and regime of detention must not unreasonably interfere with the exercise by the accused of their right to prepare and present their defense, and with their ability to do so

The European Court noted that conditions of pre-trial detention should enable detainees facing criminal charges to read and write with a reasonable degree of concentration, as an element of the right to adequate time and facilities for the preparation of the defense [1887].

Concluding [1881]observations of the Human Rights Committee: Azerbaijan,. UN Doc §8 (2009) CCPR/C/AZE/CO/3, El Salvador, UN Doc. CCPR/C/SLV/CO/6 §14 (2010), Special Rapporteur on Torture, 68/2003 / UN Doc. E/CN. 4 §26 (2002) (g), 273 / §75 (2010) UN Doc. A/65; see Concluding Observations of the Committee against Torture: Japan, 2007) UN Doc. CAT/C/JPN/CO/1) §15 (a).

General Report 12 of the Committee for the Prevention of Torture, 15) §46 ,CPT/Inf2002..

([1882]) Ladona v. Slovakia (31827) / 02), European Court (2011) . 74- § §59.

Principle 36[1883] (2) of the Body of Principles..

([1884]) Article 10 (2) (a) of the International Covenant, Article 5(4) of the American Convention, Rule 84 (2) of the Standard Minimum Rules, and Articles 94 - 101 of the European Prison Rules..

([1885]) Principles 14 and 17-18 of the Body of Principles, Rules 86 and 88-93 of the Standard Minimum Rules, and Rules 101-94 of the European Prison Rules; see Section M(1) of the Fair Trial Principles in Africa Principles 14 and 17-18 of the Body of Principles, Rules 86 and 88-93 of the Standard Minimum Rules, and Rules 101-94 of the European Prison Rules; see Section M(1) of the Fair Trial Principles in Africa.

([1886]) See Rule 37 of the European Rules for Pre-Trial Detention.

([1887]) Mazet v. Russia (63378) / 00), European Court 81 § (2005)..

10.9 Disciplinary Measures

10-9-1 Within the framework of Egyptian law

The disciplinary sanctions that may be imposed on the inmate in accordance with the Law on the Organization of Correction and Community Rehabilitation Centers are:

Warning;

Deprivation of all or some of the privileges prescribed for the inmate's degree or category for a period not exceeding thirty days;

Delaying the transfer of the inmate to a higher degree than his grade in the correctional center for a period not exceeding six months if he is sentenced to imprisonment or the correctional center, and for a period not exceeding one year if he is sentenced to life imprisonment or rigorous imprisonment;

Reducing the inmate to a lesser degree than their grade in the correctional center for a period not exceeding six months, if he is sentenced to imprisonment or imprisonment, and for a period not exceeding one year if he is sentenced to life imprisonment or rigorous imprisonment;

solitary confinement for a period not exceeding thirty days;

Placing the convict - provided that he is not less than eighteen years old and not more than sixty years old - in a special high-security room for a period not exceeding six months, while depriving him of all or some of the privileges prescribed for him under the law or the internal regulations.

Whereas the law or its internal regulations did not specify the acts that require the imposition of a disciplinary sanction on the inmate, it did, however, specialize in the sanction of the situation in a special highly guarded room, and specified guarantees for the imposition of that sanction only.

The value of the items that the inmate causes to be destroyed shall be deducted from their secretariats deposited for their account at the Correctional Center [1888].

The Law on the Organization of Correction and Community Rehabilitation Centers authorized the imposition of the penalty of solitary confinement for a period not exceeding thirty days [1889].

As for the acts that require the imposition of the penalty of childbirth in a special highly guarded room, they have been specified by the internal regulations of the community correction and rehabilitation centers as follows:

Achieving things likely to cause harm to others or to the security of the reform center.

Stealing or imitating the keys of the repair center.

Escape or attempt to escape.

Attacking one of the employees who enters the correction center to perform work related to their job or one of the visitors.

([1888]) Article 43 of the Law on the Organization of Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015. Article 43 of the Law on the Organization of Correction and Community Rehabilitation Centers stipulated the punishment of flogging by flogging an inmate not exceeding 36 lashes. If the age of the inmate is less than seventeen years, the flogging shall be replaced by beating with a thin stick not exceeding ten sticks, in the event of an attack on the employees entrusted with maintaining order in the reform center or collective rebellion, or any other case of necessity decided by the Minister of Interior. The punishment of flogging shall not be imposed on female inmates, but the penalty of flogging has been canceled under Article 1 of Law No. 152 of 2001.

([1889]) Article 43 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015.

Deliberately destroying or altering the records of the correctional centre or the papers of inmates.

Deliberately destroying some of the contents of the repair center.

Setting fire inside the rooms of the repair center.

Deliberately causing a fire at the repair center or its facilities.

Beating an inmate if the beating causes an injury that needs to be treated.

Committing any acts that may prejudice the security of the correctional center.

This is without prejudice to taking criminal action against the incident [1890].

The internal regulations of the reform and community rehabilitation centers stipulated several guarantees for the imposition of this penalty:

The heavily guarded room must meet the health conditions;

Such penalty shall not be imposed for a period exceeding six months;

This penalty shall not be imposed on the convict who is less than eighteen years of age or more than sixty years of age;

Take the opinion of the prison doctor before signing it;

Writing a record of the inmate's statements, investigating their defense, and hearing witnesses;

The decision to impose the penalty of the situation in a highly guarded room by a decision of the Assistant Minister for the Community Protection Sector at the request of the Director of the Reform Center [1891].

The Law on the Organization of Correction and Community Rehabilitation Centers differentiated between the penalties imposed by the Director of the Correction Center, and other penalties imposed by the Assistant Minister for the Community Protection Sector. As for the penalties that the Director of the Correction Center may impose, the inmate must be notified before any penalty is actually imposed on him attributed to him, their statements must be heard, and their defense must be investigated. The decision of the Director of the Correction Center to impose the penalty shall be final.

As for the penalties that the Assistant Minister of the Community Protection Sector may impose at the request of the Director of the Reform Center, a record must be drawn up that includes the statements of the inmate, the investigation of their defense, and the hearing of the testimony of witnesses. [1892].

Upon entering the correctional center, the inmate must be informed of their rights and obligations and the penalties imposed on them when they violates the laws and regulations, and they must also announce how to submit their complaint [1893].

([1890]) Article 82 of the Internal Regulations of the Community Reform and Rehabilitation Centers, as amended by Minister of Interior Decision No. 345 of 2017 regarding the amendment of some provisions of the Internal Regulations of the Community Reform and Rehabilitation Centers.

([1891]) Article 82 of the bylaws of the reform and community rehabilitation centers, as amended by the decision of the Minister of Interior No. 345 of 2017.

([1892]) Article 44 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015.

([1893]) Article 81 of the bylaws of the reform and community rehabilitation centers, as amended by the decision of the Minister of Interior No. 3320 of 2014.

As for the military reform and community rehabilitation centers, the penalty shall be imposed after the prisoner has already been declared and their defense has been achieved [1894].

The penalty decision imposed on the prisoner without announcing or informing him of the charges against him, or hearing their statements to achieve their defense, shall be null and void for violating the provisions of the law [1895].

10.9.2 Within the framework of international covenants

No detainee or prisoner may be subject to disciplinary punishment within an institution except by clear rules and procedures specified by law or order [1896].

The law or system must also specify the conduct that constitutes a disciplinary offense; the types and duration of the permissible punishment; and the authority competent to impose them[1897].

The State remains responsible for determining and regulating disciplinary measures and procedures even when it contracts with a private company to manage an institution [1898].

Disciplinary measures should be treated as a last resort and may not be considered a disciplinary offense except for those actions that threaten the proper functioning of order or safety and security [1899].

The competent authorities must conduct a thorough examination of the alleged disciplinary violation and must inform the individual concerned of the alleged violation and allow them to defend themselves, provide them with legal assistance if the interest of justice so requires, and an interpreter if necessary. The individual has the right to review an independent authority higher than the disciplinary decisions taken against them [1900].

If the alleged disciplinary offence reaches the level of a “criminal offence” under national law or international standards, the full spectrum of all fair trial rights applies.

The severity of the punishment must be commensurate with the crime, and the punishment itself must be consistent with international standards. The disciplinary punishment imposed on a detainee in pretrial detention may not entail the extension of the period of their detention, or interfere with their preparation for their defense [1901].

Prohibited sanctions include:

Collective disciplinary sanctions;

Corporal punishment;

Confinement in a dark cell;.

([1894]) The second paragraph of Article 39 of the Bylaws of the Military Correction and Community Rehabilitation Centers.
([1895]) See: Judgement of the Administrative Court in Case No. 12886 of 63 S, issued on 21 April 2009.
([1896]) The Second General Report of the Committee for the Prevention of Torture, 3) §55 ,CPT/Inf92.
([1897]) Principle 30 of the Body of Principles, Rule 29 of the Standard Minimum Rules, Principle 22 (1) - (2) of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 57 of the European Prison Rules..
([1898]) Rule 88 of the European Prison Rules..
([1899]) Rules 56 - 57 (1) of the European Prison Rules..
Principle [1900]30 (2) of the Body of Principles, Rules 29-30 of the Standard Minimum Rules, and Rules 58-59 of the European Prison Rules; see Principle 21 of the Principles for Persons Deprived of their Liberty in the Americas.
Rule 59 (c) of the European Prison Rules.
Principle 30 of the Body of Principles, Principle 22 (1) of the Principles on Persons Deprived of their Liberty in the Americas, and Rule 61 of the European Prison Rules..
([1901]) Rule 41 of the European Rules for Pre-Trial Detention..

Cruel, inhuman or degrading punishments, including restrictions on food and drinking water;[1902].

Prohibition of family visits, especially for children;[1903].

Narrowing the detention of pregnant or breastfeeding women or separating them from the rest of the detainees [1904].

10-10 Solitary Confinement

10-10-1 Within the framework of Egyptian law

The Law on the Organization of Correction and Community Rehabilitation Centers authorizes the imposition of the penalty of solitary confinement for a period not exceeding thirty days [1905].

10-10-2 Within the framework of international covenants

Prolonged solitary confinement (isolation from other prisoners) can constitute a violation of the prohibition on torture and other ill-treatment, particularly when combined with isolation from the outside world [1906].

Solitary confinement should not be imposed on children or pregnant women and those with young children [1907].

It should also not be imposed on people with mental disabilities [1908].

Solitary confinement should be used only as an exceptional measure, and for the shortest possible period of time, under judicial supervision, and there should be adequate mechanisms for review, including the possibility of judicial review of the order [1909].

Steps should be taken to minimize the harmful effects of solitary confinement on the individual by ensuring that he is allowed enough exercise and social and mental stimulation, and that their health condition is kept under regular control [1910].

([1902]) Rule 31 of the Standard Minimum Rules, Principles 11 and 22 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 60 of the European Prison Rules.

([1903]) Rule 23 of the Bangkok Rules, and rule 60 of the European Prison Rules..

([1904]) Rule 22 of the Bangkok Rules, Principle 22 (3) of the Rules Relating to Persons Deprived of their Liberty in the Americas..

([1905]) Article 43 of the Law Regulating Correction and Community Rehabilitation Centers, as amended by Law No. 106 of 2015.

([1906]) General Comment 20 of the Human Rights Committee, §6; Special Rapporteur on Torture, 268 / §81 (2011) UN Doc. A/66; Concluding observations of the Committee against Torture: New Zealand, 4/ §5 (2006) UN Doc. CAT/C/CR/32 (d) and 6(d), USA, UN Doc. CCPR/C/USA/CO/2 §36 (2006); McCallum v. South Africa, Human Rights Commission,. UN Doc 5/ §6 (2010) CCPR/C/100/D/1818/2008; Miguel Castro-Castro Prison v. Peru, Inter-American Court 323 § (2006); Van der Veen v. The Netherlands (99/50901), European Court 51 § (2003); see Concluding Observations of the Committee against Torture: Japan, §18 (2006) UN Doc. CAT/C/JPN/CO/1..

Principle 22 (3[1907]) of the Principles Relating to Persons Deprived of their Liberty in the Americas; see Rule 22 of the Bangkok Rules, and Rule 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

CRC General Comment 10, §89.

([1908]) Special Rapporteur on Torture, 268/2011) UN Doc. A/66) . 101- § §79.

Principle 22 (3[1909]) of the Principles Relating to Persons Deprived of their Liberty in the Americas and Rules 51, 53, 60/5 and 70 of the European Prison Rules.

European Court: Ramírez Sánchez v. France (59450/ 00), (Grand Chamber) (145- §138 (2006, A. B. Russia (141439/ 06), 108 § (2010); Concluding Observations of the Committee against Torture: Azerbaijan, / UN Doc. CAT/C/AZE §13 (2009) CO/3, Denmark, §14 (2007) UN Doc. CAT/C/DNK/CO/5, Israel, §18 (2009) UN Doc. CAT/C/ISR/CO/4; see Concluding Observations of the Committee against Torture: Norway, 3/ §4 (2002) UN Doc. CAT/C/CR/28 (d)..

([1910]) General Report 21 of the Committee for the Prevention of Torture, 28) §61- §63 CPT/Inf2011; Special Rapporteur on Torture, 268 / § §83 (2011) UN Doc. A/66 and 100 - 101..

The regulation of solitary confinement, especially during the period of pre-trial detention, should be strictly regulated by law and imposed only on the basis of a court decision specifying its duration [1911].

It shall not affect the contact of a person subject to solitary confinement with a lawyer or deprive them completely of contact with their family [1912].

The Special Rapporteur on torture has called for an end to its use in the pre-trial period; solitary confinement exposes detained persons to psychological pressures that can lead them to make self-incriminating statements. The Special Rapporteur said that the deliberate use of solitary confinement to obtain information or a confession from the detained person constitutes a violation of the prohibition on torture and other ill-treatment [1913].

Solitary confinement should not be imposed as part of the operative part of the court judgment[1914].

The use of solitary confinement in punishment cells should also be prohibited[1915].

10.11 The Right to be Free from Torture and other Ill-treatment

Everyone has the right to physical and psychological integrity; no one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment [1916].

The right to be free from torture and other cruel, inhuman or degrading treatment or punishment is an absolute right and a principle of customary international law applicable to all persons in all circumstances, and shall never be restricted or impaired, including in times of war or states of emergency

The duty of the State to prevent torture and other forms of ill-treatment not only applies within the borders of the State's territory but extends to any person under its effective control anywhere in the world [1917].

It also applies to acts of torture and to complicity or participation in such acts [1918].

No exceptional circumstances whatsoever, including terrorist threats or other violent crimes, may be invoked to justify torture or other ill-treatment. This prohibition applies regardless of the nature of the offence allegedly committed [1919].

([1911]) Concluding observations of the Committee against Torture: Luxembourg,. UN Doc § §5 (2002) CAT/C/CR/28/2 (b) and 6(b).
Concluding observations of the Committee against Torture: Russian Federation, §8 (2002) UN Doc. CAT/C/CR/28/4 (d); CPT General Report 21, 28) § §56 ,CPT/Inf2011 (a) and 57 (b).
([1912]) Rule 42 of the Council of Europe Rules for Pre-Trial Detention.
Special Rapporteur on Torture, 268 / § §55 (2011) UN Doc. A/66, 75 and 99.
Special [1913]Rapporteur on Torture, 268 / § §73 (2011) UN Doc. A/66 and 85.
([1914]) General Report 21 of the Committee for the Prevention of Torture, 28) §56 ,CPT/Inf2011 (a).
Principle 22 (3[1915]) of the Principles Relating to Persons Deprived of their Liberty in the Americas.
See Concluding Observations of the Committee against Torture: Bolivia:. UN Doc §95 (2001) A/56/44 (c)..
([1916]) Article 5 of the Universal Declaration, article 7 of the International Covenant, article 2 of the Convention against Torture, articles 37 (a) and 19 of the Convention on the Rights of the Child, article 10 of the Migrant Workers Convention, article 5 of the African Charter, article 5(2) of the American Convention, articles 1 and 2 of the American Convention for the Prevention of Torture, article 8 of the Arab Charter, article 3 of the European Convention, principle 6 of the Body of Principles, and articles 2 and 3 of the Declaration against Torture.
([1917]) General Comment 31 of the Human Rights Committee, §10; General Comment 2 of the Committee against Torture, §16; Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Court of Justice 111 § (2004); Concluding Observations of the Committee against Torture: United States of America,. §15 (2006) UN Doc. CAT/C/USA/CO/2.
([1918]) Article 4 of the Convention against Torture, and articles 3 and 6 of the American Convention against Torture.

All law enforcement officials are prohibited from carrying out, instigating, participating in, acquiescing in, tolerating or tolerating acts of torture or other cruel, inhuman or degrading treatment or punishment, and the fact that an official acted on orders from their superiors is in no way a justification for torture or other ill-treatment or punishment; all are obliged under international law to disobey such orders [1920].

Law enforcement officials are also required to report any case of torture or ill-treatment that occurs or is about to occur [1921].

The prohibition on torture and other ill-treatment or punishment includes acts that cause mental or physical suffering [1922].

Typically, persons deprived of their liberty are at greater risk of torture or ill-treatment, including before and during interrogation and any information obtained through such methods should be excluded from evidence in trials

The State's duty to ensure freedom from torture and other forms of ill-treatment means that it must take due care to protect the detained person from inter-prisoner violence [1923].

10-11-1 Sexual Abuse

Within the framework of international covenants

The right to be free from torture and other ill-treatment in the place of detention or imprisonment includes the right not to be subjected to rape or any other form of sexual violence or abuse by any person Any non-consensual sexual contact, of any kind, amounts to sexual violence

States must take the necessary measures to prevent sexual violence, including by separating men and women in places of detention and prisons, and detaining women under the authority of female officials where rape committed by, or with the consent or acquiescence of, a public official constitutes torture. Rape includes sexual intercourse without consent by the aggressor penetrating anything or any part of their body into the mouth, vagina or anus of the victim [1924].

State authorities must take due care to protect detainees and prisoners from sexual violence that can be committed by other inmates [1925].

Employees in places of detention must not use their position to commit acts of sexual violence, including rape or the threat of rape, shameless body searches, "virginity tests" or even other forms of verbal abuse such as insults and insults of a sexual nature [1926].

See [1919]article 2(2) of the Convention against Torture, article 5 of the American Convention against Torture, principle 6 of the Body of Principles, article 5 of the Code of Conduct for Law Enforcement Officials, article 3 of the Declaration against Torture, and guidelines 9-10 of the Robben Island Guidelines.

See General Comment 20 of the Human Rights Committee, §3; Committee Against Torture: General Comment §5 ,2, Israel, 44/2001) UN Doc. A/57) §53 (i) and§14 (2009) CAT/C/ISR/CO/4. See also Grand Chamber of the European Court: Gloux v. Germany: (54810) / 00), 99 § (2006), Gavgen v. Germany, §87 (2010) ,(05/22978), F. v. United Kingdom (24888) / 94), (1999) §69, Ramirez Sánchez v. France (59450) / 00), 116 § (2006), Chahal v. United Kingdom (22414) / 93), (80- § §76 (1996), Saadi v. Italy § §127 (2008) ,(60/37201) and 137..

See [1920]Article 2(3) of the Convention against Torture, Articles 3 and 4 of the American Convention against Torture, and Article 5 of the Code of Conduct for Law Enforcement Officials; see also Guideline 11 of the Robben Island Guidelines.

([1921]) Article 8 of the Code of Conduct for Law Enforcement Officials..

([1922]) Article 1 of the Convention against Torture; see Article 2 of the American Convention against Torture.

([1923]) See Principle 23 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

General Comment 31 of the Human Rights Committee, §8; see Velázquez Rodríguez v. Honduras, Inter-American Court 172 § (1988); European Court: Mahmut Kaya v. Turkey (22535/ 93), 115 § (2000, a. UK §22 (1998) ,(94/25599)..

([1924]) Special Rapporteur on Torture: 15/1986/ UN Doc. E/CN. 4 UN Doc. ‹24- §15 (1995) UN Doc. E/CN. 4/1995/34, §119 (1986) 36- §34(2008)A/HRC/7/3; Raquel Martí de Mejía v. Peru (10). 970), American Commission (1996); Aydin v. Turkey (2317) / 94), Grand Chamber of the European Court 86 § (1997).

([1925]) General Comment 2 of the Committee against Torture, §18; General Comment 31 of the Human Rights Committee, §8.

It is initially assumed that sexual contact between detainees or prisoners and officials or employees is coercive in nature, due to the coercive nature of the confinement environment [1927].

The US court ruled that watching a male guard pointing their gun at inmates while they are using the toilet while naked and only pawning a curtain of cloth is considered to be subject to sexual violence[1928].

10-11-2 Use of Force

within the framework of Egyptian law

The Constitution, within the framework of its principles and provisions, regulates the rights, freedoms and duties of individuals under the legal state. At the highest level of the rights and personal freedoms of individuals is the human right to life as one of the natural rights that are inherent to the human person. Therefore, the Constitution prohibits violating them - without the right - even if the freedom of the person is restricted by judicial rulings and requires the treatment of the prisoner that preserves their dignity and the payment of material and moral harm. There is no doubt that these constitutional guarantees are consistent at the top of their goal with international conventions and penal legislation that are based on the philosophy of rehabilitating the prisoners with the aim of reforming their behavior while at the same time preserving the integrity of their body in a way that preserves the individual, even if he violates the law by committing a crime of loyalty to the homeland and a sense of legal security on their rights and safety[1929].

Article 55 of the Constitution guarantees the safety of the body in the face of criminal proceedings, stipulating that: "Anyone who is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves their dignity. He may not be tortured, intimidated, coerced, or physically or morally harmed. their detention or imprisonment shall only be in places designated for that purpose as humanly appropriate and healthy. The State is obligated to provide means of access to persons with disabilities.

The violation of any of this is a crime punishable in accordance with the law

The accused has the right to silence and any statement that proves that it was made by a detainee under the weight of any of the foregoing, or the threat of any of it, is wasted and unreliable. "This right presupposes that the accused may not be tortured [1930].

The convict may not be subjected to inhumane and degrading punishments, which depends on a number of factors, including the nature of the punishment, its content, and how it is carried out. This has been confirmed by Article 5 of the Universal Declaration of Human Rights in its stipulation that a person may not be subjected to cruel, inhuman, or degrading punishments. These harsh punishments are also defective in that they lose the requirement of necessity and proportionality in an exaggerated and obvious manner, which makes them unconstitutional[1931].

In light of the supremacy of human rights, many international declarations have been issued to guarantee those rights, including the Universal Declaration of Human Rights issued in 1948, which prohibited the torture of the accused in its article 5, and this is confirmed by the

---

([1926]) Special Rapporteur on Torture, 3/2008) UN Doc. A/HRC/7) § §34 and 42; see Miguel Castro-Castro Prison v. Peru, Inter-American Court 312 § (2006).

([1927]) Special Rapporteur on Torture, 3/2008) UN Doc. A/HRC/7) §42; Prosecutor v. Kunarac et al.,IT-96-23 & IT-96-23/1-A Appellate Judgment of the ICTY (2002) . 133- § §131.

([1928]) Miguel Castro - Castro Prison v. Peru, Inter-American Court §259 (2006) (h) and 306.

([1929]) See the ruling of the Administrative Court No. 4884 of 62 BC issued at the session of 13/1/2009, page No. 316.

([1930]) Article 55 of the amended Constitution of the Arab Republic of Egypt for the year 2014.

([1931]) For example: Supreme Constitutionalism on January 4, 1997 in Case No. 2 of 15 Judicial Constitutional, Official Gazette No. 3 on January 16, 1997, and see in this sense the French Constitutional Council on May 30, 2000 Resolution No. 433..

International Convention on Civil and Political Rights in its article 7 and stipulated in many constitutions, including the Egyptian Constitution in its article 52, which stipulates that: " Torture in all its forms and manifestations is a crime that does not fall under the statute of limitations"[1932].

Article 54 also stipulates that: " Anyone who is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves their dignity. He may not be tortured, intimidated, coerced, or physically or morally harmed. their detention or confinement shall only be in places designated for this purpose as humanly appropriate and healthy. The State shall provide the means available to persons with disabilities.

Violation of any of this is a crime, the perpetrator of which shall be punished in accordance with the law "[1933].

The Court of Cassation also ruled that: [A confession must not be relied upon, even if it is true, when it is the result of coercion, whatever its destiny may be, and the origin is that the court must examine the link between the confession of the defendants and the injuries said to have been obtained to coerce them and the denial of its justifiable inference if it deems it to rely on the evidence derived from it, and the contested judgment had raised the plea of invalidity of the confession as mentioned above in a way that does not justify responding to it, because the failure of the investigating prosecutor to notice the existence of visible injuries to the defendants does not negate the existence of injuries to them, and the presence of lawyers with the defendants in an investigation conducted by the Public Prosecution does not negate the occurrence of torture][1934] .

It ruled that: [It is decided pursuant to the meaning of Article 42 of the Constitution and the last paragraph of Article 302 of the Code of Criminal Procedure that a reliable confession must be optional, and it is not considered so even if it is true. If it is issued under the weight of coercion or threat of coercion, whatever its fate and the principle is that the court if it deems it necessary to rely on the evidence derived from the confession, to examine the link between it and the coercion said to have taken place and to deny the existence of this coercion in a reasonable inference. The statement of the contested judgment was a justification for its reliance on the evidence derived from the appellants' confession to the investigation of the Public Prosecution, which would not lead to the waste of the appellant's nullity of this confession because it was issued under duress because of its confiscation of the appellants' defense before it was resolved. It is not correct in the logic of reason and intuition to reject the judgment on the nullity of the confession before a body of investigations because it was the result of duress by reassuring him of this confession because it was obtained before that body and because of the failure to mention whoever attributed the confession before it that it was forced on him as long as he disputed the validity of that confession before that body.] [1935].

It also ruled that: [It is established that the law did not define physical torture and did not require it to have a certain degree of gravity and does not need to lead to injury to the victim and it is up to the discretion of the trial court to deduce it from the circumstances of the case][1936] .

([1932]) Article 52 of the amended Constitution of the Arab Republic of Egypt of 2014.
([1933]) Article 54 of the amended Constitution of the Arab Republic of Egypt for the year 2014.
([1934]) Appeal No. 758 of 50 S issued at the hearing of October 15, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 890 rule No. 172.
([1935]) Appeal No. 23449 of 71 S issued at the session of February 5, 2002 and published in the book of the Technical Office No. 53 page No. 224 rule No. 41.
([1936]) Appeal No. 15220 of 75 S issued on December 28, 2005 and published in the Technical Office letter No. 56 page No. 844 rule No. 114.

It also ruled that: [The law did not know the meaning of physical torture and did not require a certain degree of gravity, and it is up to the discretion of the trial court to deduce it from the circumstances of the case][1937] .

It also ruled: [The law did not require that the elements of the crime of torture be available to a defendant to force him to confess stipulated in Article 126 of the Penal Code, that the torture had led to the injury of the victim, just to put their hands behind their back and hang him in a pinnacle with their head down, which was proven by the judgment against the appellant from the statements of the victim's wife, is considered torture, even if it did not result in injuries][1938] .

It also ruled that: [Since the causal relationship in the criminal articles is a material relationship that begins with the act committed by the perpetrator and is morally related to what he must expect from the usual results of their act if he deliberately comes to it, and this relationship is an objective issue that the trial judge is unique to assess and when he decides on it as evidence or denial, there is no control for the Court of Cassation over him as long as he has based their judiciary in this on reasons leading to what he concluded, and if The judgment has proven against the appellant that there is a causal relationship between the acts of torture committed by him and the result of these acts, which is the death of the victim in saying: "Since the court considers that there is a causal relationship between the act of torture committed by the accused against the victim and the result of this torture, which is the death of the victim by drowning, the provision of the second paragraph of Article 126 of the Penal Code is based and applies to the facts of the case, as the act of torture committed by the accused against the victim since the beginning of the incidents of torture by beating and dropping into contaminated water with the threat of being thrown into the sea and what led to it with The continuation of the assault in that form on a small boy and pushing him to the edge of the water pavement in an attempt to lower him again. The victim was previously harmed by the previous one, all of which entails that the victim tries to get rid of the grip of the accused to attract him. It also entails the accused pushing him in an attempt to lower the victim into the water or even threatening him while he is unsure of the victim's proficiency to swim. All of this took place in a spot on the side of the pavement that was narrowed by the presence of oil pipes extending along it. This sequence, which ended in the victim falling into the seawater and is related to the belt of the accused and then drowning and death, is considered normal and familiar in life and current with the usual turn of things and did not involve an abnormal factor unlike the cosmic year and therefore does not accept and does not hear from the accused that he did not expect that the last result, which is the death of the victim by drowning," which is a palatable pamphlet that leads to the outcome of the judgment and agrees with the correct law, what the appellant complains about in this regard is not correct, as well as the absence of his interest in this immunity because the penalty imposed by the sentence is imprisonment for five years Years falling within the scope of the penalty prescribed for the crime of torturing a defendant to force him to confess to the death of the victim stipulated in the first paragraph of Article 126 of the Penal Code][1939].

Article 126 of the Penal Code punishes every public official or employee who ordered the torture of an accused person or did so himself to get him to confess. He shall be punished by rigorous imprisonment or imprisonment from three to ten years.

([1937]) Appeal No. 1314 of 36 S issued on November 28, 1966 and published in the third part of the Technical Office's letter No. 17 page No. 1161 rule No. 219.
([1938]) Appeal No. 3351 of 56 S issued at the session of November 5, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 827 rule No. 160.
([1939]) Appeal No. 2460 of 49 S issued at the session of November 13, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 979 rule No. 190.

If the victim dies, he shall be sentenced to the penalty prescribed for intentional killing[1940].

Every public official and every person entrusted with a public service who orders the punishment of the convict or punishes them with a punishment more severe than the penalty imposed on them by law or a penalty for which they have not been sentenced shall also be punished by imprisonment. [1941].

Within the framework of international covenants

Force may be used against detainees or prisoners only when it is necessary to maintain security and order within the institution, in cases of attempted escape, when there is resistance to a legal order, or when personal safety is threatened. In any case, it may only be used if non-violent means and methods prove ineffective, and as a last option and the least necessary force must be used to address the situation [1942].

Firearms may be used only for the purpose of defense against an imminent threat of death or serious injury, to prevent the occurrence of a crime involving a grave threat to life, or to arrest a person posing such a danger or to prevent their escape, and only when the use of any other less harmful means is insufficient to remedy the situation and the deliberate use of firearms for the purpose of killing is permitted only when it is unavoidable to protect life[1943].

This principle was confirmed by the Universal Declaration of Human Rights of 1948, which prohibited the torture of the accused (Article 5). This right represents one of the basic values in a democratic society, and it stems from the duty to respect human dignity "dignité humaine". Three results stem from this right, namely: the inadmissibility of subjecting the accused to torture, the inadmissibility of inhuman treatment, and the inadmissibility of subjecting him to inhuman punishments. These results were supported on the international scale as follows:

The use of force by officials must be limited to the minimum limits, and the unnecessary and excessive use of physical force that is not required by the behavior of the detainee or prisoner, and is not commensurate with this behavior, can amount to torture or other forms of ill-treatment[1944].

(a) It is established that the accused shall not be subjected to torture by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984.

Staff should be trained in methods that enable them to safely and minimally use force, in accordance with international standards. In general, they should not carry firearms or other lethal weapons except in situations of operational emergency. Other law enforcement agencies should generally not be involved in dealing with prisoners inside prisons [1945].

The torture of the accused is subject to multiple forms, some of which are considered material coercion, and some of which are considered moral coercion, and the intercourse between them

---

([1940]) Article 126 of the Law Promulgating the Penal Code.

([1941]) Article 127 of the Penal Code.

([1942]) Rule 54 of the Standard Minimum Rules, Principles 4, 5 and 15 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Article 3 of the Code of Conduct for Law Enforcement Officials, Principle 23 (2) of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 64 of the European Prison Rules.

([1943]) Principles 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

([1944]) European Court: Artyomov v. Russia (14146/ 02), (2010) 173- §164, Kucherok v. Ukraine (2570) / 04), (133- §128 (2007), Omar Karateb v. Turkey (20502/ 05), (2010) (French only) 65- §54; see Special Rapporteur on Torture, 56 / 2004 / §44 (2003) UN Doc. E/CN. 4..

([1945]) Principle 23 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rules 64-67 and 69 of the European Prison Rules.

is the pain or physical, psychological or mental suffering inflicted on the accused as a result of the use of one of the means of torture.

Pepper spray and tear gas should not be used indoors and should never be used against any controlled person [1946].

Torture is achieved by deliberately inhumane treatment that leads to severe pain to obtain confessions, statements or information [1947].

Electroshock weapons (Tasers) should only be used by security personnel specially trained for this purpose and as a last resort in extremely dangerous circumstances, and in the face of an immediate threat to life, where it is not possible to resort to any other method that does not lead to a greater risk of causing injury or death [1948].

This right is based on the assertion of the freedom of the accused to express their statements away from coercion that affects the integrity of their body. This research raises the problem of using modern scientific means in order to coerce the accused to tell the truth. The face we are looking at is related to the legality of using them in interrogating the accused, which affects the right of the accused to express their statements freely, which affects their right to defense. Jurisprudence and the judiciary in most countries of the world have settled on refusing to use scientific means to obtain the accused[1949]'s confession.

When using force against any individual in the place of detention, the authorities should document such use of force [1950].

(b) A person shall not be treated inhumanely or dehumanizingly during the trial. This is confirmed by Article 7 of the International Covenant on Civil and Political Rights ICCPR)[1951].

This individual's right to prompt medical examination and, if necessary, treatment should be respected[1952].

If they are injured, their relatives or close friends should be notified [1953].

Prompt, independent and impartial investigations should be initiated into all allegations of excessive use of force in places of detention and prisons[1954].

([1946]) CPT: Czech Republic, 8) §46 ,CPT/Inf2009, Portugal 13) §92 ,CPT/Inf2009.

([1947]) See the judgment of the European Court of Human Rights of 18 January 1978, CED11, 18 Janvier 1978, Irlande c. Royaume Unie، Droit pénal européen CJ. Pradel et G. Corslens، p. 305..

([1948]) General Report 20 of the Committee for the Prevention of Torture, 28) §65- §84 ,CPT/Inf2010.

([1949]) Merle et Vitu، Traité de droit criminal T. II (procédure pénale)، 1979، p. 164 et 165.

Garven ; Le probléme des nouvelles techniques d'investigation au procés pénale، Rev، Sc. Crim. ، 1950، p. 313 et S.

If it is true to resort to these means for therapeutic purposes, it is not permissible to use them to reveal the truth in criminal litigation. Conscience does not care because it treats man as if he were the subject of experimentation in a laboratory and revives the meaning of torture by robbing man of his feeling and destroying his conscious will.

([1950]) Committee for the Prevention of Torture: Portugal, 4) §14 ,CPT/Inf2013.

([1951]) The European Court of Human Rights has defined inhuman treatment as behavior that causes organic or mental pain of a certain gravity without reaching the degree of severity of torture, for example, the use of the means used by the British army in interrogation in Northern Ireland, namely prolonged standing, head covering, continuous whistling inside the cell, sun deprivation, and deprivation or severe reduction of food and drink for several days.

See:

Cugges Lebreton، Libertés publiques et draits de l'homme. ، 1995، p. 276..

([1952]) The Second General Report of the Committee for the Prevention of Torture, 3) §53 ,CPT/Inf92.

([1953]) Principle 5(c) - (d) of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials..

Concluding [1954]observations of the Human Rights Committee: Honduras,. UN Doc §8 (2006) CCPR/C/HND/CO/1, Paraguay, UN Doc. CCPR/C/pry/CO/2 §11 (2005); see Concluding Observations of the Human Rights Committee: Greece, §9 (2005) UN Doc. CCPR/CO/83/GRC, Moldova, / UN Doc. CCPR/C § §9 (2009) MDA/CO/2 and 11.

10-11-3 Instruments and Methods of Restriction

within the framework of Egyptian law

The Director of the Correction and Rehabilitation Center may order the handcuffing of the inmate with iron if he commits an agitation or severe infringement, and he must immediately refer the matter to the Assistant Minister for the Community Protection Sector, and the period of handcuffing may not exceed 72 hours [1955].

In military reform centers, the director of the reform center may order the handcuffing of the inmate with iron for a period not exceeding 72 hours, with proof of this in the daily record of the incidents of the reform center, stating the reasons and notifying the director of the Correction and Rehabilitation Centers Authority for the centers under his administration and the competent security director for the centers of the security directorates [1956].

The Egyptian legislator also authorized the director of the reform center to order the shackling of the pretrial detainee and the inmate with iron legs in the event of an attempt to escape or if he is afraid to escape and this fear has reasonable grounds. He must immediately report this to the Public Prosecution or the investigating judge, as the case may be, if he is a pretrial detainee, and inform the Assistant Minister of Interior of the Prisons Authority Sector if he is an inmate, provided that each order to shackle iron is recorded in the daily record of the incidents of the reform center with a statement of its reasons, and the security director is notified immediately of this to obtain his approval of this procedure.

The Public Prosecution or the investigating judge may order the lifting of the iron handcuffs if he does not deem it necessary [1957].

It is not permitted to place the iron restriction on the feet of the convict detained in the reform center inside or outside the reform centers except in the event that he is feared to escape on reasonable grounds by an order issued by the Assistant Minister for the Community Protection Sector or the competent Director of Security, as the case may be, or whoever is authorized to do so [1958].

Within the framework of international covenants

While the use of restraining devices and methods can sometimes be necessary, if other methods of control are not found, these remain susceptible to abuse and unjustified use or abuse can amount to torture or other ill-treatment, and can result in death or serious injury

International standards prohibit the use of metal chains or restraints and regulate the use of other means of restraint, such as hand restraints and control vests [1959].

Restraints should never be used against women during labor or childbirth or immediately thereafter[1960].

([1955]) Article 89 of the Law Regulating Correction and Rehabilitation Centers, as amended by Law No. 106 of 2015, and Article 53 of the Internal Regulations of Geographical Reform Centers.

([1956]) Article 43 of the bylaws of the military reform and rehabilitation centers.

([1957]) Articles 90 and 91 of the Law Regulating Correction and Rehabilitation Centers, and Article 54 of the Internal Regulations of Geographical Correction and Rehabilitation Centers.

([1958]) Article 2 of the Law on the Organization of Correction and Community Rehabilitation Centers.

[1959]See Special Rapporteur on Torture, 56/2004 / UN Doc. E/CN. 4. §45 (2003)

Concluding observations of the Human Rights Committee: Republic of Korea,. UN Doc §13 (2006) CCPR/C/KOR/CO/6; CAT Concluding Observations: Japan: §15 (2007) CAT/C/JPN/CO/1 (g); see CAT Concluding Observations: United States of America,. UN Doc §179 (2000) A/55/44 (e).

Rule 33 of the Standard Minimum Rules, and rule 68 of the European Prison Rules..

([1960]) Rule 24 of the Bangkok Rules.

Permitted instruments and methods of restraint may be used only when necessary and proportionate; they shall be continued only as strictly necessary and shall never be used to inflict punishment on a detained person [1961].

The use of some instruments and methods of restraint inherently involves cruel, inhuman and degrading treatment, and therefore physical electrocution belts should never be used [1962].

The use of blindfolds should also be explicitly prohibited [1963].

Amnesty International calls for the prohibition of dangerous restraints, including holding diphtheria, pressing on neck arteries or vessels, and handcuffing feet[1964].

The use of restraints such as handcuffs during the process of legal arrest of a person usually does not amount to cruel, inhuman or degrading treatment if it is necessary (for example to prevent an individual from fleeing or from causing harm or damage), and if it does not involve the unreasonable use of force or exposure of the person in public[1965].

But if restrictions are used without justification or necessity or used in a way that causes pain and suffering, this amounts to cruel, inhuman or degrading treatment [1966].

Restrictions must be removed at the time of the person's appearance before the court [1967].

The European Court ruled that unnecessarily handcuffing the accused or placing him in a metal cage during the course of the trial amounts to degrading treatment [1968].

Cases of restraint of the individual should be recorded, and the person restrained should be kept under continuous supervision [1969].

10-11-4 Self-inspection

within the framework of Egyptian law

The principle under Egyptian law requires that every inmate is searched upon being admitted to a correctional facility. Any prohibited items, money, or valuables in their possession are confiscated and recorded in a logbook for inmate belongings and deposits, with sufficient descriptions provided.

Concluding observations of the Human Rights Committee: United States of America, §33 (2006) UN Doc. CCPR/C/USA/CO/3/Rev/1; CPT General Report 10, 13) §27 ,CPT/Inf2000; CAT Concluding Observations: USA, / UN Doc. CAT/C/USA §33 (2006) CO/ 2; see Special Rapporteur on Torture,. UN Doc. §41 (2008) A/HRC/7/3.

([1961]) Principle 5 of the Principles of Medical Ethics, Rules 33-34 of the Standard Minimum Rules, Rules 60/6 and 68/3 of the European Prison Rules, and Guideline 120 of the ICC Guidelines..

([1962]) Committee for the Prevention of Torture: General Report 20, 15) §74 ,CPT/Inf2010, Hungary, 16) §120 ,CPT/Inf2010.

([1963]) General Report 12 of the Committee for the Prevention of Torture, 15) §83 ,CPT/Inf2002; Special Rapporteur on Torture: 156 / §93 (2001) ,UN Doc. A. 56 (f), §26 (2002) ,UN Doc. E/CN. 4/2003/68 (g); Concluding observations of the Committee against Torture: Liechtenstein, §23 (2010) ,UN Doc. CAT/C/LIE/CO/3..

([1964]) Among other documents, Amnesty International, USA: “Less than deadly”? U.S. Use of Stun Weapons in Law Enforcement, Document No.: 2008/010/ AMR 51, p. 54 ,. Rec. 8.

([1965]) See, e.g., European Court: Harutyuanian v. Armenia (34334/ 04), § 124- §129 (2010); Ocalan v. Turkey (46221/ 99), Grand Chamber (2005) 185- §184; see also Cabal and Bertrand v. Australia, Human Rights Commission, . 1/ §8 (2003) UN Doc. CCPR/C/78/D/1020/2001.

([1966]) European Court: Yagiz v. Turkey (27473) / 02), (48- § §46 (2007), Kashavilov v. Bulgaria (891) / 05), (40- § §38 (2011)); Kucherok v. Ukraine (2570) / 04), (145- §139 (2007), Stratije et al. v. Moldova §55- §59 (2007) , (8721/05 et al), Okhrimenko v. Ukraine (53896) / 07) §93- §98 (2009), Hanaf v. France (65436) / 01), (60- § §47 (2003)..

([1967]) Rule 33 of the Standard Minimum Rules, and rule 68 (2) (a) of the European Prison Rules.

([1968]) European Court: Harutyuanyan v. Armenia (34334) / 04), (2010) 129- §124; Ramishvili and Kokhridze v. Georgia (1704) / 06), (- §98 (2009) 102, Gorodnichev v. Russia (52058) / 99), (109- §105 (2007).

([1969]) Concluding observations of the Committee against Torture: New Zealand,. UN Doc §9 ,CAT/C/NZL/CO/5; Second General Report of the Committee for the Prevention of Torture, CPT/Inf §53 ,(92)3.

If the inmate owes financial obligations to the government as stipulated by a court sentence, these obligations are settled from the money found in their possession. If the money is insufficient to cover the debt and the inmate does not fulfill these obligations after being notified, valuable items in their possession are sold by the Public Prosecution to cover the outstanding amount. The sale process halts once a sufficient amount is raised to fulfill the government's claim.

Should the collected funds, including proceeds from the sale, fall short of the financial obligations, the inmate retains an amount no less than one Egyptian pound, which is recorded under their account in deposits. The remaining balance is credited to the government.

If any surplus remains after settling the obligations, it is recorded in the inmate's deposit account for personal use when needed, unless the inmate requests that the remaining balance be handed over to a designated individual or their legal guardian[1970].

Any item concealed by the inmate, refused to be surrendered, or secretly delivered to them by others inside the correctional facility may be confiscated[1971].

Within the framework of international covenants

Self-searches of detainees and prisoners must be necessary, reasonable and proportionate, must be organized under the provisions of national law and must be conducted in a manner consistent with the personal dignity of the inspected human being, and by trained staff of the same sex [1972].

When a transgender person is searched, their request to be searched by a person of either sex should be respected

Subjective inspections of sensitive parts of the body should be exceptional and should only be carried out by appropriately trained personnel, or by a general practitioner, if requested by the detainee or prisoner. The general practitioner should normally not be the same person who provides medical care to the prisoner [1973].

The Principles Relating to Persons Deprived of their Liberty in the Americas state that vaginal or anal searches must be prohibited by[1974] law.

Strip searches as well as subjective searches of sensitive parts of the body in a humiliating manner can constitute torture or other ill-treatment [1975].

Alternative inspection methods should be developed to remove clothing with the intention of self-inspection or manual inspection, such as scanning devices [1976].

([1970]) Article 9 of the Law Regulating Correction and Rehabilitation Centers, Article 5 of Presidential Decree No. 82 of 1984, Articles 5, 6, 8, 9 of the Internal Regulations of Geographical Reform Centers, Articles 5, 6, 7 of the Internal Regulations of Military Reform Centers, and Article 1045 of the written, financial, and administrative instructions of the Public Prosecution.

([1971]) Article 12 of the Law on the Organization of Correction and Community Rehabilitation Centers.

([1972]) Rules 19-21 of the Bangkok Rules, Principle 21 of the Principles for Persons Deprived of their Liberty in the Americas, and Rule 54 of the European Prison Rules.

Human Rights Committee General Comment 16, §8; CPT General Report 10, 13) §23 ,CPT/Inf2000; see Concluding Observations of the Committee against Torture: France, 6- §28 (2010) UN Doc. CAT/C/FRA/CO/4, Hong Kong, §10 (2008) UN Doc. CAT/C/HKG/CO/4..

Third [1973]General Report of the Committee for the Prevention of Torture, 12) §73 ,CPT/Inf93; World Medical Association, Statement on Body Searches of Prisoners; Concluding Observations of the Committee against Torture: Hong Kong, / UN Doc. CAT/C §10 (2008) ‹HKG/CO/4..

([1974]) Principle 21 of the Principles Relating to Persons Deprived of their Liberty in the Americas..

Bodo [1975]v. Trinidad and Tobago, Commission on Human Rights, / UN Doc. CCPR 5/ §6 (2002) C/74/D/721/1996 & 6/7; López Álvarez v. Honduras, Inter-American Court § §54 (2006) (12) & 107.

([1976]) Rule 20 of the Bangkok Rules, Principle 21 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

The European Court found that the use of a tool to search the body of a suspect for the purpose of obtaining evidence of guilt in a drug-related crime - without being necessary, and in a manner that posed a risk to their health, while alternative, less humiliating methods of obtaining evidence could have been resorted to - constituted inhuman and degrading treatment of them [1977].

10.12 Duty to Investigate Torture and Right to Remedy and Reparation for Victims of Torture

Within the framework of international covenants

Individuals subjected to torture and other forms of ill-treatment must have access to accessible and effective remedies. In particular, States must ensure that allegations of torture are promptly, impartially, independently and thoroughly investigated, that victims have access to effective remedies and reparations, and that those responsible are brought to justice [1978].

States must provide complaint mechanisms consistent with the right to an effective remedy[1979].

Even without an explicit complaint from the victim, an investigation should be opened where there are reasonable grounds to believe that an act of torture or other ill-treatment has occurred[1980].

The failure of the State to open an investigation into allegations of torture or other ill-treatment constitutes a violation of the right to an effective remedy and the right not to be subjected to torture or other ill-treatment [1981].

Victims and their lawyers must have access to all relevant information, attend any hearings concerning their complaints and have the right to present evidence. Victims and witnesses must be protected from any reprisals or intimidation, including counter complaints, as a result of their complaints [1982].

Concluding observations of the Committee against Torture: Hong Kong,. UN Doc §10 (2008) ,CAT/C/HKG/CO/4, France, 6- ,UN Doc. CAT/C/FRA/CO/4. §28 (2010).

([1977]) Glouh v. Germany (54810/ 00), Grand Chamber of the European Court. 83- § §67 (2006).

([1978]) Article 8 of the Universal Declaration, articles 2 and 7 of the International Covenant, articles 12-14 of the Convention against Torture, articles 5 and 7 of the African Charter, articles 5 and 25 of the American Convention, articles 8-9 of the American Convention against Torture, article 23 of the Arab Charter, articles 3 and 13 of the European Convention, articles 8-11 of the Declaration against Torture, guidelines 19-16, 40 and 49-50 of the Robben Island Guidelines, sections C(a) and M7 (g) - (j) of the principles of fair trial in Africa, article 18 of the American Declaration, and principle 5 of the principles relating to persons deprived of their liberty in the Americas.

General Comment 31 of the Human Rights Committee, 16- § §51; 14 Report of the Committee for the Prevention of Torture, 28 (36- §31),CPT/Inf 2004.

General [1979]Comment 3 of the Committee against Torture, §23; see Concluding Observations of the Committee against Torture: Tunisia, 44 / §102 (1998) UN Doc. A/54..

([1980]) Article 12 of the Convention against Torture and Principle 2 of the Istanbul Protocol.

CAT General Comment 3, §27, Concluding Observations: Peru, 44 / § §169 (2001) ,UN Doc. A/56 and 172; see, e.g., Committee against Torture: Latif v. Tunisia, 2001/2003) UN Doc. CAT/C/31/D/89) 8/10-6/ §10, Blanco Abad v. Spain, 1996 / UN Doc. CAT/C/20/D/59 . 8/8-2/ §8 (1998).

[1981]See, e.g., Avadanov v. Azerbaijan, Commission on Human Rights, 5/9-3/ §9 (2010) UN Doc. CCPR/C/100/D/1633/2007; Aydin v. Turkey (94/23178), Grand Chamber of the European Court 103 § (1997)..

([1982]) General Comment 3 of the Committee against Torture, 31- § §30; General Report 14 of the Committee for the Prevention of Torture, 28 39 § ,CPT/Inf 2004.

Article 13 of the Convention against Torture, and Guideline 7 of the Council of Europe Guidelines for the Eradication of Impunity; see Articles 12 and 18 (2) of the Convention on Enforced Disappearances.

Principle 3(b) of the Principles for the Investigation of Torture..

Any person suspected of involvement in acts of torture and other ill-treatment must be removed from any position that allows them to control or exercise any authority over complaints, witnesses and investigators [1983].

State representatives suspected of having committed torture or other ill-treatment should be suspended from their duties during the investigation [1984].

The investigation should include a medical examination of the victim of torture; where the medical examination shows that the person is suffering from injuries that were not present at the time of his arrest, he should be presumed to have been ill-treated while in detention [1985].

A person who has been tortured or otherwise ill-treated is entitled to obtain redress for the harm suffered, regardless of whether the persons responsible for the torture have been identified and brought to justice [1986].

Reparation should include financial compensation and rehabilitation, including medical and psychological care, social and legal services, satisfaction and guarantees of non-repetition[1987].

The compensation provided by the State to the victim must be sufficient to redress it; while the forms of reparation should be commensurate with the violations suffered [1988].

It is not possible that the State has fulfilled the right of victims to a remedy and reparation by simply providing them with financial compensation, as the State must ensure that the investigation is able to identify the persons responsible and bring them to justice, so that they can be punished commensurate with the gravity of the violation they committed [1989].

The State shall also not relieve offenders of their responsibility in such ways as pardoning them, paying compensation to the victim, immunities, or other similar measures [1990].

([1983]) Principle 3(b) of the Istanbul Protocol..

([1984]) Gavgen v. Germany (22978) / 05), Grand Chamber of the European Court §125 (2010); Special Rapporteur on Torture,. UN Doc §26 (2002) E/CN. 4/2003/68 (k); Committee against Torture, e.g. El Salvador, §12 (2009) UN Doc. CAT/C/SLV/CO/2 (b); Concluding observations of the Human Rights Committee, e.g. Brazil, UN Doc. CCPR/C/79/Add. 66. §20 (1996).

([1985]) Concluding observations of the Committee against Torture: Cyprus,. UN Doc §4 (2002) ,CAT/C/CR/29/1 (a); European Court: Aksoy v. Turkey §61 (1996) ,(93/21987); Salmouni v. France (25804/ 94), (1999). §87.

Principle [1986]9 of the Basic Principles on Reparation for Injuries, and Section 2(5) of the Council of Europe Guidelines on the Eradication of Impunity.

General Comment 3 of the Committee against Torture, § §3 and 26.

The [1987]Basic Principles on Reparation (in particular Principles 15-23), and Principle 16 of the Council of Europe Guidelines on the Eradication of Impunity.

General Comment 3 of the Committee against Torture, 17- § §15.

([1988]) See, e.g., Siurab v. Moldova (No. 2) (7481) / 06), European Court (25- §24 (2010); Raxcaco-Reyes v. Guatemala, Inter-American Court (116- §114 (2005)).

([1989]) General Comment 31 of the Human Rights Committee, § §15 and 18; General Comment 3 of the Committee against Torture, § §9 and 17, Guridi v. Spain, Committee against Torture, 2002/8/6-6/ §6 (2005) ,UN Doc. CAT/C/34/D/212; European Court: Gavgen v. Germany (22978) / 05), Grand Chamber 119 § (2010); Okali v. Turkey (52067) / 99), (78- §71 (2006); CPT General Report 14,) 28 § §31 ,CPT/Inf 2004 and 40 - 41.

([1990]) General Comment 31 of the Human Rights Committee, §18; General Comment 2 of the Committee against Torture, §5; General Comment 3 of the Committee against Torture, 42- §40; Principles 19, 22 and 31-35 of the Updated Principles on Impunity.

Part Two: Rights During Trial

Chapter Eleven: The Right to Trial Before a Competent, Independent, and Impartial Court Established by Law

It is a fundamental principle and condition of a fair trial that the court responsible for hearing and adjudicating the case shall be legally constituted, competent, independent and impartial.

11.1 Right to be Tried by A Competent, Independent and Impartial Tribunal

11-1-1 Within the framework of Egyptian law

The judge's duty in applying the law requires knowing the legislator's will correctly, which can only be achieved if he has complete freedom to derive this will, not influenced by a particular idea and not subject to interference from these two authorities. This independence does not mean control or tyranny in opinion or judgment, but it means not being subject in extracting the word of the law and applying it to anything other than the judge's conscience and his free and sound conviction .[1991]

Therefore, Article 94 of the Egyptian Constitution stipulates that: "..." The independence, immunity and impartiality of the judiciary are basic guarantees for the protection of rights and freedoms.

The basic guarantee of judicial independence is the irremovability of its members.

The immunity of judges is one of the most important guarantees of judicial independence. This immunity means that the judge enjoys two types of protection:

Protection against his arbitrary removal from the judicial position, whether through dismissal, referral to retirement, suspension from work, or transfer to another position.

Protection from being moved to another place.

Thus, immunity is of two types:

Functional immunity, protects a judge from being removed from his position.

And spatial immunity, which protects the judge from being removed from his position.

In fact, a judge who fears for his position does not rule fairly. This does not mean that the judge has become the owner of his position, or that no matter how much a judge makes a mistake or does wrong, he will continue in his position. Rather, immunity is considered to secure the judge from the risk of being abused and his future being lost, without prejudice to referring him to disciplinary trial for any mistakes he commits.

The Egyptian Constitution has guaranteed the immunity of judges, stipulating that they cannot be dismissed. Article 186 states that: "Judges are independent and cannot be dismissed. There

---

([1991]) See on the subject: Muhammad Asfour, Independence of the Judiciary, Judges' Magazine, 1998, p. 209 and following; Counselor Muhammad Wagdi Abd al-Samad: Excusing Ignorance of the Law, Alam al-Kutub, 1973, p. 718 and following. Muhammad Kamil Obaid, Judicial Independence, PhD Thesis, 1991.

is no authority over them in their work other than the law. They are equal in rights and duties. The law determines the conditions and procedures for their appointment, secondment, and retirement, and regulates their disciplinary accountability. They may not be assigned, in whole or in part, except to the bodies and in the work specified by the law. All of this is in a manner that preserves the independence and impartiality of the judiciary and judges and prevents conflicts of interest." The law specifies the rights, duties and guarantees granted to them.

This was confirmed by the Judicial Authority Law issued in 1972, which stipulated that judges cannot be dismissed except through disciplinary means. Article 67 thereof stipulated that: "Judicial and public prosecution officers - except for assistant prosecutors - cannot be dismissed, and judges of the Court of Cassation may not be transferred to the courts of appeal or the public prosecution except with their consent."

The judiciary is tried disciplinary before a special disciplinary board consisting of the most senior presidents of the Courts of Appeal who are not members of the Supreme Judicial Council as president, and the two most senior judges of the Court of Cassation and the two most senior vice presidents of the Court of Appeal as members.[1992].

The judge's immunity is not limited to the position he holds, but extends to the court in which he works and protects him from being transferred to another court except with his consent, since the guarantee that judges cannot be dismissed is not sufficient alone to guarantee the judges' reassurance in their work, because courts of various degrees are spread throughout the republic and in cities that vary in terms of environment and living conditions, and there are multiple circuits within the primary court or the court of appeal, and the transfer order can be a means of spite against some by transferring them to remote places, or by attracting others by keeping them in the capital or nearby cities, or by distancing them from the case they are hearing by redistributing the work to them in another circuit.

The prohibition on transferring a judge is a result of his inability to be removed, and therefore it has the same constitutional value as the immunity of the judge from removal as stipulated in the constitution. Therefore, what is meant by removal does not apply to the judicial function as a whole, but also applies to the case that he is examining.

The Judicial Authority Law confirmed this, stating in Article 52 that: "Judges may not be transferred, assigned or loaned except in the cases and in the manner specified by law."

Articles 53 and the following specify the provisions for the transfer of judges.[1993]

Articles 55 and beyond also regulate the controls for their secondment, making the period temporary and requiring the approval of the Supreme Judicial Council.[1994].

Since the immunity of the judiciary derives its value from the Constitution, it follows that its value may not be diminished by a decision issued by one of the bodies responsible for administering justice affairs that includes the removal of a judge from examining a case that falls within his jurisdiction if this is not based on objective, abstract reasons regulated by law, in a manner that does not involve any suspicion of infringing on the immunity of the judiciary.

The Supreme Constitutional Court ruled that: [The current constitution has adopted, pursuant to the text of Article (4) thereof, the principle of justice, as it is, along with the principles of equality and equal opportunities, a basis for building society and preserving its national unity. For this reason, the constitution was keen in Article (96) thereof to make it a regulator of a fair and just legal trial, which guarantees the accused the guarantees of defending himself. Criminal justice,

---

([1992] Article No. 98 of the Judicial Authority Law.
([1993]) See Articles 53, 54, and 59 of the Judicial Authority Law.
([1994]) See Articles Nos. 55, 56, 57, 58, 62, 64 of the Judicial Authority Law.

in its essence - according to the rulings of this court - is what must be guaranteed through precisely and fairly defined rules, in the light of which it is determined whether the accused is convicted or innocent. This assumes a balance between the interest of the group in the stability of its security, and the interest of the accused in not imposing a penalty on him that has no connection to an act he committed, or for which this connection lacks evidence. Therefore, criminal justice may not be separated from its components, which guarantee each accused a minimum of rights that may not be waived or neglected, nor may it compromise the necessity for criminalization to remain linked to the ultimate purposes of penal laws.][1995] .

11-1-2 Within the framework of international conventions

Everyone facing a criminal trial has the right to be tried by a competent, independent and impartial tribunal established by law.[1996]

The independence of the judiciary is a fundamental pillar of the principle of legitimacy in general and a guarantee of the rule of law (legitimacy).

That is why the Seventh and Eighth United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, held in Milan in 1985 and in Cuba in 1990, affirmed that the principle of the independence of the judiciary is the basis of legitimacy and equality before the law.

Judicial independence means that its authority is free from any interference by the legislative and executive authorities, and that judges are not subject to anything other than the law. Judicial independence is an important element in the honor and prestige of the judiciary. Without it, the judiciary loses its value and usefulness in protecting freedoms.[1997]

This right requires States to establish and maintain independent and impartial courts. States must ensure that sufficient human and financial resources are available for the judicial system to function effectively throughout the country. They must also ensure the continuity of legal education for judges, prosecutors and other judicial personnel, and address any corruption or discrimination in the administration of justice.[1998]

The right to have one's case heard by an independent, impartial and legally constituted tribunal is an absolute right, without exception, and is a general principle of customary international law,

---

([1995]) The ruling of the Supreme Constitutional Court in Case No. 217 of 31 Q issued in the session of January 4, 2020, date of publication January 13, 2020, page No. 17.

([1996]) Article 10 of the Universal Declaration, Article 14(1) of the International Covenant, Article 40(2)(b)(iii) of the Convention on the Rights of the Child, Article 18(1) of the Migrant Workers Convention, Articles 7(1) and 26 of the African Charter, Articles 8(1) and 27(2) of the American Convention, Articles 12 and 13 of the African Charter, Article 6(1) of the European Convention, Basic Principles on the Independence of the Judiciary, Section A(1) of the Principles of Fair Trial in Africa, Article 26 of the American Declaration.

([1997] General de Gaulle expressed the importance of judicial independence by saying: “The proper guarantee of the adequacy, honor, and neutrality of the state depends on ensuring the independence of the judiciary and its continued preservation of the freedom of each individual” (his speech in the Place de la République in Paris on September 4, 1908, cited in: Notes and Etudes documentaires, l'organisation judiciaire en France, 14 February). 1972, p. 75.

([1998]) Article 26 of the African Charter, and Principles 6 and 7 of the Basic Principles on the Independence of the Judiciary; see Article 13 of the Arab Charter.

Principles 4(14)-(15) and 5 and 6(3)-(4) of the Bangalore Principles; Concluding Observations of the Human Rights Committee: Bosnia and Herzegovina, / UN Doc. CCPR/C/BIH §13 (2006) CO/1; Central African Republic, / UN Doc. CCPR/C/CAF §16

(2006) CO/2, Democratic Republic of the Congo, / UN Doc. CCPR/C §21 (2006) COD/CO/3; Special Rapporteur on the independence of judges and lawyers, 26/§18-§24 (2010) UN Docs. A/HRC/14 and 99(e), . 58- § §56

(2011) A/HRC/17/30.

binding on all States (including those that have not ratified international treaties) at all times, even during states of emergency and armed conflict.[1999]

The Human Rights Committee has made it clear that no one may be tried for a criminal offence except by a court established by law. Any criminal conviction issued by a body other than an independent and impartial court established by law does not meet the requirements of Article 14 of the International Covenant.[2000]

The right to a trial before a competent, independent and impartial tribunal established by law requires "not only that justice be done, but also that it be seen to have been done."

In determining whether there is a legitimate reason to fear that a particular court lacks independence or impartiality, the decisive factor remains whether the doubts raised are objectively justified.[2001]

Fair trial guarantees, including the right to be tried by a competent, independent and impartial tribunal, apply to all courts: whether ordinary or military, courts established according to customary law or religious courts, recognized by the State in its legal system.[2002]

The Human Rights Committee has stressed that judgments issued under customary law and religious courts should only be binding in the following cases:

When the proceedings relate to secondary civil or criminal matters;

When the proceedings meet the basic requirements of a fair trial and other relevant human rights guarantees enshrined in the International Covenant;

When the State courts verify them in the light of the guarantees enshrined in the International Covenant ;[2003] .

When the judgments can be appealed by the disputing parties in a procedure that meets the requirements of Article 14 of the International Covenant [2004]

Fair trial principles in Africa require that such courts respect international fair trial standards, but allow for appeals of judgments to a higher traditional court, an administrative authority or a judicial tribunal.[2005]

The Universal Declaration on the Independence of Judges, Montreal, 1983, guaranteed that the retirement age of those currently in office may not be changed without their consent.[2006]

([1999]) Article 4 of the Arab Charter; see Article 27(2) of the American Convention.
Human Rights Committee General Comment 32, §19 and General Comment 29, §16; UN General Assembly Resolution 67/166, Preamble §11 and Resolution 213/65, Preamble §9; Civil Liberties Organization, Legal Center for Defense and Defense and Aid Project
Legal v. Nigeria (218)/98), African Commission §27 (2011); González del Río v. Peru, Human Rights Committee,. UN Doc 1/ §5 (1992) CCPR/C/46/D/263/1987; Reveron Trujillo v. Venezuela, Inter-American Court 68 §
(2009); see the advisory opinions of the Inter-American Court: 87/§29-§30 (1987) OC-8, and 87/§20 (1987) OC-9; ICRC Study on Customary International Humanitarian Law, Vol. 1, Rule 100, p. 352 -
365. ?.

([2000]) General Comment 32 of the Human Rights Committee, §18.

([2001]) See European Court: Incal v. Turkey (22678)/93), (1998) § 71, Borgers v. Belgium (12005)/86), (29- § § 24 (1991), Kress v. France (39594)/98), Grand Chamber (87- § § 81 (2001); Delcourt v. Belgium § 31 (1970), (65/2689).

([2002]) See Section F of the Principles on Fair Trial in Africa.

([2003]) See M. Nowak, The International Covenant on Civil and Political Rights: A Commentary on the Provisions of the Covenant, Second Revised Edition, Engel, 2005, pp. 319-356.

([2004]) General Comment 32 of the Human Rights Committee, §24.

([2005]) Section F of the Principles of Fair Trial in Africa..

([2006] Principle 22. 2 of the Universal Declaration on the Independence of Judges.

Principle 11 of the Basic Principles on the Independence of the Judiciary states that: "The term of office, independence, security, adequate remuneration, conditions of service, pension and age of retirement of judges shall be adequately guaranteed by law. "[2007]

The tenth principle of the Basic Principles on the Independence of the Judiciary, issued in 1985, requires that those selected for judicial positions must be competent and have appropriate training and qualifications in law, stating that: "Those selected for judicial positions must be individuals of integrity and competence, and have appropriate training or qualifications in law. Any method of selecting judges must include: On guarantees against appointment to judicial positions for improper motives. In the selection of judges, no person shall be subject to discrimination on the grounds of race, color, sex, religion, political or other opinions, national or social origin, property, birth or status, provided that it shall not be considered discrimination to require that a candidate for a judicial position be a national of the country concerned.

11-2 The right to a trial before a court established by law

11-2-1 Within the framework of Egyptian law

Article 184 of the Constitution states that: "The judicial authority is independent and is exercised by the courts of all types and levels. They issue their rulings per the law, and the law defines their powers. Interference in the affairs of justice or cases is a crime that does not lapse by prescription "[2008] The Supreme Constitutional Court ruled that: [The Constitution, in Article (96), meant to guarantee the right to a fair trial, as it stipulated that the accused is innocent until proven guilty in a fair legal trial that guarantees him the right to defend himself. This is a right stipulated in Articles 10 and 11 of the Universal Declaration of Human Rights, the first of which states that every person has a full and equal right to a fair and public trial by an independent and impartial court, which shall decide his civil rights and obligations or the criminal charge against him. The second of them reiterates in its first paragraph the right of every person charged with a criminal offence to be presumed innocent until proven guilty in a public trial at which he has been provided with the necessary guarantees for his defense. This paragraph reiterates a rule that has been established in democratic countries, and within its framework lies a group of basic guarantees that, when integrated, ensure a concept of justice that is generally consistent with contemporary standards in force in civilised countries. It thus relates to the formation of the court and the rules of its organisation, the nature of the procedural rules in force before it, and how they are applied in practice. It is also considered, within the scope of the criminal accusation, to be closely related to personal freedom, which the Constitution stipulated in Article (54) as one of the natural rights that may not be infringed upon, violated or restricted in violation of its provisions. Therefore, this rule cannot be interpreted narrowly, as it is a basic guarantee to repel aggression against the citizen's rights and basic freedoms. It is what guarantees his enjoyment of it within a framework of equal opportunities. Although its scope is not limited to criminal accusations, but extends to every lawsuit, even if the rights raised therein are civil, a fair trial is considered more necessary in a criminal lawsuit, regardless of the nature of the crime and regardless of its degree of seriousness. The reason for this is that convicting the accused of a crime exposes him to the most serious restrictions on his personal freedom, and the most threatening to his right to life. These are risks that can only be avoided in light of actual guarantees that balance the individual's right to freedom on the one hand, and the group's right to defend its basic interests on the other. This is achieved whenever the criminal

---

([2007]) Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, and endorsed by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/164 of 13 December 1985.

([2008] Article No. 184 of the Constitution.

accusation is known by the charge, stating its nature, detailing its evidence and all the elements associated with it, and taking into account that the decision on this accusation is made by an independent and impartial court established by law, and that the trial is conducted in public - and within a reasonable period - and that the court bases its decision of conviction - if it reaches it - on an objective investigation conducted by itself, and on an impartial presentation of the facts; and on a fair assessment of the conflicting interests, and fairly weighing the conflicting evidence; and all of these are essential guarantees without which a fair trial cannot be established. Hence, the Constitution guaranteed it in Article (96) and linked it to two guarantees that are considered its components and fall under its concept, namely the presumption of innocence on the one hand; and the right to defense to refute the criminal accusation on the other hand, which is a right reinforced by Article (98) of the Constitution by stating that the right to defense in person or by proxy is guaranteed. Whereas this was the case, and the Constitution had taken a broader step in establishing the values of rights and freedoms, by stipulating in Articles (5, 51, 92) respect for human rights, dignity and freedoms, and protecting the rights and freedoms inherent in the person of the citizen, by stipulating an additional guarantee that they are not subject to reduction or suspension, denying the legislator the possibility of including them] [2009].

First: Criminal Court

Article No. 366 of the Criminal Procedure Code stipulates that: “One or more courts shall be formed in every Court of Appeal to consider criminal cases, and each shall be composed of three of its judges, headed by at least one of the Vice-Presidents of the Court of Appeal.”

One or more circuits of the Criminal Court, each of which shall have the rank of President of the Court of Appeal, shall be designated to consider the felonies stipulated in Chapters One, Two, Two Repeated, Three and Four of Book Two of the Penal Code, and the crimes related to those felonies. These cases shall be adjudicated expeditiously.” Article Six of the Judicial Authority Law stipulates that: “The headquarters of the Courts of Appeal shall be in Cairo, Alexandria, Tanta, Mansoura, Ismailia, Beni Suef, Assiut and Qena. Each shall consist of a president and a sufficient number of presidents, deputies, heads of circuits and judges. Judgments shall be issued by three judges. The Court of Appeal may convene in any other place within its jurisdiction or outside this jurisdiction when necessary - by a decision issued by the Minister of Justice based on a request from the President of the Court of Appeal. An exceptional circuit may also be formed on a permanent basis in one of the centers of the primary courts by a decision issued by the Minister of Justice after taking the opinion of the General Assembly of the Court of Appeal.”

Article 7 of the Judicial Authority Law stipulates that: “One or more courts shall be formed in each Court of Appeal to consider criminal cases, and each shall be composed of three judges from the Court of Appeal. The Criminal Court shall be headed by the President of the Court, one of his deputies, or one of the heads of the departments, and when necessary, one of the judges may head it.”

The General Assembly of each Court of Appeal shall appoint, each year, upon the request of its President, one of its judges to be entrusted with judging the criminal courts. If an impediment occurs to one of the judges appointed for a session of the criminal court, he shall be replaced by another judge delegated by the President of the Court of Appeal.

([2009]) The ruling of the Supreme Constitutional Court in Case No. 202 of 32 Q issued in the session of November 3, 2018, date of publication November 13, 2018, page No. 3.

In urgent cases, the president of the primary court located in the area where the criminal court is held or its representative may sit in his place. In this case, no more than one person other than the judges may participate in the ruling.[2010].

Accordingly, the Court of Cassation ruled that the issuance of a ruling by a panel of four advisors results in its nullity, and the Court of Cassation may overturn the ruling for this reason on its initiative in the interest of the accused.[2011]

The Court of Cassation also ruled that the issuance of a ruling by a criminal court composed of two judges results in its nullity, which reduces it to the point of nullity.[2012]

However, on the other hand, the distribution of work among the departments of the Court of Appeal and the appointment of judges entrusted with the judiciary in the Criminal Court is an administrative organization among the departments of the court, so nullity does not result from the issuance of a ruling by a department of the Court of Appeal that is originally competent in civil matters, as that distribution does not create a type of jurisdiction that is exclusive to one department without another department, which does not result in nullity if it is violated.[2013]

Second: The Criminal Court of Appeal

In each Court of Appeal, one or more courts shall be formed to which appeals shall be made against judgments issued by the first-degree criminal chambers. Each court shall consist of three of its judges, at least one of whom shall hold the rank of President of the Court of Appeal and the presidency of the court shall be the most senior of them.[2014] .

Article (368):

The General Assembly of each Court of Appeal shall appoint, each year, upon the request of its President, any of its judges to work in the criminal courts of both levels.

If an impediment occurs to one of the judges appointed for a session of the Criminal Court in its two degrees, he shall be replaced by another judge appointed by the President of the Court of Appeal of the same degree. [2015]

Third: Misdemeanor Court

As for misdemeanor courts, partial courts are established within the jurisdiction of each primary court, and their establishment, location and jurisdiction are determined by a decision of the Minister of Justice. Within the jurisdiction of each center or section, there is a partial court formed of one judge from the judges of the primary court to which the partial court is affiliated, and judgments in partial courts are issued by one judge.

The District Court may convene in any other place within its jurisdiction or outside this jurisdiction when necessary - by a decision of the Minister of Justice based on a request from the President of the Court. [2016]

([2010] Article No. 367 of the Code of Criminal Procedure.

([2011]) Appeal No. 119 of 83 Q issued in the session of May 12, 2013 and published in Technical Office Book No. 64, page No. 620, Rule No. 86, Appeal No. 9870 of 80 Q issued in the session of January 12, 2011 and published in Technical Office Book No. 62, page No. 19, Rule No. 4.

([2012] Appeal No. 21424 of year 63 Q issued in the session of September 27, 1995 and published in the first part of the Technical Office Book No. 46, page No. 970, rule No. 149.

([2013]) Appeal No. 1734 of 50 Q issued in the session of January 26, 1981 and published in the first part of Technical Office Book No. 32, page No. 79, Rule No. 12, Appeal No. 250 of 40 Q issued in the session of March 22, 1970 and published in the first part of Technical Office Book No. 21, page No. 431, Rule No. 106.

([2014] Article No. 367 of the Criminal Procedure Code, amended by Article 2 of Law No. 1 of 2024 amending some provisions of the Criminal Procedure Code.

([2015] Article No. 368 of the Criminal Procedure Code, amended by Article 2 of Law No. 1 of 2024 amending some provisions of the Criminal Procedure Code.

Fourth: Misdemeanor Appeal Court

A division of the Court of First Instance is competent to consider appeals filed against rulings issued by partial courts in violations and misdemeanors in the criminal or civil lawsuit attached thereto. It is held in the capital of each governorate .[2017] .

Fifth: Child Court

The establishment of specialized courts to consider crimes against children is justified by the special nature of child crime, both in terms of its causes and methods of treatment, which requires that some judges specialize in considering it, to gain experience in it, and have enough time to study such cases. The establishment of such courts is also justified by the necessity of following special procedures in trying children, to protect their psychology and future, and these procedures are difficult to follow before ordinary courts that apply procedures of a different kind.

One or more courts for children shall be formed in the headquarters of each governorate, consisting of three judges. The court shall be assisted by two experts, at least one of whom shall be a woman. Their attendance at the trial proceedings shall be mandatory. The two experts shall submit their report to the court after examining the child's circumstances from all aspects before the court issues its ruling. Appeals of rulings issued by the child's court shall be before an appellate court formed in each primary court of three judges, at least two of whom shall be at the rank of court president, and they shall be assisted by two experts from the specialists as detailed above.[2018] .

Sixth: Military Courts

Military courts were established to deal with military crimes. A military crime is an act committed by a person subject to the Military Judiciary Law in violation of the military order imposed by this law. This means that a military crime is distinguished by the person who commits it, as he must be subject to the Military Judiciary Law, and the basic principle is that he must be a military man. It is also distinguished by the type of act he commits, as it is assumed that it involves a violation of the military order and is therefore subject to criminalization by the Military Judiciary Law.

Military courts have four levels:

The Supreme Court of Military Appeals, composed of the President of the Military Judiciary Authority and a sufficient number of his deputies and military judges with the rank of colonel or more. It consists of several circuits headed by the President of the Court or one of his deputies with the rank of brigadier or more. Judgments are issued by five military judges..[2019]

The Military Criminal Court, which consists of several circuits, and each circuit is composed of three military judges headed by the most senior of them, whose rank is no less than colonel, and in the presence of a representative of the military prosecution.[2020]

The Military Court of Appeal for Misdemeanors, which consists of several circuits, and each circuit is composed of three military judges headed by the most senior of them, whose rank is not less than that of lieutenant colonel, and in the presence of a representative of the military prosecution.[2021]

([2016] Articles Nos. 11 and 14 of the Judicial Authority Law.
([2017] Article No. 9 of the Judicial Authority Law.
([2018] Articles Nos. 120 and 121 of the Child Law.
([2019] Articles No. 43 and 43 bis of the Military Judiciary Law.
([2020] Article No. 44 of the Military Judiciary Law.
([2021] Article No. 45 of the Military Judiciary Law.

The Military Court for Misdemeanors, which consists of several circuits, each circuit consisting of one judge whose rank is not less than major, and in the presence of a representative of the military prosecution.[2022]

A military trial may be held anywhere, regardless of where the crime was committed.[2023]

Seventh: State Security Courts

State Security Courts (Emergency Court) are of two types:

Partial State Security Courts, each part of the State Security Circuits of the Court of First Instance shall be composed of one of the judges of the court.

The Supreme State Security Courts, which are formed by the Court of Appeal, are composed of three judges.

The case is initiated before the State Security Courts by a member of the Public Prosecution.

The President of the Republic may, as an exception, order the formation of a partial State Security Chamber consisting of a judge and two officers of the armed forces with the rank of captain or equivalent at least, and the formation of a Supreme State Security Chamber consisting of three advisors and two commanding officers.[2024]

In areas subject to a special judicial system or for specific cases, the President of the Republic may order the formation of State Security Departments from officers. In this case, the court shall apply the procedures stipulated by the President of the Republic in the order for its formation.

In this case, the Supreme State Security Department is formed of three commanding officers, and one of the officers or one of the members of the Public Prosecution performs the function of the Public Prosecution.[2025]

Eighth: Economic Courts

A court called the "Economic Court" shall be established within the jurisdiction of each Court of Appeal. A president of the Court of Appeal shall be appointed to preside over it for a period of one year, renewable by a decision of the Minister of Justice after the approval of the Supreme Judicial Council. Its judges shall be from among the judges of the courts of first instance and the courts of appeal. A decision shall be issued by the Supreme Judicial Council to select them.

The Economic Court consists of primary and appellate circuits, and the locations of these circuits are appointed by a decision issued by the Minister of Justice after obtaining the opinion of the Supreme Judicial Council.

The primary and appellate circuits shall convene at the headquarters of the economic courts, and may convene, when necessary, in any other place, by decision of the Minister of Justice based on the request of the President of the Economic Court.[2026]

Each economic primary circuit is composed of three presidents of the primary courts.

Each of the appellate circuits shall consist of three judges of the Courts of Appeal, at least one of whom shall hold the rank of President of the Court of Appeal.[2027]

([2022] Article No. 46 of the Military Judiciary Law.
([2023] Article No. 53 of the Military Judiciary Law.
([2024] Article No. 7 of the State of Emergency Law.
([2025] Article No. 8 of the State of Emergency Law.
([2026] Article No. 1 of the Law on the Establishment of Economic Courts.
([2027] Article No. 2 of the Law on the Establishment of Economic Courts.

11-2-2 Within the framework of international conventions

The court hearing any case must be constituted in accordance with the law.[2028]

To meet this requirement, the court may have been constituted under the Constitution or other legislation passed by an authority empowered to make laws, or under common law.

The purpose of this requirement in criminal cases is to ensure that trials are not conducted by special courts that do not follow established procedures in accordance with the due principles to replace the jurisdiction of the ordinary courts, or by courts established to decide a single case in particular.[2029]

The European Court explained that a court constituted by law requires those who decide the case to meet existing legal requirements. The European Court ruled that the court was not "constituted by law" in the case where two non-representative judges were hearing a case and had exceeded the number of days of service allowed by law, there was no evidence that they had been appointed non-representative judges and the authorities could not provide any legal basis for their participation.[2030]

11-3 The Right to Have the Case Heard by a Competent Court

11-3-1 Within the framework of Egyptian law

The rules relating to the jurisdiction of criminal courts in criminal matters - including the rules of territorial jurisdiction - are all part of the public order, given that the legislator has based his determination of them on general considerations relating to the proper conduct of social justice.[2031]

First: Specific specialization

The courts have jurisdiction to adjudicate all disputes and crimes, except those excluded by a special text.[2032]

The point in appointing the competent authority to consider the criminal case is to determine the correct legal classification of the incident subject to criminalization.[2033]

The criterion for determining the type of crime is the amount of punishment prescribed by the Sharia for it.[2034]

The distribution of jurisdiction between criminal courts and partial courts is based on the type of punishment that threatens the offender, starting with the charge brought against him, according to whether it is a felony, misdemeanor, or contravention, regardless of the punishment actually

---

(2028) Article 14(1) of the International Covenant, Article 8(1) of the American Convention, Article 6(1) of the European Convention, Section A(4)(b) of the Principles on Fair Trial in Africa, and Article 26 of the American Declaration.

(2029) See Principle 5 of the Basic Principles on the Independence of the Judiciary, Abitz Barbera et al. v. Venezuela, Inter-American Court (2008) §50.

(2030) Possokhov v. Russia (63486)/00), European Court (2003) §37-§42.

(2031) Appeal No. 762 of 67 Q issued in the session of June 4, 2007 and published in Technical Office Book No. 58, page No. 431, Rule No. 86, Appeal No. 2360 of 61 Q issued in the session of September 23, 1998 and published in the first part of Technical Office Book No. 49, page No. 928, Rule No. 121, Appeal No. 12068 of 59 Q issued in the session of May 3, 1990 and published in the first part of Technical Office Book No. 41, page No. 681, Rule No. 117.

(2032 Article No. 15 of the Judicial Authority Law.

(2033) The Supreme Constitutional Court (Dispute), Case No. 3 of 22 Q issued in the session of January 13, 2003 and published in the first part of the Technical Office Book No. 10, page No. 1224, Rule No. 4, Case No. 12 of 21 Q issued in the session of November 3, 2001 and published in the first part of the Technical Office Book No. 10, page No. 1208, Rule No. 2.

(2034 Appeal No. 6637 of 82 Q issued in the session of January 5, 2013 (unpublished).

imposed on him for the crime proven against him. Therefore, what is relied upon in determining the type of jurisdiction is the legal description of the incident as the case was filed.[2035]

Misdemeanor Court

The Misdemeanor Court has jurisdiction to try persons accused of the following crimes:

Violations;

Misdemeanors, except for those committed by newspapers or other means of publication against non-individuals, and except for those committed by juveniles, in which case the Juvenile Court has jurisdiction .[2036] .

Criminal Court

The Criminal Court shall rule on every act that is considered a felony under the law, and on misdemeanors committed through newspapers or other means of publication, except for misdemeanors that harm individuals and other crimes for which the law stipulates its jurisdiction. The Criminal Court shall convene in every city in which there is a primary court, and its jurisdiction shall include what the jurisdiction of the primary court includes.

It may be held in any other place within its jurisdiction or outside this jurisdiction when necessary - by a decision issued by the Minister of Justice based on a request from the President of the Court of Appeal.[2037]

The legislator has defined the territorial jurisdiction of the criminal court as including what is included in the jurisdiction of the primary court, and this jurisdiction relates to public order.[2038]

However, it is not necessary for the criminal court to convene in the same building in which the sessions of the primary court are held.[2039]

One or more circuits of the Criminal Court - each of which shall have the same rank as the President of the Courts of Appeal - shall be designated to consider the felonies stipulated in Chapters One, Two, Two Repeats, Three and Four of Book Two of the Penal Code, and the crimes associated with those felonies. These cases shall be adjudicated expeditiously.[2040]

Also, allocating a department in the Court of Appeal to consider felonies is merely an administrative organization for distributing work among the various departments in the court, and this distribution does not create a type of jurisdiction that is exclusive to one department over another.[2041]

([2035]) Appeal No. 11099 of 79 Q issued in the session of November 25, 2010 and published in the Technical Office Book No. 61, page No. 656, rule No. 85, Appeal No. 29741 of 59 Q issued in the session of April 10, 1997 and published in the first part of the Technical Office Book No. 48, page No. 449, rule No. 66, Appeal No. 20942 of 64 Q issued in the session of October 10, 1996 and published in the first part of the Technical Office Book No. 47, page No. 987, rule No. 140, Appeal No. 1877 of 59 Q issued in the session of October 19, 1989 and published in the first part of the Technical Office Book No. 40, page No. 792, rule No. 132, Appeal No. 3906 of 58 Q issued in the session of November 3, 2017 1988 and published in the first part of the Technical Office Book No. 39, page No. 1016, rule No. 154, appeal No. 45 of year 39 Q issued in the session of April 21, 1969 and published in the second part of the Technical Office Book No. 20, page No. 539, rule No. 112.

([2036] Article No. 215 of the Code of Criminal Procedure.

([2037] Article No. 216 of the Criminal Procedure Code, and Article No. 8 of the Judicial Authority Law.

([2038] Appeal No. 11796 of 72 Q issued in the session of December 16, 2002 and published in Technical Office Book No. 53, Page No. 1143, Rule No. 192.

([2039]) Appeal No. 23147 of 85 Q issued in the session of December 26, 2016 and published in Technical Office Book No. 67, page No. 945, Rule No. 118, Appeal No. 2470 of 85 Q issued in the session of March 9, 2016 and published in Technical Office Book No. 67, page No. 302, Rule No. 38.

([2040] Article No. 366 bis of the Code of Criminal Procedure.

([2041]) Appeal No. 44270 of 85 Q issued in the session of October 22, 2016 and published in the Technical Office's letter No. 67, page No. 735, rule No. 94, Appeal No. 34946 of 84 Q issued in the session of May 8, 2016 and published in the Technical

State Security Courts (Emergency)

State Security Courts are exceptional courts whose jurisdiction is limited to two types of crimes:

The first type: crimes that occur in violation of the provisions of the orders issued by the President of the Republic or his representative.[2042]

The second type: These are crimes of public law that the President of the Republic, or his representative, refers to the State Security Courts.[2043]

Partial State Security Departments are responsible for crimes punishable by imprisonment, a fine, or both.

Office's letter No. 67, page No. 495, rule No. 57, Appeal No. 2470 of 85 Q issued in the session of March 9, 2016 and published in the Technical Office's letter No. 67, page No. 302, rule No. 38, Appeal No. 11182 of 84 Q issued in the session of December 22, 2014 and published in the Technical Office's letter No. 65, page No. 994, rule No. 134, Appeal No. 14845 of 70 Q issued in the session of September 26, 2000 and published in the Office's letter Technical No. 51, Page No. 558, Rule No. 109.

([2042]) Article 7 of the Emergency Law: Appeal No. 6597 of Judicial Year 81, issued on January 26, 2012, and published in the Technical Office Book No. 63, Page No. 142, Rule No. 18; Appeal No. 11578 of Judicial Year 67, issued on January 10, 2007, and published in the Technical Office Book No. 58, Page No. 23, Rule No. 5; Appeal No. 15230 of Judicial Year 67, issued on November 2, 2006 (unpublished); Appeal No. 1898 of Judicial Year 67, issued on June 1, 2006 (unpublished); Appeal Nos. 30759, 30760, 30761, and 30763 of Judicial Year 67, all issued on October 20, 2005 (unpublished); Appeal No. 30776 of Judicial Year 67, issued on July 21, 2005 (unpublished); Appeal Nos. 28765, 28766, and 28767 of Judicial Year 67, all issued on May 19, 2005 (unpublished); Appeal No. 30784 of Judicial Year 67, issued on July 26, 2005, and published in the Technical Office Book No. 56, Page No. 428, Rule No. 63; Appeal Nos. 1142 and 1141 of Judicial Year 68, issued on May 24, 2004 (unpublished); Appeal Nos. 1139 and 1140 of Judicial Year 68, issued on May 10, 2004 (unpublished); Appeal Nos. 1135, 1136, 1137, and 1138 of Judicial Year 68, issued on March 8, 2004 (unpublished); Appeal Nos. 1128, 1132, 1133, and 1134 of Judicial Year 68, issued on February 23, 2004 (unpublished); Appeal Nos. 1125, 1123, 1372, 1124, 1126, and 1127 of Judicial Year 68, issued on February 9, 2004 (unpublished); Appeal Nos. 1120, 1121, and 1122 of Judicial Year 68, issued on January 26, 2004 (unpublished); Appeal Nos. 1116 and 1118 of Judicial Year 68, issued on January 12, 2004 (unpublished); Appeal Nos. 934 and 20819 of Judicial Year 64, issued on January 12, 2004 (unpublished); Appeal No. 1117 of Judicial Year 68, issued on January 12, 2004 (unpublished); Appeal No. 38328 of Judicial Year 73, issued on April 1, 2004, and published in the Technical Office Book No. 55, Page No. 287, Rule No. 42; Appeal No. 1376 of Judicial Year 68, issued on October 27, 2003 (unpublished); Appeal No. 41 of Judicial Year 60, issued on February 19, 1991, and published in the first part of the Technical Office Book No. 42, Page No. 362, Rule No. 49; Appeal No. 38 of Judicial Year 60, issued on January 13, 1991, and published in the first part of the Technical Office Book No. 42, Page No. 59, Rule No. 11; Appeal No. 29288 of Judicial Year 59, issued on October 11, 1990, and published in the first part of the Technical Office Book No. 41, Page No. 903, Rule No. 158; Appeal No. 28440 of Judicial Year 59, issued on May 17, 1990, and published in the first part of the Technical Office Book No. 41, Page No. 738, Rule No. 129; Appeal No. 2555 of Judicial Year 59, issued on October 4, 1989, and published in the first part of the Technical Office Book No. 40, Page No. 733, Rule No. 123; Appeal No. 702 of Judicial Year 58, issued on May 12, 1988, and published in the first part of the Technical Office Book No. 39, Page No. 712, Rule No. 106; Appeal No. 5919 of Judicial Year 56, issued on March 16, 1987, and published in the first part of the Technical Office Book No. 38, Page No. 447, Rule No. 69; Appeal No. 3844 of Judicial Year 56, issued on November 23, 1986, and published in the first part of the Technical Office Book No. 37, Page No. 960, Rule No. 181; Appeal No. 3274 of Judicial Year 56, issued on October 12, 1986, and published in the first part of the Technical Office Book No. 37, Page No. 740, Rule No. 141; Appeal No. 7042 of Judicial Year 55, issued on March 6, 1986, and published in the first part of the Technical Office Book No. 37, Page No. 349, Rule No. 72; Appeal No. 2267 of Judicial Year 55, issued on December 10, 1985, and published in the first part of the Technical Office Book No. 36, Page No. 1088, Rule No. 200; Appeal No. 1493 of Judicial Year 54, issued on November 21, 1984, and published in the first part of the Technical Office Book No. 35, Page No. 795, Rule No. 179; Appeal No. 4423 of Judicial Year 51, issued on February 8, 1982, and published in the first part of the Technical Office Book No. 33, Page No. 165, Rule No. 33; Appeal No. 2734 of Judicial Year 51, issued on January 27, 1982, and published in the first part of the Technical Office Book No. 33, Page No. 103, Rule No. 19; Appeal No. 1470 of Judicial Year 51, issued on November 24, 1981, and published in the first part of the Technical Office Book No. 32, Page No. 969, Rule No. 169; Appeal No. 1151 of Judicial Year 49, issued on February 27, 1980, and published in the first part of the Technical Office Book No. 31, Page No. 290, Rule No. 56; Appeal No. 216 of Judicial Year 46, issued on May 24, 1976, and published in the first part of the Technical Office Book No. 27, Page No. 538, Rule No. 119; Appeal No. 1920 of Judicial Year 45, issued on April 12, 1976, and published in the first part of the Technical Office Book No. 27, Page No. 422, Rule No. 91; and Appeal No. 39 of Judicial Year 46, issued on April 11, 1976, and published in the first part of the Technical Office Book No. 27, Page No. 409, Rule No. 89.

([2043] Article No. 9 of the State of Emergency Law.

The Supreme State Security Departments are competent to deal with crimes punishable by criminal punishment, as well as crimes designated by the President of the Republic or his representative, regardless of the penalty prescribed for them.[2044]

The jurisdiction granted to the State Security Courts (Emergency Courts) in both types does not negate the original jurisdiction granted to the ordinary courts, because the legislator did not deprive the courts with general jurisdiction of any of their original jurisdiction, and the State of Emergency Law did not include a text specifying that the State Security Courts (Emergency Courts) shall be given exclusive jurisdiction to adjudicate - alone and without others - any type of crime. This is because if the legislator had intended to assign the State Security Courts (Emergency Courts) to adjudicate alone and without others in any type of crime, he would have explicitly disclosed this, similar to his approach in similar cases. The implication of this is that if a lawsuit is brought regarding a crime for which the State of Emergency Law has granted jurisdiction to the State Security Courts before the ordinary courts, they shall have jurisdiction over it, and no obstacle from the law shall prevent the ordinary courts from having jurisdiction to adjudicate this crime, and it shall be shared between the ordinary courts and the State Security Courts formed per the Emergency Law, and neither of them shall be prevented from considering the other unless the force of res judicata prevents that.[2045]

([2044] Article No. 7 of the State of Emergency Law.

([2045]) Refer to: Supreme Constitutional Court ruling (Conflict), Case No. 4 of Judicial Year 13, issued on May 16, 1992, and published in the first part of the Technical Office Book No. 5, Page No. 467, Rule No. 14; Appeal No. 6597 of Judicial Year 81, issued on January 26, 2012, and published in the Technical Office Book No. 63, Page No. 142, Rule No. 18; Appeal No. 11578 of Judicial Year 67, issued on January 10, 2007, and published in the Technical Office Book No. 58, Page No. 23, Rule No. 5; Appeal No. 15230 of Judicial Year 67, issued on November 2, 2006 (unpublished); Appeal No. 1898 of Judicial Year 67, issued on June 1, 2006 (unpublished); Appeal Nos. 30759, 30760, 30761, and 30763 of Judicial Year 67, all issued on October 20, 2005 (unpublished); Appeal No. 30776 of Judicial Year 67, issued on July 21, 2005 (unpublished); Appeal Nos. 28765, 28766, and 28767 of Judicial Year 67, all issued on May 19, 2005 (unpublished); Appeal No. 30784 of Judicial Year 67, issued on July 26, 2005, and published in the Technical Office Book No. 56, Page No. 428, Rule No. 63; Appeal Nos. 1142 and 1141 of Judicial Year 68, issued on May 24, 2004 (unpublished); Appeal Nos. 1139 and 1140 of Judicial Year 68, issued on May 10, 2004 (unpublished); Appeal Nos. 1135, 1136, 1137, and 1138 of Judicial Year 68, issued on March 8, 2004 (unpublished); Appeal Nos. 1128, 1132, 1133, and 1134 of Judicial Year 68, issued on February 23, 2004 (unpublished); Appeal Nos. 1125, 1123, 1372, 1124, 1126, and 1127 of Judicial Year 68, issued on February 9, 2004 (unpublished); Appeal Nos. 1120, 1121, and 1122 of Judicial Year 68, issued on January 26, 2004 (unpublished); Appeal Nos. 1116 and 1118 of Judicial Year 68, issued on January 12, 2004 (unpublished); Appeal Nos. 934 and 20819 of Judicial Year 64, issued on January 12, 2004 (unpublished); Appeal No. 1117 of Judicial Year 68, issued on January 12, 2004 (unpublished); Appeal No. 38328 of Judicial Year 73, issued on April 1, 2004, and published in the Technical Office Book No. 55, Page No. 287, Rule No. 42; Appeal No. 1376 of Judicial Year 68, issued on October 27, 2003 (unpublished); Appeal No. 41 of Judicial Year 60, issued on February 19, 1991, and published in the first part of the Technical Office Book No. 42, Page No. 362, Rule No. 49; Appeal No. 38 of Judicial Year 60, issued on January 13, 1991, and published in the first part of the Technical Office Book No. 42, Page No. 59, Rule No. 11; Appeal No. 29288 of Judicial Year 59, issued on October 11, 1990, and published in the first part of the Technical Office Book No. 41, Page No. 903, Rule No. 158; Appeal No. 28440 of Judicial Year 59, issued on May 17, 1990, and published in the first part of the Technical Office Book No. 41, Page No. 738, Rule No. 129; Appeal No. 2555 of Judicial Year 59, issued on October 4, 1989, and published in the first part of the Technical Office Book No. 40, Page No. 733, Rule No. 123; Appeal No. 702 of Judicial Year 58, issued on May 12, 1988, and published in the first part of the Technical Office Book No. 39, Page No. 712, Rule No. 106; Appeal No. 5919 of Judicial Year 56, issued on March 16, 1987, and published in the first part of the Technical Office Book No. 38, Page No. 447, Rule No. 69; Appeal No. 3844 of Judicial Year 56, issued on November 23, 1986, and published in the first part of the Technical Office Book No. 37, Page No. 960, Rule No. 181; Appeal No. 3274 of Judicial Year 56, issued on October 12, 1986, and published in the first part of the Technical Office Book No. 37, Page No. 740, Rule No. 141; Appeal No. 7042 of Judicial Year 55, issued on March 6, 1986, and published in the first part of the Technical Office Book No. 37, Page No. 349, Rule No. 72; Appeal No. 2267 of Judicial Year 55, issued on December 10, 1985, and published in the first part of the Technical Office Book No. 36, Page No. 1088, Rule No. 200; Appeal No. 1493 of Judicial Year 54, issued on November 21, 1984, and published in the first part of the Technical Office Book No. 35, Page No. 795, Rule No. 179; Appeal No. 4423 of Judicial Year 51, issued on February 8, 1982, and published in the first part of the Technical Office Book No. 33, Page No. 165, Rule No.

In related crimes, the ordinary courts have jurisdiction over the lesser crime that falls within the jurisdiction of the Supreme State Security Courts (Emergency) if the ordinary courts have jurisdiction over the more serious crime associated with it, in application of the general rules stipulated in Article 32 of the Penal Code. This means that if the jurisdiction of the ordinary courts to consider the more serious crime is proven, they will have jurisdiction over the lesser crime associated with it, which the legislator has granted jurisdiction over to the Emergency State Security Courts, i.e. the ordinary courts have jurisdiction over both crimes .[2046] .

Economic Courts

The primary circuits of the economic courts are competent to consider misdemeanor cases stipulated in the following laws, and their appeal shall be before the appellate circuits of the economic courts, provided that the deadlines, procedures, and provisions of immediate enforcement stipulated in the Criminal Procedures Law shall apply to appeals against judgments issued by the primary circuits of the economic courts in misdemeanor cases.

The appellate circuits of the economic courts are competent to initially consider criminal cases in the following laws. The economic courts, with their primary and appellate circuits, are exclusively competent, in type and location, to consider criminal cases arising from crimes stipulated in the following laws:

The Penal Code regarding crimes of counterfeit coins and forgeries;

Insurance Supervision and Control Law in Egypt;

The law of joint stock companies, limited partnerships, limited liability companies and one-person companies;

Capital Market Law;

Law regulating the activities of financial leasing and factoring;

Central Depository and Registration Law for Securities;

33; Appeal No. 2734 of Judicial Year 51, issued on January 27, 1982, and published in the first part of the Technical Office Book No. 33, Page No. 103, Rule No. 19; Appeal No. 1470 of Judicial Year 51, issued on November 24, 1981, and published in the first part of the Technical Office Book No. 32, Page No. 969, Rule No. 169; Appeal No. 1151 of Judicial Year 49, issued on February 27, 1980, and published in the first part of the Technical Office Book No. 31, Page No. 290, Rule No. 56; Appeal No. 216 of Judicial Year 46, issued on May 24, 1976, and published in the first part of the Technical Office Book No. 27, Page No. 538, Rule No. 119; Appeal No. 1920 of Judicial Year 45, issued on April 12, 1976, and published in the first part of the Technical Office Book No. 27, Page No. 422, Rule No. 91; and Appeal No. 39 of Judicial Year 46, issued on April 11, 1976, and published in the first part of the Technical Office Book No. 27, Page No. 409, Rule No. 89.

([2046]) Appeal No. 6597 of 81 Q issued in the session of January 26, 2012 and published in the Technical Office Book No. 63, page No. 142, rule No. 18, Appeal No. 28440 of 59 Q issued in the session of May 17, 1990 and published in the first part of the Technical Office Book No. 41, page No. 738, rule No. 129, Appeal No. 2555 of 59 Q issued in the session of October 4, 1989 and published in the first part of the Technical Office Book No. 40, page No. 733, rule No. 123, Appeal No. 1465 of 57 Q issued in the session of November 18, 1987 and published in the second part of the Technical Office Book No. 38, page No. 998, rule No. 181, Appeal No. 5919 of 56 Q issued in the session of March 16, 1989 1987 and published in the first part of the Technical Office Book No. 38, page No. 447, Rule No. 69, Appeal No. 3844 for the year 56 Q issued in the session of November 23, 1986 and published in the first part of the Technical Office Book No. 37, page No. 960, Rule No. 181, Appeal No. 3839 for the year 56 Q issued in the session of November 20, 1986 and published in the first part of the Technical Office Book No. 37, page No. 916, Rule No. 175, Appeal No. 3274 for the year 56 Q issued in the session of October 12, 1986 and published in the first part of the Technical Office Book No. 37, page No. 740, Rule No. 141, Article 32 of Law No. 58 of 1937 regarding the issuance of the Penal Code, Appeal No. 7042 for the year 55 Q issued in the session of March 6, 1986 And published in the first part of the Technical Office Book No. 37, page No. 349, rule No. 72, appeal No. 5569 of year 55 Q issued in the session of February 26, 1986 and published in the first part of the Technical Office Book No. 37, page No. 316, rule No. 65, appeal No. 2267 of year 55 Q issued in the session of December 10, 1985 and published in the first part of the Technical Office Book No. 36, page No. 1088, rule No. 200, appeal No. 1493 of year 54 Q issued in the session of November 21, 1984 and published in the first part of the Technical Office Book No. 35, page No. 795, rule No. 179.

Real Estate Finance Law;

Intellectual Property Rights Protection Law;

Central Bank, Banking and Monetary System Law;

Law of companies operating in the field of receiving funds for investment;

Law regulating restructuring, protective settlement and bankruptcy;

Law on the Protection of the National Economy from the Effects of Harmful Practices in International Trade;

Law on the Protection of Competition and the Prevention of Monopolistic Practices;

Consumer Protection Law;

Telecommunications Regulatory Law;

Law regulating electronic signatures and establishing the Information Technology Industry Development Agency;

Anti-Money Laundering Law;

Law regulating movable guarantees;

Law regulating microfinance activity;

Investment Law;

Anti - Information Technology Crimes Law[2047] .

Second: Territorial jurisdiction

Jurisdiction is determined by the place where the crime occurred, or where the accused resides, or where he is arrested. It is clear from this that the legislator did not limit the territorial jurisdiction of the crime to one court, but rather included three courts in it:

The court in whose territorial jurisdiction the crime was committed;

The court in whose jurisdiction the accused resides;

The court in whose jurisdiction the accused is arrested.

These places are equal in law and there is no distinction between them. Any of the aforementioned courts to which the suit is brought has jurisdiction over it. Therefore, the criterion for distinction between them is temporal precedence. The court to which the suit is brought first has jurisdiction, and this makes the investigation into the jurisdiction of the other two courts irrelevant. The result of this is that the claimant is the one who determines the competent court, as he is the one who chooses the court to which he brings the suit .[2048] .

([2047] Articles Nos. 4 and 5 of the Law on the Establishment of Economic Courts.

([2048]) Article No. 217 of the Criminal Procedure Code, see: Appeal No. 774 of 81 Q issued in the session of March 21, 2012 (unpublished), Appeal No. 6329 of 79 Q issued in the session of March 24, 2011 (unpublished), Appeal No. 69368 of 74 Q issued in the session of November 4, 2010 (unpublished), Appeal No. 6123 of 78 Q issued in the session of March 10, 2010 (unpublished), Appeal No. 21602 of 84 Q issued in the session of March 22, 2015 and published in Technical Office Book No. 66, page No. 319, Rule No. 45, Appeal No. 11099 of 79 Q issued in the session of November 25, 2010 and published in Technical Office Book No. 61, page No. 656, Rule No. 85, Appeal No. 52083 of 72 Q issued in the session of October 18, 2003 and published in the Technical Office Book No. 54, page No. 993, rule No. 134, Appeal No. 30075 of 70 Q issued in the session of March 18, 2003 and published in the Technical Office Book No. 54, page No. 429, rule No. 47, Appeal No. 50161 of 59 Q issued in the session of November 12, 1996 and published in the first part of the Technical Office Book No. 47, page No. 1171, rule No. 168, Appeal No. 5207 of 62 Q issued in the session of February 15, 1994 and published in the first part of the Technical Office Book No. 45, page No. 267, rule No. 40, Appeal No. 22320 of 60 Q issued in the session of September

It is clear from this that the legislator did not limit the territorial jurisdiction of the crime to one court, but rather included three courts in it:

The court in whose territorial jurisdiction the crime was committed;

The court in whose jurisdiction the accused resides;

The court in whose jurisdiction the accused is arrested.

The point of reference in spatial jurisdiction is the reality of the situation, even if its appearance is delayed until the time of the trial.[2049]

The place where the crime was committed is the place where its material element or part of this element is realized, which is based on three elements: the act, the result, and the causal relationship between them. The crime is considered to have been committed in the place where the material act occurred, in the place where the result occurred, and in every place where the direct effects of the act were realized, which consist of the causal links that link the act and the result .[2050] .

There is no difficulty if all the elements of the material element are fulfilled within the jurisdiction of one court, since that court has jurisdiction. However, if the elements of this element are divided between the jurisdictions of several courts, as if the act was committed within the jurisdiction of one court and the result was achieved within the jurisdiction of another court, then both courts have jurisdiction over the crime. Also, if some of the links of causation are fulfilled within the jurisdiction of a third court, then this court is also competent. If the crime consists of a set of acts and each act is committed within the jurisdiction of a specific court, or if the single act

---

15, 2003 1992 and published in the first part of the Technical Office Book No. 43, page No. 714, rule No. 108, appeal No. 60643 for the year 59 Q issued in the session of January 21, 1991 and published in the first part of the Technical Office Book No. 42, page No. 140, rule No. 16, appeal No. 12068 for the year 59 Q issued in the session of May 3, 1990 and published in the first part of the Technical Office Book No. 41, page No. 681, rule No. 117, appeal No. 3786 for the year 59 Q issued in the session of November 22, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1031, rule No. 166, appeal No. 4053 for the year 56 Q issued in the session of March 30, 1987 and published in the first part of the Technical Office Book No. 38, page No. 510 Rule No. 83, Appeal No. 3505 of 56 Q issued in the session of February 26, 1987 and published in the first part of the Technical Office Book No. 38, page No. 334, Rule No. 50, Appeal No. 6208 of 54 Q issued in the session of April 10, 1986 and published in the first part of the Technical Office Book No. 37, page No. 474, Rule No. 96, Appeal No. 564 of 53 Q issued in the session of June 13, 1983 and published in the first part of the Technical Office Book No. 34, page No. 759, Rule No. 151, Appeal No. 6523 of 52 Q issued in the session of March 23, 1983 and published in the first part of the Technical Office Book No. 34, page No. 420, Rule No. 86, Appeal No. 1241 of 50 Q issued in the session of November 17, 1983 1981 and published in the first part of the Technical Office Book No. 32, page No. 921, rule No. 158, appeal No. 1525 for year 50 Q issued in the session of November 17, 1980 and published in the first part of the Technical Office Book No. 31, page No. 1012, rule No. 196, appeal No. 625 for year 49 Q issued in the session of November 18, 1979 and published in the first part of the Technical Office Book No. 30, page No. 805, rule No. 172, appeal No. 248 for year 44 Q issued in the session of March 10, 1974 and published in the first part of the Technical Office Book No. 25, page No. 242, rule No. 55, appeal No. 630 for year 41 Q issued in the session of February 14, 1972 and published in the first part of the Technical Office Book No. 23, page No. 142, rule No. 37, Appeal No. 759 of 40 Q issued in the session of June 29, 1970 and published in the second part of the Technical Office Book No. 21, page No. 935, Rule No. 220, Appeal No. 533 of 40 Q issued in the session of May 11, 1970 and published in the second part of the Technical Office Book No. 21, page No. 707, Rule No. 167, Appeal No. 1947 of 39 Q issued in the session of April 6, 1970 and published in the second part of the Technical Office Book No. 21, page No. 532, Rule No. 128, Appeal No. 781 of 39 Q issued in the session of October 6, 1969 and published in the third part of the Technical Office Book No. 20, page No. 1008, Rule No. 196, Appeal No. 398 of 36 Q issued in the session of May 9, 1966 And published in the second part of the Technical Office Book No. 17, page No. 578, rule No. 103.

([2049] Appeal No. 52083 of 72 Q issued in the session of October 18, 2003 and published in Technical Office Book No. 54, Page No. 993, Rule No. 134.

([2050]) Appeal No. 23201 of 63 Q issued in the session of October 3, 1995 and published in the first part of the Technical Office Book No. 46, page No. 1055, rule No. 156, Appeal No. 49048 of 59 Q issued in the session of June 7, 1994 and published in the first part of the Technical Office Book No. 45, page No. 726, rule No. 110, Appeal No. 109 of 57 Q issued in the session of April 1, 1987 and published in the first part of the Technical Office Book No. 38, page No. 530, rule No. 88.

that it is committed was committed within the jurisdictions of several courts, then all of these courts have jurisdiction to consider the case.[2051]

However, even if the jurisdiction of the criminal court to consider the case from the point of view of the place where the crime occurred is related to public order, the plea of its absence before the Court of Cassation is conditional on it being based on facts proven by the contested ruling and does not require an objective investigation.[2052]

In the event of an attempt, the crime is considered to have occurred in every place where an act of beginning execution has occurred.

In ongoing crimes, the crime scene is considered to be any place where the continuity occurs. The ongoing crime is considered to have been committed in all places where the crime has spread.

In successive crimes, the place of the crime is considered to be any place where one of the acts included in it occurs. The assumption here is that the crime is committed by a number of acts, and each act individually constitutes a crime in itself. If the accused were satisfied with it, he would be punished for it. Therefore, each act in itself has an inherent criminal character. Based on that, the crime is considered to have been committed in any place where one of these acts was committed, and the courts to which these places belong are competent to deal with it.

If the crime is a simple negative crime, i.e. it consists of mere abstention, then it is considered to have been committed in the place where the obligation imposed by law must be implemented and the positive act required by law must be performed to protect an interest it protects, since in this place this interest was wasted, and therefore it is the responsibility of the court to which this place belongs. However, if it is a negative crime with a result, i.e. it consists of abstention followed by a criminal result, then it is the responsibility of the court of the place where the positive act should have been performed or the court of the place where this criminal result was achieved.[2053]

The legislator also stipulated that the court in whose jurisdiction the accused resides shall also have jurisdiction to consider his crime. The legislator stipulated that the court of the place of residence shall have jurisdiction, not the court of domicile. There is a difference in the legal meaning of the two expressions. The place of residence means the place where the accused resides, while domicile means the place where the accused intended to reside regularly and stably, and he may not reside in it. Usually, the two places are the same. If they differ, the place of residence shall be the criterion, not the domicile.

If the accused has multiple places of residence, all the courts to which these places are subject shall have jurisdiction over the crime. If the accused changes his place of residence during the period between committing the crime and the initiation of criminal proceedings against him, then his last place of residence shall be taken into account.[2054]

([2051] The Court of Cassation ruled: [It is established that if the acts of theft attributed to the accused occurred in the jurisdiction of more than one court, then jurisdiction in this case is vested in each court in which part of the punishable acts of theft occurred], Appeal No. 225 of Year 36 Q issued in the session of June 20, 1966 and published in the second part of the Technical Office Book No. 17, page No. 827, Rule No. 156.

([2052] Appeal No. 1947 of year 39 Q issued in the session of April 6, 1970 and published in the second part of the Technical Office Book No. 21, page No. 532, rule No. 128.

([2053]) Article No. 218 of the Criminal Procedure Code, and see: Appeal No. 33 of Year 43 Q issued in the session of March 11, 1973 and published in the first part of the Technical Office Book No. 24, page No. 310, Rule No. 67, Appeal No. 1452 of Year 36 Q issued in the session of February 27, 1967 and published in the first part of the Technical Office Book No. 18, page No. 270, Rule No. 52.

([2054] In this regard, the Court of Cassation ruled that: [Jurisdiction in criminal matters is determined either by the place where the crime occurred or by the place where the accused resides. If a public lawsuit is brought for a crime that occurred in a place

The court of the place where the accused is arrested has jurisdiction to hear the case. This court has jurisdiction if the place where the crime was committed is not specified and the accused's place of residence is unknown.

If a crime that is subject to the provisions of Egyptian law occurs abroad and the perpetrator has no place of residence in Egypt and has not been arrested there, a felony case will be brought against him before the Cairo Criminal Court and a misdemeanor case will be brought before the Abdeen Partial Court. The assumption here is that the crime was committed outside Egyptian territory, and therefore the Egyptian court with jurisdiction over it cannot be determined based on the place where the crime was committed. In addition to that, the accused has no place of residence in Egypt, or his place of residence is unknown, and he has not been arrested in Egypt.[2055]

An exception to this is if the crime was committed on board a ship or aircraft in a situation subject to Egyptian law if the ship had docked or the aircraft had landed after the crime in an Egyptian port or airport, as the crime is considered to have occurred in the place of docking or landing, and therefore the court of that place has jurisdiction over it in the application of the general rules. However, this text applies if the ship docked or the aircraft landed after the crime in a foreign port or airport.

Third: Personal jurisdiction

The principle is that all persons who have committed a crime of a certain type are subject to the same judiciary, so there is no discrimination between people according to their nationalities or social status in terms of subjection to a certain judiciary. This principle is an inevitable result of the principle of equality between people before the law, and the principle thus decides the elimination of all judicial privileges, and decides to deny the defense of lack of jurisdiction due to the accused's status, but some considerations dictated to the legislator to take into account the accused's status in determining the judiciary competent to try him, and those cases are: children, military personnel, and ministers.

Special criminal courts are courts that specialize in trying types of criminals, each type of which is distinguished by certain criminal characteristics, in terms of the factors of their criminality and the requirements of appropriate punitive treatment for them, which necessarily requires distinguishing their trial procedures with special rules that aim to achieve compatibility between the formation of the court and the trial procedures on the one hand, and between doing justice to the factors of this criminality among categories of criminals with certain characteristics.

1- Child Court

The Juvenile Court alone has jurisdiction to consider the case of a child accused of a crime or exposed to delinquency, while the Criminal Court or the Supreme State Security Court, as the case may be, has jurisdiction to consider criminal cases in which a child over the age of fifteen years at the time of committing the crime is accused, provided that a non-child contributed to the crime and it is necessary to file a criminal case against him along with the child. In this case, the court must, before issuing its ruling, examine the circumstances of the child from all aspects, and it may seek the assistance of any experts it deems appropriate in this regard.[2056]

---

within the jurisdiction of a certain court to another court within whose jurisdiction the place where the accused against whom the lawsuit is filed resides resides, the jurisdiction of this court shall not be affected by the fact that this accused is an accomplice in the crime to a principal perpetrator who cannot legally be tried before it as long as the lawsuit was brought only against him] Appeal No. 657 of year 9 Q issued in the session of March 20, 1939 and published in the first part of the collection of legal rules No. 4, page No. 496, rule No. 362.

([2055] Article No. 219 of the Code of Criminal Procedure.

([2056] Article No. 122 of the Child Law.

A child is defined as someone who has not yet reached the age of eighteen years at the time of committing the crime or when he is in a situation of exposure to danger, and the age is proven by a birth certificate, national ID card, or any other official document.

If the official document does not exist, the age shall be estimated by one of the bodies whose determination shall be issued by a decision issued by the Minister of Justice in agreement with the Minister of Health.[2057]

Since the criterion for determining the jurisdiction of the Juvenile Court is the age of the child at the time he committed his crime or at the time he was exposed to delinquency, and not his age at the time he was brought to trial, it follows that the accused must be tried before the Juvenile Court even if he was over eighteen years old at the time of his trial, if he committed his crime while under this age.

Before ruling on the case, the court must discuss with the examiners the reports submitted by the specialists what is included in them, and it may order additional examinations. This is an essential procedure intended by the legislator for the benefit of the accused child, as it seeks to inform the court of the subject matter of the social and environmental circumstances and factors that led the child to commit the crime or led him to deviance and to identify the means of reforming him, so that it is aware of those factors and their impact on determining the punishment, and in choosing the appropriate criminal measure for the child with the aim of reforming him, and that failure to listen to the social observer constitutes a failure to carry out this essential procedure that results in nullity .[2058] .

The court must also determine the child's age accurately and must refer in its ruling to the document or official paper on which it relied in determining his age, otherwise its ruling will be flawed. The principle is that estimating the age is a matter related to the subject of the lawsuit, and the Court of Cassation may not address it, unless the subject court has addressed the issue of age through research and estimation and allowed the accused and the Public Prosecution to express their observations regarding it.[2059]

The ID card is considered evidence of the accuracy of the data contained therein and is considered an official document that is relied upon to estimate the child's age.[2060]

The jurisdiction of the Child Court is determined by location; by the place where the crime occurred or where one of the cases of exposure to delinquency occurred, or by the place where the child was arrested or where he or his guardian, trustee or mother resides, as the case may be. This means that the legislator has set three controls for the jurisdiction of the Child Court locally, those controls are: the place where the crime was committed or where the case of exposure to delinquency occurred; the place where the child was arrested; and the place where he or his guardian resides. This text has applied the general rules of local jurisdiction stipulated

---

([2057] Articles 2 and 95 of the Child Law.

([2058]) Article No. 127 of the Child Law, and see: Appeal No. 25243 of the 67th year of the Q issued in the session of May 18, 1998 and published in the first part of the Technical Office Book No. 49, page No. 731, Rule No. 95.

([2059]) Appeal No. 15321 of 85 Q issued in the session of February 3, 2016 and published in the Technical Office's letter No. 67, page No. 153, rule No. 21, Appeal No. 16992 of 85 Q issued in the session of December 9, 2015 and published in the Technical Office's letter No. 66, page No. 833, rule No. 124, Appeal No. 22781 of 84 Q issued in the session of May 9, 2015 and published in the Technical Office's letter No. 66, page No. 447, rule No. 63, Appeal No. 47766 of 75 Q issued in the session of November 22, 2012 and published in the Technical Office's letter No. 63, page No. 763, rule No. 136, Appeal No. 38004 of 75 Q issued in the session of October 2, 2005 and published in the Office's letter Technical No. 56, Page No. 452, Rule No. 67.

([2060]) Article No. 50 of Law No. 143 of 1994 regarding civil status, and see: Appeal No. 5322 of 71 Q issued in the session of October 28, 2002 and published in Technical Office Book No. 53, page No. 1018, Rule No. 170.

in Article 217 of the Code of Criminal Procedure. The Child Court may, when necessary, be held in one of the social care institutions for children in which the child is placed.[2061]

2- Military courts

We explained previously that military courts have four levels, and their jurisdiction is determined as follows:

The Supreme Court of Military Appeals, this court alone has jurisdiction to consider appeals submitted by the military prosecution or by the convicted person against the final judgments issued by all military courts in crimes of general law against military personnel or civilians. The rules and procedures for appeals in cassation in criminal cases stipulated in Law No. 57 of 1959 regarding cases and procedures for appeals before the Court of Cassation shall apply to these appeals in a manner that does not conflict with the provisions of the Military Judiciary Law, and its judgments shall be final without the need for any procedure.

This court alone has jurisdiction to consider requests for reconsideration submitted against military court rulings issued in general law crimes, per the rules and procedures for requests for reconsideration stipulated in the Code of Criminal Procedure. [2062]

Military Criminal Court, which is competent to hear criminal cases.[2063]

The Military Court of Misdemeanours Appeals, which has jurisdiction to consider appeals submitted by the military prosecution or by those convicted against final rulings issued by the Military Court of Misdemeanours .[2064]

Military Court for Misdemeanors, which is competent to hear misdemeanor and contravention cases.[2065]

The jurisdiction of the military judiciary is determined by three criteria: a personal criterion, a spatial criterion, and an objective criterion, as stated in the Military Judiciary Law, as follows:

A- Personal standard

Its content is that the provisions of the Military Judiciary Law apply to persons subject to it, whether they were committed by them or against them, and whether they were adults or minors, provided that the crime was committed while they were performing their job duties, and that they were enjoying military status at the time of committing the crime. These persons are :[2066] .

Armed Forces officers;

Non-commissioned officers and soldiers of the armed forces;

Students of schools, vocational training centers, institutes and military colleges;

Prisoners of war;

Any military forces formed by order of the President of the Republic to perform a public, special or temporary service;

Military personnel of the allied forces or those attached to them if their residence in Egypt is in the absence of treaties stipulating otherwise;

([2061] Article No. 123 of the Child Law.
([2062] Articles No. 43 and 43 bis of the Military Judiciary Law.
([2063] Article No. 44 of the Military Judiciary Law.
([2064] Article No. 45 of the Military Judiciary Law.
([2065] Article No. 46 of the Military Judiciary Law.
([2066] Article No. 7 of the Military Judiciary Law.

Military attachés during field service, who are every civilian working in the Ministry of Defense or in the service of the armed forces in any way;

General Intelligence personnel;

Civilian employees of the Ministry of Defense or one of its agencies, companies or factories.[2067]

b- Spatial criterion

According to this standard, the military judiciary has jurisdiction if the crime occurred in the places specified by law, regardless of the status of the perpetrator, whether military or civilian. These places are:

Crimes that occur in camps, barracks, institutions, factories, ships, aircraft, vehicles, places or shops occupied by military personnel for the benefit of the armed forces, wherever they are located;

Crimes that occur in areas adjacent to the borders of the Republic. A decision shall be issued by the President of the Republic to determine these areas and the rules regulating them.[2068]

C- Qualitative or objective criterion

The jurisdiction of the military judiciary is determined according to this standard according to the subject of the crimes committed. The military judiciary has jurisdiction to consider them, whether the perpetrator is a military person or a civilian, as stated in the explanatory memorandum to the Military Judiciary Law. These crimes are:

Crimes committed in camps, barracks, institutions, factories, ships, aircraft, vehicles, places or shops occupied by military personnel for the benefit of the armed forces, wherever they are located;

Crimes against the equipment, missions, weapons, ammunition, documents, secrets of the armed forces and all their belongings;

Crimes that occur in areas adjacent to the borders of the Republic. A decision by the President of the Republic shall be issued to determine these areas and the rules regulating them.

Crimes that harm the security of the government from the outside, and felonies and misdemeanors that harm the government from the inside, crimes of bribery, crimes of embezzlement of public funds, aggression against them and treachery, crimes of employees exceeding the limits of their duties, as well as the crime of using force, violence or threats against a public employee or a person charged with a public service to force him unjustly to perform a job of his job or to refrain from doing so if it is committed by one of the workers in the military factories or committed against him.

As well as all crimes committed against the facilities, machines, equipment, or supplies of military factories, or against their funds, or the raw materials they use, or their documents, secrets, or anything else related to them.[2069]

As well as the crimes stipulated in Law No. 62 of 1975 regarding illicit gains committed by officers of the armed forces, even if the investigation into them does not begin until after their retirement.[2070]

([2067] Articles 4 and 8 of the Military Judiciary Law.

([2068] Article No. 5 of the Military Judiciary Law.

([2069] Article No. 5 of the Military Judiciary Law, amended by Law No. 5 of 1968, Law No. 82 of 1968, and Law No. 138 of 2010.

([2070] Article No. 8 bis (a) of the Military Judiciary Law, added by Law No. 45 of 2011.

Accordingly, a civilian person is liable to appear before the military judiciary for investigation and trial, in one of the following cases, for example:

If a dispute occurs between them and a person of military status (officers, non-commissioned officers or individuals) and this results in a crime committed by or against the soldier, whenever it occurs due to his performance of his duties.

If he is a worker in the armed forces or one of its agencies, companies or factories, during field service.

If he commits a crime related to recruitment (evasion, failure to serve, ...) etc).

If he commits a crime that constitutes a direct assault on the armed forces or on their members while performing their duties, or on their facilities, factories, missions, vehicles, equipment, weapons, papers, documents, secrets, or on the borders of the state subject to its authority.

If he commits a crime against public and vital facilities of the state, including electricity stations and networks, towers, gas lines, oil fields, railway lines, road networks, bridges, and other facilities, installations, public property, and what falls under their jurisdiction.

If he is a student in one of the colleges, institutes, schools or training centers of the Armed Forces.

11-3-2 Within the framework of international conventions

The right to have a case heard before a competent court requires that the court have jurisdiction to hear the case before it.

What is meant by jurisdiction here is that the law grants it the authority to consider the intended lawsuit, i.e. that it has jurisdiction over the subject of the lawsuit and the person against whom it is filed, provided that the trial is conducted within the time limits stipulated in the law.[2071]

The question of whether a court has jurisdiction over a case must be decided by a judicial body, in accordance with the law.[2072]

The Inter-American Court ruled that the transfer of jurisdiction over civilians accused of treason from civilian to military courts constituted a violation of the right to a trial before a competent, independent and impartial tribunal established by law. She stressed that states should not establish courts that do not adhere to the established procedures in order to seize jurisdiction from ordinary courts.[2073]

Fair trial rights apply in all courts, including special, specialized or military courts. The jurisdiction of military courts should be limited to trying members of the armed forces for violations of military discipline; they should not try crimes over which civilian courts have jurisdiction, human rights violations or crimes under international law.

First: The right to a fair trial before all courts.

In many countries, special or exceptional courts have been established to try special cases or specific crimes, such as crimes against the state, terrorism-related crimes or drug crimes. The guarantees of a fair trial provided by the procedures followed in special courts are often less than those in ordinary courts.

([2071]) Zimbabwe Lawyers for Human Rights and Zimbabwean Press Association v. Republic of Zimbabwe (284)/2003), African Commission §172; Barreto Leiva v. Venezuela, Inter-American Court §67 (2009).

([2072]) Section A(4)(b)-(d) of the Principles on Fair Trial in Africa.

([2073]) Castillo Petruzzi et al. v. Peru, Inter-American Court (1999) §§119 and 128-129; see Opinion 39/2005 of the Working Group on Enforced Disappearances (Cambodia), §§21-24 (2005) UN Doc. A/HRC/4/40/Add. 1.

Specialized courts are courts or judicial bodies formed to try persons with special legal status, such as juveniles or members of the armed forces; or to consider special categories of legal disputes, such as labor cases or those related to the law of the sea or personal status.

However, military courts should be used exclusively to try members of the armed forces for breaches of military discipline, and any human rights violations or crimes under international law should be excluded from such trials.[2074]

However, some states have used military courts to try civilians, including for crimes against the state and terrorism-related crimes, and to try military personnel accused of ordinary crimes, human rights violations, and crimes under international law.

While the International Covenant on Civil and Political Rights and regional human rights treaties do not explicitly prohibit the establishment of special or specialized courts, they do require all courts to be competent, independent and impartial.

In addition, the rights to a fair trial enshrined in international standards apply to criminal proceedings in all courts.[2075]

The standards that apply to proceedings in these courts may depend, to some extent, on whether a state of emergency has been declared or martial law is in effect.

Additional criteria apply to issues relating to children in this context.

Everyone has the right to be tried by ordinary courts using established legal procedures. Special courts that do not use legally approved procedures should not be established to assume the legal jurisdiction of ordinary courts.[2076]

The Human Rights Committee, the African Commission and the Inter-American Court have concluded that fair trial rights have been violated in criminal proceedings in special and military courts around the world, and that many of these violations have been committed in trials involving terrorism- or drug-related crimes.

In "masked judges' courts," judges remain anonymous, undermining the court's independence and impartiality. These courts often exclude the public. While it has consistently violated the rights of the defense and the principle of equality of opportunity for defense and prosecution by restricting or preventing the accused from contacting a lawyer of his choice during detention, and by preventing the accused and his lawyer from questioning or summoning witnesses or presenting additional evidence.[2077]

([2074] Amnesty International uses the term "crimes under international law" to refer to a category of crimes that includes genocide, crimes against humanity, war crimes, torture, enforced disappearance and extrajudicial execution. These crimes are illegal under international law; they must be criminalized and investigated by States, and individuals suspected of having committed such crimes must be brought to trial before civil or international courts.

([2075]) Article 10 of the Universal Declaration, Article 14 of the International Covenant, Article 40 of the Convention on the Rights of the Child, Articles 7 and 26 of the African Charter, Article 8 of the American Convention, Principle 23(b) of the Basic Principles on Reparation, and Sections A(1), A(4)(a) and F(a) of the Principles on Fair Trial in Africa.

General Comment 32 of the Human Rights Committee, §22; principles 1, 2, 3 and 15 of the draft principles governing the administration of justice through military tribunals, . UN Doc. E/CN4. /2006/58.

([2076]) Principle 5 of the Basic Principles on the Independence of the Judiciary, and sections A(4)(e) and L(a)-(c) of the Principles on Fair Trial in Africa.

Decision 2005/30 of the Commission on Human Rights, §3; Castillo Petruzzi and Others v. Peru, Inter-American Court §129 (1999); Centre for Freedom of Speech v. Nigeria (206)/97), African Commission, 13th Annual Report (1999). §12- §14.

([2077]) General Comment 32 of the Human Rights Committee, §23.

Examining trials before such courts in Colombia and Peru, the Human Rights Committee concluded that these trials violated the right to a fair trial.[2078]

The Special Rapporteur on Human Rights and Counter-terrorism called on States to avoid resorting to special or specialized courts to adjudicate terrorism cases.[2079] .

Human rights bodies have raised concerns about the procedures adopted by such courts that are inconsistent with fair trial rights, including the right to be heard by an independent and impartial tribunal, the exclusion of evidence obtained under torture or other ill-treatment, and the right to appeal to a higher tribunal.[2080] .

Likewise, customary (also called traditional) courts must respect international standards. Concerns have been raised that criminal trials conducted by some traditional courts do not guarantee fair trial rights, including the right to counsel, the right to the services of an interpreter, and the prohibition of discrimination.[2081]

The Human Rights Committee has made it clear that, to be consistent with the provisions of the International Covenant:

The criminal jurisdiction of such courts should be limited to crimes committed by minors;

The procedures of these courts must be consistent with the guarantees of fair trial established in the International Covenant;

The judgments issued by it must be subject to ratification by the courts of the State in the light of such guarantees;

The accused must have the right to appeal the judgments issued by these courts in accordance with procedures that meet the requirements of the International Covenant.[2082]

Fair trial principles in Africa also require that such courts respect international fair trial standards, but allow for appeal to a higher traditional court, an administrative authority or a court under judicial authority.[2083]

Second: Special Courts

The authorities sometimes resort to establishing special courts to apply exceptional measures that often do not comply with fair trial standards.[2084]

However, special courts may not be created to deprive ordinary courts of their judicial jurisdiction.[2085]

([2078]) Human Rights Committee: Becerra Barney v. Colombia, UN Doc. 2/ §7 §(2006) CCPR/C/87/D/1298/2004 and 8, Guerra de la Asprilla v. Colombia, 2007/3/9-2/ §9 (2010) UN Doc. CCPR/C/98/D/1623, Bolai Campos v. Peru, 1994/8/ §8 (1997) UN Doc. CCPR/C/61/D/577.

([2079]) Special Rapporteur on extrajudicial, summary or arbitrary executions, §45 (2008) UN Doc. A/63/223 (b).

([2080]) Special Rapporteur on extrajudicial, summary or arbitrary executions, §24 (2008) UN Doc. A/63/223, 27 and 32, Egypt, UN Doc §35-§32 (2009) A/HRC/13/37/Add. 2, Spain, /3/ UN Doc. A/HRC//10 §17- §16 (2008) Add. 2, Tunisia, 2010) UN Doc. A/HRC/16/51/Add. 2) §35-36; Concluding observations of the Human Rights Committee, France, UN Doc §23 (1997) CCPR/C/79/Add. 80: See also U.S. Commission, Report on Terrorism and Human Rights (2002), section 3(d)(1)(B) §230.

([2081]) Concluding observations of the Human Rights Committee: Botswana, UN Doc §21 (2008) CCPR/C/BWA/CO/1 and 12, Madagascar: / UN Doc. CCPR/C. §16 (2007) MDG/CO/3.

([2082]) General Comment 32 of the Human Rights Committee, §24.

([2083]) Section F of the Principles on Fair Trial in Africa.

([2084]) See, for example, the concluding observations of the Committee against Torture: Syria, §11 (2010) UN Doc. CAT/C/SYR/CO/1; Opinion 23/2008 of the Working Group on Enforced or Involuntary Disappearances (Rastanawi v. Syria), /30/UN Doc. A/HRC/13 . §17- §15 (2008) Add. 1.

([2085]) Principle 5 of the Basic Principles on the Independence of the Judiciary, and Sections A(4)(e) and L(c) of the Principles on Fair Trial in Africa.

Castillo Petruzzi et al. v. Peru, Inter-American Court (1999). §129.

Crimes that fall within the jurisdiction of ordinary courts should not be tried. Such courts must be independent and impartial, and respect fair trial standards.[2086]

The right to equality before the courts means that similar cases must be heard according to similar procedures. If exceptional criminal procedures or courts specially established to hear a particular category of cases are used, it must be shown that there is a reasonable objective basis justifying this distinction.[2087]

The jurisdiction of special courts - like all courts - must be based on the provisions of the law .[2088] .

Analysis of the fairness of proceedings in an extraordinary court typically focuses on whether the court is: constituted by law; whether its jurisdiction ensures non-discrimination and equality; whether its judges are independent of the executive and other authorities; whether its judges are competent and impartial; and whether its proceedings are consistent with international standards for a fair trial, including the right to appeal.[2089]

The Human Rights Committee concluded that a trial before a special court in Libya - the People's Court - violated fair trial rights. Among other things, the trial was not public; the accused was not, at any time, given access to the case file and the charges against him; and the accused was not given any opportunity to be represented by counsel of his own choosing.[2090]

Although this court was replaced by the State Security Court in 2005, it was not clear that there was any difference between the new court and the People's Court that preceded it.[2091]

The African Commission found that a number of special courts had violated the right to be tried before an independent and impartial court. For example, it held that the special courts established under the Civil Disturbances Act in Nigeria were not impartial because their composition was subject to the discretion of the executive.[2092]

It also concluded that the transfer of criminal cases from ordinary courts in Mauritania to a section of a special court headed by a senior army officer, assisted by two officers of the armed forces, violated fair trial guarantees.[2093]

Examining trials of civilians before the National Security Court in Turkey on national security charges, the European Court found that there were legitimate grounds to doubt the independence and impartiality of the court. One of the three judges on each trial panel was a military officer working in the army's legal apparatus. Although military judges enjoyed many constitutional guarantees of independence and underwent the same training as civilian judges,

---

([2086]) Resolution 2005/30 of the Commission on Human Rights.

([2087]) Human Rights Committee: General Comment 32 §14, Kavanagh v. Ireland, 3/10-2/ §10 §(2001) UN Doc. CCPR/C/71/D/819/1998 and 12; see the concluding observations of the Human Rights Committee: Ireland, / UN Doc. CCPR/C/IRL. §20 (2008) CO/3.

([2088]) Article 14(1) of the International Covenant, Article 8 of the American Convention, Article 13 of the Arab Charter, Article 6(1) of the European Convention, and Article 26 of the American Declaration.

Concluding observations of the Human Rights Committee: Iraq, UN Doc. §15 (1997) CCPR/C/79/Add. 84.

([2089]) See Report of the United States Commission on Terrorism and Human Rights (2002), section 3(d)(1)(B) §230.

([2090]) Abu Sadra v. Libyan Arab Jamahiriya, Human Rights Committee, . 8/ §7 (2010) UN Doc. CCPR/C/100/D/1751/2008.

([2091]) Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, §22 (2007) UN Doc. CCPR/C/LBY/CO/4; see the concluding observations of the Human Rights Committee: Syrian Arab Republic, / UN Doc. CCPR. §10 (2005) CO/84/SYR.

([2092]) PEN International, Constitutional Rights Project, Rights International on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria (137/94, 139/94, 154/96, 161/97) (1998), African Commission, Annual Report 12 §86 (1998).

([2093]) Malawi African Association and Others v. Mauritania (54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98), African Commission, Annual Report 13 §98-§100 (2000).

they were military personnel and therefore subject to military discipline and military evaluations, while their term of service in court remained temporary and subject to renewal.[2094]

Third: Specialized Courts

No specialized criminal courts shall be established to try persons on the grounds of their race, color, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status. Such courts would violate the principle of equality before the courts and the prohibition of discrimination.[2095]

However, the establishment of specialized courts to try certain categories of persons may be permissible if justified by reasonable objective grounds on the ground.[2096]

For example, juvenile courts should be established to handle criminal proceedings against persons who were under 18 at the time of their alleged offence, and specialized criminal courts with specially trained prosecutors and judges may be established to try those accused of gender-based violence, as an interim measure to address barriers to redress for victims of such violence.[2097]

Military courts should only consider cases involving members of the armed forces who commit violations of military discipline.

Such courts must be established under the provisions of the law, be competent, independent and impartial, and ensure respect for fair trial rights.

Fourth: Military Courts

In many countries, authorities have established military courts to try members of the armed forces for violations of military discipline. But it is worrying that some states have expanded the jurisdiction of these courts to include civilians, or to try military personnel for “ordinary criminal offences”, or violations or crimes under international law.

Human rights law has set limits on the jurisdiction of military courts in relation to the specific purpose of such courts, consistent with the right to a fair trial by a competent, independent and impartial tribunal, and with the duty of States to ensure accountability and prevent impunity for human rights violations and crimes under international law.

The Inter-American Court ruled that: “When a military court assumes jurisdiction over a matter that should be heard by ordinary courts, the individual’s right to have his case heard by a competent, independent and impartial tribunal constituted in advance by law, and a fortiori his right to due process, is violated. ”[2098]

The African Commission concluded that the trial of journalists before military courts violated Article 7 of the African Charter and contravened the provisions of Principle 5 of the Basic Principles on the Independence of the Judiciary. In addition, the accused were denied access to counsel and the right to be represented by lawyers of their choice.[2099]

([2094]) Incal v. Turkey (22678)/93, European Court §65-§73 (1998); see Öcalan v. Turkey (46221)/99, Grand Chamber of the European Court (2005) §112-§118.

([2095]) Articles 2, 7 and 10 of the Universal Declaration, Articles 2, 14 and 26 of the International Covenant, Articles 2 and 3 of the African Charter, Article 1 of the American Convention, Articles 11 and 12 of the Arab Charter, and Article 14 of the European Convention.

([2096]) Human Rights Committee: General Comment 32 §14, Manzano et al. v. Colombia, 2007/5/6 (2010) UN Doc. CCPR/C/98/D/1616.

([2097]) Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. §58 (2011). A/66/289 and 97.

([2098]) Inter-American Court: Castillo Petruzzi et al. v. Peru, (1999) §128, Radilla-Pacheco v. Mexico, §273 (2009); see Lacantuta v. Peru, §138-§143 (2006).

([2099]) Centre for Freedom of Speech v. Nigeria (206)/97), African Commission, Annual Report 13 §12-§14 (1999).

When individuals are tried before military courts, fair trial standards must be respected.[2100]

This includes measures taken against members of the armed forces who commit violations of military discipline that, given the nature of the offence or the seriousness of the potential penalty, constitute a "criminal" offence under international human rights law.[2101]

The analysis of whether a criminal proceeding by a military court is fair should include: whether the jurisdiction of the court is consistent with national law and international standards; whether the court is not subject to interference from higher military ranks or outside influence; whether the court has the judicial competence to administer justice properly; whether the judges are, and can be seen to be, competent, independent and impartial; and whether the accused has at least the minimum guarantees provided for by international fair trial standards.

1- The jurisdiction, independence and impartiality of military courts

In assessing the independence of a military court, questions should address whether the judges, who are often members of the armed forces, have received appropriate training and qualifications in law; whether their appointment procedures, conditions of service and guarantees of job security ensure their independence; whether, in the exercise of their duties as judges, they are independent of their superiors; and whether there is any hierarchical relationship between the prosecution and the members of the military court's judiciary.

Military courts, like ordinary courts, must be, and be seen to be, independent and impartial.

A number of human rights mechanisms have expressed concerns about the military commissions established to try persons detained by the United States at Guantanamo Bay. Their concerns included: the appointment of judges by the United States Department of Defense, and ultimately by the President; the power of the executive appointee to remove judges from their committee positions; and the monopoly of decision-making authority by the executive appointee over disputed jurisdiction over the judiciary.[2102]

Accordingly, in 2009, the Special Rapporteur on extrajudicial, summary or arbitrary executions declared that the legal basis on which the trials of persons held at Guantanamo Bay were based constituted a flagrant violation of the right to a fair trial and that the execution of any person under such a trial would constitute a violation of international law.[2103]

The UN High Commissioner for Human Rights, along with a number of UN experts, called on the United States to ensure that ordinary courts hear the cases of those it detains in Guantanamo Bay.[2104]

The African Commission found that the African Charter had been violated in cases in which civilians and military personnel, in Mauritania, Nigeria and Sudan, were convicted by military courts that lacked independence and impartiality. For example, the judicial body of a military

---

([2100]) General Comment 32 of the Human Rights Committee, §22; Civil Liberties Organization and Others v. Nigeria (218)/98), African Commission, Annual Report 14 §44 (2000-2001).

([2101]) Recommendation 4 CM/Rec (2010) of the Council of Europe on the human rights of members of the armed forces, Annex §28; European Court: Engel and Others v. The Netherlands (5102) - 5100/71 and 5354/72 and 5370/72), §82 (1976), Campbell and Veale v. the United Kingdom, (7189)/77 and 7878/77), §68 (1984).

([2102]) Joint report of the United Nations mechanisms on Guantanamo Bay detainees, 120/2006/(2006) UN Doc. E/CN. 4 §30 - §34.

([2103]) Special Rapporteur on extrajudicial, summary or arbitrary executions, United States of America, UN Doc. A/HRC/11/2/Add. 5 (2009) §41- §38.

([2104]) Annual Report of the High Commission for Human Rights for the year 2010. United States of America, UN Doc. A/HRC/11/2/Add. 4.

court that tried 26 civilians in Sudan was composed of active army officers who were on duty and subject to military orders.[2105]

In Nigeria, members of the armed forces and a civilian were tried for their alleged involvement in a military coup plot before a special military court. The court did not pass the independence test because its president was an active member of the country's ruling Transitional Council.[2106]

Human rights mechanisms have stated unequivocally that military courts should not be empowered to impose death sentences.

2- Trial of military personnel before military courts

Trials of members of the armed forces before military courts for violations of military discipline are not considered to be in violation of international human rights standards as long as these courts are independent and impartial, and as long as the alleged violations do not fall under the category of "ordinary crimes," human rights violations, or crimes under international law. If the offence is of a "criminal" nature under human rights law, fair trial rights must be respected.[2107]

The jurisdiction of military courts to hear criminal cases should be limited to trying military personnel in the army for violating military regulations.[2108]

The Human Rights Committee, the Committee against Torture and the Inter-American Court have all declared, in almost identical language, that the jurisdiction of military courts should be limited to trying members of the armed forces for criminal violations of military discipline, as determined by law.[2109]

A number of human rights organizations called for members of the armed forces accused of ordinary criminal offences to be tried before an ordinary (civilian) court, rather than before a military court.

The Human Rights Committee expressed concern about the lack of fair trial guarantees in military court proceedings in the Democratic Republic of the Congo and called on the authorities to abolish the jurisdiction of military courts over ordinary crimes.[2110]

The African Commission concluded that the trial of military and civilian personnel accused of a civilian crime (theft) before a military court constituted a violation of African regional standards and "good governance." [2111]

([2105]) African Commission: Legal Office of Ghazi Suleiman v. Sudan (98/222 and 229/99), Annual Report 16 §63-§67 (2003); see Amnesty International and Others v. Sudan (48/90, 50/91, 52/91 and 89/93), Annual Report 13 §67-§70 (1999).

([2106]) Civil Liberties Organization and Others v. Nigeria, (218)/98, African Commission, 14th Annual Report (2000) (2001) §24-§27 and §32-§34 and §43-§44.

([2107]) Dakar Declaration on the Right to a Fair Trial in Africa, §3; Wich Okondo Koso and Others v. Democratic Republic of the Congo (2003/281), African Commission, Annual Report 26 §84 (2008); Las Palmeras v. Colombia, Inter-American Court §51-52 (2001); Inter-American Commission, Report on Terrorism and Human Rights (2002), section 3(d)(1)(b) §232; European Court: Morris v. United Kingdom (38784)/97, §59 (2002), Engel and others v. Netherlands (5100)/71 - 5102/71 and 5354/72 and 5370/72), §82 (1976), Campbell and Veal v. United Kingdom (7189)/77 and 7878/77), §68 (1984).

([2108] See Section A of the Principles on Fair Trial in Africa.

Principle 29 of the Updated Principles on Impunity.

([2109]) Concluding observations of the Human Rights Committee: Chile, UN Doc §12 (2007) CCPR/C/CHL/CO/5; Uzbekistan: / UN Doc. CCPR/CO/71. §15 (2001) UZB

Concluding observations of the Committee against Torture: Guatemala, UN Doc. §14 (2006) CAT/C/GTM/CO/4

See, for example, Durand and Ugarte v. Peru, Inter-American Court §117 (2000); Wich Okunda Koso and Others v. Democratic Republic of the Congo (281)/2003), African Commission, Annual Report 26 (2008) §84-§88.

Resolution 1999/19 of the Commission on Human Rights (Equatorial Guinea), §8 (a).

([2110]) Concluding observations of the Human Rights Committee: Democratic Republic of the Congo, §21 (2006) UN Doc. CCPR/C/COD/CO/3.

([2111]) Wich Okunda Koso and Others v. Democratic Republic of the Congo (2003/281), African Commission, Annual Report 26 §85-§87 (2008).

The European Commission does not rule out the possibility of members of the armed forces being tried on criminal charges before military courts. However, the Council of Europe Guidelines on the Human Rights of Members of the Armed Forces, which largely summarise the jurisprudence of the European Court, provide that the guarantees of fair trial apply to all proceedings against military personnel who are criminals under the European Convention, regardless of their classification under national law. These guidelines stress the importance of: the independence of the court at every stage of the proceedings; a clear separation of prosecuting and decision-making powers; the right to a public trial; respect for the rights of the defense; and the right to appeal to an independent, impartial and competent higher tribunal.[2112]

3- Trials for human rights violations and crimes under international law before military courts.

There is growing acceptance of the idea that military courts should not have jurisdiction to try members of the military and security forces for human rights violations.[2113]

Or other crimes covered by international law. Since the judicial bodies of most military courts are composed of military personnel, respect for the right to a trial before an independent and impartial court remains, in fact and in appearance, under threat.

Similarly, the Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about "the trial of members of the security forces before military courts, which allegedly allows them to enjoy impunity due to the misconception of the concept of comradeship in arms." He cited the names of countries such as Colombia, Indonesia and Peru as well-known examples of this.[2114] .

The Inter-American Court has made it clear that military courts cannot exercise jurisdiction over human rights cases involving crimes committed against civilians.[2115]

The Human Rights Committee and the Committee against Torture have called on States, including Lebanon, Brazil, Mexico and Colombia, to transfer jurisdiction from military courts to ordinary (civilian) courts for all cases involving human rights violations by military personnel, including members of the military police.[2116]

International standards prohibit the trial of members of the security forces or other public officials accused of participating in enforced disappearances before military or special courts.[2117]

The Committee against Torture and the Special Rapporteur on Torture have made it clear that individuals accused of torture should not be tried before military courts.[2118]

([2112]) Annex to Recommendation 4) Cm/Rec(2010) of the Council of Europe, §28-§34.

([2113]) Principle 29 of the Updated Principles on Impunity; see Principles 5, 8 and 9 of the Draft Principles Governing the Administration of Justice through Military Tribunals, UN Doc. 58/2006. E/CN. 4; Special Rapporteur on torture, 156/§39 (2001) UN Doc. A/56 (j); Concluding observations of the Committee against Torture: Peru, §16 (2006) UN Doc. CAT/C/PER/CO/4 (a); Working Group on Enforced or Involuntary Disappearances: Ecuador, /40/. UN Doc. A/HRC/CN4 §101 (2006) Add. 2 (e).

([2114]) Special Rapporteur on extrajudicial, summary or arbitrary executions. §125 (1996) UN Doc. A/51/457.

([2115]) Radilla-Pacheco v. Mexico, Inter-American Court (2009) §274; see Annual Report of the Inter-American Commission on Human Rights: Colombia (2011) Chapter 4, §31, p. 349.

([2116]) Concluding observations of the Human Rights Committee: Lebanon, UN Doc §14 (1997) CCPR/C/79/Add. 78, Brazil, / UN Doc. CCPR/C/BRA §9 (2005) CO/2, Mexico, 2010) UN Doc. CCPR/C/MEX/CO/5) §11 and §18, Colombia, §14 (2010) UN Doc. CCPR/C/COL/CO/6; Concluding observations of the Committee against Torture: Mexico, / UN Doc. CAT/C §14 (2006) MEX/CO/4; see 2010 Annual Report of the High Commissioner for Human Rights (Mexico), p. 28; OHCHR, UN Doc E/CN. 4/2001/167 (Colombia), pp. 361-366.

([2117]) Article 16(2) of the Declaration on Enforced Disappearance, and Article 9 of the American Convention on Enforced Disappearance.

Radilla-Pacheco v. Mexico, Inter-American Court (2009) §277 and §290-§314.

Amnesty International calls for perpetrators of human rights violations and crimes under international law to be tried before civilian - rather than military - courts, given the lack of independence of military courts and concerns about impunity for perpetrators.[2119]

4- Trials of civilians before military courts

In some countries, military courts have jurisdiction to try civilians accused of crimes against military property or against state security.

There is growing acceptance of the principle that military courts do not have jurisdiction to try civilians, given the nature of these courts and concerns about their independence and impartiality.

Fair trial principles in Africa prohibit the use of military courts to try civilians.[2120]

The Inter-American Court has declared that military jurisdiction should be limited to trying military personnel for crimes that are, by their nature, harmful to military order and that civilians should in no case be tried before military courts. The court also made clear that retired military personnel should be considered civilians who should be tried for their civilian crimes by civilian, not military, courts.[2121]

In addition, the draft principles governing the administration of justice through military courts affirmed the principle that military courts should not have jurisdiction to try civilians.[2122]

While the Human Rights Committee and the European Court have not yet ruled out a complete ban on trials of civilians before military courts, they have said that they should be exceptional and that courts should be independent, impartial and specialized, and should respect minimum guarantees of justice.[2123]

In addition, States that allow such trials must demonstrate that they are necessary and justified, that ordinary civilian courts are unable to conduct such trials, or that they are permissible before military courts under international humanitarian law. The European Court requires that justification be provided for the trial of any civilian before a military court in each individual case. It ruled that laws that restrict certain categories of crimes to military courts are not sufficient justification for such action .[2124] .

([2118]) Special Rapporteur on torture: 156/2001) UN Doc. A/56) §39 (j); Concluding observations of the Committee against Torture: Peru, UN Doc §16 (2006) CAT/C/PER/CO/4 (a).

([2119]) For example, Amnesty International: Democratic Republic of the Congo: A new strategy is needed in the Democratic Republic of the Congo, Document No.: 2001/006/AFR 62, p. 21, Tunisia: One step forward, two steps back? One year after landmark elections in Tunisia, Document No.: 2012/010/MDE 30, p. 8, Amnesty International Statement to the 22nd Session of the UN Human Rights Council: Accountability needed for the Gaza/Israel conflict, Document No.: MDE 02/001/2013, p. 2.

([2120] Section C of the Principles on Fair Trial in Africa.

([2121]) Inter-American Court: Palamara-Iribarne v. Chile (2005) §124, §139 and §269 (14); Sisti-Hurtado v. Peru, §151 (1999).

([2122]) Principle 5 of the Draft Principles Governing the Administration of Justice through Military Tribunals, UN Doc. 58/2006. E/CN. 4, Quoted by the Special Rapporteur on the independence of judges and lawyers in 41/UN Doc. A/HRC/11 §36 (2009) and in Ergin v. Turkey (No. 6), European Court §45 (2006).

([2123]) General Comment 32 of the Human Rights Committee, §22; Ergin v. Turkey (No. 6) (47533/99), European Court §45 (2006).

([2124]) General Comment 32 of the Human Rights Committee, §22; Working Group on Enforced Disappearances, §65 (2008) 4/UN Doc. A/HRC/7 66; Ergin v. Turkey (No. 6) (47533)/99), European Court (2006) §47; see Human Rights Committee: Kurbanova v. Tajikistan, UN Doc 6/ §7 (2003) CCPR/C/79/D/1096/2002, Madani v. Algeria, UN Doc 7/ §8 (2007) CCPR/C/89/D/1172/2003, Al-Abani v. Libyan Arab Jamahiriya, 2007/8/ §7 (2010) UN Doc. CCPR/C/99/D/1640.

However, in its concluding observations, the Human Rights Committee has called on the governments of several countries, including Slovakia, for example, to prohibit the trial of civilians before military courts.[2125]

The Committee also called on Israel to refrain from holding criminal trials of Palestinian children in its military courts.[2126]

Trials of civilians before military courts have raised a number of fair trial issues, including: the lack of independence, impartiality and jurisdiction of such courts; the violation of the right to equality before the courts; and the violation of a wide range of guarantees, including the right of the accused to be assisted by counsel of his or her choice and the right to appeal.[2127]

For example, the European Court, after examining two sets of criminal procedures adopted by military courts, found that the concerns expressed by the accused regarding the independence and impartiality of the court were objectively justified. In a case heard by a military court in the United Kingdom, the tribunal consisted of two civilians and six serving military officers, one of whom - the highest ranking - acted as convener, while an assistant civilian advisory judge advised the tribunal. In the case of a journalist who was tried before a Turkish military court on charges relating to the publication of a newspaper article, the European Court noted that the military court was composed only of military officers, and that the accused's fears that the court might be influenced by considerations of one party were legitimate and justified. [2128]

The Inter-American Court and the African Commission have found in several cases that trials of civilians before military courts have violated fair trial rights.[2129]

While the Working Group on Arbitrary Detention called on States in transition that allow civilians to be tried before military courts to establish a procedure enabling civilians to challenge the jurisdiction of a military court before an independent civilian judiciary.[2130]

11-4 The right to have the case heard by an independent court

11-4-1 Within the framework of Egyptian law

The political system in Egypt is based on political and partisan pluralism, the peaceful transfer of power, the separation and balance of powers, the correlation of responsibility with power, and respect for human rights and freedoms, as outlined in the Constitution.[2131]

([2125]) Concluding observations of the Human Rights Committee: Slovakia, UN Doc §20 (1997) CCPR/C/79/Add. 79; See the concluding observations of the Human Rights Committee: Lebanon, §18 (1997) UN Doc. CCPR/C/79/Add. 78, Chile, §12 (2007) UN Doc. CCPR/C/CHL/CO/5, Tajikistan, / UN Doc. CCPR §18 (2004) CO/84/TJK, Ecuador, 2009) UN Doc. CCPR/C/ECU/CO/5). §5.

([2126]) Concluding observations of the Human Rights Committee: Israel, UN Doc §22 (2010) CCPR/C/ISR/CO/3; see Concluding observations of the Committee against Torture: Israel, §27 (2009) UN Doc. CAT/C/ISR/CO/4.

([2127]) Ergin v. Türkiye (No. 6) (47533)/99), European Court (2006). §50- §54

Human Rights Committee General Comment 32, §14 and §22.

([2128]) Martin v. United Kingdom (40426)/98, European Court (2006), Ergin v. Turkey (No. 6) (47533)/99, European Court (2006).

([2129]) See, for example, Castello Petruzzi et al. v. Peru, Inter-American Court §128(1999).

See, for example, African Commission: Legal Office of Ghazi Suleiman v. Sudan (222)/98 and 229/99), Annual Report 16 §67-63 (2003); Civil Liberties Organization and Others v. Nigeria (218)/98), Annual Report 14 (2000) §43-44 (2001; Kevin Mgwanga Gumi and Others v. Cameroon (266)/03), Annual Report 26 §127-128 (2009).

See the report of the Special Rapporteur on the independence of judges and lawyers, 2006 (UN Doc. A/61/384) Chapter 4.

([2130]) Working Group on Enforced Disappearances, 4/ UN Doc. A/HRC/7 §28 (2008) (c).

([2131] Article No. 5 of the Constitution.

First: Separation of powers

The Constitution was keen to confirm the principle of separation of powers as the ruler of the balanced relationship between the public authorities in the state, including the legislative and judicial authorities.[2132]

The judiciary is independent and is exercised by courts of all types and degrees. They issue their rulings in accordance with the law, and the law defines their powers. Interference in the affairs of justice or cases is a crime that does not lapse by prescription. Judges are independent and cannot be dismissed. There is no authority over them in their work except the law. They are equal in rights and duties. The law determines the conditions and procedures for their appointment, secondment, and retirement, and regulates their disciplinary accountability. They may not be assigned, in whole or in part, except to the entities and in the work specified by the law. All of this is in a manner that preserves the independence and impartiality of the judiciary and judges and prevents conflicts of interest.[2133]

The independence of the judiciary is essential to ensure compliance with the law. The Constitution has guaranteed the independence of the judiciary and made this independence a protection from interference in its work or influence on its course, considering that the final decision regarding the rights, duties and freedoms of individuals is in the hands of its members. The independence of the judiciary is based in its content on the judiciary deciding the lawsuits presented to it with complete objectivity, in light of the facts presented to it, and in accordance with the applicable legal rules, without restrictions imposed on it by any party, or interference on its part in the affairs of justice in a way that affects its requirements, so that its judges have the final say in every matter of a judicial nature, and issue their rulings by procedural rules that are fair in themselves, and in a way that ensures full protection of the rights of litigants .[2134]

The organization and effective administration of justice is a matter closely related to freedom and the preservation of rights of all kinds. The Constitution has guaranteed the independence of the judiciary; and made this independence a protection from interference in its work, influence, distortion, or disruption of its components, considering that the final decision regarding the rights and freedoms of litigants is up to it, and it repels aggression from them, and provides those who seek its refuge with the judicial satisfaction guaranteed by the Constitution or the law or both. No one can dissuade it from doing so, and no party, whatever its status, can distract it from its duties or obstruct it, so that its duty remains bound at all times to adjudicate the various forms of disputes presented to it according to objective standards that are not tainted by falsehood or slander, and in light of the facts that it finds to be true and in accordance with the applicable legal rules, and in a manner that prevents any interference in its affairs, whether by promise or threat, by enticement, encouragement or intimidation, directly or indirectly, so that the word of each judge is decisive in what he is competent to do and to ensure that all judicial rulings are issued according to procedural rules that are fair in themselves, and that guarantee the full protection of the rights of litigants.

les magistrats règlent les affaires dont ils sont saisis impartialement d'après les faits et conformément à la loi، sans restriction et sans être l'objet d'influences، incitations، pressions،

([2132]) The ruling of the Supreme Constitutional Court in Case No. 96 of 27 Q issued in the session of March 7, 2020, date of publication March 16, 2020, page No. 3.

([2133] Articles Nos. 184 and 186 of the Constitution.

([2134]) The ruling of the Supreme Constitutional Court in Case No. 139 of 21 Q issued in the session of March 7, 2004, date of publication March 18, 2004, and published in the first part of the Technical Office Book No. 11, page No. 405, rule No. 65, and the ruling of the Supreme Constitutional Court in Case No. 5 of 37 Q issued in the session of May 4, 2019, date of publication May 12, 2019, page No. 52.

menaces ou interventions indues، directes ou indirectes، de la part de qui que ce soit ou pour quelque raison que ce soit.

(Principes fondamentaux relatifs à l'indépendance de la magistrature adoptés par le septième congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu a Milan du 26 août au 6 septembre 1985 et confirmés par l'Assemblée Générale dans ses résolutions 40/32 du 29 novembre 1985 et 40/146 du 13 décembre 1985). [2135]

The meaning of the independence of the judiciary is that each judge's assessment of the facts of the dispute, and his understanding of the rule of law regarding them, should be free from any restriction, influence, temptation, threat, interference or pressure of any kind, extent or source. What strengthens and confirms this guarantee is the independence of the judiciary from the legislative and executive authorities, and that its jurisdiction extends over every matter of a judicial nature.[2136]

This means that no authority or person in the state may issue instructions or directives to the judge regarding a case brought before him that determine the method of examining it or the type or content of the ruling he issues in it. Rather, this must be left to the judge's conscience, drawing inspiration from the law in its various sources. The judge's independence means his freedom in his judicial work within the scope of the law.

The independence of the judge has many aspects:

The judge is independent of the legislative authority, the executive authority, and other judicial bodies. The judge is also independent of litigants and public opinion.

The legislative authority's jurisdiction to enact laws, according to the text of Article 101 of the Constitution, does not authorize it to interfere in the work that the Constitution has assigned to the judicial authority and is restricted to it. Otherwise, this would be an infringement on its jurisdiction and a violation of the principle of separation of powers.[2137]

The courts' commitment to the objective rules that the legislator has deemed appropriate, per his discretionary authority in regulating rights, when deciding on the disputes presented to them, is not considered an infringement on their independence or a diminution thereof, since this independence aims to ensure that judicial work is not the product of a personal, non-impartial tendency, so that those who resort to the judiciary obtain fair judicial satisfaction in the event of an attack on their rights and freedoms .[2138] .

On the other hand, the independence of the judiciary is not absolute independence from the yoke of every restriction, but rather it is an independence that is regulated by the boundaries determined by the constitution. The judiciary exercises its authority in accordance with the legislation issued by the legislative authority. The judge may not, when exercising his judicial authority, deviate from the requirements of that legislation.[2139]

([2135]) The ruling of the Supreme Constitutional Court in Case No. 14 of 17 Q issued in the session of September 2, 1995, date of publication September 14, 1995, and published in the first part of the Technical Office Book No. 7, page No. 176, rule No. 9.

([2136]) The ruling of the Supreme Constitutional Court in Case No. 26 of 27 Q issued in the session of January 13, 2008, date of publication January 27, 2008, and published in the first part of the Technical Office Book No. 12, page No. 809, rule No. 81.

([2137]) The Supreme Constitutional Court, Case No. 96 of 27 Q issued in the session of March 7, 2020, date of publication March 16, 2020, page No. 3, Case No. 202 of 32 Q issued in the session of November 3, 2018, date of publication November 13, 2018, page No. 3, Case No. 25 of 16 Q issued in the session of July 3, 1995, date of publication July 20, 1995, and published in the first part of the Technical Office Book No. 7, page No. 45, Rule No. 2.

([2138]) The ruling of the Supreme Constitutional Court in Case No. 5 of 37 Q issued in the session of May 4, 2019, date of publication May 12, 2019, page No. 52.

([2139]) The ruling of the Supreme Constitutional Court in Case No. 166 of 37 Q issued in the session of February 2, 2019, date of publication February 11, 2019, page No. 32.

The legislator has decided on the independence of the judiciary from the executive authority by stipulating the jurisdiction of the Supreme Judicial Council, which is composed entirely of senior judges themselves, to have control over the affairs of judges and public prosecutors, including appointment, promotion, transfer, secondment, and other matters, because one of the most important pillars of judicial independence is that the judiciary itself is responsible for the affairs of its men without participation or interference from another authority. Consequently, the judiciary has become unique in managing the affairs of its men in a manner that achieves complete independence for the judicial authority.[2140]

The text states that they cannot be dismissed, as members of the judiciary, according to the constitution, are not employees of the government apparatus and its branches. However, this does not mean that judges are not above accountability. Rather, the constitution and the law have determined the rules for their accountability in order to ensure the independence and immunity of the judiciary and to confront maliciousness and the risk of arbitrariness or control, which undermines the principle of judicial independence and empties judicial immunity of its content.[2141]

The legislator also criminalized the act of any employee who mediates with a judge or court in favor of one of the parties or to his detriment by way of an order, request, request, or recommendation.[2142]

The legislator also decided on the independence of the judge in relation to other judicial bodies. The Public Prosecution may not issue an order to him, and what he expresses verbally or in writing are merely requests, which he has the authority to accept or reject. The higher-ranking judiciary may not issue instructions to a lower-ranking judiciary, and the head of the court may not issue instructions to the judges of his court.

The judge is also independent with the parties to the lawsuit and public opinion. None of the parties to the lawsuit may direct an order to him, but rather he may present a request or present a defense. If he is not satisfied with the judge's ruling, he has no choice but to appeal it through the legally prescribed methods. The legislator has also criminalized the violation of a judge's position, prestige, or authority in connection with a lawsuit.[2143]

The law does not require that the crime of undermining the judge's position, dignity or authority occur during a trial session. All it requires is that the undermining be in connection with an ongoing civil or criminal lawsuit. The intent of Article 186 of the Penal Code is to punish the mere undermining of the dignity or authority of the courts. It is not required in this crime that the acts and expressions used include slander, insult or attribution of a specific matter. Rather, it is sufficient that they carry the meaning of insult, harm to feelings or diminish dignity. It is sufficient for the criminal intent to be present in it to intentionally direct acts or words that in themselves carry the meaning of insult to the judge, whether during the performance of the job or because of it, regardless of the motive for directing them. When the court establishes the occurrence of insulting acts or words, it does not need to explicitly indicate in its ruling that the perpetrator intended to insult or offend.[2144]

([2140]) Article No. 77 bis 2 of the Judicial Authority Law, and see Appeal No. 268 of 84 Q issued in the session of January 26, 2016 (unpublished), Appeal No. 417 of 84 Q issued in the session of July 28, 2015 (unpublished).

([2141] Article No. 168 of the Constitution, Article No. 67 of the Judicial Authority Law, Appeal No. 8792 of 72 Q issued in the session of September 25, 2002 and published in Technical Office Book No. 53, Page No. 876, Rule No. 147.

([2142] Article No. 120 of the Penal Code.

([2143] Article No. 186 of the Penal Code.

([2144] Appeal No. 26692 of the 4th year of the Q issued in the session of April 19, 2015 and published in Technical Office Book No. 66, Page No. 394, Rule No. 52

The Court of Cassation ruled that: [If the fact established by the ruling is that the accused, after the ruling in his case, said, "This is bias," addressing the court in its session and the person of the judge who issued the ruling, then this fact contains all

The legislator also criminalized attempts to influence the judge by the media, in order to guarantee his independence from them.[2145]

Second: Appointment, Transfer, Delegation, and Secondment of Judges and the Conditions Required for Them

As we have explained previously, the legislator granted the Supreme Judicial Council, which is composed entirely of senior judges themselves, complete control over the affairs of judges and public prosecutors, including appointment, promotion, transfer, secondment, and other matters, because one of the most important pillars of judicial independence is that the judiciary itself is responsible for the affairs of its men without participation or interference from any other authority.[2146]

The following conditions must be met by those appointed to the judiciary:

To be a citizen of the Arab Republic of Egypt and have full civil capacity;

He shall not be less than thirty years of age if the appointment is to the courts of first instance, thirty-eight years of age if the appointment is to the courts of appeal, and forty-one years of age if the appointment is to the Court of Cassation;

He must have a law degree from one of the law faculties of the universities of the Arab Republic of Egypt or an equivalent foreign degree, and in the latter case he must pass the equivalency exam in accordance with the relevant laws and regulations;

He must not have been convicted by courts or disciplinary boards of a dishonorable matter, even if his reputation has been restored;

To be of good conduct and reputation.[2147]

In cases other than emergency, appointments, promotions and transfers among judges shall be made once a year, during the judicial vacation.[2148]

The seniority of judges shall be determined according to the date of the presidential decree issued appointing or promoting them unless this decree specifies another date with the approval of the Supreme Judicial Council. If two or more judges are appointed or promoted in one

---

the elements that constitute the crimes of contempt of court and breach of the judge's dignity stipulated in Articles 133/2, 171, and 186 of the Penal Code. If this can be considered a confusion in the ruling of Article 89 of the Code of Civil and Commercial Procedure, this does not prevent punishment for it in those articles as long as it is at the same time the two crimes stipulated therein] Appeal No. 1144 of the 13th year of the Q issued in the session of May 10, 1943 and published in the first part of the collection of legal rules No. 6, page No. 251, rule No. 182

It also ruled that: [If the fact established by the ruling is that the accused, after leaving the chamber of the judge who rejected the objection submitted by him to the order of his detention, said in the courtroom and within the hearing of the judge, "For the sake of (so-and-so), they are detaining us. This is unjust. These are thoughts," and the court concluded from that that he intended to insult the court that issued the decision to continue his detention, and applied Article 184 of the Penal Code to him, then it is not mistaken. The accused is not allowed to appeal this to the Court of Cassation, because the statement he made leads to the conclusion reached by the court, with its objective authority. It is also not acceptable for him to say that Article 184, which was applied to him, only protects the bodies that he spoke of as being legal bodies independent of the persons of whom they are composed. It does not apply to the defect in a particular court due to a particular lawsuit, a case which has another ruling stipulated in Article 186, because insulting judges in their capacity as judges affects the court body of which they are composed, and this is what falls within the text of Article 184 of the Penal Code. As for Article 186 of the Penal Code, its purpose is to punish the mere violation of the dignity or authority of the courts] Appeal No. 162 of the 12th year of the Q issued in the session of December 1, 1941 and published in the first part of the collection of legal rules No. 5, page No. 592, rule No. 315.

([2145] Article No. 187 of the Penal Code.

([2146]) Article No. 77 bis 2 of the Judicial Authority Law, and see Appeal No. 268 of 84 Q issued in the session of January 26, 2016 (unpublished), Appeal No. 417 of 84 Q issued in the session of July 28, 2015 (unpublished).

([2147] Article No. 38 of the Judicial Authority Law.

([2148] Article No. 48 of the Judicial Authority Law.

decree, their seniority shall be according to their order in the decree. If one of the public prosecutors is appointed as a judge, his seniority among the judges shall be from the date of his appointment to the position of public prosecutor. The seniority of judges who are returned to their positions shall be considered from the date of the decree issued appointing them for the first time. The seniority of members of the Public Prosecution, when they are appointed to positions of judges similar to their grades, shall be considered from the date of their appointment to these grades. If the first public prosecutor is returned to the judiciary, his seniority among his colleagues shall be determined according to the seniority he had on the day of his appointment as first public prosecutor.[2149]

Judges may not be transferred, assigned or seconded except in the cases and in the manner specified in the Judicial Authority Law. The transfer of presidents and judges of primary courts shall be by a decision of the President of the Republic after the approval of the Supreme Judicial Council, specifying the courts to which they shall be attached. The date of transfer shall be considered the date of notification of the decision. The presidents and judges of the Cairo Court of Appeal circuits may not be transferred to another court except with their consent and the approval of the Supreme Judicial Council. As for the judges of other appeal courts, their transfer to the Cairo Court of Appeal shall be according to the seniority of the appointment, taking into account that the transfer shall be from the Qena Court of Appeal to the Assiut Court of Appeal, then to Beni Suef, then to Ismailia, then to Mansoura, then to Tanta, then to Alexandria. However, the head of the circuit or the judge may remain in the court in which he works based on his request and the approval of the Supreme Judicial Council.

The judge or president of the court shall be transferred if he has spent five years in the courts of Cairo, Alexandria, Giza and Benha, four years in the courts of Beni Suef, Fayoum, Minya and the rest of the courts of Lower Egypt, and two years in the courts of Assiut, Sohag, Qena and Aswan.

It is permissible, based on the request of the judge or the president of the court and the approval of the Supreme Judicial Council, not to transfer him to the courts of the first region and to remain in the second or third region, or not to transfer him to the courts of the second region and to remain in the third region.

Judges and presidents of the courts who obtained the last evaluation of their competence as competent are exempted from the term limit for the Cairo and Alexandria courts, provided that their previous evaluation was above average.

If a lawyer is appointed to a judgeship or prosecution position, his place of work may not be in the district of the primary court in which his place of work was located, except after at least three years have passed from the date of his appointment.[2150]

The Minister of Justice may, when necessary, temporarily delegate to work at the Court of Cassation one of the judges of the Courts of Appeal who meets the conditions for appointment to the position of judge at the Court of Cassation for a period of six months, renewable for another period, after obtaining the opinion of the General Assembly of the court to which he belongs and the General Assembly of the Court of Cassation and the approval of the Supreme Judicial Council.[2151]

The Minister of Justice may also, when necessary, delegate one of the judges of the Courts of Appeal to work in an appeal court other than the court to which he belongs for a period not

---

([2149] Article No. 50 of the Judicial Authority Law.
([2150] Articles Nos. 52, 53, 54 and 59 of the Judicial Authority Law.
([2151] Article No. 55 of the Judicial Authority Law.

exceeding six months, renewable for another period, after obtaining the opinion of the General Assembly of the court to which he belongs and the approval of the Supreme Judicial Council.[2152]

The Minister of Justice may temporarily assign one of the judges of the Courts of Appeal to work in the Public Prosecution for a period not exceeding six months, renewable for another period, after obtaining the opinion of the General Assembly of the court to which he belongs and the approval of the Supreme Judicial Council.[2153]

The Minister of Justice may, when necessary, assign presidents and judges of primary courts to courts other than their courts for a period not exceeding six months, renewable for another period after the approval of the Supreme Judicial Council.[2154]

A judge may be temporarily assigned for a period not exceeding three consecutive years to perform judicial or legal work other than his work or in addition to his work, by a decision of the Minister of Justice after taking the opinion of the General Assembly to which he belongs and the approval of the Supreme Judicial Council, provided that the aforementioned Council alone determines the remuneration that the judge is entitled to for this work after its completion.[2155]

Judges may be loaned to foreign governments or international bodies by a decision of the President of the Republic, after taking the opinion of the General Assembly of the court to which the judge or the Public Prosecutor belongs, as the case may be, and the approval of the Supreme Judicial Council. The loan period may not exceed four consecutive years.

However, the period may be extended beyond this amount if the national interest so requires, as determined by the President of the Republic.[2156]

Third: Distribution of cases among the court's departments

The Court of Cassation and every court of appeal or court of first instance shall meet as a general assembly to consider the following:

Arranging and composing departments and forming bodies;

Distribution of cases to different departments;

Determining the number of sessions and the days and hours of their convening;

Assigning judges of the Courts of Appeal to work in criminal courts and judges of the Courts of First Instance to work in district courts;

All other matters relating to the system of courts and their internal affairs;

Other matters stipulated by law.

General assemblies may delegate some of the matters within their jurisdiction to court presidents.[2157]

The General Assembly of the Court's distribution of cases to the various circuits does not create a type of jurisdiction that is exclusive to one circuit over another, and the decision of the General Assembly to establish these organizational rules does not result in the deprivation of the jurisdiction of one of the Court's circuits if the distribution of cases is changed to another circuit.

([2152] Article No. 56 of the Judicial Authority Law.
([2153] Article No. 57 of the Judicial Authority Law.
([2154] Article No. 58 of the Judicial Authority Law.
([2155] Articles Nos. 62 and 64 of the Judicial Authority Law.
([2156] Article No. 65 of the Judicial Authority Law.
([2157] Article No. 30 of the Judicial Authority Law.

This distribution does not create a type of jurisdiction that is exclusive to one circuit over another circuit, which does not result in nullity if it is violated.[2158]

The assignment of cases to judges and their distribution among them must always be a purely internal act. No foreign authority, whatever its weight, may be directed at them. Nor may they be disciplined - within the framework of this independence - except in light of their professional conduct, nor may they be dismissed except if there is clear evidence of their lack of competence, nor may their term of service be reduced while they hold their positions, nor may they be appointed for short periods during which their work is temporary, nor may they be selected on non-objective grounds based on merit and entitlement. In particular, the State must provide its judicial authority - in all its branches - with sufficient financial resources to enable it to administer itself a conscious and capable justice, otherwise its independence would be an illusion.[2159]

11-4-2 Within the framework of international conventions

The independence of the court is an essential element necessary for a fair trial, and a prerequisite for the rule of law.[2160]

Courts as institutions, and each judge, should be independent. Decision-makers in any case must be free to decide the matters before them independently and impartially, on the basis of the facts and in accordance with the law, without any interference, pressure or undue influence from any branch of government, or from any other party .[2161]

It also means that the first criterion in selecting people who hold judicial positions is their legal experience and integrity.[2162]

The Human Rights Committee, as well as the Special Rapporteur on the independence of judges and lawyers, the African Commission, the Committee of Ministers of the Council of Europe, and the European and Inter-American Courts have identified factors affecting the independence of the judiciary. These are elaborated, to some extent, in non-treaty standards, including the Basic Principles on the Independence of the Judiciary, the Bangalore Principles, and the Principles of Fair Trial in Africa.[2163]

([2158]) Appeal No. 44270 of 85 Q issued in the session of October 22, 2016 and published in Technical Office Letter No. 67, page No. 735, rule No. 94, Appeal No. 34946 of 84 Q issued in the session of May 8, 2016 and published in Technical Office Letter No. 67, page No. 495, rule No. 57, Appeal No. 2470 of 85 Q issued in the session of March 9, 2016 and published in Technical Office Letter No. 67, page No. 302, rule No. 38, Appeal No. 645 of 85 Q issued in the session of December 14, 2015 and published in Technical Office Letter No. 66, page No. 868, rule No. 129, Appeal No. 11182 of 84 Q issued in the session of December 22, 2014 and published in Technical Office Letter No. 65 Page No. 994 Rule No. 134, Appeal No. 14845 of 70 Q issued in the session of September 26, 2000 and published in Technical Office Book No. 51 Page No. 558 Rule No. 109, Appeal No. 18327 of 62 Q issued in the session of May 27, 1997 and published in the first part of Technical Office Book No. 48 Page No. 663 Rule No. 99, Appeal No. 8070 of 54 Q issued in the session of March 25, 1985 and published in the first part of Technical Office Book No. 36 Page No. 450 Rule No. 76, Appeal No. 1800 of 48 Q issued in the session of February 25, 1979 and published in the first part of Technical Office Book No. 30 Page No. 300 Rule No. 60.

([2159]) The ruling of the Supreme Constitutional Court in Case No. 34 of 16 Q issued in the session of June 15, 1996, date of publication June 27, 1996, and published in the first part of the Technical Office Book No. 7, page No. 763, rule No. 49.

([2160]) Principle 1 of the Bangalore Principles.

([2161]) Principles 3-4 of the Basic Principles on the Independence of the Judiciary, Section A(4)(c) and (f) of the Principles on Fair Trial in Africa, Principle 1 of the Bangalore Principles: Reverón Trojelo v. Venezuela, Inter-American Court 146 § (2009).

([2162]) Principle 10 of the Basic Principles on the Independence of the Judiciary, and Section A(4)(1) of the Principles on Fair Trial in Africa.

([2163] Other relevant standards (not mentioned in this guide) include: the Commonwealth Principles on Accountability between and the Relationship between the Three Branches of Government, adopted by the Heads of Government of Commonwealth member states; the Minimum Standards for Judicial Independence, adopted by the International Bar Association; and the

These include the principle of separation of powers, which protects the judiciary from undue external influence or interference, and practical guarantees of the independence of judges such as security of tenure and adequate salaries.[2164]

These requirements and guarantees protect the accused's right to a fair trial and the integrity of the judicial system itself.[2165]

First: Separation of powers

Courts derive their independence from the principle of separation of powers applied in democratic societies. This means that each state agency has specific responsibilities that are exclusively its own. According to the African Commission, "The main justification for the principle of separation of powers is to ensure that one branch of government does not become so powerful as to encroach upon the other and exceed the limits of its authority." The separation of the three powers of government - executive, legislative and judicial - ensures the existence of controls and balancing mechanisms that prevent any of them from encroaching upon the others."[2166]

Judges, as a body and as individuals, should not be subject to any interference, whether by the state or by private persons.[2167]

The state must guarantee and ensure this independence by stipulating it in its laws, and by having all government institutions respect it. States should ensure that there are structural and functional safeguards against any political or other interference in the administration of justice.[2168]

The judiciary, as an institution and as individuals, must have absolute authority to adjudicate cases referred to it.[2169]

This means that judicial rulings may not be changed by a non-judicial authority in a way that harms one of the parties except in matters relating to mitigation or modification of sentences and in cases of pardon.[2170]

The independence of the judiciary requires that employees charged with judicial duties enjoy complete independence from those responsible for public prosecution duties .[2171]

Concerns have been raised about direct interference with the independence of the judiciary as an institution, and with the independence of individual judges.

The African Commission decided that two decrees issued by the Nigerian government violated the African Charter by removing the jurisdiction of the courts over appeals against government decrees and actions. "An attack of this kind on the jurisdiction of the courts is particularly

---

Beijing Declaration on Principles for the Independence of the Judiciary in the LAWASIA Region, adopted by 19 Chief Justices of the Asia-Pacific region.

([2164]) Basic Principles on the Independence of the Judiciary, and Section A(4) of the Principles on Fair Trial in Africa.

([2165]) See Recommendation 12 (2010) CM/Rec of the Council of Europe, preamble §6.

([2166]) Lawyers for Human Rights v. Swaziland (251)/2002), African Commission (2005) §56.

([2167]) See Abitz Barbera et al. v. Venezuela, Inter-American Court §55 (2008).

([2168]) Principle 1 of the Basic Principles on the Independence of the Judiciary, and Section A(4)(a) and (f)-(g) of the Principles on Fair Trial in Africa, Recommendation 12 CM/Rec (2010) of the Council of Europe, preamble §7 and §13.

([2169]) General Comment 32 of the Human Rights Committee, § 19; Abitz Barbera and Others v. Venezuela, Inter-American Court § 55 (2008).

([2170]) Principles 3 and 4 of the Basic Principles on the Independence of the Judiciary, and Section A(4)(f) of the Principles on Fair Trial in Africa, Recommendation 12 CM/Rec (2010) of the Council of Europe, preamble §§16-§17.

([2171]) Principle 10 of the Guidelines on the Role of Prosecutors, and Section 1 (f) of the Principles on Fair Trial in Africa.

repugnant, since it leaves room for the violation of other rights to go unaddressed, not to mention being, in itself, a violation of human rights," the Committee said.[2172]

The Inter-American Court concluded that the mere possibility that a decision by a military court in Mexico could be "reviewed" by federal authorities meant that the courts did not meet the requirement of judicial independence.[2173]

The Committee against Torture raised concerns about the power of the Attorney General to influence judicial decisions in Burundi and his decision to annul a Supreme Court order to release on bail seven people detained for alleged involvement in an attempted military coup .[2174]
.

The African Commission concluded that the trial of Ken Saro-Wiwa and his co-accused before a special court whose members of the judiciary were selected by the executive constituted a violation of the independence of the courts, regardless of the individual qualifications of the judges selected.[2175]

The Special Rapporteur on the independence of judges and lawyers criticised the arrest of a Venezuelan judge who had ordered the conditional release of a detainee. The detainee had spent more than two years in pre-trial detention, while the UN Working Group on Arbitrary Detention declared his detention arbitrary.[2176]

The failure of judges to take action in cases of alleged human rights violations and their issuance of acquittals or low rates of acquittals in criminal cases may be evidence of the judges' lack of independence.[2177]

In some countries, the composition of the judiciary does not meet the requirement of separation of powers.[2178]

A number of UN special rapporteurs have expressed concern that the US military commissions working on Guantanamo Bay detainees were not sufficiently independent of the executive branch. Among other things, the United States Department of Defense, and ultimately the President, has authority over the body responsible for appointing judges, who can be removed by the body that appointed them.[2179]

In its deliberations on whether a court is independent, the European Court examined the question of whether its decision-makers are subject to orders from branches of the executive.

The European Court considered that the State Security Court in Türkiye, which included military judges in each trial chamber, was not independent, in the context of criminal proceedings

([2172]) Civil Liberties Organisation v. Nigeria (129)/94, African Commission §14 (1995); see Lawyers for Human Rights v. Swaziland (2002/251), African Commission (58- §53 (2005).
([2173]) Radilla-Pacheco v. Mexico, Inter-American Court § 281 (2009).
([2174]) Concluding observations of the Committee against Torture: Burundi: UN Doc §12 (2006), CAT/C/BDI/CO/1.
([2175]) African Commission: PEN International, Constitutional Rights Project, Rights International on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria (137/94, 139/94, 154/96, 161/97) §§86, (1998) §§94-95; see Media Rights Agenda v. Nigeria (224/98, (2000) §66; see also Ghazi Suleiman Legal Office v. Sudan (222/98, 229/99), African Commission (66-§§63 (2003).
([2176]) Special Rapporteur on the independence of judges and lawyers, UN Doc A/HRC/14/16 (2010), footnote 35 and §68; see also the concluding observations of the Committee against Torture: Ethiopia: §22 (2010), UN Doc CAT/C/ETH/CO/1.
([2177]) See the concluding observations of the Human Rights Committee: Brazil, UN Doc §7 (2006) CCPR/C/BRA/CO/2; Russian Federation, UN Doc CCPR/C/RUS §21 (2009) CO/6; the concluding observations of the Committee against Torture: Guatemala: §72 (2000), UN Doc A/56/44 (c); the Special Rapporteur on human rights and counter-terrorism: Tunisia, §34 (2010) UN Doc A/HRC/16/51/Add2.
([2178]) Palamara-Iribarne v. Chile, Inter-American Court 155 § (2005).
([2179]) Joint report of the United Nations mechanisms on detainees at Guantanamo Bay, 120/2006/§30-§33 (2006) UN Doc E/CN4; see Special Rapporteur on the independence of judges and lawyers, 60/2005/UN Doc E/CN4 §17-§19 (2005); see also the concluding observations of the Human Rights Committee: Jordan, §12 (2010) UN Doc CCPR/C/JOR/CO/4.

against a civilian. Military judges received the same professional training as civilian judges and enjoyed many of the same constitutional guarantees of their independence.

However, they remained active members of the military and were therefore subject to the orders of the executive authority and to considerations of disciplinary procedures and military evaluations, and they were appointed by the military and administrative authorities for fixed terms of four years, renewable.[2180]

Concerns were also raised about the independence of prosecutors. These concerns included: police officers acting as prosecutors;[2181]

Supervision by prosecutors of detainees in the pre-trial phase, during investigations and in the course of trials; and laws that empower prosecutors to prevent the implementation of court decisions or to remove judges from cases they are hearing.[2182]

Second: Appointing judges and the conditions that must be met by them

To maintain the independence of the judiciary and ensure that judges are of high quality, international standards require that persons appointed to the judiciary be selected based on their legal training, experience and integrity.[2183]

Likewise, decisions to promote judges should be based on objective factors, in particular ability, experience and integrity.[2184]

To combat discrimination, steps should be taken to ensure that qualified women and qualified persons from minorities are appointed to the judiciary.[2185]

The body responsible for appointing, promoting and disciplining judges should be independent of the executive authority, both in its composition and in its method of operation.[2186]

It should be pluralistic and balanced, with the judiciary constituting the majority of its members. Selection and appointment procedures should be transparent.[2187]

([2180]) Incal v. Turkey (22678)/93, European Court (73- § 65 (1998); see Öcalan v. Turkey (46221)/99, Grand Chamber of the European Court (2005) 118- § 112.
([2181]) Concluding observations of the Committee against Torture: Zambia, UN Doc §9 (2008), CAT/C/ZMB/CO/2.
([2182]) Concluding observations of the Committee against Torture: Kazakhstan, UN Doc §128 (2001) A/56/44 (c); Ukraine, UN Doc CAT/C/UKR/CO/5 (2007) §10; Tajikistan, UN Doc CAT/C/TJK/CO/1 (2006); Benin, UN Doc CAT/C/BEN/CO/2 (2008); Working Group on Enforced Disappearances: China, §33-§34 (2004) UN Doc E/CN4/2005/6/Add4; see also Special Rapporteur on the independence of judges and lawyers, UN Doc (2012) A/HRC/20/19, §40 and §100.
([2183]) Principle 10 of the Basic Principles on the Independence of the Judiciary, Section A(4)(i)-(k) of the Principles on Fair Trial in Africa, Article 12 of the Statute of the International Criminal Tribunal for Rwanda, Article 13 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, Council of Europe, Recommendation 12 (§44-§45), CM/Rec) 2010; Inter-American Court: Reverón Trubjello v. Venezuela (2009) §71-§74, Abitz Barbera and Others v. Venezuela §143 (2008).
([2184]) Principle 13 of the Basic Principles on the Independence of the Judiciary, and Section A(4)(o) of the Principles on Fair Trial in Africa.
([2185]) Article 8 of the Protocol to the African Charter on the Rights of Women.
Special Rapporteur on the independence of judges and lawyers, UN Doc §22-§33 (2011) A/66/289 and 92; Concluding observations of the Human Rights Committee: United Kingdom, §15 (2001) UN Doc. CCPR/CO/73/UK; France, §26 (2008) UN Doc. CCPR/C/FRA/CO/4; Concluding observations of the Committee against Torture: Bahrain, 2005) UN Doc. CAT/C/CR/34/BHR) §7 (h), Sudan, §21 (1997) UN Doc. CCPR/C/79/Add. 85; General Recommendation 31 of the Committee on the Elimination of Racial Discrimination §§1(g) and 5(d); see Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala, §8 (2010) UN Doc. CERD/C/GTM/CO/12-13, Colombia, UN Doc. §13 (1999) CERD/C/304/Add. 76.
([2186]) Special Rapporteur on the independence of judges and lawyers, UN Doc- §34 - §23 (2009) A/HRC/11/41 and 97; Concluding observations of the Human Rights Committee: Azerbaijan, §12 (2009) UN Doc. CCPR/C/AZE/CO/3, Honduras, §16 (2006) UN Doc. CCPR/C/HND/CO/1; see also the concluding observations of the Human Rights Committee: Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 §20 (2006); Council of Europe Recommendation 12 §46-§48, CM/Rec (2010); Galstyan v. Armenia (26986/03) ECtHR §61-§62 (2008).

The African Commission has deemed the body responsible for the appointment, promotion, transfer and discipline of judges in Cameroon, which is headed by the President of the Republic and the Vice-President is the Minister of Justice, to be in violation of the principle of separation of powers. It considered that the presence of members of the legislative authority and the judiciary, as well as the presence of an "independent personality", in the membership of the committee, was not sufficient to guarantee the independence of the courts in accordance with Article 26 of the African Charter.[2188] .

Where judges are elected rather than appointed based on their merits, concerns have been raised about the independence and impartiality of judges and the potential for politicization. For example, the Human Rights Committee, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, have expressed concerns about the impact that the election of judges in some US states may have on fair trial rights, including in death penalty cases. The Human Rights Committee recommended a system for appointing judges based on their personal merits by an independent body. She also expressed concern that the judiciary in many rural areas of the United States is supervised by unqualified and untrained persons. "[2189]

International standards on the conditions of appointment of judges require States to provide sufficient resources to ensure that they receive adequate salaries and pensions. The law must also guarantee that they will serve the terms stipulated for their employment, and specify the terms of service, end-of-service bonuses, and retirement age.[2190]

The Human Rights Committee expressed concern that the main consideration in the selection of many judges was not their legal qualifications. She also expressed concern that few judicial positions were held by non-Muslims or women, and that judges were subject to pressure from a government-dominated oversight body.[2191]

To ensure the independence of the judiciary, judges should be protected from impeachment, and no judge should have any fear of being removed from office because of any political reaction to his rulings. Whether the judge is appointed or elected, he must ensure that he continues to hold his position until he reaches the mandatory retirement age, or until the end of the period prescribed for holding the position he occupies, if he holds a position that is temporary for a specific period.[2192]

([2187]) Section A(4)(h) of the Principles on Fair Trial in Africa.

([2188]) Kevin Mgwanga Ghenmi and Others v. Cameroon (266)/03), African Commission §209-§212 (2009); see Concluding Observations of the African Commission: Democratic Republic of the Congo, (2003) §20 and §26.

([2189]) Concluding observations of the Human Rights Committee: United States of America, § § 288 (1995) A/50/40)CCPR/C/79/Add. 50(301); Special Rapporteur on extrajudicial, summary or arbitrary executions: United States of America, §10-§12 (2009) A/HRC/11/2/Add. 5 and 74; see the concluding observations of the Committee against Torture: Serbia, §8 (2008) UN Doc. CAT/C/SRB/CO/1; Special Rapporteur on the independence of judges and lawyers, 41/UN Doc. A/HRC/11. §25 (2009).

([2190]) Principles 7 and 11-13 of the Basic Principles on the Independence of the Judiciary, and sections A(4)(l)-(m) and B(a)-(c) of the Principles on Fair Trial in Africa; see Article 12 of the Arab Charter.

General Comment 32 of the Human Rights Committee, §19; Special Rapporteur on the independence of judges and lawyers, 41/§§73 (2009) UN Doc. A/HRC/11 and 76, §40-§68 (2010) A/HRC/14/26; Council of Europe Recommendation 12 (CM/Rec) 2010 §55-§49; Concluding observations of the Human Rights Committee: Georgia, UN Doc §14 (2007) CCPR/C/GEO/CO/1, Kenya, / UN Doc. CCPR/CO/83/KEN §20 (2005); Concluding observations of the Committee against Torture: Yemen, UN Doc §17 (2010), CAT/C/YEM/CO/2/Rev. 1; Inter-American Court: Abitz Barbera et al. v. Venezuela § 43 (2008); Shukron Shukron v. Venezuela. §98 (2011).

([2191]) Concluding observations of the Human Rights Committee: Sudan, UN Doc. §21 (1997) CCPR/C/79/Add. 85.

([2192]) Council of Europe Recommendation 12 (§49-§52, CM/Rec) 2010; Inter-American Court: Abitz Barbera and Others v. Venezuela §§84 (2008) and 43, Shukron Shukron v. Venezuela §99 (2011).

A judge may not be suspended from work or removed from his position unless he becomes unable to perform his duties, or if he engages in behaviour that is unbecoming of the position he holds .[2193] .

The Human Rights Committee and the Committee against Torture have expressed concern about the appointment of judges for fixed, renewable terms based on review by the executive. In Moldova, for example, judges were initially appointed for a five-year term, and in Uzbekistan, the executive branch reviewed judges' appointments every five years .[2194]

Judges may be subject to disciplinary measures and sanctions, including suspension or removal, for misconduct. Complaints against judges, in their judicial capacity, should be dealt with promptly and impartially in hearings conducted by independent and impartial bodies whose decisions are subject to independent judicial review; the results of disciplinary measures should be made public.[2195]

Judges should enjoy personal immunity from civil suits against improper acts or omissions in the exercise of their judicial functions, although the State may be required to pay compensation for such acts.[2196]

The Human Rights Committee has expressed concern that the President of the Republic may dismiss judges of the Constitutional Court and the Supreme Courts of Belarus without any safeguards against abuse of this power. She pointed out that there were allegations that the President of the Republic had dismissed two judges because they had failed to implement an order issued by the executive authority and collect a fine imposed by it.[2197]

Third: Distribution of cases to court judges

The Judicial Administration shall distribute case files to judges in any court in which they practice their work based on objective criteria.[2198]

Where a single case may be subject to the jurisdiction of more than one court, the judicial authority should determine which court will hear it, basing its decision on objective factors.

11-5 The Right to Have the Case Heard by An Impartial Court

11-5-1 Within the framework of Egyptian law

The Constitutional Court has ruled that the impartiality of the judiciary is a complementary element to its independence and is considered a human right and a fundamental principle of the law because it confirms confidence in the judiciary. The Public Prosecution, while exercising its

(2193) Principles 11, 12 and 18 of the Basic Principles on the Independence of the Judiciary, and Section A(4)(l)-(p) of the Principles on Fair Trial in Africa.

(2194) Concluding observations of the Human Rights Committee: Moldova, UN Doc §24 (2009) CCPR/C/MDA/CO/2, Uzbekistan, / UN Doc. CCPR/C §16 (2010) UZB/CO/3; Concluding observations of the Committee against Torture: Kyrgyzstan, 44/§74 (2000), UN Doc. A/55 (d), Azerbaijan, UN Doc (2000) A/55/44 (d) §68 and §69 (d).

(2195) General Comment 32 of the Human Rights Committee, §20; Special Rapporteur on the independence of judges and lawyers, 41/§57-§63 (2009) UN Doc. A/HRC/11 and 98; Council of Europe Recommendation 12 (§61), CM/Rec) 2010; Inter-American Court: Abitz Barbera and Others v. Venezuela §44 (2008), Shukron Shukron v. Venezuela (2011) §104-§105 and §120.

(2196) Principles 16, 17, 19 and 20 of the Basic Principles on the Independence of the Judiciary, and sections A(4)(n) and (p)-(r) of the Principles on Fair Trial in Africa, Concluding Observations of the Committee against Torture: Armenia, UN Doc §37 (2001), A/56/44 (c).

(2197) Concluding observations of the Human Rights Committee: Belarus, §13 (1997) UN Doc. CCPR/C/79/Add. 86.

(2198) Principle 14 of the Basic Principles on the Independence of the Judiciary, Council of Europe Recommendation CM/Rec(2010)12, §24; Special Rapporteur on the independence of judges and lawyers, 2009 (41) / UN Doc. A/HRC/11 §46، A/HRC/11/41/Add. 2 (Russia) § 61 (2009); Concluding observations of the Committee on the Elimination of Racial Discrimination: Kazakhstan, / UN Doc. CERD/C/65. §18 CO/3-(2004).

powers through its handling of the criminal case, also enjoys the independence and impartiality of the judiciary, that the public interest is the essence of its work, and that this is done objectively.[2199]

Providing judicial guarantees, the most important of which are impartiality and independence, is a must in every judicial dispute. These are two guarantees that are interconnected and equal in the field of exercising justice and achieving its effectiveness. Each of them has the same constitutional value, so one does not rise above the other or obligate it. Rather, they complement each other and are equal in value.[2200]

The independence of the judiciary means that it works away from forms of external influence that weaken the resolve of its men, causing them to deviate from the truth, whether by temptation or coercion, enticement or intimidation. If their refusal to enforce the right is due to their bias against one of the opponents and their bias towards another - for personal interests or other internal factors that arouse the instincts of appeasing one party over another - then that is from them, giving priority to the whims of the soul; contradicting the guarantee of impartiality when deciding the judicial dispute; and the fact that judicial work should not raise dark shadows about its impartiality, so that litigants who have doubts about it cannot be reassured by it, after it has become distant from the high values of the judicial function.[2201]

The judge's impartiality prevents judicial work from being the product of a personal, non-impartial tendency, which often happens if the judge decides a dispute in which he has previously expressed an opinion. Thus, the judge's impartiality is a necessary constitutional condition to ensure that he is not subject in his work to anything other than the authority of the law.[2202]

The guarantee of a fair trial guaranteed by the Constitution means that every legal dispute should have its judge - even if the rights raised therein are of a civil nature - and that it should be decided by an independent and neutral court established by law, within which the opponent can clarify his claim, present its opinions and respond to the statements or arguments of his opponents that oppose it in light of opportunities in which they are all equal so that its formation, rules of organization, the nature of the systems in force before it and how to apply it are a specific act of justice, a progressive concept that is consistent with the contemporary standards of civilized countries..[2203]

([2199] Appeal No. 30639 of 72 Q issued in the session of April 23, 2003 and published in Technical Office Book No. 54, Page No. 583, Rule No. 74.

([2200]) The Supreme Constitutional Court, Case No. 163 of 26 Q issued in the session of December 2, 2007 and published in the first part of the Technical Office Book No. 12, page No. 749, rule No. 74, Case No. 151 of 21 Q issued in the session of September 9, 2000, date of publication September 21, 2000, published in the first part of the Technical Office Book No. 9, page No. 744, rule No. 88, Case No. 38 of 16 Q issued in the session of November 16, 1996, date of publication November 28, 1996, published in the first part of the Technical Office Book No. 8, page No. 169, rule No. 12.

([2201]) Supreme Constitutional Court, Case No. 148 of 28 Q issued in the session of July 6, 2008, date of publication July 26, 2008, published in the second part of the Technical Office Book No. 12, page No. 1154, rule No. 118, Case No. 26 of 27 Q issued in the session of January 13, 2008, date of publication January 27, 2008, published in the first part of the Technical Office Book No. 12, page No. 809, rule No. 81, Case No. 133 of 19 Q issued in the session of April 3, 1999, date of publication April 15, 1999, published in the first part of the Technical Office Book No. 9, page No. 237, rule No. 30, Case No. 83 of 20 Q issued in the session of December 5, 1998, date of publication December 10, 1998, published in the first part From the Technical Office Book No. 9, Page No. 109, Rule No. 15, Case No. 162 of 19 Q issued in the session of March 7, 1998, date of publication March 19, 1998, and published in the first part of the Technical Office Book No. 9, Page No. 1103, Rule No. 133.

([2202]) The Supreme Constitutional Court, Case No. 26 of 27 Q, issued in the session of January 13, 2008, date of publication January 27, 2008, and published in the first part of the Technical Office Book No. 12, page No. 809, rule No. 81.

([2203]) The Supreme Constitutional Court, Case No. 26 of 27 Q issued in the session of January 13, 2008, date of publication January 27, 2008, published in the first part of the Technical Office Book No. 12, page No. 809, rule No. 81, Case No. 152 of

The impartiality of the judiciary is distinguished from its independence, as they are two meanings that do not overlap. The independence of the judiciary means that it works away from forms of external influence that weaken the resolve of its men, causing them to deviate from the truth through temptation or coercion, enticement or intimidation. If their refusal to enforce the right is due to their bias against one of the opponents, and their bias towards another, for personal interests or other internal factors that arouse the instincts of appeasing one party over another, then this is from them giving priority to the whims of the soul, contradicting the guarantee of impartiality when deciding the judicial dispute, which compromises their neutrality. It is not permissible for judicial work to cast dark shadows around its neutrality so that litigants who have doubts about it cannot be reassured by it, after it has become distant from the high values of the judicial function.[2204]

The principle of the judge's impartiality is based on a fundamental rule based on the necessity of the litigant's confidence in his judge, and that his judgment is issued only based on truth alone, without bias or whims. While the set of legislative provisions regulating judicial affairs have been keen to support and provide this impartiality, at the same time they have not neglected the right of the litigant, if he has reasons that call for the suspicion of influencing this impartiality, to find a way to prevent the person against whom this suspicion has arisen from the judiciary in his case. Hence, the right to reject the judge from considering a particular dispute has been established as one of the basic rights that is linked to the right of the judge himself, provided that each right may be exposed to the phenomenon of its misuse spreading in it by excessive use and using it as a means of malice in the dispute and obstinacy in it, and prolonging the period of adjudication in cases without taking into account what this leads to in terms of harm to the judges in their reputation, position and feelings.

Disqualification and Recusal of Judges from Adjudication

The judge is prohibited from participating in the consideration of the case:

If the crime was committed against him personally;

If he has performed the work of a judicial police officer in the case, or the function of the public prosecution, or the defense of one of the opponents, or gave testimony in it, or carried out a work of experts, and the basis for the judge's obligation to refrain from considering the case in those cases is that he has performed an act that gives him an opinion in the case or personal information that conflicts with what is required of the judge in terms of being free of the subject of the case, so that he can weigh the arguments of the opponents with an abstract weight, otherwise he loses his competence to consider it, for fear that he will adhere to his opinion that is revealed by his previous work, taking into account that expressing an opinion may call for its adherence.[2205]

---

20 Q issued in the session of June 3, 2000, date of publication June 17, 2000, published in the first part of the Technical Office Book No. 9, page No. 627, rule No. 74.

([2204]) The Supreme Constitutional Court, Case No. 38 of 16 Q issued in the session of November 16, 1996, date of publication November 28, 1996, published in the first part of the Technical Office Book No. 8, page No. 169, rule No. 12, Case No. 34 of 16 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7, page No. 763, rule No. 49.

([2205]) Article No. 247 of the Criminal Procedure Code, Appeal No. 536 of 79 Q issued in the session of June 10, 2009 and published in Technical Office Book No. 60, page No. 298, Rule No. 40, Appeal No. 17633 of 75 Q issued in the session of July 21, 2005 and published in Technical Office Book No. 56, page No. 412, Rule No. 62, Appeal No. 13948 of 65 Q issued in the session of March 17, 2004 and published in Technical Office Book No. 55, page No. 246, Rule No. 32, Appeal No. 23606 of 61 Q issued in the session of October 10, 2001 and published in Technical Office Book No. 52, page No. 710, Rule No. 133, Appeal No. 2127 of 61 Q issued in the session of December 7, 2004 1999 and published in the first part of the Technical Office Book No. 50, page No. 627, rule No. 141, appeal No. 18245 for the year 63 Q issued in the session of January 10, 1998 and published in the first part of the Technical Office Book No. 49, page No. 76, rule No. 9, appeal No. 5874 for the year 63 Q issued in the session of October 30, 1997 and published in the first part of the Technical Office Book No. 48, page No. 1166,

However, if the judge's role is limited to carrying out a procedure or issuing a ruling that is not related to the subject of the lawsuit and does not indicate that he has an opinion on it, then this does not prevent him from considering the subject of the lawsuit at a later stage.[2206]

The judge is prohibited from participating in the ruling if he has carried out an investigation or referral in the case. The principle is that whoever carries out an investigation in a criminal case is prohibited from participating in examining the case or ruling on it, considering that this is a principle of trials. The wisdom behind this is to ensure the impartiality of the judge who sits in the ruling council between the accused and the prosecution authority, and so that his ruling is not interpreted according to a belief he had previously formed about the charge that is the subject of the trial, while he exercises the jurisdiction of the investigation or assumes the prosecution authority or participates in the referral decision or in examining the case at a previous stage. There is a rule in conscience dictated by optimal justice and does not need a text to decide it, which is that whoever sits in the judicial council must not have written, listened or spoken on the subject presented, so that his soul is clear of everything from which his opinion on the accused could be inferred, which would reveal to the latter his fate in advance and shake his confidence in him or destroy his reassurance with him..[2207]

What is meant by investigation as a reason for the judge to refrain from ruling in the case is what the judge conducts or issues within the scope of the criminal case, whether in his capacity as an investigating or ruling authority.[2208]

The fact that a member of the court that issued the ruling applied the legal description and registration to the incident and ordered the accused to appear before the court of first instance during his work as a deputy to the public prosecutor before his appointment as a judge contradicts what is required of the judge in terms of being free of the subject matter so that he can weigh the arguments of the opponents in an abstract manner. .[2209]

The judge's participation in the panel that considered the appeal against the Public Prosecution's decision that there was no basis for filing a criminal case against the accused and

---

rule No. 175, appeal No. 18232 for the year 60 Q issued in the session of February 4, 1996 and published in the first part of the Technical Office Book No. 47, page No. 150, rule No. 22, appeal No. 63033 for the year 59 Q issued in the session of May 21, 1995 and published in the first part of the Technical Office Book No. 46, page No. 880, rule No. 132, Appeal No. 8132 of 62 Q issued in the session of March 15, 1995 and published in the first part of the Technical Office Book No. 46, page No. 548, rule No. 79, Appeal No. 14628 of 61 Q issued in the session of June 8, 1994 and published in the first part of the Technical Office Book No. 45, page No. 734, rule No. 112, Appeal No. 1604 of 57 Q issued in the session of January 12, 1989 and published in the first part of the Technical Office Book No. 40, page No. 68, rule No. 7, Appeal No. 2 of 56 Q issued in the session of March 31, 1988 and published in the first part of the Technical Office Book No. 39, page No. 516, rule No. 76, Appeal No. 470 of 51 Q issued in the session of December 2, 1981 and published In the first part of the Technical Office Book No. 32, page No. 1021, rule No. 178, appeal No. 1321 of year 48 Q issued in the session of December 10, 1978 and published in the first part of the Technical Office Book No. 29, page No. 907, rule No. 188, appeal No. 529 of year 42 Q issued in the session of June 12, 1972 and published in the second part of the Technical Office Book No. 23, page No. 914, rule No. 205.

([2206] Appeal No. 22440 of year 60 Q issued in the session of December 5, 1993 and published in the first part of the Technical Office Book No. 44, page No. 1090, rule No. 170.

([2207]) Article No. 247 of the Criminal Procedure Code, Appeal No. 123 of Year 42 Q issued in the session of March 6, 1972 and published in the first part of the Technical Office Book No. 23, page No. 334, Rule No. 76, Appeal No. 786 of Year 39 Q issued in the session of October 20, 1969 and published in the third part of the Technical Office Book No. 20, page No. 1074, Rule No. 211.

([2208]) Appeal No. 7475 of 56 Q issued in the session of December 2, 1987 and published in the second part of the Technical Office Book No. 38, page No. 1057, rule No. 192, Appeal No. 529 of 42 Q issued in the session of June 12, 1972 and published in the second part of the Technical Office Book No. 23, page No. 914, rule No. 205, Appeal No. 786 of 39 Q issued in the session of October 20, 1969 and published in the third part of the Technical Office Book No. 20, page No. 1074, rule No. 211.

([2209]) Appeal No. 357 of 69 Q issued in the session of February 27, 2006 (unpublished), Appeal No. 593 of 51 Q issued in the session of December 31, 1981 and published in the first part of Technical Office Book No. 32, page No. 1236, Rule No. 222.

decided to cancel the order, which is an act of referral, is a reason for the judge to refrain from participating in the ruling on the case filed against the accused.[2210]

If the body that issued the criminal court's ruling to uphold the order to prevent the accused, his wife and his two children from disposing of their money is the same body that issued the conviction ruling against the accused, then this conflicts with the requirement that the judge be free of the subject of the case, and as a result the ruling is considered to have been issued by a body that has lost its authority to consider the case and rule on it .[2211] .

The judge is also prohibited from participating in the ruling on the appeal if the ruling being appealed was issued by him/her.[2212]

However, if the judge had considered the case in one of the sessions of the court of first instance and his work was limited to hearing the testimony of the injured party without expressing an opinion or issuing a ruling, this is not considered a reason for the invalidity of his subsequent participation in the body that issued the ruling in the appeal.[2213]

The judge's action or ruling in the aforementioned cases is void, even if it was done with the agreement of the parties. In such cases, the judge must refrain from ruling on the case of his own accord, even if none of the parties requests his dismissal. Otherwise, his ruling is void by law, because it relates to a principle of the trial established to ensure the distribution of justice by separating the investigation and judicial work.

If this invalidity occurs in a ruling issued by the Court of Cassation, the opponent may request that it cancel the ruling and reconsider the appeal before another circuit.[2214]

The reasons for incompetence leading to the invalidity of judgments are specific matters that the legislator has chosen individually and specifically from among various cases that would allow the judge to step down to avoid embarrassment or allow the opponents to reject him to reassure them. The legislator has considered in his choice the characteristics of incompetence in terms of a specification that allows for the exclusion of the discretionary power, and its publicity that makes it known in most cases to the judge and opponents, and its ability to be proven with conclusive evidence. He has arranged for the existence of these reasons to make the judge incompetent to consider the case and invalidate his work by force of law even if justice is achieved or is based on the agreement of the opponents. The matter is not subject to the discretionary power of the courts to which the challenge is brought against this work, nor to the judge's conscience as its source, nor to the will of the opponents and what they feel of reassurance or suspicion, in order to enable public confidence in the judiciary, and to be careful not to attach any doubt to its rulings regarding the persons of the judges, which necessarily means that the judge's competence to consider the case, and the validity or invalidity of his

---

([2210] Appeal No. 2225 of 38 Q issued in the session of March 17, 1969 and published in the first part of Technical Office Book No. 20, page No. 331, Rule No. 72.

([2211]) Appeal No. 536 of 79 Q issued in the session of June 10, 2009 and published in Technical Office Book No. 60, page No. 298, Rule No. 40, Appeal No. 74835 of 75 Q issued in the session of March 27, 2006 (unpublished), Appeal No. 74835 of 75 Q issued in the session of March 27, 2006 (unpublished), Appeal No. 2127 of 61 Q issued in the session of December 7, 1999 and published in the first part of Technical Office Book No. 50, page No. 627, Rule No. 141.

([2212]) Article No. 247 of the Criminal Procedure Code, Appeal No. 1488 of Year 45 Q issued in the session of January 5, 1976 and published in the first part of the Technical Office Book No. 27, page No. 46, Rule No. 7, Appeal No. 2081 of Year 36 Q issued in the session of February 27, 1967 and published in the first part of the Technical Office Book No. 18, page No. 284, Rule No. 55.

([2213] Appeal No. 666 of 41 Q issued in the session of December 6, 1971 and published in Part Three of Technical Office Book No. 22, Page No. 713, Rule No. 173.

([2214]) Article No. 147 of the Civil and Commercial Procedures Law, Appeal No. 8282 of 58 Q issued in the session of May 31, 1990 and published in the first part of the Technical Office Book No. 41, page No. 799, Rule No. 138, Appeal No. 529 of 42 Q issued in the session of June 12, 1972 and published in the second part of the Technical Office Book No. 23, page No. 914, Rule No. 205.

work, revolve around quality. And provided that a specific case is available from the cases mentioned by the legislator in the Criminal Procedures Law, the Civil and Commercial Procedures Law, and the Judicial Authority Law, to name a few.[2215]

And since the reasons for the incompetence were mentioned in an exhaustive manner and do not include the accused's feeling of a desire to convict or the knowledge of the court body issuing the judgment for the victim, this is because the state of anger and hostility is an internal matter that exists in the judge's soul and relates to his person and conscience, and the legislator left the matter of determining it to the judge's discretion and what his soul is reassured by and his conscience is comfortable with, and all of this does not prevent him from considering the case as long as he has seen that this desire did not exist in his soul, and he did not feel such embarrassment in considering it. [2216]

The judge's ruling in another case against the accused does not bind him in any way while he is in the process of ruling in another case against the same accused, and it is not considered among the reasons for incompetence.[2217]

The judge's ruling on another previous lawsuit between the family of the accused and the victim is not considered a reason for the judge's incompetence.[2218]

The mere fact that the head of the body that issued the ruling on the accused is a brother of the Public Prosecutor does not constitute a reason for his incompetence to participate in examining the case, as long as the Public Prosecutor did not personally represent the prosecution in the case itself.[2219]

The opponents have the right to reject the judges' ruling in the cases mentioned above, and the judge is not competent to consider the case and is prohibited from hearing it even if none of the opponents rejects him in the following cases:

If he is a relative or in-law of one of the opponents up to the fourth degree;

([2215] Appeal No. 7481 of 63 Q issued in the session of June 5, 1995 and published in the second part of the Technical Office Book No. 46, page No. 846, rule No. 165.

([2216]) Appeal No. 61 of 88 Q, issued in the session of November 25, 2018 (unpublished). It is noted that the victim in that appeal was the former Attorney General.

See: Appeal No. 32900 of 84 Q issued in the session of November 13, 2016 and published in Technical Office Book No. 67, page 797, rule No. 98, Appeal No. 35317 of 85 Q issued in the session of October 17, 2016 and published in Technical Office Book No. 67, page 719, rule No. 91, Appeal No. 33679 of 84 Q issued in the session of September 1, 2015 and published in Technical Office Book No. 66, page 588, rule No. 83, Appeal No. 21602 of 84 Q issued in the session of March 22, 2015 and published in Technical Office Book No. 66, page 319, rule No. 45, Appeal No. 11182 of 84 Q issued in the session of December 22, 2014 and published In the Technical Office Book No. 65, Page No. 994, Rule No. 134, Appeal No. 24701 for the year 83 Q issued in the session of May 13, 2014, Appeal No. 10517 for the year 80 Q issued in the session of October 20, 2011 and published in the Technical Office Book No. 62, Page No. 318, Rule No. 53, Appeal No. 699 for the year 75 Q issued in the session of December 13, 2010 and published in the Technical Office Book No. 61, Page No. 698, Rule No. 90, Appeal No. 10664 for the year 79 Q issued in the session of March 4, 2010 and published in the Technical Office Book No. 61, Page No. 215, Rule No. 27, Appeal No. 41754 for the year 72 Q issued in the session of November 9, 2003 and published in the Technical Office Book No. 54, Page No. 1063 Rule No. 145, Appeal No. 14845 of 70 Q issued in the session of September 26, 2000 and published in Technical Office Book No. 51, page No. 558, Rule No. 109, Appeal No. 25649 of 64 Q issued in the session of December 17, 1996 and published in the first part of Technical Office Book No. 47, page No. 1362, Rule No. 196, Appeal No. 20735 of 64 Q issued in the session of October 23, 1996 and published in the first part of Technical Office Book No. 47, page No. 1091, Rule No. 157.

([2217]) Appeal No. 28911 of 59 Q issued in the session of December 10, 1990 and published in the first part of the Technical Office Book No. 41, page No. 1078, rule No. 196, Appeal No. 2048 of 29 Q issued in the session of May 17, 1960 and published in the second part of the Technical Office Book No. 11, page No. 477, rule No. 91.

([2218] Appeal No. 41754 of 72 Q issued in the session of November 9, 2003 and published in Technical Office Book No. 54, Page No. 1063, Rule No. 145.

([2219] Appeal No. 562 of 37 Q issued in the session of May 15, 1967 and published in the second part of the Technical Office Book No. 18, page No. 655, Rule No. 128.

If he or his wife has an existing dispute with one of the parties to the lawsuit and with his wife;

If he is an agent for one of the parties in his private business, or his guardian, trustee, or suspected heir, or if he has a kinship or marriage relationship up to the fourth degree with the guardian of one of the parties, or his trustee, or with one of the members of the board of directors of the company in dispute, or with one of its managers, and this member or manager has a personal interest in the lawsuit;

If he, his wife, one of his relatives or in-laws on the line of descent, or the person for whom he is an agent, guardian or trustee has an interest in the pending lawsuit;

If he had issued a fatwa or pleaded on behalf of one of the parties in the case, or written about it, even if that was before he became a judge, or if he had previously considered it as a judge, expert, or arbitrator, or if he had given testimony about it .[2220] .

The judge may be dismissed for any of the following reasons:

If he or his wife has a case similar to the case he is considering, or if one of them has a dispute with one of the opponents, or with his wife after the case brought before the judge has been brought, unless this case was brought with the intention of disqualifying him from considering the case brought before him;

If his divorced wife, from whom he has a child, or one of his relatives or in-laws on the line of descent, has a dispute pending before the court with one of the parties to the case or with his wife, unless this dispute was brought after the case brought before the judge with the intention of dismissing him;

If one of the opponents is his servant, or if he is accustomed to eating with or living with one of the opponents, or if he received a gift from him before or after filing the lawsuit;

If there is enmity or affection between him and one of the opponents, which makes it likely that he will not be able to rule without bias .[2221] .

It is not permissible for judges who are related or related by marriage up to the fourth degree to sit in one circuit, including the purpose.[2222]

It is not necessary for the establishment of affection between a judge and one of the opponents in the case he is examining, that the evidence indicates its strength and solidity, nor that the enmity has reached a depth that confirms its intensity and wildness. Rather, it is sufficient for either of them to be realized that it is personal and connected to the judge himself, and that its effect is to deviate from the scale of truth, even if the enmity does not reach the level of dispute, nor the affection to the level of eating with one of the opponents or living with him or accepting gifts from him before or after filing the case, but rather its motive and motivation is separate from a marital relationship or kinship or marriage. The reasons for rejection are directed to all cases in which a suspicion arises that has its basis around a type of personal feelings that the judge has, and with it the ruling in the case from which it is sought to be rejected does not prevail without an inclination that is stormy with the truth, or influential in its course.[2223]

The representative of the prosecution, the representative of one of the parties, or his advocate may not be among those who have the aforementioned relationship with one of the judges who

([2220] Article No. 248 of the Criminal Procedure Code, and Article No. 146 of the Civil and Commercial Procedure Code, Appeal No. 17052 of the 60th year of the Q issued in the session of November 16, 1998 and published in the first part of the Technical Office Book No. 49, page No. 1287, Rule No. 182.

([2221] Article No. 148 of the Civil and Commercial Procedures Code.

([2222] Article No. 75 of the Judicial Authority Law.

([2223]) The Supreme Constitutional Court, Case No. 38 of 16 Q, issued in the session of November 16, 1996, date of publication November 28, 1996, and published in the first part of the Technical Office Book No. 8, page No. 169, rule No. 12.

are hearing the case. The representation of a lawyer who has the aforementioned relationship with the judge shall not be considered if the representation is subsequent to the judge hearing the case. The reason for the lack of competence only arises if the representation of the lawyer - the advocate of one of the parties - precedes or is contemporaneous with the judge hearing the case. What is meant by the representation in this regard in the context of criminal cases is attendance with the accused and not merely the issuance of a representation from him to his lawyer as is the case in civil and criminal matters in which the law does not require the presence of the accused. If the representation is subsequent to the judge hearing the case, it does not entail lack of competence, but rather the representation itself shall not be considered. The implication of this text is clear, which is to avoid the evasion of the parties by deliberately appointing a lawyer who has the aforementioned relationship with one of the judges in order to prevent him from hearing the case.[2224]

The right to dismiss a particular judge from hearing a specific dispute is closely related to the right to litigate, as its outcome for every dispute - in the end - is a fair solution that represents the judicial satisfaction required to repel the aggression against the claimed rights. This satisfaction assumes that its content is in accordance with the provisions of the Constitution, and it is not so if its determination is attributed to a party or body that lacks its independence or impartiality, or both, as these two guarantees - imposed by the Constitution on the above - are considered a restriction on the discretionary power that the legislator possesses in the field of regulating rights, and therefore nullity is attached to any legislative regulation of the judicial dispute that is contrary to them. .[2225]

It is established that the legislator's regulation of the conditions for the rejection of judges has taken into consideration a fundamental rule based on the fact that every litigant must be assured that the ruling of his judge is issued only on the basis of truth alone, without any influence from the inner workings of the human soul, its desires and biases. The legislator has balanced - in the texts with which he has regulated the rejection of judges - between two matters:

The first: that the case, whatever its subject matter, should not be decided by judges who have a suspicion that they are colluding with one of the parties and thus affecting their impartiality. Therefore, the legislator permitted their rejection according to reasons he specified in order to prevent them from continuing to consider the case on the basis of which the reason for their rejection arose.

Second: The rejection of judges should not be an introduction to defaming them without right, or to preventing them from considering the cases themselves in order to avoid ruling on them maliciously and maliciously.[2226]

If the judge has a reason for recusal, he must declare it to the court so that it may decide on his recusal in the consultation chamber. The district judge must refer the matter to the president of the court.

([2224]) Article No. 75 of the Judicial Authority Law, Appeal No. 39618 of 72 Q issued in the session of January 16, 2003 and published in Technical Office Book No. 54, page No. 112, Rule No. 11, Appeal No. 657 of 55 Q issued in the session of May 16, 1985 and published in the first part of Technical Office Book No. 36, page No. 668, Rule No. 119.

([2225]) The Supreme Constitutional Court, Case No. 84 of 19 Q issued in the session of November 6, 1999, date of publication November 18, 1999, published in the first part of the Technical Office Book No. 9, page No. 385, rule No. 48, Case No. 38 of 16 Q issued in the session of November 16, 1996, date of publication November 28, 1996, published in the first part of the Technical Office Book No. 8, page No. 169, rule No. 12.

([2226]) The Supreme Constitutional Court, Case No. 152 of 20 Q, issued in the session of June 3, 2000, date of publication June 17, 2000, and published in the first part of the Technical Office Book No. 9, page No. 627, rule No. 74.

Except for the cases of recusal stipulated by law, if the judge has reasons that make him feel embarrassed to consider the case, he may submit the matter of his recusal to the court, or to the president of the court, as the case may be, for a decision on it.[2227]

11-5-2 Within the framework of international conventions

The court must be impartial. The duty of impartiality, which is an essential element of the proper exercise of judicial functions, requires that all decision-makers in a criminal case, whether they are judges, judicial officers or jurors, be and are seen to be impartial.[2228]

True integrity is required in both substance and substance as a prerequisite for maintaining respect for the justice system.[2229]

The right to a fair trial requires that judges and jurors have no vested interest in, or preconceived notions about, the case before them, and that they not act in a manner that favors one of the parties to the case.[2230]

A judge or juror should not hear a case if he or she is unable to decide it impartially, or if he or she may appear to be impartial. For example, if the judge has personal knowledge of a controversial fact in the case, or is a lawyer or witness regarding a matter of the case, or has an interest in the outcome of the case or bias towards one of the parties, the judge should usually recuse himself from hearing the case.[2231]

It is also the duty of the courts to ensure the impartiality of jurors in jury trials.[2232]

Judges are required to ensure that the proceedings are conducted fairly, respecting the rights of all parties, without discrimination. [2233]

Several human rights bodies have recommended that judges, prosecutors and lawyers be trained and sensitized on the rights of women and minorities so that they are able to challenge discriminatory stereotypes and ensure respect for the right to equality before the law and the courts. Human rights bodies have recommended that state officials, including law enforcement officers, active members of the armed forces, judges and prosecutors, be excluded from jury membership, in order to preserve the independence and impartiality of judicial proceedings.[2234]

([2227] Article No. 249 of the Code of Criminal Procedure.

([2228]) Human Rights Committee: Kartunen v. Finland, / UN Doc. CCPR 3/7-2/ §7 (1992) C/46/D/387/1989, Collins v. Jamaica, / UN Doc. CCPR 4/ §8 (1991) C/43/D/240/1987; Council of Europe Recommendation 12, CM/Rec)2010 §60; European Court: Piersac v. Belgium (8692)/79), §30 (1982); Kyprianou v. Cyprus, (73797)/01) Grand Chamber (2005) §118-§121.

([2229]) General Comment 32 of the Human Rights Committee, § 21; European Court: Piersac v. Belgium (8692)/79), (32-§ § 30 (1982, Sander v. United Kingdom (34129)/96) § 22 (2000, Galstyan v. Armenia (26986)/03) European Court § 79 (2007); : Abitz Barbera and Others v. Venezuela, Inter-American Court, § 56 (2008); Prosecutor v. Anto Forundjia IT-95-17/1-A)) Appeals Chamber of the International Tribunal for the Former Yugoslavia (July § 189-§ 190 (2000).

([2230]) Principle 2 of the Bangalore Principles; Karttunen v. Finland, Human Rights Committee, 1989/2/ §7 (1992) UN Doc. CCPR/C/46/D/387..

([2231]) Section A(5)(d) of the Principles on Fair Trial in Africa, Article 15 of the Rwanda Rules, Article 15 of the Yugoslavia Rules, Principles 2/5 and 4/4 of the Bangalore Principles; Council of Europe Recommendation §59-§60, CM/Rec(2010)12; Palamara-Iribarne v. Chile, Inter-American Court (2005) §145-§147 and §158-§161.

([2232] Andrews v. United States (11). 139), American Commission (1996) §147-§172, §183 and §187; Hanif and Khan v. United Kingdom (52999)/08 and 61779/08) European Court (2011) §138.

([2233]) Principle 6 of the Basic Principles on the Independence of the Judiciary, Principle 5 of the Bangalore Principles; see Special Rapporteur on the Independence of Judges and Lawyers, §17/289 (2011) UN Doc. A/66..

([2234]) Special Rapporteur on the independence of judges and lawyers: Russian Federation, §98 (2009) UN Doc. A/HRC/11/41/Add. 2; Concluding observations of the Committee against Torture: Russian Federation, / UN Doc. CAT/C/RUS . 13 § (2006) CO/4.

Decisions on facts must be made impartially and based solely on evidence and circumstantial evidence, and the facts must be based on applicable laws. No party may interfere in the case, impose restrictions or pressures on it, or resort to enticement or threats in its context.[2235]

Judges should act in a manner that preserves the impartiality and independence of the judiciary and protects the dignity of their office.[2236]

Judges should not make any comments that could reasonably be expected to affect the outcome of the proceedings.

Challenge the impartiality of the court

The right to challenge the independence and impartiality of a court, judge or jury is essential to ensuring respect for the right to appear before an independent and impartial tribunal. States must ensure that there is a mechanism for receiving such appeals. .[2237]

The Inter-American Court has indicated that challenging the impartiality of a judge should not be seen as questioning his moral integrity, but rather as a mechanism for building credibility and confidence in the judicial system.[2238]

There are two forms of test for the impartiality of courts, one of which is objective, and examines whether the judge has provided sufficient procedural guarantees to exclude any legitimate doubt about his integrity. The second is subjective, and tests whether the judge has any personal biases. It is clear from this that the impartiality factor is as important as its essence, but it is generally assumed that judges (or members of the jury) have no personal preferences that affect the impartiality of their decision, unless a party presents evidence to the contrary, and usually in the context of procedures provided for by national law.[2239]

When considering challenges to the impartiality of judges in criminal cases, the opinion of the accused, despite its importance, remains inconclusive; what is decisive in this regard is whether there is an objective basis justifying doubts about this impartiality.[2240]

In this context, the Human Rights Committee stated that national courts should examine the grounds on which a judge may be dismissed for incompetence, where provided for by law, and replace any judge who meets the criteria specified in this regard.[2241]

Challenges to the impartiality of the Court have been raised in various contexts, including in cases where judges have participated in other parts of the proceedings in another capacity, cases where the identity of judges has been kept confidential, and others where judges appear to have a personal interest in the proceedings or some form of relationship with one of the parties. The African Commission decided that the establishment of a special court composed of one judge and four members from among the officers of the armed forces, and giving it absolute power to try, adjudicate and sentence those accused of inciting civil unrest, constituted a violation of Article 7 (d) of the African Charter. The committee said, "Regardless of the character

---

([2235]) Principle 2 of the Basic Principles on the Independence of the Judiciary, and sections A(2)(h) and 5(a) and (e) of the Principles on Fair Trial in Africa, see Council of Europe Recommendation 12 CM/Rec (2010) §5, §14 and §22-§23.

([2236] Principle 8 of the Basic Principles on the Independence of the Judiciary.

([2237]) See Section A(5)(b) of the Principles on Fair Trial in Africa, Abitz Barbera and Others v. Venezuela, Inter-American Court, (2008) §63-§67.

([2238]) Abitz Barbera et al. v. Venezuela, Inter-American Court, (2008) §63.

([2239]) Barreto Leyva v. Venezuela, Inter-American Court § 98 (2009); European Court: Piersac v. Belgium (8692)/79), § 30 (1982); Sander v. United Kingdom (34129)/96 (25-24 (2000) and 27 and 34, Kyprianou v. Cyprus, (73797)/01) Grand Chamber § 118-§ 121 (2005); Prosecutor v. Anto Forundjija (IT-95-17/1-A) Appeals Chamber of the International Tribunal for the Former Yugoslavia July (2000) § 189-§ 191 and § 196-§ 197.

([2240]) Hauschildt v. Denmark (10486)/83, European Court (1989) §48-§49.

([2241]) Kartunen v. Finland, Human Rights Committee, / UN Doc. CCPR . 2/ §7 (1992) C/46/D/387/1989.

of the members of these courts, their very composition suggests, if not embodies, impartiality."[2242]

The US court concluded that the "faceless judges" system constitutes a violation of the right to a trial before an independent, impartial and competent court. Among the reasons given by the Committee is the fact that keeping the identity of the judges secret prevents the accused from knowing whether there is a basis on which they are seeking the removal of the judge on the basis of lack of impartiality or jurisdiction.[2243]

The European Court also found that the right to a trial before an independent and impartial tribunal was violated when a court failed to consider allegations that a juror had made a racist remark in public before the trial of a man of Algerian origin in France.[2244]

The European Court did not find that there was anything that undermined the impartiality of the court, even though one of the court judges had participated in the pre-trial proceedings and in the decision to detain the accused pending trial, and the presiding judge had decided that there was prima facie evidence in the court file that justified bringing the case before the court. [2245]

However, the European Court found in the following cases a lack of impartiality:

Whereas the investigating judge had ordered the accused to be detained before their trial and had interrogated them on a number of occasions during the investigation, and had subsequently been appointed a judge in the court, and in this capacity had been charged with trying the accused in the same case;[2246]

Whereas a judge who had ordered the extension of the detention of one of the accused confirmed the jury's decision and issued the verdict against the accused after presiding over the court to try him criminally;[2247]

Whereas the judge in a criminal case for defamation had previously presided over the court in a criminal case relating to the same matter;[2248] .

Whereas a police officer participated in the jury despite knowing that he had worked with another police officer who was a witness in the case and provided testimony about an incident about which opinions differed during the trial [2249] .

([2242]) Constitutional Rights Project (in relation to Zamani Lakoot and 6 others) v. Nigeria (87)/93), African Commission (1994) - §14(5).

([2243]) Castillo Petruzzi et al. v. Peru, Inter-American Court (1999) § 134-§ 132; see Report of the Inter-American Commission on Terrorism and Human Rights (2002) section 3(d)(1)(B) § 233; Carranza v. Peru, / UN Doc. CCPR 3/ § § 6 (2005) C/85/D/1126/2002 and 7/5, Becerra v. Colombia, UN Doc 2/ § § 5 (2006) CCPR/C/87/D/1298/2004 and 7/2, see also concluding observations: Tunisia: § 15 (2008) UN Doc. CCPR/C/TUN/CO/5..

([2244]) Ramli v. France (16839)/90), European Court (48-§ 46 (1996); see also European Court: Sander v. United Kingdom (34129)/96) § 34 (2000), Gregory v. United Kingdom (22299)/93), (1997) § 45-§ 48; Andrews v. United States, (11). 139) US Commission, Report 57/96 147 - §187(1996).

([2245]) European Court: Nortier v. The Netherlands (13924)/88, (1993) §31-§35; see also Saraiva de Carvalho v. Portugal (15651)/89, (1994) §30-§40.

([2246]) De Capper v. Belgium (9186)/80, European Court (1984) §30.

([2247]) Ekeberg and Others v. Norway (11106) / et al 04), European Court §34-§44 (2007); see Hauschildt v. Denmark (10486) / 83), European Court (1989) §43-§53.

([2248]) Fatahlaev v. Azerbaijan (40984)/07, European Court (2010) §136-§139.

([2249]) Hanif and Khan v. United Kingdom (52999)/08 and 61779/08), European Court (2011) §138-§150.

Chapter Twelve: The Right to Equality Before the Law and Courts

12-1 Within the Framework of Egyptian Law

12-1-1 The right to equality before the law

All Egyptian constitutions, starting from the 1923 Constitution and ending with the current Constitution, have all reiterated equality before the law and guaranteed its application to all citizens as the basis of justice, freedom and social peace.[2250]

Since citizens are equal before the law and are equal in rights, freedoms and public duties, there is no discrimination between them on the basis of religion, belief, gender, origin, race, color, language, disability, social status, political or geographical affiliation, or for any other reason. [2251]

The principle of equality before the law aims to protect the rights and freedoms of citizens in the face of forms of discrimination that infringe on these rights or restrict the exercise of those freedoms. The equal legal protection imposed by this principle is not limited to the rights and freedoms stipulated in the Constitution, but its scope of implementation also extends to the rights that the legislator guarantees to citizens within the limits of his discretionary authority and in light of the legislative policy that he deems to achieve the public interest.[2252]

(2250) Supreme Constitutional Court, Case No. 56 of 24 Q issued in the session of May 11, 2003, date of publication May 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 1062, rule No. 155, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Technical Office Book No. 8, page No. 124, rule No. 8, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Technical Office Book No. 8, page No. 124, rule No. 8, Case No. 33 of 15 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7 Page No. 297 Rule No. 17, Case No. 14 of 17 Q issued in the session of September 2, 1995, date of publication September 14, 1995, published in the first part of the Technical Office Book No. 7 Page No. 176 Rule No. 9, Case No. 11 of 16 Q issued in the session of July 3, 1995, date of publication July 20, 1995, published in the first part of the Technical Office Book No. 7 Page No. 19 Rule No. 1, Case No. 23 of 16 Q issued in the session of March 18, 1995, date of publication April 6, 1995, published in the first part of the Technical Office Book No. 6 Page No. 567 Rule No. 38, Case No. 39 of 15 Q issued in the session of February 4, 1995, date of publication March 6, 1995, published in the first part of the Technical Office Book No. 6 Page No. 511 Rule No. 35, Case No. 30 of 15 Q issued in the session of December 3, 1994, date of publication December 22, 1994, published in the first part of the Technical Office Book No. 6, page No. 386, Case No. 34 of 13 Q issued in the session of June 20, 1994, date of publication July 7, 1994, published in the first part of the Technical Office Book No. 6, page No. 302 Rule No. 27, Case No. 43 of 13 Q issued in the session of December 6, 1993, date of publication December 23, 1993, published in the first part of the Technical Office Book No. 6, page No. 80.

(2251) The first paragraph of Article No. 53 of the Constitution.

(2252) Supreme Constitutional Court, Case No. 51 of 22 Q issued in the session of May 11, 2003, date of publication May 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 1054, rule No. 154, Case No. 56 of 24 Q issued in the session of May 11, 2003, date of publication May 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 1062, rule No. 155, Case No. 77 of 23 Q issued in the session of May 11, 2003, date of publication May 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 1071, rule No. 156, Case No. 56 of 22 Q issued in the session of June 9, 2002, date of publication June 20, 2002 And published in the first part of the Technical Office Book No. 10, page No. 393, Rule No. 61, Case No. 33 of 15 Q issued in the session of December 2, 1995, date of publication December 21, 1995, and published in the first part of the Technical Office Book No. 7, page No. 297, Rule No. 17, Case No. 14 of 17 Q issued in the session of September 2, 1995, date of publication September 14, 1995, and published in the first part of the Technical Office Book No. 7, page No. 176, Rule No. 9, Case No. 39 of 15 Q issued in the session of February 4, 1995, date of publication March 6, 1995, and published in the first part of the Technical Office Book No. 6, page No. 511, Rule No. 35, Case No. 17 of 14 Q issued in the session of January 14, 1995, date of publication February 9, 1995 1995 and published in the first part of the Technical Office Book No. 6, page No. 440, Case No. 30 of the 15th Q issued in the session of December 3, 1994, date of publication December 22, 1994 and published in the first part of the Technical Office Book No. 6, page No. 386, Case

Although the Constitution has prohibited discrimination between citizens on the basis of religion, belief, gender, origin, race, color, language, disability, social status, political or geographic affiliation, or for any other reason, this does not mean at all the confinement of the cases in which discrimination is prohibited, but rather it was mentioned as the most common in work and the most prevalent in practical life, and saying otherwise leads to permitting discrimination in cases other than those, such as preferring some over others based on their birth, or the extent of their wealth, or their tribal fanaticism, or their ethnic tendencies, or their social status, or their class affiliation, or on the basis of their inclinations and opinions, or their partisan inclinations, or their position on public authority, or their aversion to its organizations, or their adoption of specific actions, or other forms of discrimination that lack in their structure objective foundations that justify them, which contradicts the essence of the principle of equality and prevents it from achieving its goal and exposes freedoms, rights and public duties to the risk of discrimination between citizens on non-foundations. Objectivity justifies it. [2253]

The forms of discrimination that contradict the principle of equality before the law, although it is impossible to limit them, are based on any distinction, restriction, preference or exclusion that arbitrarily infringes on the rights and freedoms guaranteed by the constitution or the law, whether by denying the very existence of them, or by suspending or diminishing their effects, in a way that prevents them from being exercised on a footing of complete equality among those qualified to benefit from them, especially at the level of political, social, economic, cultural and other aspects of public life.[2254]

No. 43 of the 13th Q issued in the session of December 6, 1993, date of publication December 23, 1993 and published in the first part of the Technical Office Book No. 6, page No. 80.

([2253]) Supreme Constitutional Court, Case No. 155 of 18 Q issued in the session of March 6, 1999, date of publication March 18, 1999, published in the first part of the Technical Office Book No. 9, page 214, rule No. 28, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Technical Office Book No. 8, page 124, rule No. 8, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Technical Office Book No. 8, page 124, rule No. 8, Case No. 33 of 15 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7, page No. 297 Rule No. 17, Case No. 14 of 17 Q issued in the session of September 2, 1995, date of publication September 14, 1995, published in the first part of the Technical Office Book No. 7, page No. 176, Rule No. 9, Case No. 40 of 16 Q issued in the session of September 2, 1995, date of publication September 14, 1995, published in the first part of the Technical Office Book No. 7, page No. 194, Rule No. 10, Case No. 6 of 15 Q issued in the session of April 15, 1995, date of publication April 27, 1995, published in the first part of the Technical Office Book No. 6, page No. 637, Rule No. 41, Case No. 23 of 16 Q issued in the session of March 18, 1995, date of publication April 6, 1995, published in the first part of the Technical Office Book No. 6 Page No. 567 Rule No. 38, Case No. 39 of 15 Q issued in the session of February 4, 1995, date of publication March 6, 1995, published in the first part of the Technical Office Book No. 6, Page No. 511 Rule No. 35, Case No. 30 of 15 Q issued in the session of December 3, 1994, date of publication December 22, 1994, published in the first part of the Technical Office Book No. 6, Page No. 386.

([2254]) Supreme Constitutional Court, Case No. 109 of 27 Q issued in the session of June 10, 2007, date of publication June 17, 2007 and published in the first part of the Technical Office Book No. 12, page No. 507, rule No. 48, Case No. 85 of 28 Q issued in the session of June 10, 2007, date of publication June 17, 2007 and published in the first part of the Technical Office Book No. 12, page No. 530, rule No. 50, Case No. 124 of 24 Q issued in the session of April 9, 2006, date of publication May 6, 2006 and published in the second part of the Technical Office Book No. 11, page No. 2385, rule No. 380, Case No. 56 of 24 Q issued in the session of May 11, 2003, date of publication May 29, 2003 and published In the first part of the Technical Office Book No. 10, page No. 1062, rule No. 155, case No. 180 of 20 Q issued in the session of January 1, 2000, date of publication January 13, 2000, and published in the first part of the Technical Office Book No. 9, page No. 448, rule No. 55, case No. 155 of 18 Q issued in the session of March 6, 1999, date of publication March 18, 1999, and published in the first part of the Technical Office Book No. 9, page No. 214, rule No. 28, case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, and published in the first part of the Technical Office Book No. 8, page No. 124, rule No. 8, case No. 38 of 17 Q issued in the session of May 18, 1996, date of publication May 30, 1996 1996 and published in the first part of the Technical Office Book No. 7, page No. 637, Rule No. 40, Case No. 30 for the year 16 Q issued in the session of April 6, 1996, date of publication April 18, 1996 and published in the first part of the Technical Office Book No. 7, page No. 551, Rule No. 33, Case No. 33 for the year 15 Q issued in the session of December 2, 1995, date of publication December 21, 1995 and published in the first part of the Technical Office Book No. 7, page No. 297, Rule No. 17, Case No. 14 for the year 17 Q issued in the session of September 2, 1995, date of publication September 14, 1995 and published in the first part of

The principle of equality before the law, which the Constitution established as a fundamental guarantee for achieving justice, freedom and social peace, is not limited to the scope of its application to the rights and freedoms guaranteed by the Constitution, but also extends to those of them that have been decided by law - or by a lower legislative instrument - and it is not permissible after that to restrict them in a way that impedes them or detracts from their exercise, but rather they must be regulated by unified foundations in which there is no discrimination between those addressed by their provisions who are legally qualified to benefit from them.[2255]

The principle of equality before the law, which the Constitution guarantees to all citizens, as the basis of justice, freedom and social peace, means that neither the legislative nor the executive authority may exercise its legislative powers entrusted to it by the Constitution in a manner that violates the equal protection it guarantees for all rights, and taking into account that the equal protection before the law, which the Constitution has adopted, does not address the law in an abstract sense, but rather because the law is an expression of a specific policy created by situations with their problems, and that it seeks, through the texts it contains, to achieve purposes in themselves through the means it has specified.[2256]

This means that the principle of equality before the law means that the legislative authority shall not approve or the executive authority shall not issue legislation that violates the equal legal protection of all rights, whether those stipulated in the constitution or those guaranteed by the legislator..[2257]

The legislative or executive authorities, in exercising their powers stipulated in the Constitution, may not violate the equal legal protection of all rights, whether those stipulated in the Constitution or those specified by law. Hence, this principle protects against legal texts in which the legislator establishes unjustified discrimination that conflicts with legal positions whose elements are similar, so that the unity of its structure is not an entry point for the unity of its organization, but rather the legal rule that governs it is either exceeding in its breadth the conditions of these positions or falling short in its scope of comprehending them.[2258]

---

the Technical Office Book No. 7, page No. 176, Rule No. 9, Case No. 23 for the year 16 Q issued in the session of March 18, 1995, date of publication April 6 For the year 1995 and published in the first part of the Technical Office Book No. 6, page No. 567, rule No. 38, case No. 39 for the year 15 Q issued in the session of February 4, 1995, date of publication March 6, 1995 and published in the first part of the Technical Office Book No. 6, page No. 511, rule No. 35, case No. 30 for the year 15 Q issued in the session of December 3, 1994, date of publication December 22, 1994 and published in the first part of the Technical Office Book No. 6, page No. 386.

([2255]) Supreme Constitutional Court, Case No. 177 of 26 Q issued in the session of January 14, 2007, date of publication January 28, 2007, published in the first part of the Technical Office Book No. 12, page No. 225, rule No. 23, Case No. 227 of 21 Q issued in the session of December 2, 2000, date of publication December 14, 2000, published in the first part of the Technical Office Book No. 9, page No. 796, rule No. 96, Case No. 87 of 20 Q issued in the session of May 6, 2000, date of publication May 18, 2000, published in the first part of the Technical Office Book No. 9, page No. 534, rule No. 65, Case No. 17 of 18 Q issued in the session of May 3, 1997, date of publication May 15, 1997, published in the first part of the Office Book Technician No. 8 Page No. 591 Rule No. 40.

([2256]) Supreme Constitutional Court, Case No. 259 of 25 Q issued in the session of June 12, 2005, date of publication June 23, 2005, published in the second part of the Technical Office Book No. 11, page No. 1885, rule No. 312, Case No. 24 of 21 Q issued in the session of June 2, 2001, date of publication June 14, 2001, published in the first part of the Technical Office Book No. 9, page No. 957, rule No. 115, Case No. 35 of 18 Q issued in the session of March 6, 1999, date of publication March 18, 1999, published in the first part of the Technical Office Book No. 9, page No. 182, rule No. 23, Case No. 132 of 18 Q issued in the session of January 3, 1998, date of publication January 15, 1998, published in the first part From the Technical Office Book No. 8, Page No. 1065, Rule No. 74.

([2257]) The Supreme Constitutional Court, Case No. 217 of 24 Q, issued in the session of February 13, 2005, date of publication March 10, 2005, and published in the first part of the Technical Office Book No. 11, page No. 1398, rule No. 232.

([2258]) The Supreme Constitutional Court, Case No. 122 of 22 Q issued in the session of February 13, 2005, date of publication March 10, 2005, and published in the first part of the Technical Office Book No. 11, page No. 1381, rule No. 230, Case No. 81 of 25 Q issued in the session of February 13, 2005, date of publication March 10, 2005, and published in the first part of the Technical Office Book No. 11, page No. 1429, rule No. 237.

The principle of equality is not a rigid, indoctrinated principle that contradicts practical necessity, nor is it an iron rule that rejects all forms of discrimination, nor does it guarantee the mathematical precision required by the scales of absolute justice among things. If the legislative authority is permitted to take whatever measures it deems appropriate to regulate a specific, defined subject or to prevent an evil that it deems necessary to repel, and if its prevention of greater harm with lesser harm is necessary, its application of the principle of equality must not be a revelation of its whims, nor an indication of its adoption of permissible situations that arouse grudges or hatreds that break the controls of its behavior, nor an aggression expressing the might of its authority. Rather, its position must be moderate in the area of its dealings with citizens, and it must not differentiate between them by imposition or oppression.

It is therefore permissible for the legislative authority to differentiate - according to logical standards - between centers whose data are not the same, or whose foundations differ from one another. In order to preserve the principle of equality, it must establish, through this organization, a legislative division in which the legal texts it includes are linked to the legitimate purposes it seeks, provided that the differences between those centers are real, not artificial or imaginary. This is because what preserves the principle of equality, and does not contradict its content, is that organization that establishes a legislative division in which the secondary texts it includes are linked to the legitimate purposes it seeks. If evidence is provided that these texts are separate from their objectives, then discrimination is a failure that cannot be seen. Likewise, if the connection between the means and the ends is weak, then the discrimination is considered to be based on facts that cannot be applied to it, and thus it is not constitutionally permissible.[2259]

The legal positions to which the principle of equality relates are those that are united in the elements that constitute each of them, not as realistic elements that the legislator did not take into account, but rather as elements that the legislator took into account, imposing a legal effect on them. Their connection is only the creation of that legal position that includes them.[2260]

This legal status does not arise except through its solidarity after its existence has become linked to it. It does not arise at all through its establishment, and it is not conceivable after its realization and the legal status is generated from it that it would be a restriction on it, nor that the legislator would diminish the advantages that he linked to its existence, since they are latent in it and it is not permissible to revoke them.[2261]

This means that the principle of equality before the law does not mean treating all citizens according to uniform rules, as the legislative organization may involve division, classification or discrimination, whether through the burdens it imposes on some or through the advantages it grants to one group over another. However, the basis for the constitutionality of this organization is that its texts, by which the legislator organizes a specific topic, are not separated from its

---

([2259]) Supreme Constitutional Court, Case No. 259 of 25 Q issued in the session of June 12, 2005, date of publication June 23, 2005, published in the second part of the Technical Office Book No. 11, page No. 1885, rule No. 312, Case No. 47 of 17 Q issued in the session of January 4, 1997, date of publication January 16, 1997, published in the first part of the Technical Office Book No. 8, page No. 223, rule No. 16, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Technical Office Book No. 8, page No. 124, rule No. 8, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Office Book Technician No. 8 Page No. 124 Rule No. 8.

([2260]) Supreme Constitutional Court, Case No. 259 of 25 Q issued in the session of June 12, 2005, date of publication June 23, 2005, published in the second part of the Technical Office Book No. 11, page No. 1885, rule No. 312, Case No. 276 of 24 Q issued in the session of March 13, 2005, date of publication April 7, 2005, published in the first part of the Technical Office Book No. 11, page No. 1583, rule No. 261, Case No. 9 of 18 Q issued in the session of March 22, 1997, date of publication April 3, 1997, published in the first part of the Technical Office Book No. 8, page No. 522, rule No. 33.

([2261]) The Supreme Constitutional Court, Case No. 227 of 21 Q, issued in the session of December 2, 2000, date of publication December 14, 2000, and published in the first part of the Technical Office Book No. 9, page No. 796, rule No. 96.

objectives, so that the connection of the purposes that it seeks to achieve with the means it resorted to is logical and not weak, feeble or fabricated, in a way that violates the foundations on which constitutionally justified discrimination is based. Therefore, if there is similarity in the legal positions that organize some categories of citizens, and their equality in the elements that compose them, this necessitates the unity of the legal rule that should be applied to them. If the legislator deviates from that, he falls into the mud of constitutional violation, whether this deviance was intentional or occurred accidentally.[2262]

Whenever the law is different between situations, positions, or persons that are not actually the same, and its assessment of that is based on objective foundations, inspired by goals whose legitimacy is not disputed, and guarantees the legal rule alone regarding persons whose circumstances are similar to what does not exceed its requirements, the law falls within the framework of the discretionary authority possessed by the legislator, and is therefore not considered a suspicious law, but rather includes justified discrimination that does not detract from its constitutional legitimacy if the equality it sought and sought is mathematically far from perfection, nor if its application is an act that has violated it.[2263]

Although the principle of the authority possessed by the legislator in the field of regulating rights is its absoluteness, the restrictions that the constitution may impose to protect these rights from possible forms of aggression against them are what determine the boundaries of the circle in which legislative regulation may not enter, destroying the rights guaranteed by the constitution, or affecting their content in a way that undermines them. Hence, this circle represents a vital area through which the right can only breathe, and the organization of the right is not possible from a constitutional perspective except beyond its external borders, so that invading it is contrary to its organization, and an aggression against it that leads to its confiscation or restriction. Likewise, the legal texts in which the legislator has organized a specific topic may not be separated from its objectives. Rather, these texts must be an introduction to it and a basis for satisfying a public interest that has its consideration, appropriate means to justifiable ends.

This is because every legislative regulation does not come out of a vacuum and is not considered intended for its own sake, but rather its goal is to implement specific objectives that it seeks, and its legitimacy reflects a framework for the public interest on which the legislator established this regulation as a tool for achieving it and a way to reach it.[2264]

The origin of the legislator's authority in the field of regulating rights is that it is discretionary authority unless the constitution restricts its exercise with controls that limit its absoluteness, and it is considered a boundary for it that may not be invaded or crossed. Since the constitution entrusts the legislative authority with regulating a specific subject, the legal rules it approves in this area may not infringe upon the rights whose origin is guaranteed by the constitution, whether by revoking them or diminishing them from their sides, since wasting or destroying

---

([2262]) The Supreme Constitutional Court, Case No. 14 of 23 Q issued in the session of April 4, 2004, date of publication April 15, 2004, published in the first part of the Technical Office Book No. 11, page No. 580, rule No. 95, Case No. 32 of 16 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7, page No. 240, rule No. 14.

([2263]) The Supreme Constitutional Court, Case No. 132 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1065, rule No. 74.

([2264]) Supreme Constitutional Court, Case No. 180 of 20 Q issued in the session of January 1, 2000, date of publication January 13, 2000, published in the first part of the Technical Office Book No. 9, page No. 448, rule No. 55, Case No. 155 of 18 Q issued in the session of March 6, 1999, date of publication March 18, 1999, published in the first part of the Technical Office Book No. 9, page No. 214, rule No. 28, Case No. 52 of 18 Q issued in the session of June 7, 1997, date of publication June 19, 1997, published in the first part of the Technical Office Book No. 8, page No. 653, rule No. 43, Case No. 30 of 16 Q issued in the session of April 6, 1996, date of publication April 18, 1996, published in the first part of the Technical Office Book No. 7 Page No. 551 Rule No. 33, Case No. 9 of 16 Q issued in the session of August 5, 1995, date of publication August 17, 1995, published in the first part of the Technical Office Book No. 7, Page No. 106 Rule No. 7.

these rights is an aggression against their vital areas that they breathe only through. Therefore, the regulation of these rights must not be an intrusion into their content, but must be fair and justified.[2265]

The violation of the principle of equality before the law occurs through any action that undermines equal legal protection taken by the state, whether through its legislative authority or its executive authority, which means that neither of these two authorities may impose a difference in treatment unless it is justified by logical differences that can be rationally linked to the purposes sought by the legislative action issued by them.

It is not correct to say that every legislative section is considered a classification that contradicts the principle of equality. Rather, legal texts must always be viewed as means determined by the legislator to achieve certain goals that he seeks. The principle of equality before the law cannot be applied except in light of its legitimacy and the logical connection of these means to it. It is therefore inconceivable that the evaluation of the legislative division be separate from the goals sought by the legislator. Rather, the permissibility of this division is linked to the restrictions imposed by the constitution on these goals and to the existence of a minimum level of compatibility between them and the methods of achieving them. It is therefore impossible for the objective assessment of the reasonableness of the legislative division to be completely separate from the ultimate goals of the legislation.

The effect of the equality of those who are similar in legal protection is that it includes all of them, so its scope is not limited to some of them, nor does it extend to categories other than theirs. Consequently, this protection may not be generalized beyond its natural scope, nor may the legislator reduce its scope by withholding it from a group of those who deserve it.

The legislator may intend, through the legal texts he formulates, to conduct a discrimination that is contrary to the constitution, and the effects that the discrimination produces may, in terms of its extent, undermine the purposes that the constitution intended to establish. Discrimination is considered unforgivable in both of these cases, and perhaps the discrimination is more dangerous in the second case, in which the challenged legislative text appears neutral in its appearance but contrary to the constitution in its effect.[2266]

12-1-2 The Right of Individuals to Access Courts on an Equal Basis with Others - The Right to Litigation

Litigation is a right that is protected and guaranteed to all. The state is committed to bringing the litigation bodies closer together and works to expedite the settlement of cases. It is prohibited to protect any administrative action or decision from judicial oversight, and no person shall be tried except before his natural judge, and exceptional courts are prohibited.[2267]

The importance of the right to resort to the judiciary is particularly evident in criminal proceedings, where personal freedom and related rights and freedoms are at risk. Through judicial intervention, it is possible to be assured of achieving a balance between the public interest and the protection of personal freedom and other rights and freedoms. Thus, the Criminal Procedure Code ensures achieving a balance between the public interest and the

---

([2265]) The Supreme Constitutional Court, Case No. 62 of 18 Q, issued in the session of March 15, 1997, date of publication March 27, 1997, and published in the first part of the Technical Office Book No. 8, page No. 488, rule No. 31.

([2266]) The Supreme Constitutional Court, Case No. 87 of 20 Q issued in the session of May 6, 2000, date of publication May 18, 2000, and published in the first part of the Technical Office Book No. 9, page No. 534, rule No. 65, Case No. 17 of 18 Q issued in the session of May 3, 1997, date of publication May 15, 1997, and published in the first part of the Technical Office Book No. 8, page No. 591, rule No. 40.

([2267] Article No. 97 of the Constitution.

protection of rights and freedoms, by conducting a fair trial in which all guarantees are respected, most importantly the right to defense.

The principle is that in the preliminary investigation stage, the judge must provide oversight over the course of the investigation, authorize procedures that affect personal freedom, and order the accused to be referred to trial if there is sufficient evidence against him. In the trial stage, it is necessary for another judge to decide on the proof of the charge and to issue a sentence upon conviction. In the execution stage, another judge must supervise the execution of the sentences.

Judicial guarantee is a necessary presumption to reach a fair and just trial, and a right expressed by the right to litigate. The right to litigate assumes, from the outset and obviously, enabling every litigant to access it easily, without being burdened by financial burdens or hindered by procedural obstacles. This access - which means the right of every person, whether national or foreign, to resort to the judiciary, and that its doors are not closed in the face of those who resort to it, and that the path to it is paved by law - is nothing more than a link in the chain of litigation, completed by two other links, without which this right cannot be valid, and its existence is not complete in the absence of either of them. This is because the establishment of the right to access the judiciary is completed by the middle link in the right to litigate, which is the one that reflects the impartiality and independence of the court, the immunity of its members, and the objective foundations of its practical guarantees. Thus, it guarantees, through its integration, the contemporary standards that provide every person with a complete and equal right to a fair and public trial, based on an independent and impartial court established by law, which decides - within a reasonable period - his civil rights and obligations. Or in the criminal charge against him and within its framework he is able to present his claim and achieve his defense and confront his opponent’s evidence in response and comment within a framework of equal opportunities and taking into account that the formation of the court and the foundations of its organization and the nature of the substantive and procedural rules in force within its scope and how to apply them in practice are what determine the main features of that middle link whenever the above is the case and the right to litigation is not complete unless the state provides the dispute at the end of its journey with a fair solution that represents the settlement that the person requesting it seeks to obtain as the judicial satisfaction that he seeks to confront the violation of the rights that he claims and this satisfaction - assuming its legitimacy and consistency with the provisions of the constitution - is integrated into the right to litigation as the last link in it and its connection to the final purpose intended by it with a close link since the judicial dispute is not established to defend a theoretical interest from which no practical benefit is derived, but rather its purpose is to require a benefit approved by the law and in light of which the truth of the disputed issue between its parties and the rule of law regarding it are determined, and with it the aspects of the judicial dispute are achieved The process does not operate in a vacuum, and the integration of this satisfaction into the right to litigation means that it is considered one of its components, and there is no way to separate it from it, otherwise this right will lose its meaning and become a mirage.[2268]

([2268]) Supreme Constitutional Court, Case No. 81 of 19 Q issued in the session of February 6, 1999, date of publication February 18, 1999, published in the first part of the Technical Office Book No. 9, page No. 165, rule No. 21, Case No. 15 of 14 Q issued in the session of May 15, 1993, date of publication June 10, 1993, published in the second part of the Technical Office Book No. 5, page No. 315, rule No. 27, Case No. 2 of 14 Q issued in the session of April 3, 1993, date of publication April 15, 1993, published in the second part of the Technical Office Book No. 5, page No. 241, rule No. 21, Case No. 69 of 22 Q issued in the session of February 13, 2005, date of publication March 10, 2005, published in the first part of the Technical Office Book No. 11 Page No. 1355 Rule No. 228, Case No. 129 of 22 Q issued in the session of January 12, 2003, date of publication January 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 887 Rule No. 129, Case No. 55 of 20 Q issued in the session of March 4, 2000, date of publication March 20, 2000, published in the first part of the Technical Office Book No. 9, page No. 470 Rule No. 57, Case No. 180 of 19 Q issued in the session of June 6, 1998, date

Every person has the right to resort to his natural judge, and this indicates that this right, in the origin of his law, is a right for all people, and they do not differ from one another in the field of resorting to it, but rather their legal positions are equal in their efforts to repel aggression against their rights in defense of their personal interests. The Constitution has been keen to guarantee the implementation of this right in its constitutionally established content, such that it is not permissible to limit its exercise to one group rather than another, or to permit it in a specific case rather than another, or to burden it with obstacles that are contrary to its nature, to guarantee that access to it is a right for everyone who resorts to it, not restricted in that except by the restrictions required by its organization, which may not in any case reach the extent of confiscating it. Thus, the Constitution has guaranteed the right to sue for every citizen, and has strengthened this right with its guarantees that prevent any infringement of it, and has established it as a basis for defending their interests and protecting them from aggression, and has made citizens equal in relying on it.[2269]

The constitution has established the right to litigation for all people as an authentic constitutional principle and has not restricted it to Egyptians alone but has also guaranteed this right to foreigners. This text has reiterated what previous constitutions have implicitly established regarding guaranteeing the right to litigation for individuals, both nationals and foreigners, when it granted them rights that do not exist and do not bear fruit except through the establishment of this right, as it is the means that guarantees their protection, enjoyment, and repelling aggression against them.[2270]

People are not distinguished from one another in the field of their right to access their natural judge, nor in the scope of the procedural and substantive rules that govern similar judicial disputes, nor in the effectiveness of the guarantee of the right to defense that the constitution or the legislator guarantees for the rights they claim, nor in their collection according to uniform standards when the conditions for requesting them are met, nor in the methods of appeal that regulate them. Rather, the rights themselves must have specific rules, whether in the field of litigation regarding them or defending them, or appealing them or appealing the rulings related to them. And a single dispute must always have uniform rules, whether in the field of its collection, defense, or appeal of the rulings issued in it.[2271]

---

of publication June 18, 1998, published in the second part of the Technical Office Book No. 8, page No. 1401 Rule No. 107, Case No. 129 of 18 Q issued in the session of January 3, 1998, date of publication January 15, 2003 1998 and published in the first part of the Technical Office Book No. 8, page No. 1077, rule No. 75, case No. 5 for the year 15 Q issued in the session of December 17, 1994 and published in the first part of the Technical Office Book No. 6, page No. 918, rule No. 19, case No. 2 for the year 14 Q issued in the session of April 3, 1993, date of publication April 15, 1993 and published in the second part of the Technical Office Book No. 5, page No. 241, rule No. 21, case No. 57 for the year 4 Q issued in the session of February 6, 1993, date of publication February 18, 1993 and published in the second part of the Technical Office Book No. 5, page No. 150, rule No. 13.

([2269]) Supreme Constitutional Court, Case No. 15 of 14 Q issued in the session of May 15, 1993, date of publication June 10, 1993, published in the second part of the Technical Office Book No. 5, page No. 315, rule No. 27, Case No. 101 of 26 Q issued in the session of February 1, 2009, date of publication February 15, 2009, published in the second part of the Technical Office Book No. 12, page No. 1274, rule No. 129, Case No. 26 of 27 Q issued in the session of January 13, 2008, date of publication January 27, 2008, published in the first part of the Technical Office Book No. 12, page No. 809, rule No. 81, Case No. 106 of 19 Q issued in the session of January 1, 2000, date of publication January 13, 2000, published in the part The first of the Technical Office Book No. 9, page No. 437, rule No. 54, case No. 153 of 19 Q issued in the session of June 5, 1999, date of publication June 17, 1999 and published in the first part of the Technical Office Book No. 9, page No. 284, rule No. 35, case No. 145 of 19 Q issued in the session of June 6, 1998, date of publication June 18, 1998 and published in the second part of the Technical Office Book No. 8, page No. 1423, rule No. 109.

([2270]) The Supreme Constitutional Court, Case No. 99 of the 4th year of the Q issued in the session of June 4, 1988, date of publication June 23, 1988, and published in the first part of the Technical Office Book No. 4, page No. 119, rule No. 18.

([2271]) Supreme Constitutional Court, Case No. 198 of 20 Q issued in the session of April 14, 2002, date of publication April 27, 2002, published in the first part of the Technical Office Book No. 10, page No. 296, rule No. 50, Case No. 92 of 21 Q issued in the session of January 6, 2001, date of publication January 18, 2001, published in the first part of the Technical Office Book No. 9, page No. 843, rule No. 101, Case No. 92 of 21 Q issued in the session of January 6, 2001, date of

The right to litigation must not be regulated by legal texts that burden the path to it, make litigation a risk whose consequences cannot be guaranteed, include a cost that lacks its cause, be far from what is considered fairness in the field of delivering rights to their owners, or lack the logical controls that surround the requirement of the right.[2272]

All people do not differ from one another in the field of their efforts to repel aggression against the rights they claim, but rather they possess the same means in the matter of demanding and obtaining the same rights.[2273]

The right to litigate is a right granted to both the natural person and the legal person. They do not differ at all in their enjoyment of the same constitutional right, but they may differ in the legal organization for exercising this right, a difference due to the unity of the will of the natural person and the multiplicity of wills that make up the legal person, which makes the matter regarding the legal organization that regulates the exercise of the right to litigate by the natural person governed by its being based on the will of this person alone and not making his right to litigate dependent on the interference of other wills with his individual will. This makes this intervention a waste of his individual will, and thus undermines his right to litigation.[2274]

The Constitution guaranteed a fair trial, meaning that every legal dispute should have its judge, and that it should be decided by an independent and impartial court established by law, within which the opponent can clarify his claim, present his opinions, and respond to the statements or arguments of his opponents that oppose it, in light of equal opportunities for all of them, so that its formation, rules of organization, the nature of the systems in force before it, and how to apply it are a specific act of justice, a progressive concept that is consistent with the contemporary standards of civilized countries.[2275]

---

publication January 18, 2001, published in the first part of the Technical Office Book No. 9, page No. 843, rule No. 101, Case No. 181 of 19 Q issued in the session of March 4, 2000, date of publication March 20, 2000, published in the first part of Technical Office Book No. 9, Page No. 512, Rule No. 62, Case No. 81 of 18 Q issued in the session of April 4, 1998, Publication Date April 16, 1998, and published in the second part of Technical Office Book No. 8, Page No. 1273, Rule No. 96, Case No. 64 of 17 Q issued in the session of February 7, 1998, Publication Date February 19, 1998, and published in the first part of Technical Office Book No. 8, Page No. 1108, Rule No. 78, Case No. 129 of 18 Q issued in the session of January 3, 1998, Publication Date January 15, 1998, and published in the first part of Technical Office Book No. 8, Page No. 1077, Rule No. 75, Case No. 79 of 18 Q issued in the session of December 6, 1997, Publication Date December 18, 1997 And published in the first part of the Technical Office Book No. 8, page No. 1022, rule No. 70, case No. 9 of 18 Q issued in the session of March 22, 1997, date of publication April 3, 1997, and published in the first part of the Technical Office Book No. 8, page No. 522, rule No. 33, case No. 62 of 18 Q issued in the session of March 15, 1997, date of publication March 27, 1997, and published in the first part of the Technical Office Book No. 8, page No. 488, rule No. 31, case No. 74 of 17 Q issued in the session of March 1, 1997, date of publication March 13, 1997, and published in the first part of the Technical Office Book No. 8, page No. 437, rule No. 28, case No. 22 of 17 Q issued in the session of February 3, 1996, date of publication February 17, 1996 and published in the first part of the Technical Office Book No. 7, page No. 446, rule No. 26, case No. 15 of year 17 Q issued in the session of December 2, 1995, date of publication December 21, 1995 and published in the first part of the Technical Office Book No. 7, page No. 316, rule No. 18, case No. 39 of year 15 Q issued in the session of February 4, 1995, date of publication March 6, 1995 and published in the first part of the Technical Office Book No. 6, page No. 511, rule No. 35.

([2272]) The Supreme Constitutional Court, Case No. 129 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1077, rule No. 75.

([2273]) The Supreme Constitutional Court, Case No. 231 of 20 Q, issued in the session of March 7, 2004, date of publication March 18, 2004, and published in the first part of the Technical Office Book No. 11, page No. 371, rule No. 60.

([2274]) Supreme Constitutional Court, Case No. 98 of 20 Q issued in the session of December 15, 2002, date of publication December 26, 2002, published in the first part of the Technical Office Book No. 10, page No. 786, rule No. 113, Case No. 193 of 23 Q issued in the session of December 15, 2002, date of publication December 26, 2002, published in the first part of the Technical Office Book No. 10, page No. 810, rule No. 118, Case No. 6 of 24 Q issued in the session of September 22, 2002, date of publication October 24, 2002, published in the first part of the Technical Office Book No. 10, page No. 607, rule No. 88.

([2275]) The Supreme Constitutional Court, Case No. 26 of 27 Q issued in the session of January 13, 2008, date of publication January 27, 2008, published in the first part of the Technical Office Book No. 12, page No. 809, rule No. 81, Case No. 8 of 8 Q

The Constitution requires that every judicial dispute have its judge and places an obligation on the State to provide every individual - whether national or foreign - with easy access to its courts, ensuring the basic guarantees necessary for the effective administration of justice in accordance with its levels in civilized countries.

The rights that derive their existence from legal texts necessarily require - and in order to require - a request for protection that the constitution or the legislator guarantees for them, considering that mere access to the judiciary is not considered sufficient to guarantee them, but rather this access must always be coupled with the removal of obstacles that prevent the settlement of situations arising from aggression against them, especially those that take the form of complex procedural forms, so that the state provides the dispute at the end of its journey with a fair solution based on the impartiality and independence of the court, and ensures that the judicial organization is not used as a tool for discrimination against a specific group or for prejudice against it. This settlement is what the opponent seeks to obtain as the judicial satisfaction that he requests to confront the violation of the rights that he claims. This satisfaction - assuming its legitimacy and consistency with the provisions of the constitution - is integrated into the right to litigation and is considered one of its complements.[2276]

The legislator may not reduce the role of judicial litigation, in which guaranteeing the right to it and access to it is considered the only way to exercise the right to litigation, nor may he strip this litigation of judicial satisfaction, the waste or belittling of which is considered a violation of the protection that the constitution guarantees for all rights.[2277]

The legislator's authority in regulating the right to litigation is discretionary, unless the constitution restricts it with certain controls that are considered a limit to it and prevent its release. Its essence is the comparison that he makes between the various alternatives related to the subject of the regulation to choose the most appropriate for its content, the most deserving of achieving the purposes that he seeks, and the most likely to fulfill the most weighty interests, giving preference to what he sees as the most appropriate for the interests of the group, and the closest to guaranteeing the most weighty of these interests. There is no restriction on the legislator's exercise of this authority except that the constitution itself has imposed specific controls regarding its exercise that are considered boundaries that must be adhered to.[2278]

---

issued in the session of March 7, 1992, date of publication April 2, 1992, published in the first part of the Technical Office Book No. 5, page No. 224, rule No. 26.

([2276]) The Supreme Constitutional Court, Case No. 152 of 20 Q issued in the session of June 3, 2000, date of publication June 17, 2000, published in the first part of the Technical Office Book No. 9, page No. 627, rule No. 74, Case No. 34 of 16 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7, page No. 763, rule No. 49, Case No. 98 of 4 Q issued in the session of March 5, 1994, published in the first part of the Technical Office Book No. 6, page No. 198, rule No. 19.

([2277]) The Supreme Constitutional Court, Case No. 81 of 18 Q, issued in the session of April 4, 1998, date of publication April 16, 1998, and published in the second part of the Technical Office Book No. 8, page No. 1273, rule No. 96.

([2278]) Supreme Constitutional Court, Case No. 36 of 19 Q issued in the session of December 13, 2014, date of publication December 22, 2014, Case No. 10 of 22 Q issued in the session of June 11, 2006, date of publication June 13, 2006, published in the second part of the Technical Office Book No. 11, page No. 2625, rule No. 418, Case No. 46 of 20 Q issued in the session of April 4, 2004, date of publication April 15, 2004, published in the first part of the Technical Office Book No. 11, page No. 531, rule No. 88, Case No. 64 of 21 Q issued in the session of March 7, 2004, date of publication March 18, 2004, published in the first part of the Technical Office Book No. 11, page No. 390, rule No. 63, Case No. 123 of 22 Q issued in the session of January 12, 2003, date of publication January 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 868, rule No. 127, Case No. 161 of 22 Q issued in the session of January 12, 2003, published in the first part of the Technical Office Book No. 10, page No. 868, rule No. 127, Case No. 47 of 17 Q issued in the session of January 4, 1997, date of publication January 16, 1997, published in the first part of the Technical Office Book No. 8, page No. 223, rule No. 16, Case No. 38 of 16 Q issued in the session of November 16, 1996, date of publication November 28, 1996, published in the first part of the Technical Office Book No. 8, page No. 169, rule No. 12.

The right to litigation is one of the constitutional rights that the legislator may intervene in, within the scope of his discretionary authority, by organizing it in a manner that ensures the achievement of its purpose, which is to achieve justice and return rights to their owners, without this organization exceeding the limits of its purpose, turning into a restriction that undermines the constitutional right in its original content or the essence of its existence.[2279]

The legislative organization of the right to litigation is not bound by rigid forms that the legislator does not deviate from, and whose molds are emptied into a deaf image that cannot be changed. Rather, the legislator may vary between them by deciding for each case what is appropriate for it, in light of the advanced concepts required by the situations in which this right is exercised, and in a manner that does not reach the point of wasting it, so that this organization remains flexible and meets the requirements of judicial litigation, so that it is not an excess that releases judicial litigation from its shackles, deviating from its objectives, nor a neglect that is contrary to its requirements. Rather, between these two matters there is a basis, in commitment to its purposes, considering it a form of judicial protection of the right in its most moderate form.[2280]

The legislator may choose from the procedural forms for enforcing the right to resort to the judiciary what, in his objective assessment, is most consistent with the nature of the dispute that is entrusted to be decided by a court or body with judicial jurisdiction, without prejudice to its main guarantees that ensure that rights are delivered to their owners according to specific rules that are fair in themselves.[2281]

The legislator is not bound by specific procedural forms that extend to all disputes, even if their subject matter differs, since the procedural organization of the judicial dispute cannot reflect rigid, uniform patterns for the framework for its adjudication, otherwise it would be drowning in formalism, even if its sterility is apparent. Rather, the legislator must always differentiate

---

([2279]) Supreme Constitutional Court, Case No. 11 of 24 Q issued in the session of May 9, 2004, date of publication June 10, 2004, published in the first part of the Technical Office Book No. 11, page No. 757, rule No. 127, Case No. 98 of 20 Q issued in the session of December 15, 2002, date of publication December 26, 2002, published in the first part of the Technical Office Book No. 10, page No. 786, rule No. 113, Case No. 193 of 23 Q issued in the session of December 15, 2002, date of publication December 26, 2002, published in the first part of the Technical Office Book No. 10, page No. 810, rule No. 118, Case No. 6 of 24 Q issued in the session of September 22, 2002, date of publication October 24, 2002, published In the first part of the Technical Office Book No. 10, page No. 607, rule No. 88.

([2280]) Supreme Constitutional Court, Case No. 163 of 26 Q issued in the session of December 2, 2007 and published in the first part of the Technical Office Book No. 12, page No. 749, rule No. 74, Case No. 17 of 26 Q issued in the session of April 15, 2007, date of publication April 19, 2007 and published in the first part of the Technical Office Book No. 12, page No. 328, rule No. 35, Case No. 167 of 27 Q issued in the session of April 15, 2007, date of publication April 19, 2007 and published in the first part of the Technical Office Book No. 12, page No. 369, rule No. 37, Case No. 10 of 22 Q issued in the session of June 11, 2006, date of publication June 13, 2006 and published in the second part of the Technical Office Book No. 11, page No. 2625 Rule No. 418, Case No. 69 of 22 Q issued in the session of February 13, 2005, date of publication March 10, 2005, published in the first part of the Technical Office Book No. 11, page No. 1355, Rule No. 228, Case No. 15 of 24 Q issued in the session of May 9, 2004, date of publication June 10, 2004, published in the first part of the Technical Office Book No. 11, page No. 764, Rule No. 128, Case No. 64 of 21 Q issued in the session of March 7, 2004, date of publication March 18, 2004, published in the first part of the Technical Office Book No. 11, page No. 390, Rule No. 63, Case No. 129 of 22 Q issued in the session of January 12, 2003, date of publication January 29, 2003 And published in the first part of the Technical Office Book No. 10, page No. 887, rule No. 129, case No. 65 of 17 Q issued in the session of February 1, 1997, date of publication February 13, 1997, and published in the first part of the Technical Office Book No. 8, page No. 368, rule No. 24, case No. 47 of 17 Q issued in the session of January 4, 1997, date of publication January 16, 1997, and published in the first part of the Technical Office Book No. 8, page No. 223, rule No. 16, case No. 38 of 16 Q issued in the session of November 16, 1996, date of publication November 28, 1996, and published in the first part of the Technical Office Book No. 8, page No. 169, rule No. 12, case No. 32 of 16 Q issued in the session of December 2, 1995, date of publication December 21, 1997 1995 and published in the first part of the Technical Office Book No. 7, page No. 240, rule No. 14.

([2281]) The Supreme Constitutional Court, Cases No. 185, 186 of 25 Q issued in the session of June 11, 2006, date of publication June 13, 2006, published in the second part of the Technical Office Book No. 11, page No. 2656, rule No. 421, Case No. 101 of 22 Q issued in the session of April 13, 2003, date of publication April 24, 2003, published in the first part of the Technical Office Book No. 10, page No. 1016, rule No. 147, Case No. 102 of 12 Q issued in the session of June 19, 1993, date of publication July 8, 1993, published in the second part of the Technical Office Book No. 5, page No. 343, rule No. 29.

between the form of this organization, to choose from it what is appropriate to the characteristics of the disputes to which it relates, and their procedural requirements, so that the forms required to enforce the right to litigation are multiple, without prejudice to its dimensions guaranteed by the Constitution, especially from the perspective of its main guarantees that represent a vital framework for preserving rights of all kinds.[2282]

The meaning of the right to litigation is that every dispute - in the end - has a fair solution, which represents the judicial satisfaction required to repel the aggression against the claimed rights.[2283]

The right to litigation has an ultimate goal that it seeks, represented by the judicial satisfaction that litigants struggle to obtain in order to compensate for the damages that have befallen them as a result of the aggression against the rights they seek. If the legislator burdens it with restrictions that make it difficult to obtain, or prevent it, this is a breach of the protection that the constitution has guaranteed for this right, and a denial of the facts of justice in the essence of its features. Without coupling judicial satisfaction with the means of implementing it and compelling those obligated to it to submit to it, this satisfaction becomes scattered in vain, and loses its value from a practical perspective.[2284]

There is no contradiction between the right to litigation as an authentic constitutional right and its legislative regulation, provided that the legislator does not use this regulation as a means to prohibit or waste this right.[2285]

([2282]) The Supreme Constitutional Court, Case No. 47 of 22 Q, issued in the session of February 10, 2002, and published in the first part of the Technical Office Book No. 10, page No. 157, Rule No. 29.

([2283]) Supreme Constitutional Court, Case No. 148 of 28 Q issued in the session of July 6, 2008, date of publication July 26, 2008, published in the second part of the Technical Office Book No. 12, page No. 1154, rule No. 118, Case No. 129 of 22 Q issued in the session of January 12, 2003, date of publication January 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 887, rule No. 129, Case No. 181 of 19 Q issued in the session of March 4, 2000, date of publication March 20, 2000, published in the first part of the Technical Office Book No. 9, page No. 512, rule No. 62, Case No. 133 of 19 Q issued in the session of April 3, 1999, date of publication April 15, 1999, published In the first part of the Technical Office Book No. 9, page No. 237, rule No. 30, case No. 83 of 20 Q issued in the session of December 5, 1998, date of publication December 10, 1998 and published in the first part of the Technical Office Book No. 9, page No. 109, rule No. 15, case No. 162 of 19 Q issued in the session of March 7, 1998, date of publication March 19, 1998 and published in the first part of the Technical Office Book No. 9, page No. 1103, rule No. 133.

([2284]) Supreme Constitutional Court, Case No. 140 of 27 Q issued in the session of May 13, 2007, date of publication May 21, 2007, published in the first part of the Technical Office Book No. 12, page No. 428, rule No. 42, Case No. 64 of 21 Q issued in the session of March 7, 2004, date of publication March 18, 2004, published in the first part of the Technical Office Book No. 11, page No. 390, rule No. 63, Case No. 380 of 23 Q issued in the session of May 11, 2003, date of publication May 29, 2003, published in the first part of the Technical Office Book No. 10, page No. 1112, rule No. 161, Case No. 65 of 18 Q issued in the session of January 6, 2001, date of publication January 18, 2001, published In the first part of the Technical Office Book No. 9, page No. 814, rule No. 98, case No. 65 for the year 18 Q issued in the session of January 6, 2001, date of publication January 18, 2001 and published in the first part of the Technical Office Book No. 9, page No. 814, rule No. 98, case No. 33 for the year 21 Q issued in the session of November 4, 2000 and published in the first part of the Technical Office Book No. 9, page No. 763, rule No. 91, case No. 181 for the year 19 Q issued in the session of March 4, 2000, date of publication March 20, 2000 and published in the first part of the Technical Office Book No. 9, page No. 512, rule No. 62, case No. 104 for the year 20 Q issued in the session of July 3, 1999, date of publication July 15, 1999 and published in the first part of the Technical Office Book No. 9 Page No. 316 Rule No. 39, Case No. 145 of 19 Q issued in the session of June 6, 1998, date of publication June 18, 1998, published in the second part of the Technical Office Book No. 8, page No. 1423 Rule No. 109, Case No. 37 of 18 Q issued in the session of April 4, 1998, date of publication April 16, 1998, published in the second part of the Technical Office Book No. 8, page No. 1260 Rule No. 95.

([2285]) Supreme Constitutional Court, Case No. 8 of 28 Q issued in the session of June 10, 2007, date of publication June 17, 2007 and published in the first part of the Technical Office Book No. 12, page No. 523, rule No. 49, Case No. 167 of 27 Q issued in the session of April 15, 2007, date of publication April 19, 2007 and published in the first part of the Technical Office Book No. 12, page No. 369, rule No. 37, Case No. 306 of 24 Q issued in the session of December 11, 2005, date of publication December 29, 2005 and published in the second part of the Technical Office Book No. 11, page No. 2098, rule No. 342, Case No. 174 of 24 Q issued in the session of January 9, 2005, date of publication January 24, 2005 and published In the first part of the Technical Office Book No. 11, page No. 1299, rule No. 218, case No. 15 of year 24 Q issued in the session of May 9,

The Constitution did not stop at establishing the right to litigation for all people as an authentic constitutional principle, but rather went beyond that to establishing the principle of prohibiting the text in the laws to protect any administrative action or decision from judicial oversight, and made this right an ultimate goal that it seeks, represented by judicial satisfaction, which litigants struggle to obtain, to compensate for the damages that have befallen them as a result of the aggression against the rights that they demand. If the legislator burdens it with restrictions that make it difficult to obtain or prevent it, this would be a breach of the protection that the Constitution has guaranteed for this right, and a denial of the facts of justice in the essence of its features.[2286]

Denying or restricting the right to judicial satisfaction, whether by withholding it from those who initially request it, or by presenting it slackly and slowly without justification, or surrounding it with procedural rules that are fundamentally flawed in themselves, is considered a waste or belittling of the protection imposed by the constitution or law for the rights that have been violated, which undermines the essence of this satisfaction and does not push it to its full extent, so that this is purely an aggression against the right to litigation that dissolves into a denial of justice in its most specific components, provided that it is understood that this denial is not based in its content on a mere error in applying the law, but rather is a failure to provide judicial satisfaction itself, especially whenever the judicial means that the legislator has made available to the opponents do not provide the one who has exhausted them with the necessary protection to preserve the rights that he claims, or his pursuit of his opponent to obtain the judicial satisfaction that he hopes for is futile.[2287]

The legislator's organization of the trial of children accused of committing felonies before the Children's Court, with its formation stipulated in the law and its jurisdiction to consider felonies in which the child is accused, is considered the natural judge according to the civilized vision of

---

2004, date of publication June 10, 2004 and published in the first part of the Technical Office Book No. 11, page No. 764, rule No. 128, case No. 242 of year 23 Q issued in the session of April 4, 2004, date of publication April 15, 2004 and published in the first part of the Technical Office Book No. 11, page No. 610, rule No. 99, case No. 231 of year 20 Q issued in the session of March 7, 2004, date of publication March 18, 2004 and published in the first part of the Technical Office Book No. 11, page No. 371, rule No. 60, case No. 101 of year 22 Q issued in the session of April 13, 2003, date of publication April 24, 2003, published in the first part of the Technical Office Book No. 10, page 1016, rule No. 147, Case No. 69 of 23 Q issued in the session of December 15, 2002, date of publication December 26, 2002, published in the first part of the Technical Office Book No. 10, page 777, rule No. 112, Case No. 219 of 21 Q issued in the session of September 22, 2002, date of publication October 24, 2002, published in the first part of the Technical Office Book No. 10, page 638, rule No. 93, Case No. 148 of 22 Q issued in the session of June 9, 2002, date of publication June 20, 2002, published in the first part of the Technical Office Book No. 10, page 426, rule No. 66, Case No. 47 of 22 Q issued In the session of February 10, 2002, published in the first part of Technical Office Book No. 10, page No. 157, rule No. 29.

([2286]) The Supreme Constitutional Court, Case No. 77 of 22 Q issued in the session of July 6, 2008, date of publication July 26, 2008, and published in the second part of the Technical Office Book No. 12, page No. 1133, rule No. 116

Therefore, the Supreme Constitutional Court ruled to reject the unconstitutionality of the text of the first paragraph of Article 210 of the Code of Criminal Procedure, which limits the right to appeal to the order that there is no basis for filing a criminal lawsuit to the plaintiff in the civil right alone, without the victim who did not file a civil lawsuit. This is due to the difference in the legal status of each of them - considering that the first is the person who was harmed by the crime, and wanted to exercise his civil right himself in addition to the criminal right that he represents and that the Public Prosecution exercises. As for the second, although he was harmed in this way, he left the matter to the Public Prosecution as a representative of society, so he did not file a civil suit, and it was available to him, so he himself dropped the right that the law granted him. In addition, the legislator did not deprive the victim who did not file a civil suit of the right to object to the issued order that there is no reason to file a lawsuit, and granted him the right to appeal to the presidential authorities in the Public Prosecution, and also granted the Attorney General the authority to issue a judicial decision to cancel the order within the three-month period following its issuance, the Supreme Constitutional Court, Case No. 141 of 27 Q issued in the session of January 4, 2009, date of publication January 17, 2009, and published in the second part of the Technical Office Book No. 12, page No. 1264, Rule No. 128.

([2287]) The Supreme Constitutional Court, Case No. 15 of 17 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7, page No. 316, rule No. 18, Case No. 5 of 15 Q issued in the session of December 17, 1994, published in the first part of the Technical Office Book No. 6, page No. 918, rule No. 19.

children's criminality and delinquency. The legislator sought, by establishing these texts, a legitimate public interest based on objective foundations that justify the provisions they contain. Therefore, the claim of breaching the guarantee of a fair trial and the right to defense is unfounded.

Children's criminality has a special nature, and the precautionary measures and penalties that may be imposed on them do not aim to cause pain as much as they aim to correct it. Their falling into the abyss of crime is not due - in most cases - to evil souls as much as it is the result of environmental and social circumstances that contributed to pushing them to do so. Therefore, the legal status of a child accused of a felony differs from that of a non-child accused of the same felony, which provides a logical justification for the difference in the court competent to try each of them, as well as the difference in the procedures followed in the trial. Thus, the child's court, with its formation and the procedures followed before it in accordance with the law, becomes the natural judge for the trial of the first, while the criminal court or the Supreme State Security Court, as the case may be, is the natural judge for the trial of the second.[2288]

As for limiting litigation to one degree, it is necessary - initially - to distinguish between limiting the right to litigation to one degree on the one hand, and denying the right to it absolutely or in a restricted manner on the other hand.[2289]

The principle is that limiting litigation in matters decided by a single court does not contradict the Constitution, but rather falls within the framework of the discretionary power possessed by the legislator in the field of regulating rights, which frees him from being bound by any specific forms or rigid patterns that are difficult to change or amend, so that he may choose from the appropriate forms and procedures for enforcing this right what, in his objective assessment, is most consistent with the nature of the dispute that is entrusted to decide by a court or body with judicial jurisdiction, without prejudice to the basic guarantees in litigation.[2290]

It is something that the legislator is independent in his assessment, taking into account two matters: First: that this limitation be based on objective foundations dictated by the nature of the dispute and the characteristics of the rights raised therein; Second: that the single-level court or body be a court or body with judicial jurisdiction in terms of its formation, guarantees, and the rules in force before it; and that the legislator has entrusted it with adjudicating all elements of the dispute - factual and legal - so that it does not have to review what another party concludes; and that whenever the legislator has guaranteed the right to litigate for any claimant, regardless of its value, and the foundations that he has decided to limit the right to litigate for some claims to a single level are objective foundations that have what justifies them from sound judicial and practical logic and that he has undertaken all of this within the scope of his discretionary authority in organizing the right to litigate; and since litigation in itself is not an end but rather a means to reach judicial satisfaction by giving each person his right through specific rules that

---

([2288]) The Supreme Constitutional Court, Case No. 47 of 22 Q, issued in the session of February 10, 2002, and published in the first part of the Technical Office Book No. 10, page No. 157, Rule No. 29.

([2289]) The Supreme Constitutional Court, Case No. 102 of 12 Q, issued in the session of June 19, 1993, date of publication July 8, 1993, and published in the second part of the Technical Office Book No. 5, page No. 343, rule No. 29.

([2290]) Supreme Constitutional Court, Case No. 15 of 24 Q issued in the session of May 9, 2004, date of publication June 10, 2004, published in the first part of the Technical Office Book No. 11, page No. 764, rule No. 128, Case No. 219 of 21 Q issued in the session of September 22, 2002, date of publication October 24, 2002, published in the first part of the Technical Office Book No. 10, page No. 638, rule No. 93, Case No. 148 of 22 Q issued in the session of June 9, 2002, date of publication June 20, 2002, published in the first part of the Technical Office Book No. 10, page No. 426, rule No. 66, Case No. 13 of 13 Q issued in the session of February 6, 1993, date of publication February 18, 1993, published in the second part From the Technical Office Book No. 5, page No. 206, Rule No. 16, Case No. 18 of 12 Q issued in the session of November 7, 1992, publication date December 3, 1992, and published in the second part of the Technical Office Book No. 5, page No. 56, Rule No. 6.

the constitution has guaranteed, then there is no contradiction between guaranteeing the right to litigate and organizing it legislatively.[2291]

In contrast to the above, the legislator may establish a court or body with judicial jurisdiction to adjudicate legal issues related to a particular dispute and no other, as a response on its part to a decision issued by an administrative body when it adjudicated it, as this is considered a denial of the right to resort to the judiciary, given that adjudicating the factual elements of the dispute is up to an administrative body that does not necessarily have the basic elements and guarantees of litigation. It is also necessary to distinguish between limiting the right to litigation to one degree on the one hand, and on the other hand, since this multiplicity - when evidence of it is available from the legislative texts themselves - is considered negating - and obviously - due to the lack of its being limited to one degree, and is always achieved when an appellate court reviews the rulings of the lower court in its factual and legal elements, and also when the judicial organization is headed and the top of its ranks is occupied by a court above them whose jurisdiction is limited to deciding on legal issues to establish them, even if appealing its rulings is impossible. [2292]

The legislator's intervention in setting a deadline for appeal is a form of the legislator's use of his discretionary power in regulating the right to litigation, unless that deadline is so short that it impedes the exercise of the right or makes it impossible or nearly impossible.[2293]

The state's commitment to bringing the judiciary closer to litigants seeks to ensure more effective protection of the right to litigation.[2294]

The opponents have no right to have a specific court consider their disputes.[2295]

Imposing fees on lawsuits does not include any infringement on the right to litigation, which the Constitution guarantees to all people and obliges the state to bring the judiciary closer to litigants and to expedite the settlement of lawsuits, because this does not conflict with the contribution of these litigants to the expenses of running the justice system in a manner that does not burden the access of rights to their owners.[2296]

It is noted that the legislator, in the text of the first paragraph of Article No. 210 of the Code of Criminal Procedure, prohibited the civil rights claimant (the injured party) from challenging the Public Prosecution's orders that there is no reason to file a criminal case in crimes committed by public employees and workers during or because of the performance of their duties, as it stipulated that: "The civil rights claimant may challenge the order issued by the Public Prosecution that there is no reason to file a case unless it was issued in a charge directed against a public employee or worker or one of the law enforcement officers for a crime

---

([2291]) Supreme Constitutional Court, Case No. 174 of 24 Q issued in the session of January 9, 2005, date of publication January 24, 2005, published in the first part of the Technical Office Book No. 11, page No. 1299, rule No. 218, Case No. 219 of 21 Q issued in the session of September 22, 2002, date of publication October 24, 2002, published in the first part of the Technical Office Book No. 10, page No. 638, rule No. 93, Case No. 148 of 22 Q issued in the session of June 9, 2002, date of publication June 20, 2002, published in the first part of the Technical Office Book No. 10, page No. 426, rule No. 66.

([2292]) The Supreme Constitutional Court, Case No. 102 of 12 Q, issued in the session of June 19, 1993, date of publication July 8, 1993, and published in the second part of the Technical Office Book No. 5, page No. 343, rule No. 29.

([2293]) The Supreme Constitutional Court, Case No. 193 of 23 Q, issued in the session of December 15, 2002, date of publication December 26, 2002, and published in the first part of the Technical Office Book No. 10, page No. 810, rule No. 118.

([2294]) The Supreme Constitutional Court, Case No. 11 of 24 Q, issued in the session of May 9, 2004, date of publication June 10, 2004, and published in the first part of the Technical Office Book No. 11, page No. 757, rule No. 127.

([2295]) The Supreme Constitutional Court, Case No. 46 of 2004 Q, issued in the session of April 4, 2004, date of publication April 15, 2004, and published in the first part of the Technical Office Book No. 11, page No. 531, rule No. 88.

([2296]) The Supreme Constitutional Court, Case No. 136 of 21 Q, issued in the session of May 5, 2001, date of publication May 17, 2001, and published in the first part of the Technical Office Book No. 9, page No. 949, rule No. 114.

committed by him during or because of the performance of his duties, unless it is one of the crimes referred to in Article 123 of the Penal Code.."[2297]

He objected to this text, saying that it violates the right to litigation, as it prevents the injured party from resorting to the natural of the judge to request compensation from the person responsible for the harmful act, in addition to retribution from him.

The Supreme Constitutional Court ruled to reject this objection on the basis that although the legislator has authorized the person who has suffered harm from the crime to claim civil rights during the investigation, resorting to the criminal judiciary to adjudicate civil rights is nothing more than an exception to the original jurisdiction of the civil judiciary to consider the lawsuit related to it. Therefore, the civil lawsuit pending before the criminal judiciary is subordinate to the criminal lawsuit, and the claimant of civil rights has the choice between resorting to one of the two paths, civil or criminal, if both are open to him. If the exceptional path is closed to him, his right to request compensation for damages arising from the crime remains before the civil judiciary, as an original right - not an exceptional one - which means that the principle is that the adjudication of the civil lawsuit is in the hands of this judiciary in its capacity as its natural judge. Therefore, the challenged legislative text does not prevent the claimant of civil rights from resorting to it to redress the harm he suffered from the crime committed by a public employee or user, since the path to collect civil rights before its natural judge remains open and his right to it does not lapse except by the lapse of the right in the lawsuit filed. To order it.

As for the claim that the plaintiff in civil rights is deprived of retribution from these people for a crime committed by them during the performance of their duties or because of them, the response is that the right to direct prosecution is only an exception to the principle of filing a criminal lawsuit by order of a judicial authority, and the legislator has closed - within the limits of his discretionary authority and for considerations related to the public interest - this path in the field of functional crimes without any waste of the right to prosecute their perpetrators criminally according to objective standards and in light of the evidence that strengthens and supports the accusation. If the above is the case, then the challenged legislative text does not violate the right to adjudicate civil rights to compensate for the harm arising from the functional crime or to waste the right to retribution from its perpetrator, which makes this entire objection unfounded.[2298]

12-1-3 Right to Equality Before the Courts - Equality of Arms

The principle of equality in a fair trial is manifested in the enjoyment by the holders of legal positions, i.e. the parties to the criminal case, of the same rights and freedoms. When one of them is deprived of these rights and freedoms guaranteed by the constitution, while the other

([2297] See: Article No. 210 of the Code of Criminal Procedure.

Article 123 of the Penal Code states that: "Any public employee who uses the authority of his position to stop the implementation of orders issued by the government or provisions of laws and regulations, or to delay the collection of funds and fees, or to stop the implementation of a ruling or order issued by the court or any competent authority shall be punished by imprisonment and dismissal." Likewise, any public employee who intentionally refrains from implementing a ruling or order mentioned above after eight days of being notified by a bailiff shall be punished by imprisonment and dismissal if the implementation of the ruling or order falls within the employee's jurisdiction."

The implication of all of the above is that the civil rights claimant (the injured party) may not appeal the order issued by the Public Prosecution stating that there is no basis for filing a criminal case in the crimes stipulated in Article 126 of the Penal Code, which is the crime of ordering a public employee or worker to torture an accused person or doing so himself to force him to confess. Likewise, the civil rights claimant (the injured party) may not appeal the order issued by the Public Prosecution stating that there is no basis for filing a criminal case in the crime stipulated in Article 127 of the Penal Code, which is the crime of ordering a public employee or person charged with a public service to punish a convict or punishing him himself with a punishment more severe than the punishment imposed on him by law or with a punishment not imposed on him.

([2298]) The Supreme Constitutional Court, Case No. 19 of 8 Q, issued in the session of April 18, 1992, date of publication May 7, 1992, and published in the first part of the Technical Office Book No. 5, page No. 262, rule No. 30.

enjoys them, the legal text that established this discrimination is in violation of the principle of equality, in addition to its violation of the rights and freedoms that this text has wasted, which is what is called the principle of equality in arms L'égalité des armes.

The principle of equality in arms does not mean that the legislative text should determine the right to defense in the exercise of his rights, but rather it must include enabling him to exercise this right to the extent necessary that is consistent with the general requirements of a fair trial.

The Supreme Constitutional Court in Egypt referred to the principle of equality of arms, stating in one of its rulings that it is not permissible to violate, within the framework of a fair trial, the guarantee of defense, which equalizes the weapons of the opponents, and in light of which lawyers secure the interests of their clients and observe its limits in accordance with the principles of the profession and its requirements, and in a way that does not lower the controls of its practice to the point of wasting its objective levels, which adherence to which is supposed to be sufficient for their role as partners of the judicial authority in carrying out its mission.[2299]

The Constitution guarantees the rights stipulated in its core, protection from their practical aspects and not from their theoretical data. Convicting the accused of a crime exposes him to the most serious restrictions on his personal freedom, and the most threatening to his right to life. It has become necessary, when deciding on a criminal accusation, for the ruling to balance between the individual's right to freedom and the group's right to defend its basic interests, and to guarantee the concepts of justice even in the most serious and worst crimes through the objectivity of the investigation conducted publicly – and within a reasonable period – by an independent and neutral court established by law, and after presenting the facts in an abstract manner, considering that all of this is a primary guarantee that helps it to protect personal freedom, and it is not restricted except by sound legal means that no one is willing to commit to.[2300]

The controls of a fair trial are represented in a set of initial rules whose contents reflect a system with integrated features that seeks, through the foundations on which it is based, to preserve human dignity and protect his basic rights and prevents, through its guarantees, the misuse of punishment in a way that deviates from its objectives and achieves the ultimate purposes of penal laws, which are contradicted by the fact that the conviction of the accused is an intended goal in itself. Whereas the presumption of the accused's innocence of the criminal charge is always constitutionally linked - and to ensure its effectiveness - to procedural means that are considered closely related to the right to defense, including the accused's right to confront the evidence presented as proof of his guilt, with the right to refute it by means deemed appropriate in accordance with the law and in a manner that guarantees the accused's rights the minimum level of protection that may not be waived or diminished [2301]

In the context of a criminal case, it is noted that the position of the accusation differs from the position of the defense in various aspects. The defense has the right to be informed of the accusation and the facts on which it is based and to benefit from the principle of innocence. The accused also has the right to remain silent, and he also has the right, in order to refute the evidence of the accusation, to present illegal evidence.

([2299]) The Supreme Constitutional Court, Case No. 9 of 16 Q, issued in the session of August 5, 1995, date of publication August 17, 1995, and published in the first part of the Technical Office Book No. 7, page No. 106, rule No. 7.

([2300]) The Supreme Constitutional Court, Case No. 10 of 18 Q, issued in the session of November 16, 1996, date of publication November 28, 1996, and published in the first part of the Technical Office Book No. 8, page No. 142, rule No. 9.

([2301] Appeal No. 15279 of 62 Q issued in the session of March 19, 2001 and published in Technical Office Book No. 52, Page No. 343, Rule No. 57

See: Supreme Constitutional Court, Case No. 10 of 18 Q issued in the session of November 16, 1996, date of publication November 28, 1996, published in the first part of Technical Office Book No. 8, page No. 142, Rule No. 9.

On the other hand, the prosecution has the means of power to use, especially the powers of arrest, detention and precaution, but the prosecution authority is bound by legitimate evidence in its actions, and the prosecution must adhere to objectivity in its opinions and actions, which the defense is not bound to.

The accusation is not an enemy of the defense but must participate in balance with it during the trial in order to establish the truth to ensure the effectiveness of justice.

It is clear from this that what is meant by equality of arms is the balance between the rights of defense and the rights of the prosecution, so that the procedures do not turn into an ongoing accusation document before which the accused stands in a position of submission or obedience, which is considered contrary to the principle of innocence. The balance must be such that it protects the right of defense in the face of the rights of the prosecution. Therefore, the prosecution authority may not use the public interest as a pretext to attack and infringe upon the right of defense.

The principle of innocence reflects the balance that the Constitution has struck between the individual’s right to freedom on the one hand, and the group’s right to defend its basic interests on the other hand. Accordingly, the right of the Public Prosecution to present evidence of the accusation must be balanced by the guarantee of defense that equates the accused’s position with it - within the framework of the adversarial system of criminal justice - so that he can, through it, challenge its arguments and refute the evidence presented by it.[2302]

Criminal justice, in its essence, must be guaranteed through precisely and fairly defined rules, in the light of which it is decided whether the accused is guilty or innocent. This assumes a balance between the interest of the community in the stability of its security and the interest of the accused in not imposing a punishment on him that has no connection to an act he committed or that lacks evidence of this connection. Criminal justice must therefore not be separated from its components, which guarantee each accused a minimum level of rights that may not be waived or neglected, nor must it compromise the necessity for criminalization to remain linked to the ultimate purposes of penal laws.[2303]

The criminal accusation does not contradict organized freedom, and it is not permissible to adjudicate it away from the values of truth and justice, whose roots are deeply rooted in those principled rules that civilized nations have committed to and accepted as their behavior, even in the most serious and worst crimes. This means that personal freedom may not be sacrificed without necessity, and that the delicate balances that balance the position of the prosecution authority with the rights of its accused may not be violated, especially what relates to the accused’s right to be aware of the charge attributed to him, conscious of its dimensions, connected to its facts, perceptive of its evidence, and to be represented in person when it is decided, and to be assisted in defending it by a lawyer who manages his defense, so that only what is legally permissible from its evidence is accepted, and he does not neglect those mandatory legal means by which he can summon his witnesses and refute the statements of the prosecution witnesses after confronting them, for its structure is not sound, rather its coherence is disrupted.[2304]

([2302]) The Supreme Constitutional Court, Case No. 6 of 13 Q, issued in the session of May 16, 1992, date of publication June 4, 1992, and published in the first part of the Technical Office Book No. 5, page No. 344, rule No. 37.

([2303]) Arab Republic of Egypt - Supreme Constitutional Court - Constitutional

[Case No. 49 - Year 17 - Session Date 6/15/1996 - Publication Date 6/27/1996 - Technical Office 7 Part No. 1 - Page No. 739 - Rule No. 48] - [Ruling of unconstitutionality].

([2304]) The Supreme Constitutional Court, Case No. 58 of 18 Q, issued in the session of July 5, 1997, date of publication July 19, 1997, and published in the first part of the Technical Office Book No. 8, page No. 731, rule No. 48.

The accused's right to deny and reject the accusation is the minimum level of protection that must be guaranteed for his right to defense, so the French Code of Criminal Procedure, in Article 114, requires the investigator to inform the accused that he is free "not to make any statement," that is, to remain silent when being interrogated.[2305]

The procedural means that the prosecution authority has in its possession in the field of proving the crime are supported by huge resources that the accused falls short of, and are only balanced by the presumption of innocence coupled with a capable defense to ensure that he is not convicted of the crime, unless the evidence of it is exonerating from any suspicion that has any basis.

It is therefore not permissible to grant constitutional legitimacy to penal texts that do not have the means of defense available to both the prosecution authority and its accused, and their weapons are not equal in terms of proving and denying them.[2306]

Every crime created by the legislator has its elements that must be proven by the prosecution authority through presenting its evidence and convincing it in a way that removes all reasonable doubt about it, since it deliberately accuses a person of a crime it claims. To create a new reality that contradicts the assumption of innocence as an expression of the nature with which man was created and to which he has been connected since birth, and which cannot be violated by any will, regardless of its weight. Rather, it is removed by a judicial ruling related to a specific crime, and it has become final regarding its attribution to its perpetrator.[2307]

The implication of the presumption of the accused's innocence is that he is convicted of the crime he is accused of committing according to fair rules that do not prejudice his right to defense. The procedural rules by which the legislator regulates the adjudication of this accusation should ensure that each accused person has the substantive rights related to them and should not infringe upon them or affect their course or restrict their integrity, given that their purpose is to ensure that the individual is freed from the tyranny of authority or its abuse within a framework of organized freedom. There is no more firm and profoundly effective rule than that the accusation must include an adequate definition of the charge, specify its evidence, and be accompanied by a sufficient opportunity in the light of which the accused can present his view on it. While it is unacceptable for a person to be convicted of a crime of which he was not accused, this principle applies with equal force to every accusation without defense. It is not conceivable that the defense would be effective without a reasonable period of time to prepare

---

([2305] Appeal No. 15279 of 62 Q issued in the session of March 19, 2001 and published in Technical Office Book No. 52, Page No. 343, Rule No. 57

In the same ruling, it was ruled that: The statement that obligating someone who engages in a criminal activity - such as drug trafficking - to notify or acknowledge engaging in that activity that requires punishment or accusing him of evading the payment of taxes due on his profits from that criminal activity - which he can avoid (i.e. the accusation) except by paying those taxes, which requires disclosing the punishable activity that imposed those taxes on his account, and this statement contradicts the principle of innocence and strips it of its content in practice, and is not satisfied with transferring the burden of his denial to the accused - contrary to the principle - but rather goes beyond it to obligating the accused to present evidence of his conviction with his own hand, which is a waste of the basic principles established by the constitution and a violation of personal freedom and the guarantee of defense, in the absence of which it is not permissible to investigate the incident that is the subject of the criminal accusation or convict the accused of it.

See: Appeal No. 17880 of 66 Q issued in the session of February 13, 2006 (unpublished), Appeal No. 20755 of 64 Q issued in the session of May 10, 2004 (unpublished).

([2306]) The Supreme Constitutional Court, Case No. 64 of 17 Q issued in the session of February 7, 1998, date of publication February 19, 1998, published in the first part of the Technical Office Book No. 8, page No. 1108, rule No. 78, Case No. 15 of 17 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7, page No. 316, rule No. 18.

([2307]) The Supreme Constitutional Court, Case No. 72 of 18 Q issued in the session of August 2, 1997, date of publication August 14, 1997, published in the first part of the Technical Office Book No. 8, page No. 749, rule No. 49, Case No. 58 of 18 Q issued in the session of July 5, 1997, date of publication July 19, 1997, published in the first part of the Technical Office Book No. 8, page No. 731, rule No. 48.

it, nor without informing the accused of the witnesses that the prosecution authority has prepared to prove its case, so that they can be confronted and challenged, nor by depriving him of the mandatory means by which he secures the appearance of witnesses in his favor whom he selects according to his choice and without restriction, regardless of their position in the authority they head or in which they perform work, nor that his poverty be a reason for denying him this right, nor that he be prevented from reviewing and discussing the documents submitted by the prosecution authority, nor that he be isolated from communicating with his lawyer directly or indirectly, whether that is during the stage of judicial adjudication of the accusation, or before it, or when appealing its final outcome, otherwise the right to defense becomes of limited value (of little value).

The right to defense is closely related to the criminal case from the perspective of clarifying its aspects, correcting and following up on its procedures, presenting the factual and legal issues that support the accused's position in a way that ensures their coherence, responding to what opposes them, and clarifying the truth in what is important of its points, especially through comparing between multiple alternatives, preferring the one most closely related to it, and the strongest possibility in the field of winning it, while supporting it with what is necessary from the documents that document it. Justice will not be easy to achieve or reach its goal, within the framework of a criminal accusation characterized by complexity, or the overlapping of the elements on which it is based, if the right to defense is absent, characterized by complexity, or the overlapping of the elements on which it is based, if the right to defense is absent, or limited to the stage of the accusation or how to decide it, without the stages of investigation in which the focus is - not on a crime whose facts and motives are still shrouded in mystery - but rather on a specific person suspected of committing it, surrounded by the party that is handling him with its questions and reservations about him.[2308]

The assumption of the accused's innocence is nothing more than a continuation of the human nature, and a necessary condition for organized freedom that enshrines its basic values, from which it is inconceivable that the group could be separated. It is also closely related to the right to life and to the pillars of justice on which all civil and political systems are based. Hence, the principle of innocence was part of the characteristics of the accusatorial system, necessary to protect the basic rights guaranteed by the Constitution to every accused, meaning that this innocence may not be suspended on a condition that prevents the enforcement of its content; nor may it be suspended through an accusation that is weak, nor may it be overturned either by exempting the prosecution from its obligation to prove the validity of its accusation, or through its intervention or that of others to influence without right the course of the criminal case and its final outcome. Rather, violating it - as an axiomatic principle - is an unforgivable error, a prejudicial error, requiring the annulment of any decision that does not comply with it.

Thus, the principle of innocence is considered an integral part of a fair trial, as it is supported by other elements that constitute its components, and together they represent a minimum of rights necessary for its administration, and under which falls the right of both the accused and the prosecution authority to have the same means by which their positions are equal, whether in the field of refuting or proving the charge; and these are rights that may not be deprived or marginalized, whether it concerns a person who is considered an accused or a suspect. All laws have approved it - not to protect the guilty - but rather to ward off the severity of the penalty prescribed for the crime that was mixed with suspicion of its commission, which prevents the certainty of its occurrence by those accused of committing it, since this accusation is not considered sufficient to destroy the principle of innocence, nor is it proof of the fact by which the crime is committed, nor is it an obstacle to proving it. Rather, this principle remains in place until

([2308]) The Supreme Constitutional Court, Case No. 64 of 17 Q, issued in the session of February 7, 1998, date of publication February 19, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1108, rule No. 78.

it is overturned by a judicial ruling that has become final after it has encompassed the accusation with insight and foresight and concluded that the evidence of its validity - with all its components - was pure and complete.[2309]

The presumption of innocence of the accused of a criminal charge is always constitutionally coupled - and to ensure its effectiveness - with procedural means that are closely related to the right to defense, including the right of the accused to confront the evidence presented by the Public Prosecution as proof of the crime, with the right to deny it by means deemed appropriate in accordance with the law, such as the right of the accused to confront the witnesses presented by the Public Prosecution as proof of the crime and the right to refute their statements and to abort the evidence presented by the denial evidence that he presents, and the right of the accused to summon his witnesses and not to be forced to make statements that testify against him (La protection contre L'auto incrimination.[2310]

The elements that make up the right to litigation are not complete unless the legislator provides the judicial dispute - at the end of its journey - with a fair solution that represents the judicial relief sought by the one who requests it to confront the violation of the rights he claims. The right to defense - in person or by proxy - is sought to be obtained through the means of defense by which the opponents present their evidence - in fact and law - in a way that does not discriminate between one another, but rather their weapons are equal in the field of the rights they claim. Then this satisfaction - assuming its consistency with the provisions of the constitution and the law - constitutes an indivisible part of the right to litigation. It is linked to the ultimate purposes that it works to achieve. This is supported by the fact that the judicial dispute is not established to defend theoretical interests that do not generate practical benefit, but rather its goal is to require a benefit that is approved by the law, and its reality crystallizes the scope of the disputed issues and the rule of law regarding them..[2311]

The right to defense is closely related to the judicial dispute from the perspective of clarifying its aspects, evaluating its course, following up on its procedures, presenting its arguments in a way that ensures the support of its pillars, responding to what opposes it, and managing a capable defense that clarifies the truth in what is important of the issues raised by the judicial dispute, especially through comparing between multiple alternatives, preferring the one most closely related to it, and the strongest possibility in the field of winning it, while supporting it with what is productive of papers.[2312]

If the plaintiff in the civil right and the accused are two parties in a single criminal dispute, and the two are considered to be in an identical legal position in this regard, then if the legislator grants the plaintiff in the civil right the right to appeal the decision that there is no basis for filing a criminal case, and deprives the accused of it, this would be a waste of the principle of equality, which contradicts the constitution. Moreover, depriving the accused of appealing the decision

---

([2309]) The Supreme Constitutional Court, Case No. 29 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1042, rule No. 72.

([2310]) Supreme Constitutional Court, Case No. 10 of 18 Q issued in the session of November 16, 1996, date of publication November 28, 1996, published in the first part of the Technical Office Book No. 8, page No. 142, rule No. 9, Case No. 28 of 17 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7, page No. 262, rule No. 15, Case No. 25 of 16 Q issued in the session of July 3, 1995, date of publication July 20, 1995, published in the first part of the Technical Office Book No. 7, page No. 45, rule No. 2, Case No. 49 of 17 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7, page No. 739 Rule No. 48.

([2311]) The Supreme Constitutional Court, Case No. 15 of 17 Q, issued in the session of December 2, 1995, date of publication December 21, 1995, and published in the first part of the Technical Office Book No. 7, page No. 316, rule No. 18.

([2312]) The Supreme Constitutional Court, Case No. 129 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1077, rule No. 75.

that there is no basis for filing a case confiscates his constitutional right to appear before his natural judge and wastes his right to litigate in order to obtain fair judicial satisfaction..[2313]

The right of the accused to be treated equally with other accused

The criminal judge, when exercising his discretionary power in imposing punishment on the offender, must individualize the punishment in accordance with the seriousness of the crime and the degree of danger of the offender. Complete equality between those sentenced in the amount of punishment requires the unity of legal positions in view of the seriousness of the crime and the degree of danger of the offender. Without this, equality before the judiciary is not achieved. The seriousness of the crime and the danger of the offender are an acceptable objective criterion as a basis for individualizing the punishment.

In application of this, the legislator, when he permitted the imposition of restrictions on the funds of some persons who, through the investigation with them, had sufficient evidence of their involvement in one of the crimes he specified, prevented them from managing or disposing of them, thereby distinguishing between them and other citizens, and even between them and other accused persons alleged to have committed other crimes, and all of them were included in one legal status, which is the assumption that they were normal, and the accusation - when it exists, and the mere investigation a fortiori - does not invalidate their innocence, nor does it differentiate between them in the rights they enjoy, since the forms of discrimination that violate their equality before the law - even if it is impossible to limit them - are based on any distinction, restriction, exclusion or preference, which exceeds the logical limits of organizing the rights and freedoms guaranteed by the constitution and the law, whether by denying the very existence of them or by restricting their effects in a way that prevents them from being exercised on a footing of complete equality between those legally qualified to benefit from them, and that the basis for imposing these restrictions is not even related to the issuance of a specific accusation regarding a specific person, but rather is based on the establishment of sufficient evidence from the investigation on If he is likely to be accused of one of the crimes specified by law, and this evidence is not confounded by the force of res judicata, and is not therefore considered an irrevocable judgment convicting them of it, then distinguishing between them and others - and the principle of innocence unites them - is contrary to the rule of reason, unreasonable, apparently arbitrary, and therefore contrary to the principle of equality established by the constitution. [2314]

12-2 Within the framework of international conventions

Guarantees of equality in the context of the trial stages involve several aspects. It prohibits the use of discriminatory laws and discrimination in the implementation of laws. It includes the right to equality before the law and the right to receive equal protection of the law; it also includes the right of every individual to resort to the courts and to receive the same treatment as others before the courts.

12-2-1 The right to equality before the law

Everyone is equal before the law and everyone is entitled to equal protection of the law.[2315]

([2313]) The Supreme Constitutional Court, Case No. 163 of 26 Q issued in the session of December 2, 2007 and published in the first part of the Technical Office Book No. 12, page No. 749, Rule No. 74.

([2314]) The Supreme Constitutional Court, Case No. 26 of 12 Q, issued in the session of October 5, 1996, date of publication October 17, 1996, and published in the first part of the Technical Office Book No. 8, page No. 124, Rule No. 8.

([2315]) Article 7 of the Universal Declaration, Articles 2(1), 3 and 26 of the International Covenant, Articles 2 and 15 of CEDAW, Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 of the Convention on the Status of Persons with Disabilities, Articles 2 and 3 of the African Charter, Articles 1 and 24 of the

The right to equal protection of the law prohibits discrimination, in law or in practice, in the administration of criminal justice. However, this does not mean that any difference in treatment is discrimination. Discrimination is limited to cases where the distinction is due to criteria that are illogical or far from objectivity, and do not serve the purpose of achieving a legitimate goal or are consistent with that. It means that judges, prosecutors and law enforcement officials have a duty to respect and protect the prohibition against discrimination.[2316]

States should review existing laws and draft laws to ensure that they are free from discrimination. It must monitor the implementation of applicable laws and regulations to ensure that they do not have any discriminatory effect. Laws must also be amended and practices corrected as necessary to eliminate all forms of discrimination and ensure equality.[2317]

Examples of discriminatory criminal laws include laws that allow for additional penalties based on the legal status of foreign nationals in the country; or that criminalize people who change their religion ;[2318]

or criminalize consensual sexual activities between adults of the same sex;[2319]

Or that pardons men who marry women they have raped; or that does not criminalize marital rape.[2320]

Examples of discriminatory procedural laws include laws that give less weight to a woman's testimony than a man's, requiring it to be corroborated; rape laws that allow the victim's sexual history and conduct to be used to strengthen evidence when it is not relevant or necessary to the case; and those that require evidence of sexual violence to prove lack of consent.[2321]

Examples of discrimination in the implementation of laws include prosecutions that specifically target an ethnic group;[2322]

American Convention, Article 11 of the Arab Charter, Article 14 of the European Convention, Article 2 of the American Declaration, and Principle 22 of the Principles on Persons Deprived of Liberty in the Americas; see Article 4(f) of the Inter-American Convention on Violence against Women, Articles 8 and 2 of the Protocol to the African Charter on the Rights of Women, Article 4(2)-(3) of the Council of Europe Convention on Violence against Women, Protocol 12 to the European Convention, and Article 67 of the Rome Statute.

([2316]) See the Special Rapporteur on the independence of judges and lawyers,. UN Doc Council of Europe on Violence against Women. §42 (2011) A/66/289.

([2317]) Article 3 of the International Covenant, Article 2(1)(c) of the Convention on the Elimination of Racial Discrimination, Article 4(1)(b) of the Convention on the Status of Persons with Disabilities, Articles 2 and 8 of the Protocol to the African Charter on the Rights of Women, Article 7(e) of the American Convention on Violence against Women, and Article 4(2) of the Council of Europe Convention on Violence against Women.

General Recommendation 31 of the Committee on the Elimination of Racial Discrimination, Part 1A; Gonçalves v. Portugal, Human Rights Committee,. UN Doc 4/ §7 (2010) CCPR/C/98/D/1565/2007; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, United States of America,. UN Doc § §19 (2009) A/HRC/11/2/add. 5 and 74; Recommendation 5 (CM/Rec) 2010 of the Council of Europe, §§1-§2, 4 and §46 of the annex; Report of the Fourth World Conference on Women, 20/§232 (1995) UN Doc. A/CONF/177 (d); see recommendation 25 of the CEDAW Committee, §7; and resolution 10/7 of the Human Rights Council, §8.

([2318]) See General Comment 22 of the Human Rights Committee, §5.

([2319]) Human Rights Committee: Tonin v. Australia, / UN Doc. CCPR 9-2/§ §8 (1994) C/50/D/488/1992, Kenya, / UN Doc. CCPR/CO/83 §27 (2005) KEN; Dudgeon v. United Kingdom (7525)/76), European Court (1981) §61 and §63; see also L. And. v. Austria (39393)/98 and 39829/98), European Court (2003) §44-§54; Salah and Others v. Egypt, Opinion 7/2002 of the Working Group on Enforced Disappearances,. UN Doc 2002) E/CN. 4/2003/8/Add. 1) p. 68-73 §27-§28.

([2320]) Concluding observations of the CEDAW Committee: Bolivia, / UN Doc. CEDAW/C §7 (2008) BOL/CO/4, Lebanon, §27 (2008) UN Doc. CEDAW/C/LBN/CO/3.

([2321]) See Article 54 of the Council of Europe Convention on Violence against Women, CEDAW Committee General Recommendation 21 §8; Special Rapporteur on the independence of judges and lawyers, UN Doc. A/66/289(2011) §48; Concluding observations of the Human Rights Committee: Japan, §14 (2008) UN Doc. CCPR/C/JPN/CO/5..

([2322]) Concluding observations of the Committee on the Elimination of Racial Discrimination: Croatia, §12 (1999) UN Doc. CERD/C/304/Add. 55, and. UN Doc CERD/C/HRV §15 (2009) /CO/8; and Concluding Observations of the Committee against Torture: Bosnia and Herzegovina, §10-§11 (2005), UN Doc. CAT/BIH/CO/1.

and the disproportionate application of broad stop-and-search laws, or anti-terrorism laws that target specific groups;[2323]

and the repeated arrest and detention of individuals because of their political opinions;[2324]

and the laws criminalizing adultery, which are applied mainly against women;[2325]

Failure to investigate incidents of violence against women and prosecute perpetrators, and to treat them as personal rather than criminal matters;[2326]

Failure to investigate possible discriminatory motives behind a crime [2327]

The United Nations General Assembly has repeatedly called on States to ensure that counter-terrorism legislation is non-discriminatory.[2328]

12-2-2 The right of the individual to access the courts on an equal basis with others

Everyone, including persons accused of criminal offences and victims of crime, has the right to equal access to the courts without discrimination.[2329]

The duty to respect this right requires States to establish courts, provide them with resources and ensure that they hold fair trials. These courts should be in places that are easily accessible to people in all parts of the country, including rural areas.[2330]

It should also be easily accessible for people with disabilities. States must also ensure that legal aid, professional interpreters and document translators are available to those who do not speak or understand the language used in court.[2331]

As well as witness protection programs, nationwide.[2332]

It must also ensure that procedures are easily accessible to persons with disabilities.[2333]

([2323]) See the Special Rapporteur on human rights and counter-terrorism, §37 (2007) UN Doc. A/HRC/4/26 and 98/2006/2005) UN Doc. E/CN. 4) §26-§27, 42-50, 72, 211/§23 (2009) UN Doc. A/64.

([2324]) Aminu v. Nigeria, (205)/97, African Commission (2000) §21-§22 and §27.

([2325]) Special Rapporteur on the independence of judges and lawyers, UN Doc §74 (2011) A/66/289; see Amnesty International, Six-point checklist on justice for violence against women (Document number: ACT 77/002/2010).

([2326]) European Court: Obuz v. Türkiye (33401)/02), (- § §195 (2009) 202, Bevacqua and S. v. Bulgaria (71127)/01), § 63 (2008) and 8304; CEDAW Committee: A. T. v. Hungary, 2003/4/ § § 8 (2005) UN Doc. CEDAW/C/32/D/2 and 9/1-9/3, Tayag Vertido v. Philippines, 2008 / UN Doc. CEDAW/C/46/D/18 9/8-1/ §8 (2010); Lenahan (Gonzalez) and others v. United States (12). 626), Inter-American Commission (215- § 209 (2011); Concluding Observations of the Committee against Torture: Yemen, § 29 (2010), UN Doc. CAT/YEM/CO/2/Rev. 1.

([2327]) Natschova and Others v. Bulgaria (43577)/98) Grand Chamber of the European Court §162-§168 (2005).

([2328]) For example, UN General Assembly: Resolution 65/221, §§4 and 6(e) and 6(m), Resolution 66/171, §§4 and 6(f) and 6(n).

([2329]) See, among other standards, article 8 of the Universal Declaration, articles 2, 3, 14(1) and 26 of the International Covenant, articles 2 and 15 of CEDAW, articles 13(1) and 9 of the Convention on the Rights of Persons with Disabilities, article 18 of the Migrant Workers Convention, articles 2, 7 and 19 of the African Charter, article 8 of the Protocol to the African Charter on the Rights of Women, articles 8, 24 and 25 of the American Convention, articles 12, 13 and 23 of the Arab Charter, and articles 6 and 13-14 of the European Convention.

General Comment 32 of the Committee against Torture, §8-§11; Goode v. Republic of Botswana (313)/05), African Commission §163 (2010); Rosendo Canto et al. v. Mexico, Inter-American Court §184 (2010).

([2330]) Concluding observations of the Arab Human Rights Committee: Jordan, (2012) §17.

([2331]) Principle 10 of the Guidelines and Guideline 3(f) §43 of the Principles on Legal Aid.

([2332]) General Comment 32 of the Human Rights Committee, §10 (Legal aid); Special Rapporteur on the independence of judges and lawyers, 289/UN Doc. A/66 2011(§ 60 (73-100-101 (witness protection programmes); interpreters: Concluding observations of the Committee on the Elimination of Racial Discrimination: Iran, 19-§13 (2010) UN Doc. CERD/C/IRN/CO/18, Norway,. UN Doc §16 (2003) CERD/C/63/CO/8, Romania, - UN Doc. CERD/C/ROU/CO/16 §19 (2010) 19; Inter-American Court: Advisory Opinion 99/OC-16 §119-§120 (1999); Rosendo Cantú et al. v. Mexico, (2010) §185-§184; Annual Report of the Inter-American Commission (2009): Chapter §179 5.

The availability of effective legal aid plays a crucial role in whether a person can protect his or her rights, participate meaningfully in proceedings, or seek justice through the courts.[2334]

States must ensure that effective legal assistance is available to persons, in criminal cases, during the pre-trial stage, during the trial and at the various stages of appeal,[2335]

As well as in their efforts to seek redress and redress for alleged violations of constitutional guarantees, wherever they occur, for example in death penalty cases.[2336]

Prompt and effective access to courts requires respect for the right of the individual to recognition as a person before the law, a right that is violated, for example, when a person is detained outside the law, including during enforced disappearance.[2337]

Foreign nationals and stateless persons who are in the territory or subject to the jurisdiction of a State shall have the right to access the courts on an equal basis with nationals of that State, regardless of their status.[2338]

Women have the right to resort to the courts on an equal footing with men.[2339]

In this context, the Committee on the Elimination of Discrimination against Women explained the following: “Some countries limit women’s right to litigation through applicable laws, limited access to legal advice, and inability to seek redress from the courts.

“Also, her position as a witness or her testimony in some other countries does not have the same respect and weight as a man’s. ”[2340]

The United Nations General Assembly has called on States to ensure that effective legal aid is available to all women victims of violence to enable them to make informed decisions about legal proceedings.[2341]

Among the prohibited obstacles to seeking recourse to the courts under international law are the issuance of decisions to grant amnesty or exemption from punishment for those convicted, or immunities that prevent the prosecution or imposition of penalties on perpetrators of war crimes,

---

([2333]) Among other standards, Article 7(f) of the American Convention on Violence against Women, Article 28 of the European Convention on Trafficking in Human Beings, Articles 18 and 56 of the Council of Europe Convention on Violence against Women, and Section C(a)-(d) of the Principles on Fair Trial in Africa.

([2334]) General Comment 32 of the Human Rights Committee, §10; see Golder v. United Kingdom (4451)/70, European Court (1975).

([2335]) See the concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, §22 (2008) UN Doc. CERD/C/USA/CO/6; Report of the United States Commission on Terrorism and Human Rights, (2002) Section 3(f) § 341 (1).

([2336]) Principle 3 and Guidelines 4-6 of the Principles on Legal Aid.

General Comment 32 of the Human Rights Committee, §10; Human Rights Committee: Currie v. Jamaica, 1989/2/ §§12 (1994) UN Doc. CCPR/C/50/D/377 and 13/2-13/4, Shaw v. Jamaica, 1996/1998) UN Doc.

CCPR/C/62/D/704) 6/ §7, Henry v. Trinidad and Tobago, 1997 / UN Doc. CCPR/C/64/D/752. 6/ §7 (1998).

([2337]) Report of the Inter-American Commission on Terrorism and Human Rights, (2002) Section 3(f)(341-343, (1); see Madou v. Algeria, Human Rights Committee, 7/§§7, 6/§7 (2008) UN Doc. CCPR/C/94/D/1495/2006 and 8; General Comment 11 of the Working Group on Enforced or Involuntary Disappearances on the right to recognition before the law in the context of enforced disappearances.

([2338]) Article 18 of the Migrant Workers Convention, Article 26 of the European Convention on Migrant Workers, and Article 5 of the Declaration on Non-Nationals.

General Comment 32 of the Human Rights Committee, §9; Special Rapporteur on human rights and counter-terrorism, 223/§14 (2008) UN Doc. A/63; Goode v. Republic of Botswana (313)/05), African Commission § 163 (2010); see Yola v. Belgium

(45413) / 07), European Court (40- § § 28 (2009)..

([2339]) Among a number of standards, Articles 2, 3, 14 and 26 of the International Covenant, and Articles 2 and 15 of CEDAW.

([2340]) CEDAW Committee General Recommendation 21, §8.

([2341]) Resolution 65/228 of the United Nations General Assembly, §12.

genocide, crimes against humanity, and other crimes covered by international law. Statutes of limitations for such crimes are in violation of international standards.[2342]

12-2-3 The right to equality before the courts

Equality before the courts is a right for every human being.[2343]

This right applies equally to foreign nationals and stateless persons.[2344]

This general principle of the rule of law means that every person has the right to access the courts on an equal basis with others, and that all parties to the lawsuit are treated equally without discrimination. This is "one of the basic elements of human rights protection and a procedural means of maintaining the rule of law. "[2345]

The right to equality before the courts requires States to eliminate discriminatory stereotypes that undermine the integrity of criminal proceedings. The composition of the judiciary, prosecution and police authorities should reflect the diversity of the communities they serve.[2346]

In addition, judges, prosecutors and law enforcement officials must be trained on the means of prohibiting discrimination and its various manifestations, and on the laws that punish it.[2347]

([2342]) Principles 4-6 and 18-19 of the Basic Principles on Reparation, Section C(d) of the Principles on Fair Trial in Africa, Principles 7 and 14 of the Council of Europe Guidelines on the Eradication of Impunity; see Articles 2 and 6-7 of the Convention against Torture, Articles 6 and 8-10 of the Convention on Enforced Disappearance, Articles 1-4 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Article 4 of the Genocide Convention, Article 7 of the American Convention on the Enforced Disappearance of Persons, the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes, Article 29 of the Statute of the International Criminal Court, Article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention, Article 131 of the Third Geneva Convention, Article 146 of the Fourth Geneva Convention, and Article 85 of Protocol I to the Geneva Conventions. See: Human Rights Committee General Comment 31, § 18 and General Comment § 15, 20; Committee against Torture General Comment 3, § 40-42 and General Comment § 5, 2; Principles 19 and 22-29 of the Updated Principles on Impunity; Velasquez-Rodriguez v. Honduras, Inter-American Court § 172-176 (1988); Inter-American Commission: Consuelo Herrera et al. v. Argentina (50-§ 42 (1993) (10). 147 et al, Santos Mendoza et al v. Uruguay (51- § § 50 (1992) (10). 029 et al; European Court: Yaman v. Turkey (32446), § 55 (2004, Yater v. Turkey (33750)/03), § 70 (2009); Prosecutor v. Maurice Kallon and Brima Bazzi Camara (- 15 - SCSL-2004 AR72)E(AR16-AR72)E(), Appeals Chamber of the Special Court for Sierra Leone, Decision on Jurisdiction Challenge: Amnesty under the Lomé Agreement, SCSL-04-15-60, 13 March § 73 (2004) (from Annex 2); see also European Court: Asinov et al. v. Bulgaria (24760)/94), § 102 (1998), Kart v. Turkey (8917)/05) Grand Chamber § 111 (2009).

([2343]) Article 10 of the Universal Declaration, Article 14(1) of the International Covenant, Articles 2(c) and 15(1) of CEDAW, Articles 2 and 5(a) of the Convention on the Elimination of Racial Discrimination, Articles 12 and 13 of the Convention on the Rights of Persons with Disabilities, Article 12 of the Arab Charter, Article 8(2) of the American Convention, Section A(2)(b) of the Principles on Fair Trial in Africa, Article 67(1) of the Rome Statute, Article 20(1) of the Statute of the International Criminal Court for Rwanda, and Article 21(1) of the Statute of the International Criminal Court for the Former Yugoslavia.

([2344]) Article 18(1) of the Migrant Workers Convention, and Article 5 of the Declaration on Non-Nationals.

General Comment 15 of the Human Rights Committee, §§1, 7 and 9, 32; see Special Rapporteur on human rights and counter-terrorism, UN Doc. 223. A/63 §14 (2008); Advisory Opinion 99/1999 (OC-16), Inter-American Court, §119; Advisory Opinion 03/OC-18, Inter-American Court §173 (2003).

([2345]) See General Comment 32 of the Human Rights Committee, §2 and §8; Principle 5 of the Bangalore Principles.

([2346]) CEDAW General Recommendation 23, § 15; CERD General Recommendation 31, § 5(d) and 1(g); Special Rapporteur on the independence of judges and lawyers, § 289/§ 26 (2011) UN Doc. A/66 and 92; and concluding observations of the Committee on the Elimination of Racial Discrimination: Guatemala,. §8 (2010) UN Doc. CERD/C/GTM/CO/12-13.

([2347]) Article 7 of the Convention against Torture, Article 13(2) of the Convention on the Rights of Persons with Disabilities, Article 8 of the Protocol to the African Charter on the Rights of Women, Article 8(2) of the American Convention on Violence against Women, and Article 15 of the Council of Europe Convention on Violence against Women.

Principles 5 and 6(3)-6(4) of the Bangalore Principles; CEDAW Committee General Recommendation 19, §24(b); UN General Assembly resolution 63/155, §14; Special Rapporteur on the independence of judges and lawyers, UN Doc. 289/2011. A/66) §34-§40 and 94-96; Annex to Recommendation 5 (CM/Rec) 2010 of the Council of Europe, §3; General Policy Recommendation No. 13 (2011) (Rome) of the European Commission against Racism and Intolerance, §§8(d) and 9(d), and No. 9 (2004) (Anti-Semitism); Concluding Observations of the Human Rights Committee: Bosnia and Herzegovina,. UN Doc

The right to equality before the courts requires that similar cases be dealt with according to the same procedures.[2348]

This prohibits the creation of exceptional procedures, courts or special categories of crimes or persons, unless this is based on objective and logical grounds that justify such distinctions.[2349]

It is impossible to speak of an objective and logical basis for subjecting a person to exceptional criminal procedures, or to trial by ordinary or special courts specially constituted to prosecute persons based on their race, color, sex, language, religion, political or other opinion, or on the basis of their national or social origin, wealth, birth or other status. Discrimination in the enjoyment of rights on such grounds is prohibited in international law, including, for example, in articles 2 and 26 of the International Covenant.

In principle, providing lower procedural guarantees in "political" criminal cases than those in "ordinary" cases cannot, for this reason, be compatible with the right to equality before the courts. In the context of terrorism-related proceedings, concerns have been raised about trials being held in courts with special procedures such as the exclusion of jury trials in Northern Ireland, or the trial of civilians in Tunisia before military courts that allow little scope for appeal. Concerns have also been raised about special tribunals (the US military commissions at Guantanamo Bay) that have tried only third-country nationals, in part because they violate the prohibition on non-discrimination and the principle of equality before the law.[2350]

The Committee on the Elimination of Racial Discrimination expressed concern that Israel applies criminal laws to Palestinians that differ from those applied to Israelis, resulting in prolonged detention periods and harsher penalties for Palestinian perpetrators of the same crimes.[2351]

It also raised concerns about discrimination in the treatment of rules of customary international law, and by courts applying the provisions of this law.[2352]

The European Court of Human Rights also clearly affirmed the principle of equality of arms between the accused and the public prosecution as a representative of the prosecution, and that it does not mean looking at the relationship between the public prosecution and the accused as a conflict relationship between them, but rather the principle is determined by looking at the interests that each party defends in most cases, which requires giving them the same attention.[2353]

First: The individual's right to be treated equally with others before the courts.

Equality of treatment before the courts in criminal cases requires that the defense and the prosecution be treated in a manner that ensures equality of arms between them in preparing and presenting their arguments on the case to the court.

---

§12 (2006) CCPR/C/BIH/CO/1; Japan, UN Doc. CCPR/C/JPN/CO/5 §14 (2008); Concluding observations of the Committee on the Elimination of Racial Discrimination: Guatemala, 13 - §8 (2010) UN Doc. CERD/C/GTM/CO/12..

([2348]) Zimbabwe Lawyers for Human Rights v. Republic of Zimbabwe (2003/284), African Commission, §156 (2009).

([2349]) General Comment 32 of the Human Rights Committee, §14.

([2350]) Concluding observations of the Human Rights Committee: United Kingdom,. UN Doc CCPR/CO/73/UK(2001) §18 and;UN Doc. CCPR/C/GBR/CO/6(2008) §18 Special Rapporteur on human rights and counter-terrorism: Tunisia, / UN Doc. A §35- §36 (2010) HRC/16/51/Add. 2; Special Rapporteur on the independence of judges and lawyers, 60/2005/§17-§19, UN Doc. E/CN. 4; see also A and Others v. United Kingdom, (3455)/05 ECJ Grand Chamber § 190 (2009).

([2351]) Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel,. §35 (2007) UN Doc. CERD/C/ISR/CO/13.

([2352]) Concluding observations of the Committee on the Elimination of Racial Discrimination: Lebanon, §14 (1998) UN Doc. CERD/C/304/Add. 49, Rwanda,. UN Doc. §12 (2000) CERD/C/304/Add. 97.

([2353]) Referred to in the book: Marc Verdussen Arrêt Borgers of October 30, 1991, p. 342, 343.

Every accused person is entitled to be treated equally with other accused persons of the same status, without discrimination on any prohibited ground.[2354]

Equality of treatment in this context does not mean identical treatment; rather, it means that where the objective facts are the same, the response of the legal system should be the same, and the principle of equality is violated if the court treats the accused on a discriminatory basis or makes a prosecution decision on such a basis.

Violations of the right to equal treatment by the courts include: failure to assign competent defense counsel to those who cannot afford it; failure to provide a competent interpreter when required; and practices that result in higher rates of individuals belonging to ethnic or racial groups, or those suffering from mental illness, in detention facilities and prisons than their normal proportion in the community;[2355]

and disproportionately lenient sentences handed down to persons convicted of gender-based violence;[2356]

The impunity of law enforcement officials convicted of committing human rights violations, or the issuance of lenient sentences against them.[2357]

The European Court of Human Rights has also ruled that each party to the case must have a reasonable opportunity to present his case before the court in conditions that do not disadvantage him in relation to his opponent in the case.[2358]

Second: The right to a fair hearing of cases

The right to a fair hearing includes the minimum set of procedures and guarantees for a fair trial set out in international standards, but its scope is broader. This right includes compliance with national standards provided they are consistent with international standards. A trial may meet all national and international procedural guarantees, yet it may not meet the standard of fair trial.

The right to a fair hearing lies at the heart of the concept of a fair trial, and therefore every person has the right to have his case heard fairly.[2359]

([2354]) Articles 2(1), 14(1) and 14(3) of the International Covenant, article 15 of CEDAW, article 5(a) of the Convention on the Elimination of Racial Discrimination, article 18(1) of the Migrant Workers Convention, article 8 of the Protocol to the African Charter on Women, article 8(2) taken together with article 1(1) of the American Convention, and sections A(2)(b) and (d) of the Principles on Fair Trial in Africa; see articles 6 and 14 of the European Convention, article 2 of the American Declaration, principle 5 of the Bangalore Principles.

([2355]) General Recommendation No. 31 of the Committee on the Elimination of Racial Discrimination §§26 and 30; Working Group on Enforced or Involuntary Disappearances, 7/2006/§65-§67 (2005) UN Doc. E/CN. 4; Report on Terrorism and Human Rights, Inter-American Commission, (2002), Section 3(h) §398-§400(3) (interpreters); Concluding Observations of the Human Rights Committee: New Zealand, §12 (2010) UN Doc. CCPR/C/NZL/CO/5; Concluding observations of the Committee on the Elimination of Racial Discrimination: Belgium, / UN Doc. CERD/C §14 (2008) BEL/CO/5; Concluding observations of the CEDAW Committee, Canada,. UN Doc §33-§34 (2008) CEDAW/C/CAN/CO/7; see Henry v. Trinidad and Tobago, Human Rights Committee, 1997/6/ §7 (1999) UN Doc. CCPR/C/64/D/752.

([2356]) Concluding observations of the Human Rights Committee: Bosnia and Herzegovina, UN § § 12 (2006) Doc. CCPR/C/BIH/CO/1 and 16; Japan, / UN Doc. CCPR/C §14 (2008) JPN/CO/5; Concluding observations of the CEDAW Committee, Honduras, UN. §18 (2007) Doc. CEDAW/C/HON/CO/6.

([2357]) Concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia, §11 (1999) UN Doc. CERD/C/304/Add. 76; Concluding observations of the Committee against Torture: Austria, § 20 (2010), UN Doc. CAT/C/AUT/CO/4.

([2358]) CEDH, 27 Oct. 1993, Sériel , no. 274; Gaz. Pal. 19 Juill. 1994.

([2359]) Article 10 of the Universal Declaration, Article 14(1) of the International Covenant, Article 18(1) of the Migrant Workers Convention, Article 13 of the Arab Charter, Article 6(1) of the European Convention, Section A(1)-(2) of the Principles on Fair Trial in Africa, Article 67(1) of the Rome Statute, Articles 19(1) and 20(2) of the Statute of the International Criminal Court for Rwanda, Articles 20(1) and 21(2) of the Statute of the International Criminal Court for Yugoslavia; see Article 40 of the Convention on the Rights of the Child, Article 7(1) of the African Charter, Article 8 of the American Convention, and Article 26 of the American Declaration.

Fair consideration of cases requires an independent, impartial and competent court established by law. One of the basic criteria for fair consideration of cases is the principle of equality of legal opportunity between the two parties to the case. This means that they are treated procedurally equally throughout the trial. There is growing recognition that a fair hearing of cases also requires respect for the rights of victims, which they should exercise consistently and on an equal footing with the rights of the accused.[2360]

The right to a fair hearing in criminal cases is based on a number of specific rights enshrined in international standards, sometimes referred to as the "right to due process." These include the right to be presumed innocent, to adequate time and facilities for the preparation of a defense, to be tried without undue delay, to defend oneself or through legal counsel, to call and examine witnesses, not to incriminate oneself, to appeal against judgements, and to be protected from the retroactive application of criminal laws. However, international standards governing trial procedures make it clear that the rights mentioned represent the "minimum" guarantees that must be available. Observing each of these guarantees, in all circumstances and cases, does not guarantee a fair hearing of the case. But the right to a fair trial is broader than the sum of the guarantees individually, and depends on the way in which the entire trial was conducted.[2361]

The guarantee of a fair hearing of the case does not guarantee that the court did not make errors in its evaluation of the evidence, in its application of the law, or in its instructions to the jury.[2362]

Moreover, the violation of a right guaranteed by international or national law does not necessarily mean that the entire trial was not fair.[2363]

Human rights standards do not grant the accused the right to a trial by jury, but all trials, whether before or without a jury, must respect the guarantees of a fair trial.[2364]

While some treaties, including the ICCPR, may temporarily restrict certain guarantees of a fair trial during states of emergency, the Human Rights Committee has made it clear that a court may not, in any way, deviate from the fundamental principles of a fair trial.[2365]

Procedural guarantees for fair hearing should be ensured by law, and the courts should ensure the integrity of criminal proceedings.[2366]

According to the Human Rights Committee, "... A trial is unfair, for example, if the court tolerates the public in the courtroom acting in a hostile or supportive manner towards one of the parties in a criminal case, which interferes with the right to defense, or if an accused is subjected to other

---

([2360]) See the situation in the Democratic Republic of the Congo, (ICC-01/04-135-tEN) Pre-Trial Chamber of the International Criminal Court (2006) §37-§39.

([2361]) See Advisory Opinion 90/OC-11, Inter-American Court (1990) §24; Inter-American Commission, Report on Terrorism and Human Rights (2002) Section 3(h) §399, 3; International Criminal Court: Prosecutor v. Lubanga, (ICC-01/04-01/06-102) Pre-Trial Chamber of the International Criminal Court, Decision on the Final Order of Disclosure and Confirmation of the Timetable (15 May 2006) ICC-01/04-01/06-102); §97 (2006) Appeals Chamber, Judgment on Appeal against a Decision Concerning a Defence Challenge to the Jurisdiction of the Court Pursuant to Article 19(2)(a) of the Rome Statute (14 December 2006), §37-§39.

([2362]) General Comment 32 of the Human Rights Committee, §26; see: Prosecutor v. Lubanga, (722) - 06/01 - 04/ICC-01) Appeals Chamber of the International Criminal Court, Judgment on Appeal against a Decision Concerning a Defence Challenge to the Jurisdiction of the Court Pursuant to Article 19(2)(a) of the Rome Statute (14 December 2006) §30.

([2363]) See Prosecutor v. Momčilo Kranjićnik (IT-00-39-A), Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, (17 March 2009) §135.

([2364]) Wilson v. Australia, Human Rights Committee, / UN Doc. CCPR 4/ §4 (2004) C/80/D/1239/2004; Taxquit v. Belgium, (926)/05), Grand Chamber of the European Court §83-§84 (2010).

([2365]) General Comment 29 of the Human Rights Committee, §11.

([2366]) Principle 6 of the Basic Principles on the Independence of the Judiciary, Guidelines 12, 13(b) and 14 of the Guidelines on the Role of Prosecutors, Article 64(2) of the Rome Statute, Article 19(1) of the Londres Statute, Article 20(1) of the Statute of the Yugoslavia Tribunal, Council of Europe Recommendation (12 CM/Rec), (2010), §60.

manifestations of hostility that lead to similar results. Other aspects that negatively affect the fairness of the trial include the behavior of jurors in a racist manner and the leniency of the judiciary towards that, or the selection of the jury in a manner that reflects the presence of racial prejudice. "[2367]

The International Criminal Court has confirmed that when it becomes impossible to hold a fair trial due to violations of the accused's rights, the trial proceedings must then be suspended.[2368]

Third: Equality between defense and prosecution (equality of legal opportunities)

One of the basic criteria for fair consideration of cases is the principle of equality of legal opportunity between the two parties to the case.[2369]

In criminal cases, where the prosecution finds all the state apparatus behind it, the principle of equal opportunity between the defense and the prosecution becomes an important guarantee of the accused's right to defend himself. It also ensures that the defense has a real opportunity to prepare and present its argument in the case, and to discuss the arguments and evidence presented to the court, on an equal footing with the prosecution.[2370]

The basic conditions for the application of the right to equal legal opportunity include the right to adequate space and facilities for the preparation of the defense, including the right of the prosecution to disclose all material information relating to the case.[2371]

These also include the right to a lawyer, the right to summon and question witnesses, and the right of the accused to attend his trial.[2372]

However, this principle does not require that the two parties to the conflict have equal financial capabilities or human resources.[2373]

UN human rights bodies have found that this principle has been violated, for example, when the accused has not had access to the information necessary to prepare his defense; and when the accused has not been able to properly instruct defense counsel ;[2374]

When the defense was denied the opportunity to call witnesses on an equal footing with the prosecution ;[2375]

([2367]) General Comment 32 of the Human Rights Committee, §25; Gridin v. Russia, Human Rights Committee, 1997/2/ §8 (2000) UN Doc. CCPR/C/69/D/770..

([2368]) Prosecutor v. Lubanga, (772) - 06/01 - 04/ICC-01), Appeals Chamber of the International Criminal Court, Decision on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court (14 December 2006) §37.

([2369]) Section A(2)(a) of the Principles on Fair Trial in Africa, European Court: Cris v. France (39594)/98, Grand Chamber §§72 (2001) and 74, Zhuk v. Ukraine (45783)/05), §25 (2010); Prosecutor v. Tadić (IT-94-1-A) ICTY Appeals Chamber (15 July 1999) §43-§44 (1999); Situation in Uganda 05-US-Exp/01-04/ICC-02)) International Criminal Court, Decision on the Prosecutor's Applications for Leave to Appeal and Suspension or Stay of the Execution of the Hearing of Leave to Appeal (10 July 2006) §24.

([2370]) General Comment 32 of the Human Rights Committee, § 13; Jasper v. United Kingdom (27052)/95), Grand Chamber of the European Court § 51 (2000).

([2371]) European Court: Jasper v. United Kingdom (27052)/95, Grand Chamber 51 § (2000); Foucher v. France (22209)/93, 34 § (1997); Prosecutor v. Tadić (1-A-IT-94) Appeals Chamber of the International Tribunal for the former Yugoslavia 47 § (1999).

([2372]) See section 6(a) of the Principles on Fair Trial in Africa, Nahimana and Others v. Prosecutor (ICTR-99-52-A), ICTR Appeals Chamber (28 November 2007) §220 (2007); see Advisory Opinion 2002/OC-17, Inter-American Court §132 (2002).

([2373]) Nahimana and Others v. Prosecutor (ICTR-99-52-A), Appeals Chamber of the International Tribunal for Rwanda (28 November 2007) §220; Prosecutor v. Kordic and Mario Cerkez (IT-95-14/2-A, Appeals Chamber of the International Tribunal for the Former Yugoslavia (2004) §175-§176.

([2374]) Wolf v. Panama, Human Rights Committee, / UN Doc. CCPR 6/ §6 (1992) C/44/D/289/1988; Moassiev v. Russia (62936)/00), European Court §224 (2008); Barreto Leyva v. Venezuela, Inter-American Court (2009) §29, §54, §62-§63.

When the accused did not agree to a postponement of the trial due to the absence of his lawyer ;[2376]

When the accused or the defense lawyer is excluded from a hearing attended by the prosecution representative [2377]

The African Commission explained that the principle of equal opportunity between the two parties to the lawsuit requires that the defense be the last to intervene before the court before the conclusion of the pleadings for the court to conduct its deliberations.[2378]

The Special Rapporteur on human rights and counter-terrorism has raised concerns about a number of cases in which individuals have been charged with terrorism-related offences without being given equal opportunities with the prosecution to prepare their defense. Noting the disproportionate access to resources for the prosecution and the defense, the Special Rapporteur cited, as an example, the failure to allocate sufficient financial support to defense lawyers in Spain to visit their clients who were detained in various parts of the country until their trial began. With regard to Egypt, he expressed concern about the restrictions on consultation meetings between the accused and their lawyers, both before and during the trial, and about the fact that defense lawyers were not allowed to review the case files until the first session of the trial, which made the right of the accused to adequate conditions for preparing an adequate defense merely ink on paper.[2379]

Chapter Thirteen: The Right to Public Hearing of Cases

13-1 Within the Framework of Egyptian Law

The principle of public hearings has constitutional value, as it was approved by the Constitution, which states: "Court hearings are public, unless the court decides to keep them secret in consideration of public order or morals. In all cases, the verdict shall be pronounced in a public hearing. "[2380]

Through the publicity of the sessions, the parties to the dispute become clear about their rights and obligations in court to ensure a fair legal trial. This publicity contributes to ensuring the impartiality of those who are entrusted by law with the task of judging the case and guarantees citizens a means of verifying the guarantees of the trial. It is a means of monitoring the effectiveness of justice, as the publicity of the judicial procedures gives citizens a means of verifying directly or through the press the availability of the conditions in which the judiciary is

---

(2375) See Cantoral-Benavides v. Peru, Inter-American Court (2000) §127; Opinion 24/2008 of the Working Group on Enforced Disappearances (Syria), §27 (2010) UN Doc. A/HRC/13/30/Add. 1; Prosecutor v. Orić IT-03-68-AR73. 2)), Appeals Chamber of the International Tribunal for the Former Yugoslavia, Interim Decision on the Length of the Defence Case (20 July 2005) §6-§11.

(2376) Robinson v. Jamaica, Human Rights Committee. / UN Doc. CCPR. 4/ §10 (1989) C/35/D/223/1987.

(2377) Becerra Barney v. Colombia, Human Rights Committee, UN Doc 2/ §7 (2006) CCPR/C/87/D/1298/2004; Zhuk v. Ukraine (45783)/05), (2010) §25-§35.

(2378) Lawyers Without Borders (on behalf of Bwambamye) v. Burundi (231)/99, African Commission (2000) §25-§35.

(2379) Special Rapporteur on human rights and counter-terrorism: UN Doc §27 (2008) A/63/223, Spain, 2008) UN Doc. A/HRC/10/3/Add. 2) §27, Egypt, §36-§37 (2008) UN Doc. A/HRC/13/37/Add. 2..

(2380 Article No. 187 of the Constitution.

conducted in their name, and this guarantee greatly exceeds the guarantees granted to the parties to the case.

The Supreme Court, which was responsible for monitoring the constitutionality of laws, concluded that the principle of public hearings is limited to rulings issued by courts in the narrow sense, and not by other judicial bodies. Therefore, publicity does not apply to criminal orders or disciplinary councils.[2381]

The principle of public hearings may not be excluded except to protect another constitutional value, which is either the protection of the right to private life, or the protection of public order or morals.[2382]

The Constitution has guaranteed the protection of the right to privacy in Article No. 57.[2383]

This was confirmed by Article 268 of the Code of Criminal Procedure, which stipulated that: “The session must be public. However, the court may, in consideration of public order or the preservation of morals, order that all or part of the case be heard in a secret session, or prevent certain categories from attending it.” The basic principle in the law is that trial sessions be public, but Article 268 of the Code of Criminal Procedure permitted the court to order that all or part of the case be heard in a secret session in consideration of public order or the preservation of morals.[2384]

The Penal Code stipulates the punishment of anyone who publishes, by any means of publicity, a mention of what happened in civil or criminal cases that the court decided to hear in a secret session.[2385]

Paragraph 4 of Article 85 of the Penal Code stipulates that news and information related to measures and procedures taken to uncover crimes affecting state security from abroad, or to investigate or prosecute their perpetrators, are considered defense secrets. However, the court may authorize the broadcast of what it deems to be the proceedings of the trial.

Whereas the established constitutional principle is the publicity of trial sessions that citizens witness without discrimination, so that public opinion can follow what is happening in cases that concern it, and ignoring it leads to the invalidity of the trial procedures and the invalidity of the judgment issued accordingly, all of this unless the court decides to keep some trials confidential in consideration of public order or to preserve morals, or the law decides to keep the trial confidential for considerations it deems appropriate, as is the case in the trial of a child as stated in the first paragraph of Article 126 of the Child Law issued by Law No. 12 of 1996, the Child Law has prohibited the attendance of a child’s trial before the Child Court except for his relatives, witnesses, lawyers, social observers, and those whom the court permits to attend with special permission. This means that the scope of the confidentiality of trial sessions is before the Child Court only, not the Criminal Court, if the child is tried before it in the circumstances stipulated by law.[2386]

([2381] Case No. 17 of 7 Q issued in the session of April 1, 1978 and published in the first part of the Technical Office Book No. 1, page No. 166.

([2382]) The Supreme Constitutional Court, Case No. 38 of 40 Q, issued in the session of January 4, 2020, date of publication January 13, 2020, page No. 60.

([2383] Article No. 57 of the Constitution.

([2384]) See: Appeal No. 28462 of the 67th year of the Q issued in the session of May 7, 1998 and published in the first part of the Technical Office Book No. 49, page No. 666, Rule No. 85.

([2385] Article No. 189 of the Penal Code.

([2386]) Article No. 126 of the Child Law, see: Appeal No. 7066 of year 81 Q issued in the session of January 26, 2012 and published in Technical Office Book No. 63, page No. 155, Rule No. 20, Appeal No. 29653 of year 67 Q issued in the session of March 10, 1998 and published in the first part of Technical Office Book No. 49, page No. 388, Rule No. 53.

However, the presence of the civil claimant with his lawyer in the secret trial session does not invalidate the procedures because he is a party to the case and has the right not to be satisfied with the presence of his lawyer on his behalf and to testify to his case himself. However, publicity is the rule in trials, and secrecy invalidates them by law. The law's permission for them in consideration of the system or morals is contrary to the rule, and it is the right of the judge alone, not the right of the opponents of the lawsuit.[2387]

However, deliberation on judgments must take place in secret among the judges together, where the judges who heard the pleadings exchange opinions on the cases presented to them without supervision from anyone other than God and their consciences, so that each judge can express his opinion in complete freedom and the judge who divulges the secret of the deliberation is held criminally and disciplinarily accountable. The judge rules on the case according to the belief that he has formed in complete freedom without external influence, whatever its source, whether from the public or the media.[2388]

The mere absence of mention of publicity in the minutes of the session and the ruling cannot be a reason to overturn the ruling unless the appellant proves that the session was secret without justification.[2389]

Placing the accused in a glass cage or restricting entry to the courtroom with permits does not conflict with the public nature of the trial. The purpose of this is to manage the session and organize entry.[2390]

13-1-1 Electronic litigation

First: Introduction

The rapid development witnessed by the world in the field of communications and information technology has led to the emergence of the World Wide Web (the Internet), which is an interconnected and saturated network that connects thousands of networks, allowing communication in the form of exchanging digital information within a unified protocol between computers and networks located all over the world, which operate in various languages, and which has cast its shadow on all areas of life; as modern means of communication via the Internet have had the greatest impact on many aspects of social and economic activity and the emergence of e-commerce and e-government, as it has provided its users with many and varied capabilities such as shopping, advertising, concluding various contracts, and conducting all transactions without the need for movement or physical presence, so exchanging information and goods and making reservations and other things has become extremely easy, done with the least possible effort and time, until it has become the lifeblood in all aspects, especially commercial and economic.

This technological revolution also extended to include the legal field in general and judicial work in particular after many governments moved towards adopting the concept of e-government and

---

([2387] Appeal No. 257 of 47 Q issued in the session of January 9, 1930 and published in the first part of the collection of legal rules No. 1, page No. 417, rule No. 370.

([2388]) Article No. 166 of the Code of Civil Procedure, see: Appeal No. 29653 of the 67th year of the Civil Procedure, issued in the session of March 10, 1998, published in the first part of the Technical Office Book No. 49, page No. 388, Rule No. 53.

([2389] Appeal No. 1345 of 46 Q issued in the session of April 25, 1929 and published in the first part of the legal rules collection No. 1, page No. 282, rule No. 241.

([2390]) Appeal No. 23147 of 85 Q issued in the session of December 26, 2016 and published in Technical Office Book No. 67, page No. 945, Rule No. 118, Appeal No. 44270 of 85 Q issued in the session of October 22, 2016 and published in Technical Office Book No. 67, page No. 735, Rule No. 94, Appeal No. 2470 of 85 Q issued in the session of March 9, 2016 and published in Technical Office Book No. 67, page No. 302, Rule No. 38, Appeal No. 18637 of 84 Q issued in the session of April 14, 2015 and published in Technical Office Book No. 66, page No. 360, Rule No. 51, Appeal No. 901 of 21 Q issued in the session of March 11, 1952 and published in Part Two of Technical Office Book No. 3, Page No. 562, Rule No. 209.

moving to the electronic environment. Hence, the need for the existence of an electronic court and remote litigation emerged, which imposes a new method in conducting procedures in lawsuits, by creating electronic means starting from registering the lawsuit, through initiating its procedures, and ending with adjudicating it and issuing the judgment electronically, i.e. (by relying on the international information network "the Internet").

Although many countries have adopted the concept of e-government, and thus most of the governmental, economic, media and community interactions and components have moved to the electronic environment, the judiciary has not achieved noticeable progress in most countries of the world, compared to what has been achieved by private sector departments and some government agencies. There are many Arab countries where judges still rely on paper writing to record procedures. Moreover, there are some ministries of justice that do not have an active website on the Internet yet; which has contributed significantly to the delay of cases before the courts, to the point that some disputes, even if few, remain before the judiciary for a decade or more. Hence, it was imperative for this important facility to keep pace with the development of society and interact with its developments effectively, which has made it important to resort to electronic litigation in the field of judicial work.

Second: The nature of remote communication technology in criminal proceedings

E-litigation means the use of remote communication technology and means in conducting trials. It is a modern term resulting from the tremendous development in communication means.

The use of electronic litigation in the field of trials is a technological revolution in the entire justice sector in the countries that have adopted it, including the European countries, and some Arab countries, most notably the United Arab Emirates, the Kingdom of Saudi Arabia, Algeria, and Tunisia.

This is due to the fact that the use of this technology has achieved prompt justice, eliminated slow litigation, and many other advantages. It has also achieved effectiveness in achieving fair trial guarantees, the most important of which is that the personal presence of one of the parties to the lawsuit (whether the accused, the victim, the witness, the expert, or others) is not physical, but rather is achieved through participation via remote communication methods.

Therefore, the principle of presence in these trials is achieved through the visible presence of the person without his personal presence. This is done through the Internet, where direct communication is achieved through sound and image without physical movement between the parties to the dispute who are geographically distant and the court, and at a specific moment in time through the technologies of this network.

One of the most important electronic litigation techniques is the video conference technology, which has made it possible in the electronic litigation process to communicate via an electronic mediator, and the absence of the physical presence of the parties in the litigation procedures.

Third: Definition of remote trial

Remote trial means the use of modern technical means to conduct a judicial trial between parties who are not in the same physical space, where the trial is conducted through remote communication technology (Video Conference), meaning an audio and visual conversation between the judicial body and one of the parties to the lawsuit to ensure direct communication, despite being in different and distant places. [2391]

([2391]) D. Hesham Al-Balawi, Remote Trial and Fair Trial Guarantees, Public Prosecution Presidency Magazine, Issue 1, June 2020, p. 11.

Telecommunication technology is also known as an audio and visual conversation between two or more parties in direct communication with each other via modern means of communication, to achieve remote presence. [2392]

It can also be defined as conducting the trial in accordance with the legal and procedural requirements of the parties to the criminal case, so that the judicial body remains at its headquarters in the courthouse, by connecting it via electronic means of communication. [2393]

Fourth: The distinction between remote litigation and traditional litigation

Remote litigation is consistent with traditional litigation in the subject matter, as well as the parties to the lawsuit; both aim to enable the person to file a lawsuit before the competent judicial authority that considers the dispute and issues a ruling on it; electronic lawsuits are like traditional lawsuits, and differ from them only in the method of implementing the procedures. Within the framework of remote litigation, implementation is carried out via the Internet via a visual and audio medium, which distinguishes it from traditional litigation.

The trial via modern means of communication is also distinguished from the regular or traditional trial in that the personal presence of one of the parties to the lawsuit (whether the accused, the victim, the witness, the expert, or others) is not physical, but rather is achieved via remote communication technologies. The principle of presence in this type of trial is achieved through the visual presence of the person without his personal presence.

Fifth: Advantages of using remote communication technology in criminal proceedings

Scientific and technological progress has imposed a transition to a new reality that is consistent with the data imposed by the requirements of this progress, its laws, and the mechanisms for dealing with it. Compared to traditional litigation - which relies on manual work more than electronic work - the use of remote communication technology is characterized by many characteristics and advantages, the most important of which are:[2394]

Reducing the presence of paper documents and the emergence of electronic documents, as correspondence between the two parties to the litigation is done electronically, and these electronic documents are the only legal document available to the parties in the event of a dispute between them; this results in several outcomes, the most important of which is reducing the circulation and storage of paper files of lawsuits in the courts, and also reducing storage spaces in the court building.

Speed of implementation of litigation procedures, without the need for the parties to the lawsuit to go to court, which saves time and reduces congestion and overcrowding of courts and sessions. Through this technology, the parties to the case can access the court's website, view the case file, and follow it while they are in their locations.

Less file loss and higher level of security of court records, as electronic documents are more reliable and easier to detect any change or modification in them, in addition to the ease of accessing them.

Ease of viewing the case file remotely, eliminating routine work, such as moving to more than one place to file the case file, and ease of paying legal expenses; as electronic payment methods replace regular cash payment. The use of this modern technology in litigation also

---

([2392] This definition is included in Article 1 of the UAE Federal Law on the Use of Telecommunication Technology No. 5 of 2017.

([2393]) D. Omar Abdul Majeed Musbah, Fair Trial Guarantees in Light of the Adoption of Remote Communication Technology in Criminal Procedures in the United Arab Emirates, A Comparative Study, Kuwait International Law School Journal, Sixth Year, Issue 24, December 2018, p. 387.

([2394] Amir Farag Youssef, Electronic Courts and Electronic Litigation, Modern Arab Office, Cairo, 2014, p. 41.

helps raise the level of security in court records, as it is easy to detect any change or modification in them, in addition to the ease of viewing and accessing them at any time.

Rationalizing the financial expenses associated with transporting thousands of detainees daily to and from courtrooms, which costs the state treasury huge sums.

One of the most important advantages of using this technology is also protecting the security of witnesses, victims and informants, as there are some cases in which it is impossible to reveal the identity of witnesses, or victims of some crimes whose identity is preferable not to be revealed, as this technology allows them to be placed in other courtrooms and heard through the communication system without seeing their faces.

All these advantages have made this technology successful, which has led to an increase in demand for it in order to develop and accelerate the work of the relevant authorities in the justice sector on the one hand, and to save effort and money on the other hand.

In the event that audio-visual communication technology is used in trial procedures, special halls are equipped at the prison level with the necessary modern means of communication, and the same applies to courts, which are equipped with communication devices, large screens and loudspeakers, allowing all those present at the sessions to follow the trial, see the accused and witnesses, and listen to their statements and testimonies.

Although all the advantages of adopting remote communication technologies in trials make them of great importance in normal times, their importance increases and even becomes a necessity in exceptional circumstances that societies may experience, such as the “Corona pandemic,” which has made remote trials an urgent necessity to preserve the lives and public health of all those involved in the judicial process.

Sixth: The impact of the use of remote communication technology in criminal proceedings on fair trial guarantees

A- Introduction

International and national reports on judicial affairs indicate the weakness of the effectiveness of traditional judiciary and its inability to keep pace with the developing and renewed pace of economic and social life. It has been noted that the volume of civil and criminal cases before the courts has increased, which in turn has led to slowness in issuing and implementing judgments. This slowness in processing cases undoubtedly prevents the achievement of the ultimate goal, which is to reach a fair trial and issue judgments within reasonable timeframes.

Hence, the use of remote communication technology in criminal proceedings, as a new stage in the development of criminal proceedings, reflects the trend towards benefiting from technological data in the development of criminal proceedings, which in turn is reflected in the performance of the criminal justice system. The objectives set for this stage are not separate in their intellectual and philosophical context from the purposes of the previous stages, but rather are a natural extension of them. The use of communication technology as a modern means of remote criminal investigation and trial will remain subject to constitutional and legal considerations such as due process, the right to a lawyer, the right to be present, the right to confront and witnesses, and the principle of oral pleading is achieved through it, all with the aim of enhancing the guarantees of a fair trial. This is in addition to the impact of this technology on the speed of resolving disputes, which is a factor of security and stability; as the phenomenon of slowness in resolving lawsuits is a dangerous phenomenon that affects all members of society, and creates a defect in the justice system, and it had to be addressed, and the importance of using this type of technology in conducting trials became apparent.

Accordingly, we will discuss the impact of using remote communication technology on fair trials in terms of the speed of adjudicating cases within a reasonable period in the first section, then we will discuss the extent of the impact of this technology on guarantees of the rights of defense during remote communication procedures, in the second section, as follows:

B- The impact of using remote communication technology on achieving the rule of adjudicating cases within a reasonable period of time

The citizen's right to obtain his right within a reasonable period of time is considered one of the most important indicators of supporting the confidence of litigants in the judiciary and its members, due to its connection to the field of respect for human rights and fundamental freedoms and the principle of reasonable time, which is a principle related to the rights and freedoms of individuals, and the assumption of the presumption of innocence. The goal is to ensure that the judgment on the fate of the individual is issued without any unjustified delay, as well as to ensure that his rights to defend himself are not infringed upon, since the passage of a period of time on judicial procedures may cause the details of the facts to fade from the memory of witnesses or become distorted, or it may be difficult to find them or other evidence may be damaged or disappear. This rule also aims to confirm the shortening of the period of anxiety and psychological stress that the accused suffers out of fear for himself and his fate and the suffering he suffers as a result of the stigma that will befall him socially, as a result of being accused of committing an unlawful act. Despite the presumption of innocence. The judiciary's resort to remote communication technology aims to speed up the pace of its work, especially when it comes to cases in which one of the accused or witnesses is accused in another case, and is imprisoned hundreds of kilometers away, so he is heard through modern means of communication in order to save the money and effort required to transport him to the courts.

C- The impact of remote litigation procedures on guarantees of defense rights

One of the most important basic principles in conducting a trial is that the litigation sessions must be public. The public nature of the sessions is the general principle in conducting trials. It is worth noting that the use of remote communication technology in the trial stage will not negatively affect the public nature of the sessions, but rather the opposite, as the trial procedures will be conducted with sound and image, and with high accuracy in front of all those attending this trial, so that everyone can keep up with the smooth running of justice, the plaintiff, the defendant, his attorney, the judiciary and the witnesses; as this is done in front of everyone, and even verifying the identity of the accused defendant in front of everyone, and in recording the case in the first session, and all these guarantees are taken into account and ensured; therefore, we find that publicity is achieved through this trial, as the trial procedures are presented to everyone in the courtroom through image and sound. Thus, the principle of publicity can be achieved in several ways; the public can attend sessions in more than one place. They can come to the hall where the judge sits and which has a large display screen or come to the distant rooms where the opponents are and follow the proceedings of the sessions. It is also possible to provide the opportunity for those who wish to attend a session to obtain approval from the judge of the session and go to the nearest court headquarters to him and watch the proceedings of the session via the court's internal Internet network, which connects the court headquarters to each other, noting that the judge has the ability to make the sessions confidential and limited to the opponents or their agents, when necessary.

As for the principle of attendance or confrontation between opponents, and the possibility of providing the opportunity for those present to watch these trials so that the pleading is public, just like any other, this is achieved using remote communication technology, and even more accurately than before the traditional judiciary, as the plaintiff will be in front of everyone, as well as the defendant on the screen, voice and sound, and identity verification will be conducted in

front of everyone via the screen and with high accuracy, and his acknowledgment and the acknowledgment of his agent to conduct the trial remotely will be taken, and everyone will be able to monitor the proper course of justice by attending and watching everyone.

As for the extent to which the principle of orality is achieved in electronic remote litigation, there is no doubt that the wisdom behind the principle of orality is to apply the principle of confrontation between opponents - the principle of presence; so that each party to the lawsuit has the opportunity to hear and confront his opponent, and to be able to know what data and evidence his opponent has and discuss it, and also to allow the judge to form his emotional conviction through the arguments presented by the parties before him in the session. All of this has become possible to achieve in electronic litigation through the electronic medium represented by direct communication by voice and image via the Internet, without physical movement between the parties to the dispute and the court at a specific time, by using the technologies of this Internet network, the most important of which is the "videoconference" technology, which allows the possibility of communication via the electronic medium, and the absence of the physical presence of the parties in the litigation procedures when using remote communication technology.

Therefore, applying the principle of orality and confrontation through the use of remote communication technology, when confrontation is not possible - according to the traditional concept - is appropriate, more just and more capable of performing its function in adhering to the traditional concept of the principle of orality, with which it can be assumed that hearing oral statements is no longer possible, since applying the principle of orality of criminal procedures regarding hearing witnesses requires that hearing them is basically possible, as it has been ruled that the criminal trial must be based on the oral investigation conducted by the court in the session, and in which it hears witnesses as long as that is possible, and therefore the concept of electronic presence appeared when using remote communication technology.

One of the most important consequences of the principle of orality of criminal proceedings when using remote communication technology is the principle of its immediacy, i.e. its continuity without interruption, for those who give their testimony immediately on facts that may change over time. The witness’s confidence or hesitation is one of the elements that allow for assessing the extent of the witness’s truthfulness, and this goal cannot be achieved if the pleadings and deliberations are separated from the judgment by a period of time, as the impact of the criminal evidence presented in the court session against the accused and his methods of defense should not be dispersed.

However, there are several conditions that must be observed for the validity of the session, when using remote communication technology in criminal trials through an Internet connection, the most important of which are:

First: Verify the validity of identity and legal status

It means ensuring the physical presence of both parties to the dispute, by ensuring that they are online at the time set for the session, and their capacity in the lawsuit as a plaintiff or his representative, for example.

Second: Respect for privacy

Trust that the message, which may be an oral statement or a document, reaches only the recipient himself (the judge or the lawyer), and ensure that the message is intact and has not been altered or missing during transmission, and trust that it is legible in the linguistic sense, and in the legal informational sense, readable, audible and clearly visible.

Third: Ensure that the recipient of the message has the legal capacity and authority.

Confidence that he will not deny what he received and the timing, i.e. the time report, by day and hour, that the communication took from beginning to end, and in the legal informational sense: the period of the session.

The identity and legal status of the opponents or their agents can be verified behind the computer screen, when the dispute is held, by relying on some technical tools such as: password, personal identification number, encryption, etc.

From the above it is clear that

The concept of electronic litigation is a modern concept that emerged as a result of the emergence of modern technology that has entered all areas of life, including judicial work.

Electronic litigation allows judges to consider and conduct their judicial procedures using new electronic means that rely on electronic media technology.

The electronic litigation system offers many advantages to judges and litigants, as it saves time and effort, as it enables litigants to submit requests at any time and from anywhere by accessing the court's website. Therefore, neither the parties to the lawsuit nor the judges themselves have to go to the courthouse. This saves time and reduces the crowding and congestion of courts and sessions.

Applications are submitted and lawsuits are filed via e-mail, and data is exchanged electronically, and this data is usually signed by the owner of the editor or document.

The use of remote communication technology in the judicial field requires many necessary components and requirements without which it cannot be implemented, the most important of which is human energies, such as judges, clerks, administrators and technicians who are qualified and trained to use this technology in their field of work. Including mechanical or technical ones, such as computers, electronic programs, electronic records, in addition to the electronic court website, including technical requirements necessary to protect data and information by encrypting it in order to secure it from tampering.

6- The electronic litigation system also requires the enactment of laws and legislative systems that regulate and facilitate the work of judges in the court and at the same time provide technical criminal protection for it.

Seventh: Remote litigation in Egyptian legislation

The Egyptian legislator did not fully organize remote litigation, but rather all that the legislator has turned to in this field is the use of electronic litigation in considering pretrial detention renewal sessions. The Ministry of Justice announced in 2020 - following the outbreak of the Corona virus and under the pretext of taking into account public safety and health, and also in order to take serious measures to change the course of Egyptian litigation to digital litigation - the start of considering pretrial detention renewal sessions remotely via "video conference" technology, which means that the accused will not be transferred from his prison to attend the detention renewal session in person to be directly before his natural judge and lawyer, but rather the accused remains in his place of detention and watches the session through communication via one of the electronic devices, and that only the investigating judge and lawyer will be in the courtroom. This is according to what the Ministry of Justice stated, in order to save the costs of transporting and securing the accused to the courtroom, and to achieve prompt justice and speedy adjudication of cases.

The Minister of Justice issued Decision No. 8901 of 2021 to provide legislative cover for this experiment and then generalize it and provide legal protection for it. The text of the decision

stated in its first article: “With due regard to all legal guarantees, the judges may hold hearings to consider the renewal and resumption of pretrial detention remotely using technology. "

Therefore, it is understood from the decision that this procedure should not be the basis for holding detention renewal sessions, but rather it has been given a permissible character if all legal guarantees are available. Despite this, the Ministry of Justice announced the generalization of remote pretrial detention sessions, and as a result, remote detention renewal sessions began to be held without the accused moving from their places of detention to the court.

13-2 Within the Framework of International Conventions

The right to a public hearing is a fundamental guarantee of fairness and independence of litigation, and a means of protecting public confidence in the justice system.

13-2-1 The right to a public hearing of cases

All courts must hold their sessions and deliver their judgments in public, except in a few strictly defined exceptional cases. The right to a public hearing of criminal cases is also guaranteed by international standards.[2395]

Under the Arab Charter, this right is not subject to restriction in emergency situations.[2396]

While the African Charter does not explicitly guarantee the right to a public hearing of criminal cases, the African Commission has found that the failure to hold public hearings constitutes a violation of Article 7 of the Charter (on fair trial).[2397]

Moreover, the principles of fair trial in Africa include this right. The right to a public trial means not only that the parties to the case (and victims in jurisdictions where they are not parties to the case) are present at the hearings, but that the hearings are also open to the general public and the media. In addition to protecting the rights of the accused, this embodies the public rights to know and monitor how justice is administered and protected, and the rulings reached by the judicial system.[2398]

The right of the observer concerned to monitor trials and his right “to witness public hearings, proceedings and trials, in order to form an opinion as to their compliance with national law and applicable international obligations and commitments” is expressly guaranteed in the Declaration on Human Rights Defenders.[2399]

At least one court must hear the case in public, unless the case can be considered as one for which exceptions are allowed.[2400]

([2395]) Article 10 of the Universal Declaration, Article 14(1) of the International Covenant, Article 18(1) of the Migrant Workers Convention, Article 8(5) of the American Convention, Article 13(2) of the Arab Charter, Article 6(1) of the European Convention, Principle 36(1) of the Body of Principles, Sections A(1) and (3) of the Principles on Fair Trial in Africa, Article 26 of the American Declaration, Articles 64(7), 67(1) and 68(2) of the Rome Statute, Articles 19(4) and 20(2) of the Statute of the International Criminal Court for Rwanda, Articles 20(4) and 2(21) of the Statute of the International Criminal Court for Yugoslavia; see Article 7(1) of the African Charter.

([2396] Article 4(2) of the Arab Charter.

([2397]) African Commission: Media Rights Agenda v. Nigeria (224)/98) §51-§54 (2000); Civil Liberties Organization, Legal Defence Centre and Legal Aid Project v. Nigeria (218)/98), §35-§39 (2001).

([2398]) General Comment 32 of the Human Rights Committee, § 28; European Court: Thiers and Others v. San Marino (24954)/94 and 24971/94 and 24972/94), § 92 (2000); Galstyan v. Armenia (26986)/03), § 80 (2007); Palamara-Iribarne v. Chile, Inter-American Court § 168 (2005).

([2399]) Article 9(3)(b) of the Declaration on Human Rights Defenders, adopted by resolution 53/144 of the United Nations General Assembly.

([2400]) Fredin v. Sweden (18928)/91, European Court (1994) §18-§22.

Where the case has been heard in public in the lower courts, the decision whether appellate court proceedings may be held in camera will depend largely on the nature of the charges.[2401]

13-2-2 Basic conditions for public review

A public trial requires an oral hearing of the prosecution and pleadings in the presence of the public, including the media, depending on the subject of the case. The court shall announce the date and place of hearings open to the parties to the dispute and to the general public and shall provide reasonable facilities for interested members of the public to attend such hearings.[2402]

The Human Rights Committee found that violations of the right to a fair public trial had occurred in criminal cases involving public figures. In one such case, the trial was held in a small courtroom that could not accommodate the interested public; a second trial was held behind closed doors.[2403]

The European Court concluded that the right to a public hearing was violated when the trial of a person who allegedly threatened prison guards was held within prison walls. This resulted in the unjustified obstruction of the public's effective participation in the session due to the lack of information on how to get to the prison, the conditions of entry, and the fact that the session was held in the early morning.[2404]

The right to a public hearing does not necessarily include all pre-trial proceedings, including those relating to decisions taken by prosecutors or public bodies.[2405]

The European Court noted that the right to a public hearing applies to proceedings in which a charge is decided, but not necessarily to hearings in which the lawfulness of detention pending trial is reviewed.[2406]

However, the Inter-American Court found that a violation of the right to a public hearing had occurred during the investigation phase of a case tried by a military court in Chile, in which several of the accused's rights had not been respected.[2407]

Even in cases where the public is excluded from attending the trial, the court's decision must be made public, including the basic facts, evidence and legal reasons for the ruling, unless the case concerns minors whose interests otherwise require it or the case concerns disputes between spouses or concerns the guardianship of children.[2408]

13-2-3 Exceptions to the right to a public hearing

The right of the general public to attend criminal proceedings may be restricted in a limited number of precisely defined cases, all of which must be explained for their reasons, as follows:

([2401]) General Comment 32 of the Human Rights Committee, § 28; European Court: Thiers and Others v. San Marino (24954/94 and 24971/94 and 24972/94), § 95 (2000), Ekbatani v. Sweden (10563/83), § 31-§ 33 (1988).

([2402]) Section A(3) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, §28; Van Meers v. Netherlands, Human Rights Committee, 1986/2/ §6 (1990) UN Doc. CCPR/C/39/D/215; Reyban v. Austria (35115)/97), European Court § 29 (2000).

([2403]) Human Rights Committee: Marinich v. Belarus, / UN Doc. CCPR 5/§10 (2010) C/99/D/1502/2006; Kulov vs Kyrgyzstan, . 6/ §8 (2010) UN Doc. CCPR/C/99/D/1369/2005.

([2404]) European Court: Reyban v. Austria (35115)/97, European Court §28-§31 (2000); see also Hamatov v. Azerbaijan (9852)/03 and (13413), §140-§152 (2007).

([2405]) General Comment 32 of the Human Rights Committee, §28.

([2406]) Reinbrecht v. Austria (67175)/01), European Court §41 (2005).

([2407]) Palamara-Iribarne v. Chile, Inter-American Court (2005) §165-§174.

([2408]) General Comment 32 of the Human Rights Committee, §29.

Public morals (some cases may include sexual crimes);[2409]

Public order, which means primarily the order inside the courtroom;[2410]

National security in a democratic society;)[2411]

When confidentiality becomes necessary to preserve the interests of minors or the private lives of the parties to the case (such as protecting the identity of victims of sexual violence);[2412]

To the extent strictly required by necessity, if the court finds that there is an extreme necessity requiring this in special cases in which publicity would harm the interests of justice;[2413]

In addition, there are express exceptions intended to protect the interests and privacy of children who are accused of infringing the penal law, or who are victims or witnesses of a crime. A child accused of violating the penal code is entitled to full respect for his privacy during all stages of the judicial proceedings. To protect the child's right to privacy, the African Charter on the Rights of the Child requires that the media and the public be excluded from the proceedings. Other standards allow courts to hold hearings behind closed doors when the interests of children or justice require it. The Committee on the Rights of the Child recommends that States impose rules requiring that court hearings involving a child facing the law be held behind closed doors. Exceptions to this rule should be very limited and clearly stated in law. Other measures should also be taken to ensure that no personal information or data that could identify a child is published, including in court rulings or by the media.

A variety of international standards aim to protect the privacy and identity of child victims of crime, victims of gender-based sexual violence, and victims of human trafficking. The European Convention on the Sexual Abuse of Children allows judges to hold closed hearings that are not attended by the public.[2414]

Both the Human Rights Committee and the European Commission found that excluding the public from two cases, one involving charges of rape of a woman and the other of sexual offences against children, was admissible under article 14 of the ICCPR and article 6 of the European Convention.[2415]

In cases against adults where exceptions to the right to a public trial apply, courts should, as an alternative to holding all trial sessions behind closed doors, consider whether closing aspects of the proceedings could be sufficient. Courts should also consider alternatives to holding all or some hearings behind closed doors, including by taking measures to protect witnesses. Such measures must be consistent with the accused’s right to a fair trial in the context of conflict of

---

([2409]) Article 14(1) of the International Covenant, Article 6(1) of the European Convention, g. for. v. Canada, Human Rights Committee, UN Doc. /CCPR . 6 / C/41/D/341/1988 (1991) §4.

([2410]) Article 14(1) of the ICCPR, Article 6(1) of the European Convention, Section A(3)(f)(2) of the Principles on Fair Trial in Africa, see Gredin v. Russian Federation, Human Rights Committee, UN Doc 2/ §8 (2000) CCPR/C/69/D/770/1997; see M. Nowak, The United Nations International Covenant on Civil and Political Rights: Commentary on the International Covenant, Second Revised Edition, Engel, 2005, pp. 34-325. Z. P. v Canada (640), Human Rights Committee, / UN Doc. CCPR 6/ § §4 (1991) C/41/D/341/1988 and 5/63/1913) v Austria;6), European Commission, Abstract 2 of the Strasbourg Law of Case No. 438 (30) April 1965 (unpublished).

([2411]) Article 14(1) of the International Covenant, Article 6(1) of the European Convention, and Section A(3)(f)(2) of the Principles on Fair Trial in Africa.

([2412]) Article 14(1) of the International Covenant, and Article 6(1) of the European Convention; see also Section A(3)(f)(ii) of the Principles on Fair Trial in Africa.

([2413]) Article 14(1) of the International Covenant, Article 8(5) of the American Convention, Article 13(2) of the Arab Charter, Article 6(1) of the European Convention; see Section A(3)(f)(2) of the Principles on Fair Trial in Africa.

([2414]) Article 36(2) of the European Convention on the Sexual Abuse of Children.

([2415]) Z. P. v Canada, Human Rights Committee, / UN Doc. CCPR 6/ § §4 (1991) C/41/D/341/1988 and 5/63/1913 (X. v Austria;6), European Commission, Abstract 2 of the Strasbourg Law of Case No. 438 (30 April 1965) (unpublished).

rights proceedings, including the principle of equality of opportunity for the defense and the prosecution.[2416]

While the customary rule remains that the ICC must hold its hearings in public, it may close part of a trial to protect a victim, witness or accused, or to allow for the presentation of evidence by electronic or other means. The reasons behind the order to close the session must be made public.[2417]

The widespread use of closed hearings on the grounds of national security, including in trials of people on terrorism-related charges, has raised legitimate concerns. International law does not give the state unrestricted discretionary power to determine for itself the issues it considers to be affecting national security.[2418]

According to the Johannesburg Principles, “no restriction which a State seeks to justify on the grounds of national security shall be legitimate unless its real purpose and demonstrable effect is to protect the existence of the State or its territorial integrity or unity against the use or threat of force; or to protect its ability to respond to the use or threat of force, whether the source of the threat is external, such as a military threat, or internal, such as incitement to the violent overthrow of the government.”[2419]

The Special Rapporteur on human rights and counter-terrorism reiterated his conviction that restrictions on the right to a public hearing on the grounds of national security should only be resorted to to the extent strictly necessary. To ensure integrity, “it should be accompanied by adequate monitoring or review mechanisms.” He expressed concern that prosecutors in a criminal case in South Africa involving national security had requested that all trial proceedings be held behind closed doors.[2420]

In its report on terrorism and human rights, the American Commission suggested that elements of the right to a public trial should be subject to restriction, for example in states of emergency (of such a nature that rights may be restricted) when there are threats to the life or physical integrity of judges or other officials involved in the administration of justice, or to their independence. However, she said that such restrictions should be determined on a case-by-case basis, be strictly necessary and subject to measures to ensure the fairness of the trial, including the right to challenge the jurisdiction, independence or impartiality of the court.[2421]

The African Commission concluded that the military court proceedings against alleged plotters who were planning a military coup in Nigeria violated the accused's right to a public hearing. The committee noted that the government did not provide specific reasons for excluding the public from the trial sessions.[2422]

Secret trials are a more blatant violation than any other infringement on the right to public trials. The US Commission ruled that secret trials of civilians in Peru before military courts in which the identities of the judges were concealed (the phenomenon known as “faceless judges”) and held in military facilities that were off-limits to the public violated, among other things, the defendants’ right to a public trial.[2423]

([2416] See Section A(3)(g)-(i) of the Principles on Fair Trial in Africa.
([2417]) Article 68(2) of the Rome Statute, and Guideline 20 of the ICC Guidelines.
([2418] See Section A(3)(f)(ii) of the Principles on Fair Trial in Africa.
([2419]) Principle 2(a) of the Johannesburg Principles.
([2420]) Special Rapporteur on human rights and counter-terrorism: UN Doc UN Doc. A/HRC/6/17/Add. 2, §30 (2008) A/63/223 (South Africa). §32 (2007).
([2421]) U.S. Commission, Report on Terrorism and Human Rights, (2002) Section 3(a)3(d) §262.
([2422]) Media Rights Agenda v. Nigeria (224)/98), African Commission §51-§54 (2000).
([2423]) Inter-American Commission: Castillo-Petruzzi et al. v. Peru, §§169-§173 (1999), Lori Berenson-Mejia v. Peru, §§197-§199 (2004).

Except as specified, trials must be public and open to the public at large, including the media, and should not be limited to a special category of people only.[2424]

Chapter Fourteen: Presumption of Innocence of the Accused

14-1 Within the Framework of Egyptian Law

The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the right to defend themselves.[2425]

The origin of innocence is assumed in every accused person, for man was born free, purified from sin and the filth of disobedience, his feet did not slip into evil, and his hand did not touch injustice or slander. It is assumed that he was healthy when he was born alive, and that he remained so, avoiding sins of all kinds, keeping away from vices of all kinds, and adhering to a straight path that does not deviate from the straight path. This is an assumption that cannot be demolished based on illusion, but rather must be refuted by evidence derived from the best papers and the scales of truth, with insight and discernment. This will not be the case unless he is convicted by a judgment that has been closed off to appeal, and thus has become final.[2426]

The principle of every accusation is that it should be serious and it is not conceivable that the accusation could be a rash act that the Public Prosecution slips into through its haste or negligence. It was self-evident that the accusation of a crime is not evidence of its proof, and evidence of it is not equal to it. The accusation, even if it was based on reasons that suggest the accused's conviction of the crime, was nothing more than a mere suspicion that the court of subject matter did not rule on with a decisive and irrevocable ruling, whether by proving or denying it. The Supreme Constitutional Court ruled that the initial rules on which a fair trial is based - whether when ruling on every criminal accusation or on the rights and civil obligations of the person - although they are procedural in origin, their application within the scope of the criminal case - and throughout its episodes - necessarily affects its final outcome. It was decided that the principle of innocence falls under these rules as a primary rule required by the nature upon which man is created and required by procedural legitimacy, and as a primary assumption for the effective administration of criminal justice to provide every individual with security in the face of control, tyranny and prejudice. The assumption of innocence was not limited to the case in which there is the person is in it at birth, but it extends to the stages of his life until its end to compare the actions he commits and is not separated from it by a criminal accusation, regardless of the weight of the evidence on which it is based. The presumption of innocence represented a fixed principle related to the criminal accusation in terms of proving it and not the type of punishment prescribed for it. This principle was latent in every individual, whether he was a suspect or an accused, as it was a fundamental rule approved by all laws, not to guarantee protection for the guilty, but to achieve a legal principle that means that a mistake in forgiveness is better than a mistake in the punishment that must be averted from every

---

([2424]) Section A(3)(d) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, §29.
([2425] Article No. 96 of the Constitution.
([2426]) The Supreme Constitutional Court, Case No. 26 of 12 Q issued in the session of October 5, 1996, date of publication October 17, 1996, published in the first part of the Technical Office Book No. 8, page No. 124, rule No. 8, Case No. 28 of 17 Q issued in the session of December 2, 1995, date of publication December 21, 1995, published in the first part of the Technical Office Book No. 7, page No. 262, rule No. 15.

individual whose accusation is doubtful (Dans le doute on acquitte) or based on evidence that cannot be legally accepted. The criminal accusation - in light of the above - does not shift the principle of innocence or invalidate its content, but rather this principle remains dominant over the criminal case, even existing before it is initiated, and extending throughout its stages and whatever the time of its ruling.[2427]

Every person charged with a criminal offence has the right to be presumed innocent until proven guilty in a public trial at which he has had all the guarantees necessary for his defense. This is a rule that has been applied in democratic countries and within the framework of which there is a set of basic guarantees, which, when integrated, ensure a concept of justice that is generally consistent with contemporary standards in force in civilized countries.[2428]

Among them is its belief in the sanctity of private life, and the severity of restrictions that affect personal freedom, which the constitution considers to be one of the natural rights inherent in the human soul, and cannot be separated from it as an aggression, and to ensure that the state - when exercising its powers in the field of imposing punishment in order to preserve the social order - adheres to the ultimate purposes of penal laws, which contradict the conviction of the accused as an intended goal in itself, or the rules according to which he is tried are in conflict with the correct concept of effective criminal justice administration. Rather, these rules must adhere to a set of values that guarantee the rights of the accused a minimum level of protection, which may not be waived or diminished, and under these rules falls the principle of innocence as a primary rule imposed by nature and required by the facts of things.[2429]

The principle of innocence is that this innocence may not be suspended on a condition that prevents the enforcement of its content, nor may it be suspended through a weak accusation, nor may it be overturned either by exempting the prosecution from its obligation to provide evidence of the validity of its accusation, or through its or others' intervention to influence the course of the criminal case and its final outcome without right. Rather, violating it - as an axiomatic principle - is an unforgivable error, a prejudicial error, requiring the annulment of any decision that does not comply with it.

The principle of innocence is thus considered an integral part of a fair trial, as it is supported by other elements that constitute its components, and together they represent a minimum of rights necessary for its administration, and under which falls the right of both the accused and the prosecution authority to have the same means by which their positions are equal, whether in the field of refuting or proving the charge, and these are rights that may not be deprived or marginalized, whether it concerns a person who is considered an accused or a suspect. All laws have approved it - not to protect the guilty - but rather to ward off the severity of the penalty prescribed for the crime that was mixed with suspicion of its commission, which prevents the certainty of its occurrence by those accused of committing it, since this accusation is not considered sufficient to destroy the principle of innocence, nor is it proof of the fact by which the crime is committed, nor is it an obstacle to proving it. Rather, this principle remains in place until

---

([2427]) The Supreme Constitutional Court, Case No. 49 of 17 Q, issued in the session of June 15, 1996, date of publication June 27, 1996, and published in the first part of the Technical Office Book No. 7, page No. 739, rule No. 48.

([2428]) Supreme Constitutional Court, Case No. 96 of 27 Q issued in the session of March 7, 2020, date of publication March 16, 2020, page 3, Case No. 202 of 32 Q issued in the session of November 3, 2018, date of publication November 13, 2018, page 3, Case No. 102 of 36 Q issued in the session of October 13, 2018, date of publication October 22, 2018, page 23, Case No. 88 of 36 Q issued in the session of February 14, 2015, date of publication February 25, 2015, Case No. 78 of 36 Q issued in the session of February 14, 2015, date of publication February 25, 2015, Case No. 196 of 35 Q issued in the session of November 8, 2014, date of publication November 12, 2014.

([2429]) The Supreme Constitutional Court, Case No. 186 of 33 Q issued in the session of October 13, 2018, date of publication October 22, 2018, page No. 34, Case No. 61 of 21 Q issued in the session of February 3, 2018, date of publication February 12, 2018, page No. 20, Case No. 10 of 18 Q issued in the session of November 16, 1996, date of publication November 28, 1996, and published in the first part of the Technical Office Book No. 8, page No. 142, Rule No. 9.

it is overturned by a judicial ruling that has become final after it has encompassed the accusation with insight and foresight, and concluded that the evidence of its validity - with all its components - was pure and complete.[2430]

There is no way to refute the principle of innocence except by evidence presented by the Public Prosecution, the persuasive force of which reaches the level of certainty and conviction, proving the crime attributed to the accused in every aspect and with respect to every fact necessary for its occurrence. Otherwise, the principle of innocence does not collapse, as it is one of the pillars on which the concept of a fair trial is based. The implication of this is that the principle of innocence in the accused is that the proof of the charge against him falls on the Public Prosecution, which alone bears the burden of presenting evidence, and the accused is not required to present any evidence of his innocence, just as the legislator does not have the right to impose legal presumptions to prove the charge or to transfer the burden of proof to the accused.[2431]

It is not permissible to treat a person as if he is merely a suspect, as considering a person a suspect undermines the principle of innocence. Every crime that is alleged to have been committed cannot be proven without conclusive evidence that covers all of its elements, and it is also not permissible to assume its proof - even in one of its elements, whether material or moral - through a legal presumption that the legislator arbitrarily creates. Without this, the principle of innocence is nothing but an illusion, and whenever the legislator - through a legal presumption he created - wastes the presumption of the accused's innocence of the charge against him, this is a violation of the means of repelling it, and a waste of the balance between the rights he possesses to refute it, and those possessed by the prosecution authority to prove it.[2432]

The elements of a crime are not fully established unless the prosecution authority proves them by presenting its evidence and convincing them in a way that removes all reasonable doubt about them. This is because, by accusing a person of a crime it claims, it deliberately creates a new reality that contradicts the presumption of innocence, as it is an expression of the nature with which man was created and to which he has been connected since birth. It cannot be shaken by an accusation, nor can it be overturned by a will, no matter how weighty it may be. Rather, it is removed by a judicial ruling related to a specific crime, and it has become final regarding its attribution to its perpetrator, after clear and conclusive evidence has been established of the availability of its elements stipulated by the legislator. If the person is suspected, then treating him on the basis of this consideration alone, which strips him of the rights guaranteed by the constitution, is not permissible.[2433]

It is established that the principle of innocence is considered a fundamental rule in the accusatory system, which is not permissible, imposed by the facts of things and required by procedural legitimacy and the protection of the individual in the face of forms of control, tyranny and prejudice, which prevents the fact that a crime is committed from being considered proven without serious and conclusive evidence that reaches the level of certainty and conviction and leaves no room for suspicion of the absence of the charge or doubt therein, and without that the principle of innocence is not absent, and it was also established that it is necessary in the principles of reasoning that the evidence on which the judgment relies leads to the results it

---

([2430]) The Supreme Constitutional Court, Case No. 29 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1042, rule No. 72.

([2431] Appeal No. 61 of 88 Q issued in the session of November 25, 2018 (unpublished).

([2432]) The Supreme Constitutional Court, Case No. 29 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1042, rule No. 72.

([2433]) The Supreme Constitutional Court, Case No. 58 of 18 Q, issued in the session of July 5, 1997, date of publication July 19, 1997, and published in the first part of the Technical Office Book No. 8, page No. 731, rule No. 48.

based on it without arbitrariness in the conclusion and without conflict in the judgment of reason and logic.[2434]

Criminal justice, in its essence, must be guaranteed through precisely defined and fair rules, in the light of which it is decided whether the accused is guilty or innocent. This assumes a balance between the interest of the community in the stability of its security, and the interest of the accused in not imposing on him a punishment that has no connection to an act he committed, or that lacks evidence of this connection. Therefore, criminal justice must not be separated from its components that guarantee each accused a minimum level of rights that must not be waived or neglected, nor must it compromise the necessity for criminalization to remain linked to the ultimate purposes of penal laws.[2435]

The presumption of innocence is a fixed principle relating to the criminal charge, and extends to the criminal case in all its stages and throughout its procedures. It has become inevitable that it is not permissible to overturn the acquittal except by conclusive evidence that the court arrives at, and from which its belief is formed in order to be able to refute the principle of innocence imposed on a person, in light of the evidence presented before it, which proves every element of the crime, and every fact necessary for its establishment, including criminal intent in both its types if it is required in it, and without that the principle of innocence is not demolished)[2436]

The principle of innocence is related to the criminal charge in terms of proving it, and has nothing to do with the nature or seriousness of the crime that is its subject, nor with the type or extent of its punishment. This principle is inherent in every individual, guaranteeing his protection whether in the influential stages preceding his criminal trial, or during it, and throughout its episodes.[2437]

The presumption of innocence seems more necessary in the field of defense rights, given that the procedural means that the public prosecution has in its possession in the field of proving the crime are supported by huge resources that the accused lacks, and are only balanced by the presumption of innocence to ensure that he will not be convicted of the crime unless the evidence for it is clear of any suspicion that has a basis (Dans la doute, on acquitte). Penal texts may not therefore be interpreted as negating the principle of innocence of the accused by violating them, nor as ending the necessity that evidence of the violation of them be productive and influential. Rather, each accused - relying on this principle - may remain silent "initially", and may indicate "finally" what is considered a reasonable doubt Doute raisonnable surrounding the charge in terms of its proof.[2438]

([2434]) Appeal No. 43943 of 85 Q issued in the session of May 4, 2016 and published in Technical Office Letter No. 67, page No. 470, rule No. 55, Appeal No. 33873 of 84 Q issued in the session of July 29, 2015 and published in Technical Office Letter No. 66, page No. 572, rule No. 79, Appeal No. 3654 of 80 Q issued in the session of January 5, 2012 and published in Technical Office Letter No. 63, page No. 49, rule No. 5, Appeal No. 19803 of 67 Q issued in the session of November 12, 2007 and published in Technical Office Letter No. 58, page No. 679, rule No. 130, Appeal No. 19803 of 67 Q issued in the session of November 12, 2007 and published in Technical Office Letter No. 58 Page No. 679 Rule No. 130.

([2435]) The Supreme Constitutional Court, Case No. 50 of 37 Q issued in the session of March 2, 2019, date of publication March 11, 2019, page No. 34, Case No. 24 of 29 Q issued in the session of May 5, 2018, date of publication May 13, 2018, page No. 36.

([2436]) Supreme Constitutional Court, Case No. 114 of 29 Q issued in the session of January 14, 2017, date of publication January 24, 2017, page 3, Case No. 116 of 29 Q issued in the session of July 25, 2015, date of publication August 2, 2015, Case No. 22 of 29 Q issued in the session of May 9, 2015, date of publication May 20, 2015, Case No. 35 of 30 Q issued in the session of June 1, 2014, date of publication June 9, 2014, Case No. 127 of 30 Q issued in the session of April 6, 2014, date of publication April 20, 2014.

([2437]) The Supreme Constitutional Court, Case No. 26 of 12 Q, issued in the session of October 5, 1996, date of publication October 17, 1996, and published in the first part of the Technical Office Book No. 8, page No. 124, Rule No. 8.

([2438]) The Supreme Constitutional Court, Case No. 29 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1042, rule No. 72.

The origin of innocence is not a legal presumption, as the presumption of innocence is not purely a legal presumption, nor is it one of its forms, since the legal presumption is based on transferring the proof from its original location - represented by the fact that is the source of the claimed right - to another fact close to it and connected to it, and this alternative fact is the one whose proof is considered proof of the first fact by virtue of the law. This is not the case with regard to the innocence assumed by the Constitution, as there is no fact that the Constitution has replaced another fact, and established it as an alternative to it. Rather, the presumption of innocence is based on the nature upon which man was created. He was born free and innocent of sin or disobedience, and it is assumed throughout the stages of his life that the origin of innocence is still latent in him, accompanying him in the actions he commits, until the court of subject matter, with a decisive and irrevocable ruling, overturns this assumption, in light of the evidence presented by the Public Prosecution proving the crime attributed to him in every aspect of it, and with respect to every fact necessary for its establishment, including criminal intent in both its types if it is required therein, and the right of the accused to confront the witnesses presented by the Public Prosecution to prove the crime, and the right to refute their statements and abort the evidence they presented with the evidence of denial that he presents. Without this, the origin of innocence is not demolished, as it is one of the pillars upon which the concept of a fair trial guaranteed by the Constitution is based, and it reflects a principled rule that is in itself It is indisputable, clear as the truth itself, required by procedural legitimacy, and its enforcement is a primary assumption for the administration of criminal justice. The constitution requires it to protect personal freedom in its vital areas, and to provide every individual with security in the face of control, tyranny and prejudice, in a way that prevents the fact that a crime is committed from being considered proven without evidence, and in a way that prevents the legislator from assuming that it is proven by a legal presumption that he creates.[2439]

And since the legal presumptions - even those that are conclusive - are those that the legislator establishes in advance and generalizes after formulating them in light of what is due to occur in practice, and the legislator, by establishing them, seeks to exempt the opponent from proving a specific fact after he has replaced it with something else and established it as an alternative to it, so that the evidence is transferred to it, then if the opponent proves it, this is considered proof of the original fact by virtue of the law. Legal presumptions are thus only indirect proof whose scope of application is originally limited to civil matters. If they extend beyond that to other matters, the issue of their constitutionality becomes determined in light of their infringement on personal freedom and their violation of its components.[2440]

The legislator's introduction of a legal presumption that undermines the presumption of innocence, which infringes on personal freedom, which penal texts represent the most dangerous restrictions on, and which is considered necessary to guarantee against all forms of prejudice and tyranny to protect it, especially in the context of a criminal trial, the fairness of which is considered a condition for its integrity from a constitutional perspective, and an affirmation of the necessity that its reins be in the hands of the court of subject matter alone, so that its judgment in it is not separate from the investigation work that it conducts itself, from which it extracts its conviction of the commission of the alleged crime or its absence.[2441]

([2439]) The Supreme Constitutional Court, Case No. 156 of 34 Q, issued in the session of November 2, 2019, date of publication November 5, 2019, page No. 23.

([2440]) The Supreme Constitutional Court, Case No. 58 of 18 Q, issued in the session of July 5, 1997, date of publication July 19, 1997, and published in the first part of the Technical Office Book No. 8, page No. 731, rule No. 48.

([2441]) The Supreme Constitutional Court, Case No. 29 of 18 Q, issued in the session of January 3, 1998, date of publication January 15, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1042, rule No. 72.

14-1-1 The Legal Basis of the Presumption of Innocence

It is established that the criminal dispute does not seek to establish the state's right to punish except after providing all guarantees to respect the individual freedom of the accused. The state, with its powers through its various apparatuses, undoubtedly has the right to obtain its right to punish the accused of committing the crime by all means and methods. However, the principle of legitimacy that governs the legal state obliges its legislative, executive and judicial apparatuses to respect the general rules set by law to ensure respect for individual freedoms and the life of society.

The basic principle of man is innocence, and he has the right to enjoy his freedom and all his other rights stipulated in the law. Accordingly, the state must respect this freedom and those rights. So how can the state intervene, in defiance of this general principle, to infringe upon his freedom based on its right to punish? The organization of the state, in order to guarantee this freedom and these rights, requires that the recognition of its right to punishment be in the hands of an independent body, which is the judiciary. In order for the problem to be transferred to the judiciary so that it can decide on it with a ruling that cannot be appealed, certain procedures must be taken, which are what is called criminal litigation. In this litigation, the state aims to collect the necessary evidence of the occurrence of the crime and attribute it to the accused, then determine his responsibility for it and impose the appropriate punishment on him.

The presumption of innocence of the accused requires that he be treated as such in all stages of the criminal case, in addition to the stage of evidence before the stage of accusation arises. The seriousness of the crime or the manner in which it occurred is of no importance, as the legal presumption indicating the innocence of the accused is established regardless of the type of crime or the nature of the measures taken to uncover the truth and establish the state’s authority to punish.

It is clear that even under war powers no person may be sentenced to death or restricted in his liberty until he has been confronted with the charges against him, tried and convicted on the basis of solid evidence. If we look at other constitutional texts, we should conclude that there are two types of procedures, civil and military procedures. Military procedures are intended to suit emergency or war conditions, which is referred to as martial law.

Martial law and other exceptional laws must not conflict with the texts and provisions set forth in the constitutions in the assumptions studied in this regard.

If we look at the provisions and texts in the criminal laws in this regard, we find that they guarantee the protection of human rights, as the Penal Code specifically prohibits the violation of the personal freedom of citizens by public authorities, under any form of arrest or arbitrary custody or assault on the sanctity of homes or the violation of the secrets of correspondence or professional secrets and so on. In this regard, there is a clear convergence between the Penal Code when it is committed to the legitimacy of crimes and penalties, and the Criminal Procedure Code when it is committed to procedural legitimacy. The Penal Code protects basic human rights by threatening to punish anyone who violates them, and this means that the Penal Code is bound by the public rights guaranteed by the Constitution. As for the Criminal Procedure Code, it must ensure a balance between the state’s right to obtain evidence of guilt and the accused’s right to prove his innocence, or as it is called equality in arms “Egalité des arues”, or in other words, the basic elements for a fair trial for the accused and his assistance in defending himself must be available, and this means that criminal procedures are bound by respect for the personal freedom guaranteed by the Constitution based on the presumption of innocence.

There may not be a dispute over the rights of the accused, but over what restricts these rights for the public good. There is no dispute that exceptional circumstances may justify restricting these rights from what is followed in normal circumstances, but only to the extent necessary.

According to the principle of legitimacy that governs the legal state, the legislator must ensure that an adequate balance is established between the rights of the state's representative in the accusation (the Public Prosecution) and the rights of the accused, so as to guarantee the other's freedom, all his rights and human dignity. Respecting this principle is necessary and essential to achieve a fair criminal trial. Therefore, the Criminal Procedure Code must regulate the limits within which public authorities can infringe on individual freedoms in order to establish social justice. This law is the law of the honorable, because it specifies the guarantees that ensure the protection of their freedom against control and arbitrariness.

The trend of criminal policy towards protecting society must never reach the point of infringing on the rights and guarantees of the accused. It is inconceivable that there would be a clash between the requirements of social protection and the requirements of human protection, because depriving the citizen of his human rights means stripping him of the means he needs to prove his existence and develop his personality, which hinders his adaptation to the life of society. Here it is noted that the protection of human rights is not viewed as natural rights, but rather is focused on two foundations:

Protecting human rights represents a social value that is integrated into the general feeling of the members of society, and this feeling must be taken into consideration in order to preserve the social entity.

Respecting human rights is the means to ensure its true response to society, and this response is not conceivable unless its means are consistent with the traditions and principles of society.

The principle of innocence is one of the principles recognized by all legal systems. If society has an interest in punishing criminals, then the freedoms of the innocent cannot be infringed upon. This society must defend these freedoms and guarantee them until there is complete evidence of the commission of the crime. Then the infringement of freedom is achieved as a punishment determined by the law. The freedom of the innocent cannot be diminished, because this freedom is a basic human right and has been guaranteed by the Universal Declaration of Human Rights. The innocence of a person is the principle, and his conviction is the exception. Any infringement of freedom can only occur after the conviction has been established and after innocence has been refuted by evidence of conviction.

This has some consequences, including placing the burden of proof on the Public Prosecution and interpreting doubt in favor of the accused.

This principle requires that it be protected by certain guarantees that ensure its respect and support so that it does not become a mere piece of evidence devoid of any positive content that guarantees human freedom.

A person enjoys complete freedom until his conviction is decided, which requires that he be surrounded by certain guarantees that stand as a barrier against the arbitrariness of the legislator or the state's agencies with regard to the measures they take that affect individual freedoms. All measures taken in the name of defending society and in order to protect the interests of the state may not extend beyond the necessary scope to which they must be confined, and they may not affect a general principle of the legal system, which is the innocence of a person until his conviction is decided.

This principle means that the accused must be treated as innocent as long as his conviction has not been proven or decided by a criminal judgment. This innocent treatment cannot be provided

unless it is confirmed by certain guarantees that ensure its observance. In light of these guarantees, the state authorities do not act as instruments of conviction or as devices for mere accusation, but rather they become tools of social criminal justice whose mission is to guarantee and ensure freedoms.

All guarantees regulated by law aim to achieve personal freedom that confirms this right in the face of public authority. They are a living expression of the power of the law in resisting the deviation of public authority, and through them the rule of law is confirmed.

The innocence of a human being requires that he be surrounded by important guarantees when it is necessary to infringe upon his freedom. These guarantees ensure that the infringement upon his freedom is restricted to the narrowest limits and that this infringement appears as an exception. These restrictions fall into two types:

An objective type, which is represented by the objective reasons for infringing on freedom;

Formal type, which is represented by the substantive forms in which all procedures for infringing freedom are emptied.

As for the objective reasons, they all come back to one meaning that justifies departing from the original innocence of man, and this meaning is represented in the availability of strong indications that cast doubt on this innocence. Arresting and searching a person and his residence is not legally valid unless there is sufficient evidence to accuse the person of committing the crime, which casts doubt on the general principle of his innocence. This requires that it is not permissible to resort to it except to the extent necessary to uncover the truth.

As for the essential forms required by law when freedoms are infringed upon, the law requires these forms as a guarantee for the accused in order to balance the state's right to punishment and the accused's right to freedom.

Formalism takes two forms:

A fixed form that takes the form of a written statement, such as the date, signature, and reasons for warrants to search a residence or monitor correspondence and conversations;

Animated form: It takes a specific form during which procedural actions must be carried out, and appears either in the form of specific dates during which procedural actions must be carried out, such as pretrial detention, or in the form of specific facts that must occur during procedural actions, such as the presence of the accused during the search and all investigation procedures, etc.

The principle of innocence of the accused refers to a temporary and ambiguous state that the accused goes through, before his innocence is confirmed of what is attributed to him and before his conviction is verified. This principle is considered a fundamental principle in the democratic system of criminal procedures, and one of the assumptions of a fair trial. The House of Lords has described it as a "golden thread in the fabric of criminal law."[2442]

Regardless of the difference in laws in placing the principle of innocence in the hierarchical structure of the legal system, it is considered a human right, and a basic right that receives constitutional protection. The Universal Declaration of Human Rights of 1948 stipulated that everyone charged with a crime is presumed innocent until proven guilty according to law in a public trial at which he has been given the guarantees to defend himself (11/1). This principle was confirmed by the International Covenant on Civil and Political Rights, which was unanimously approved by the United Nations General Assembly in 1966 (Article 14), as

---

([2442]) J. Spencer، "Le droit anglais" Revue International de droit pénal، 1992 (vol. 1 et 2) " La prevue en procédure pénal comprée، p. 83 et 90..

stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 6). It was confirmed by the Human and People's Rights Project in the Arab World, which was developed by the Conference of Arab Experts, which was held at the International Institute for Higher Studies in Criminal Sciences in Syracuse in December 1985, as it stipulated in (Article 5/2) that the accused is innocent until proven guilty by a judicial ruling issued by a competent court. This principle is considered a basic principle to guarantee the personal freedom of the accused, and it requires that every person accused of a crime, no matter how serious, must be treated As an innocent person until proven guilty by a final judicial ruling, this principle was confirmed by the Egyptian Constitution issued in 2014 (Article 96/1), the Tunisian Constitution (Chapter No. 12), the Syrian Constitution (Article 10/1), and the Libyan Constitution (Article 15).

This principle is consistent with the principles of the pure Islamic Sharia, as it was mentioned in the noble hadith: "Avert the punishments from Muslims as much as you can. If you find a way out for the Muslim, then let him go, for it is better for the imam to make a mistake in forgiveness than to make a mistake in punishment."

The principle of innocence is considered a fundamental pillar of constitutional legitimacy in the Code of Criminal Procedure. This pillar is consistent with the first pillar of constitutional legitimacy in the Penal Code, which is the legitimacy of crimes and punishments. The application of the rule "no crime or punishment without a legal text" inevitably assumes another rule, which is the presumption of innocence in the accused until his guilt is proven in accordance with the law. Some people, when commenting on the European Convention on Human Rights, were keen to explicitly indicate that the true meaning of the rule "legitimacy of crimes and punishments" is to guarantee the principle of innocence for every accused person.[2443]

The conference held by the International Association of Jurists in New Delhi in 1959 confirmed that the application of the principle of legality involves recognizing the rule that the accused is presumed innocent until proven guilty.[2444]

This meaning is what the Egyptian Court of Cassation expressed when it said: [Justice is not harmed by a criminal escaping punishment as much as it is harmed by the infringement on people's freedoms and their arrest without justification] [2445]

([2443]) KAREL VASAK، La convention Européenne droits de l'homme، Paris 1964، p. 48-49..

([2444]) Vasak، op. p. 18..

([2445]) Appeal No. 50968 of Judicial Year 85, issued on February 24, 2018 (unpublished), Appeal No. 32432 of Judicial Year 85, issued on February 11, 2017 (unpublished), Appeal No. 29959 of Judicial Year 84, issued on March 12, 2016 (unpublished), Appeal No. 23705 of Judicial Year 84, issued on March 8, 2016 (unpublished), Appeal No. 6442 of Judicial Year 82, issued on April 4, 2013, and published in the Official Technical Office, Vol. 64, p. 458, Rule No. 60, Appeal No. 5232 of Judicial Year 82, issued on January 13, 2013 (unpublished), Appeal No. 4662 of Judicial Year 80, issued on November 19, 2011 (unpublished), Appeal No. 7290 of Judicial Year 79, issued on July 7, 2011 (unpublished), Appeal No. 5012 of Judicial Year 79, issued on May 4, 2011 (unpublished), Appeal No. 8583 of Judicial Year 80, issued on March 27, 2011 (unpublished), Appeal No. 45353 of Judicial Year 73, issued on January 24, 2011, and published in the Official Technical Office, Vol. 62, p. 54, Rule No. 9, Appeal No. 6959 of Judicial Year 80, issued on October 19, 2010 (unpublished), Appeal No. 32412 of Judicial Year 73, issued on March 7, 2010 (unpublished), Appeal No. 32442 of Judicial Year 73, issued on March 7, 2010 (unpublished), Appeal No. 498 of Judicial Year 79, issued on September 29, 2009 (unpublished), Appeal No. 12457 of Judicial Year 72, issued on April 19, 2009, and published in the Official Technical Office, Vol. 60, p. 223, Rule No. 29, Appeal No. 27816 of Judicial Year 70, issued on November 19, 2007 (unpublished), Appeal No. 77606 of Judicial Year 76, issued on March 28, 2007 (unpublished), Appeal No. 15766 of Judicial Year 76, issued on February 12, 2007, and published in the Official Technical Office, Vol. 58, p. 151, Rule No. 31, Appeal No. 16583 of Judicial Year 70, issued on February 22, 2006, and published in the Official Technical Office, Vol. 57, p. 300, Rule No. 33, Appeal No. 11544 of Judicial Year 75, issued on February 6, 2006 (unpublished), Appeal No. 60176 of Judicial Year 73, issued on June 2, 2005 (unpublished), Appeal No. 63297 of Judicial Year 73, issued on May 3, 2005, and published in the Official Technical Office, Vol. 56, p. 271, Rule No. 41, Appeal No. 26503 of Judicial Year 64, issued on July 26, 2004 (unpublished), Appeal No. 15692 of Judicial Year 70, issued on April 21, 2004 (unpublished), Appeal No. 26585 of Judicial Year 68, issued on March 5, 2002,

Basic procedural guarantees must be ensured at all stages of the proceedings, such as the presumption of innocence, the right to be informed of the charges, the right to remain silent, the right to the services of a lawyer, the right to have a parent or guardian present, the right to confront and examine witnesses, and the right to appeal to a higher authority.

14-1-2 The Nature of the Presumption of Innocence

Some have argued that "the default of the accused is innocence" is considered a simple legal presumption, and the presumption is an inference of the unknown from the known, and the known is that the default of things is permissibility unless the opposite is decided by a judicial ruling and based on a legal text that the crime occurred and the punishment is deserved, and the unknown inferred from this default is the innocence of the person until his conviction is proven by a judicial ruling.[2446]

However, the Supreme Constitutional Court concluded that the presumption of innocence is not purely a legal presumption, nor is it one of its forms, on the basis that the legal presumption is based on transferring the proof from its original location - represented by the fact that is the source of the claimed right - to another fact that is close to it and connected to it, and this alternative fact is the one whose proof is considered proof of the first fact by virtue of the law, and this is not the case with regard to the innocence assumed by the constitution, as there is no fact that the constitution has replaced another fact and established it as an alternative to it, but rather the presumption of innocence is based on the nature upon which man is created, as he was born free and innocent of sin or disobedience, and it is assumed throughout the stages of his life that the origin of innocence is still latent in him, accompanying him in what he does of actions until the court of subject matter overturns this presumption with a decisive ruling - from which there is no return - in light of the evidence presented by the Public Prosecution proving

---

and published in the Official Technical Office, Vol. 53, p. 366, Rule No. 65, Appeal No. 27945 of Judicial Year 67, issued on April 16, 2000 (unpublished), Appeal No. 516 of Judicial Year 65, issued on January 6, 1998, and published in the Official Technical Office, Vol. 49, Part I, p. 58, Rule No. 6, Appeal No. 29390 of Judicial Year 59, issued on November 19, 1997, and published in the Official Technical Office, Vol. 48, Part I, p. 1281, Rule No. 194, Appeal No. 3294 of Judicial Year 63, issued on February 15, 1995 (unpublished), Appeal No. 179 of Judicial Year 60, issued on February 19, 1991, and published in the Official Technical Office, Vol. 42, Part I, p. 372, Rule No. 50, Appeal No. 8280 of Judicial Year 58, issued on May 31, 1990, and published in the Official Technical Office, Vol. 41, Part I, p. 792, Rule No. 137, Appeal No. 11226 of Judicial Year 59, issued on March 11, 1990, and published in the Official Technical Office, Vol. 41, Part I, p. 519, Rule No. 86, Appeal No. 15008 of Judicial Year 59, issued on December 21, 1989, and published in the Official Technical Office, Vol. 40, Part I, p. 1274, Rule No. 205, Appeal No. 3055 of Judicial Year 58, issued on October 20, 1988, and published in the Official Technical Office, Vol. 39, Part I, p. 930, Rule No. 140, Appeal No. 3298 of Judicial Year 56, issued on October 21, 1986, and published in the Official Technical Office, Vol. 37, Part I, p. 788, Rule No. 151, Appeal No. 6391 of Judicial Year 54, issued on March 19, 1986, and published in the Official Technical Office, Vol. 37, Part I, p. 428, Rule No. 87, Appeal No. 2913 of Judicial Year 54, issued on April 3, 1985, and published in the Official Technical Office, Vol. 36, Part I, p. 524, Rule No. 88, Appeal No. 1230 of Judicial Year 54, issued on March 28, 1985, and published in the Official Technical Office, Vol. 36, Part I, p. 488, Rule No. 81, Appeal No. 1207 of Judicial Year 54, issued on October 8, 1984, and published in the Official Technical Office, Vol. 35, Part I, p. 632, Rule No. 139, Appeal No. 6097 of Judicial Year 53, issued on February 15, 1984, and published in the Official Technical Office, Vol. 35, Part I, p. 153, Rule No. 31, Appeal No. 411 of Judicial Year 50, issued on June 9, 1980, and published in the Official Technical Office, Vol. 31, Part I, p. 737, Rule No. 142, Appeal No. 1872 of Judicial Year 53, issued on November 29, 1973, and published in the Official Technical Office, Vol. 34, Part I, p. 1010, Rule No. 204, Appeal No. 174 of Judicial Year 43, issued on April 9, 1973, and published in the Official Technical Office, Vol. 24, Part II, p. 506, Rule No. 105, Appeal No. 1172 of Judicial Year 36, issued on January 31, 1967, and published in the Official Technical Office, Vol. 18, Part I, p. 128, Rule No. 24, Appeal No. 1209 of Judicial Year 34, issued on January 25, 1965, and published in the Official Technical Office, Vol. 16, Part I, p. 87, Rule No. 21, Appeal No. 1030 of Judicial Year 28, issued on October 21, 1958, and published in the Official Technical Office, Vol. 9, Part III, p. 839, Rule No. 206.

([2446]) ESSAID، La presumption d'innocence، Thése، op، cit. ، pp. 73 et 74..

the crime attributed to him in every aspect of its elements, and with regard to every fact necessary for its establishment.[2447]

The Egyptian Constitution of 2014 confirmed this principle, as Article 96 of it stipulated that: "The accused is innocent until proven guilty in a fair legal trial, in which he is guaranteed the right to defend himself." This principle was recognized by both the Anglo-Saxon legal system and the Latin legal system.[2448]

The factual evidence presented by the Public Prosecution, and through the procedures undertaken by the criminal judge by virtue of his positive role in proving the truth, is not sufficient to refute this principle. Rather, this principle remains in place despite the available evidence presented to refute it, until a final judicial ruling is issued convicting the accused, as the law considers a final judicial ruling to be a title of truth that is not open to debate.

With this ruling, the principle of innocence is extinguished and there is a conclusive presumption of the truth of what the ruling has decided. This conclusive presumption alone is what is suitable for nullifying the principle of innocence in the accused if the final ruling is a conviction. Therefore, it is not sufficient to refute this principle merely by other evidence, whether it is legal evidence - simple or conclusive - or judicial. This general principle extends its effects to both proving the crime and proving the reasons for permissibility or impediments to liability.

The conviction of the accused depends on the absence of permissibility and the absence of obstacles to liability. The Public Prosecution, in the context of proof, must present evidence that refutes the principle of innocence, which can only be established through a final judicial ruling proving the occurrence of the crime and attributing it to the accused, while establishing his responsibility and the absence of any of the reasons for permissibility.[2449]

Since the principle of innocence is nothing but an affirmation of a general principle, which is the freedom of the accused, it entails the necessity of protecting all rights and freedoms, without which the principle of innocence loses its meaning, because freedom cannot be elevated through violations of the rights and freedoms that form an integrated unit, which is human dignity. The principle of innocence has no meaning if the trial is conducted through procedures in which the rights of defense are not respected. This is what was realized by the recommendations of the preliminary session of the 15th International Conference on Criminal Law held in Spain in May 1992, which discussed the subject of movements to reform criminal procedures and protect human rights. This meaning appeared clearly in what was stipulated in (Article 96/1) of the Egyptian Constitution, which required that the accused's conviction be proven in a legal trial in which he is guaranteed the guarantees of his defense. The implication of this is that a (legal) trial, i.e. a fair one - i.e. one in which all the rights of the accused are respected - is a necessary condition for proving the conviction that negates the principle of innocence. Therefore, the principle is not negated by merely referring the accused to trial, but rather its negation depends on the issuance of a final judgment. (Condemning).[2450]

Since the principle of innocence cannot be achieved without this ruling, it is not permissible to impose other penalties as an alternative to filing a lawsuit before the court, such as the obligation to pay a specific fine before the conviction is proven by a ruling, or the obligation to pay the expenses of the lawsuit procedures before the trial, or the imposition of an

---

([2447]) The Supreme Constitutional Court, Case No. 25 of 16 Q, issued in the session of July 3, 1995, date of publication July 20, 1995, and published in the first part of the Technical Office Book No. 7, page No. 45, rule No. 2.

([2448]) See the report on Common law countries in the International Journal of Criminal Law, 64 (1992), pp. 33, 55.

([2449]) See the recommendations of the Toled Symposium in Spain in May 1992 in preparation for the Fifteenth International Congress on Criminal Law to be held in Brazil in 1994.

([2450] Article 96 of the Constitution of the Arab Republic of Egypt, amended in 2014.

administrative penalty without proof of conviction in accordance with the rules stipulated in the disciplinary law.

Literally speaking, only those accused of a crime enjoy the presumption of innocence. However, as European courts have noted after some hesitation, the presumption of innocence can be invoked against any person against whom a state agency has brought an accusation. The presumption of innocence is not limited to criminal litigation procedures when a criminal case is initiated, but is also reflected in the investigation procedures, disciplinary trial procedures, and more than that, the Human Rights Committee in Strasbourg confirmed in 1967 that it is not permissible, in a press conference organized by the Minister of the Interior following the occurrence of a murder, to issue a declaration to public opinion that a specific person in his name has incited the commission of the crime, because this declaration entails a violation of the presumption of innocence.

On the other hand, a final judgment of conviction alone is sufficient to nullify the principle of innocence. However, the amount or type of punishment is not related to this principle. After the conviction is proven, the judge may derive elements from the criminal's personality to estimate the punishment, which are elements that are not suitable for proving the conviction in the first place. The mere bad reputation of the accused or his previous commission of the crime is not suitable as evidence for convicting him of the crime, even if it is suitable as an element in estimating the punishment. The European Committee of Human Rights, which is responsible for implementing the European Convention on Human Rights, has decided that the presumption of innocence - from a legal perspective - does not stand in the way of increasing the punishment at the appeal stage. The Supreme Constitutional Court in Egypt has also confirmed that the presumption of the accused's innocence represents a fixed principle related to the criminal charge in terms of proving it and not the type of punishment prescribed for it.

However, it has been observed that if the principle of innocence is to be respected literally, criminal proceedings will become impossible. Therefore, the practical, realistic content of this principle depends on the guarantees of rights and freedoms that surround the application of this presumption.[2451]

The principle of innocence means that the accused must be treated in the same way as innocent people, and therefore the principle is that he enjoys all the rights and freedoms guaranteed by the constitution and regulated by law. However, since the provisions of the constitution are integrated and interconnected, and the constitution, as it guaranteed personal freedom and all human rights, also guaranteed criminalization and punishment (Article 95 of the constitution) and guaranteed trial for crimes when it stipulated that no punishment shall be imposed except by a judicial ruling (Article 95 of the constitution), constitutional legitimacy in criminal procedures requires a balance between respecting basic rights and freedoms and guaranteeing the procedures taken against the accused.[2452]

The two matters must be reconciled and respected together without compromising one at the expense of the other. This reconciliation is achieved by relying on the principle of innocence in determining the legal framework within which the accused's exercise of his personal freedom and other human rights is regulated in light of the requirements of the criminal dispute. This legal framework is represented in the form of guarantees that ensure the protection of personal freedom and other human rights when taking any criminal action against the accused.

([2451]) Stefan Trechsel‹ The protection of human rights in criminal.
Procedures‹ Rev. int droit penal‹ 1978‹ p. 554 et 555..
([2452] Article 95 of the Constitution of the Arab Republic of Egypt, amended in 2014.

The law regulates the use of the accused's personal freedom within the criminal dispute in light of the objectives of the criminal dispute. This legal regulation must not exceed the principle of innocence by surrounding the procedures permitted by the law with certain guarantees that ensure the protection of the accused's rights and freedoms, which he exercises as an innocent person.

Every criminal procedure permitted by law must be bound by these guarantees to avoid danger in its implementation, otherwise it would be contrary to the principle of innocence. The criminal procedure stipulated by law without being surrounded by these guarantees would be an arbitrary assault and contrary to the principle of innocence, which is considered an assault on constitutional legitimacy.

Criminal procedures should not be taken without constitutional legitimacy, as this legitimacy is based on the principle of innocence, and this principle, as we have explained, determines the scope of any criminal procedure through the guarantees that restrict it. In this regard, there is a convergence between the Penal Code when it adheres to the legitimacy of crimes and penalties, and the Code of Procedure when it adheres to the principle of innocence. The former, in what it decides of crimes and penalties, is bound by respect for the public freedoms guaranteed by the Constitution. It is not permissible to criminalize any act that is considered an exercise of one of these freedoms, such as freedom of contract, freedom of assembly, freedom to form associations and unions, and freedom of the press. Likewise, the Code of Criminal Procedure, in what it decides of procedures for criminal litigation, is bound by respect for the guarantees guaranteed by the Constitution for rights and freedoms, based on the principle of innocence. It is not permissible to allow any criminal procedure to be initiated unless it is surrounded by these guarantees.

The principle of innocence, as a rule governing criminal procedures, requires that the accused not be described with any description of guilt during the course of the criminal dispute. This description does not change except when a conviction is issued. A fair trial is subject to the principle of confrontation, so the accused is allowed to confront the evidence attributed to him and direct his defense towards it at this stage. In light of the principle of innocence, the accused is not obligated to prove his innocence, but rather the Public Prosecution, as a representative of the prosecution, must present this evidence.

The principle of innocence as a rule of judgment requires that the court interpret doubt in favour of the accused, and that it not rule to convict him except on the basis of complete certainty and not on mere probability. This principle applies to the court alone, unlike the principle of innocence as a rule of criminal procedure, which addresses all parties that conduct all stages of the criminal dispute (including the court).

14-2 Within the Framework of International Conventions

A fundamental principle of the right to a fair trial is that anyone charged with a criminal offence is presumed innocent until proven guilty according to law after a fair trial.

14-2-1 Presumption of Innocence

Everyone has the right to be presumed innocent and to be treated as innocent at trial unless and until he has been found guilty according to law in a trial that conforms at least to the minimum essential requirements of justice.[2453]

([2453]) Article 11 of the Universal Declaration, Article 14/2 of the International Covenant, Article 20(b)(1) of the Convention on the Rights of the Child, Article 18(2) of the Migrant Workers Convention, Article 7(1)(b) of the African Charter, Article 8(2) of the American Convention, Article 16 of the Arab Charter, Article 6(2) of the European Convention, Principle 36(1) of

The right to the presumption of innocence is a rule of customary international law – and applies at all times and in all circumstances. It may not be subject to reservations in treaties or lawfully restricted in time of war or other public emergency.[2454]

It is an essential element of the right to fair criminal proceedings and the rule of law.

The right to the presumption of innocence applies to suspects even before they are formally charged with any crime and brought to trial, and the right remains in effect until the conviction is upheld after exhausting all appeals.

Criminal procedures and their implementation in each case, and the treatment of the accused, must respect the principle of the presumption of innocence.

14-2-2 Burden and standard of proof

Presuming the accused innocent until proven guilty means that the burden of proof lies with the prosecution. Unless guilt is proven beyond a reasonable doubt, no court may convict. If there are reasonable grounds for doubt, the accused must be acquitted.[2455]

Although the burden of proof or standard of proof is not expressly set out in the International Covenant or in regional human rights treaties, the Human Rights Committee, the Inter-American Court, the European Court and the African Commission have all indicated that the presumption of innocence requires the prosecution to prove guilt beyond reasonable doubt. According to the Human Rights Committee, the presumption of innocence “imposes on the prosecution the burden of proving the charge and ensures that guilt is not presumed until the charge is proved beyond reasonable doubt”.[2456]

The Special Tribunal for the former Yugoslavia has explained that this standard “requires that the truth-seeker be satisfied that there is no reasonable explanation for the evidence other than that the accused is guilty”.[2457]

The African Commission concluded that the proceedings against Ken Saro-Wiwa and his co-accused violated the principle of presumption of innocence. The court that conducted the trial acknowledged that there was no direct evidence linking the defendants to the crimes with which they were charged, but convicted them on the basis that none of them could prove their innocence. Moreover, before and during the trial, Nigerian government representatives had declared, in press conferences and at the United Nations, that the accused were guilty.[2458]

In accordance with the principle of presumption of innocence, the rules of evidence and the method of conducting the trial must ensure that the prosecution bears the burden of proof at all stages of the trial.

---

the Body of Principles, Principle 26 of the American Declaration, Article 66 of the Rome Statute, Article 20(3) of the Statute of the International Criminal Court for Rwanda, and Article 21(3) of the Statute of the International Criminal Court for the Former Yugoslavia.

([2454]) Human Rights Committee General Comment 24, § 8, General Comment 29, § 11 and 16, and General Comment § 6, 32; see ICRC Study on Customary International Humanitarian Law, vol. 1, Rule 100, pp. 357-358.

([2455]) Section N(6)(e) of the Principles on Fair Trial in Africa, Article 66(2) and (3) of the Rome Statute, Rule 87(a) of the Rwanda Tribunal Rules, and Rule 87(a) of the Yugoslavia Tribunal Rules.

([2456]) General Comment 32 of the Human Rights Committee, § 30; European Court: Barbera, Messegüe and Gabardo v. Spain (10590)/83), § 77 (1988, Telfner v. Austria (33501)/96), § 15 (2001); see Ricardo Cañes v. Paraguay, Inter-American Court § 153-§ 154 (2004).

([2457]) Prosecutor v. Milan Martić (IT-95-11-A), Appeals Chamber of the International Tribunal for the Former Yugoslavia, (8 October 2008) §55 and §61.

([2458]) PEN International, Constitutional Rights Project, Rights International on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria 137/94 et al)), African Commission, § 9 (1998).

In some countries, the law requires that the accused (not the prosecution) state the elements of certain crimes. For example, the accused may be required to explain the reasons for his presence in a particular place (i.e. at or near the scene of the crime), or his possession of certain items (such as stolen, smuggled or prohibited goods). When these conditions are included in the text of the law, they are called "legal presumptions" or "presumptions of law and fact." The validity of these procedures has been challenged because they unacceptably place the burden of proof on the accused rather than the prosecution, in violation of the principle of presumption of innocence. In order to meet the requirements of the principle of presumption of innocence guaranteed in international law, it must be specified in law. It must also be rebuttable, preserving the accused's right to defense.[2459]

The Human Rights Committee has raised concerns about legal presumptions in laws criminalizing drug possession (for example where possession of a specific quantity leads to a presumption that it is for the purpose of supplying to others) and in counter-terrorism laws (including those requiring the accused to prove the absence of intent).[2460]

The American Committee considers that a criminal charge should not be brought on the basis of mere suspicion, or mere circumstantial evidence, as this places the burden of proof on the accused rather than the prosecution, in violation of the principle of presumption of innocence.[2461]

The Human Rights Committee has found that one element of Sri Lanka's Terrorism Act violates the presumption of innocence. Rather than requiring the prosecution to prove that a confession was voluntary, the law requires the accused to prove that his confession - which he claims was extracted under torture - was not voluntary and should therefore be excluded from evidence.[2462]

The Rome Statute prohibits any transfer of the burden of proof to the accused or any imposition of the burden of proof on him.)[2463](.

14-2-3 Measures to protect the right to presumption of innocence

If a decision is made to detain a person pending trial, and for how long, this detention must be consistent with the principle of the presumption of innocence.[2464]

The treatment of persons held in pre-trial detention and the conditions of their detention must be consistent with the presumption of innocence.[2465]

The Human Rights Committee has stressed that denial of bail or length of pre-trial detention should not be considered as indicators of guilt. It considered that imposing the maximum period of pre-trial detention by linking it to the penalty required for the alleged offence could constitute

---

([2459]) Section N(6)(e)(3) of the Principles on Fair Trial in Africa, Salabiako v. France (10519)/83), European Court (1988) §28-§30.

([2460]) Concluding observations of the Human Rights Committee: New Zealand, UN Doc §17 (2010) CCPR/C/NZL/CO/5 (for further clarification see. UN Doc CCPR/C/NZL/Q/5, question 19, p. 3), Australia, / UN Doc. CCPR/C/AUS. §11 (2009) CO/5.

([2461]) Annual Report of the Inter-American Commission: Peru, OEA/Ser. L/V/II. 95, doc. 7 rev Ch. V, (1996), Section §4, 8.

([2462]) (See Chapter 17 on exclusion of evidence), Singarasa v. Sri Lanka, Human Rights Committee, UN Doc. 4/ §7 (2004) CCPR/C/81/D/1033/2001.

([2463]) Article 67(l)(1) of the Rome Statute.

([2464]) Principle 3(2) of the Principles on Persons Deprived of Liberty in the Americas, and Rule 3/1 of the Council of Europe Rules on Pre-trial Detention, see General Comment 32 of the Human Rights Committee, § 30; Van der Tang v. Spain (19382)/92), European Court § 55 (1995); Pinheiro and Dos Santos v. Uruguay (11). 506), USC §65-§66 (2002).

([2465]) Principle 36(1) of the Body of Principles, and Rule 84/2 of the Standard Minimum Rules; see Rule 95/1 of the European Prison Rules, Special Rapporteur on human rights and counter-terrorism, Spain, §24-§25 (2008) UN Doc. A/HRC/10/3/Add. 2; see Ladonna v. Slovakia (02/31827) ECtHR §66-§72 (2011).

a violation of the presumption of innocence, as well as the right to a trial within a reasonable time or release.[2466]

It also concluded that excessive pre-trial detention constituted a violation of the presumption of innocence.[2467]

Similarly, the Inter-American Court has made clear that pretrial detention that is disproportionately long, or without adequate justification, can constitute violations of the presumption of innocence, as it "tantamounts to a presumption of judgment" before trial. She stressed that pre-trial detention is only a preventive measure, not a punitive one; it must not exceed the strict limits necessary to ensure that the detained person does not obstruct the investigation or evade justice.[2468]

The presumption of innocence requires that judges and juries have no prior judgment in any case they are hearing.[2469]

It means that the authorities, including prosecutors, police and government officials, may not make any statements suggesting an opinion condemning the accused before the criminal proceedings are completed, or after a decision of acquittal has been issued.[2470]

It also means that the authorities have a duty to discourage the media from undermining the integrity of a criminal trial by issuing prejudgments or influencing the outcome of the trial, in a manner consistent with the right to freedom of expression and the right of the public to be informed of the proceedings of the trial.[2471]

Informing the public that a criminal investigation is underway, mentioning the suspect's name in this context, or saying that the suspect has been arrested does not violate the presumption of innocence, as long as the person is not suggested to be guilty.

The European Court has made it clear that a clear distinction must be drawn between stating that a person is suspected of a criminal offence, which is acceptable, and declaring that this person has committed a crime, which, in the absence of a final conviction, constitutes a violation of the presumption of innocence.[2472]

The principle of presumption of innocence must be taken as the basis on which the trial proceeds. Judges must therefore conduct the trial without having any preconceived opinion as to the guilt or innocence of the accused before them and must ensure that the trial is conducted in accordance with this principle.

Accordingly, the Human Rights Committee found that the presumption of innocence had been violated in a case where the trial judge asked the prosecution a number of preliminary

---

([2466]) General Comment 32 of the Human Rights Committee, §30; Human Rights Committee, Italy, §14 (2006) UN Doc. CCPR/C/ITA/CO/5..

([2467]) Cagas et al. v. Philippines, Human Rights Committee, UN Doc. 3/ §7 (2001) CCPR/C/73/D/788/1997..

([2468]) Inter-American Court: Chaparro Alvarez and Lapo Iñiguez v. Ecuador, §145-§146 (2007); Tibi v. Ecuador, §189 (2004); Suarez-Rosero v. Ecuador, §77-§78 (1997); see Inter-American Commission, Report on Terrorism and Human Rights (2002), section 3(d)(1)(A), §223.

([2469]) Telfner v. Austria (33501)/96), European Court §15 (2001) and §19-§20.

([2470]) Section N(6)(e)(ii) of the Principles on Fair Trial in Africa.

([2471]) General Comment 32 of the Human Rights Committee, §30; Human Rights Committee: Gridin v. Russia, 1997/5/ §§3 (2000) UN Doc. CCPR/C/69/D/770 and 8/3, Ngo v. Cameroon, 2005/2009) UN Doc. CCPR/C/96/D/1397) 6/ §7; Law Office of Ghazi Suleiman v. Sudan (222)/98 and 229/99), African Commission § § 54 (2003) and 56; Laurie Berenson-Mejia v. Peru, Inter-American Court (161- § 158 (2004); European Court: G. C. P §54-§61 (2011), (03/20899) v Romania and 46; Nestak v Slovakia §88-§91 (2007), (01/65559); CERD General Recommendation 31, §29; see Papon v France (No. 2) (54210)/00), European Court §6 (2001) (d).

([2472]) Kraus v. Switzerland, (7986)/77), European Commission decision § 3 (2006, European Court: Fatahlaev v. Azerbaijan (40984)/07), (2010) § 160-§ 163, Khodzhin and Others v. Russia (13470)/02) § 93-§ 97 (2008).

questions, refused to allow several defense witnesses to testify regarding the accused's alibi, and where senior officials made widely disseminated public statements portraying the accused as guilty.[2473]

The right not to be compelled to incriminate oneself or to confess guilt, and the related right to remain silent, are rooted in the principle of the presumption of innocence. It was found that allowing confessions extracted under torture or other ill-treatment, or under duress, to be admitted into evidence constituted a violation of the presumption of innocence.[2474]

Care must be taken to ensure that the accused is not surrounded by signs suggesting guilt during the trial, which may affect the presumption of his innocence. These include placing him in a cage in the courtroom, shackling his hands or feet with handcuffs or shackles, forcing him to wear prison clothes in the courtroom, or shaving his head before sending him to court in countries where procedures require shaving prisoners' hair after they are convicted.[2475]

Low rates of acquittal in criminal cases can raise doubts about the extent to which the principle of presumption of innocence is respected.[2476]

14-2-4 After acquittal

If a person is acquitted of a criminal charge, by a final judgment of a court (including on procedural grounds such as the expiry of the time limit for prosecution), this judgment becomes binding on all official authorities. Therefore, public authorities, particularly the courts, the public prosecution and the police, must refrain from giving any indication that this person is likely to be guilty, in order to avoid violating the principle of the presumption of innocence, and out of respect for the court's judgment and the rule of law.[2477]

The European Court found that the presumption of innocence had been violated after the accused had been acquitted or the proceedings had been discontinued, when the courts expressed doubts about his innocence in their explanation of why they had refused to grant him compensation for the period he had spent in pre-trial detention.[2478]

The legal systems of some countries separate criminal and non-criminal (civil) justice. Therefore, a judgment of acquittal issued against a person in a criminal case does not prevent him from being sued in a civil case based on the same facts.[2479]

But using a different (lower) standard of proof. However, decisions in such cases must respect the presumption of innocence and must not entail criminal consequences for a person who has previously been acquitted of a criminal charge.[2480]

([2473]) Larrañaga v. Philippines, Human Rights Committee, / UN Doc. CCPR. 4/ §7 (2006) C/87/D/1421/2005.

([2474]) Inter-American Commission: Alfonso Martin del Campo Dodd v. Mexico §45-§63 (2009),(12). 228) and 76, Manriquez vs. Mexico (11). 509)، (1999). §85.

([2475]) See Rule 17(3) of the Standard Minimum Rules, Rule 97/2 of the European Prison Rules, General Comment 32 of the Human Rights Committee, §30; Special Rapporteur on the independence of judges and lawyers: Russian Federation, /41/UN Doc. A/HRC/11 §37 (2009) Add. 2 (1); see European Court: Samoila and Sionka v. Romania (33065)/2003), (100- § 99 (2008, Ramishvili and Kohridze v. Georgia (174)/06), (2009) § 94- § 120 and § 132.

([2476]) See Special Rapporteur on the independence of judges and lawyers: Russian Federation, §37 (2009) UN Doc. A/HRC/11/41/Add. 2 (1)..

([2477]) See Allen v. United Kingdom (25424)/09 ECJ Grand Chamber §103 (2013).

([2478]) European Court: Scanina v. Austria (13126)/87, (1993) § 31- § 30, Assan Rochetti v. Austria (28389). 95), (32- § § 31 (2000, Tindam v. Spain (25720)/05), (41- § § 35 (2010); see European Court: Geerings v. Netherlands (30810)/03), § 41-§ 51 (2007), Minelli v. Switzerland (79/8660), (1983), Hammern v. Norway (30287)/96), § 47-§ 49 (2003).

([2479]) X. v Austria, (81/9295), European Commission decision (1982).

([2480]) See European Court: Allen v. United Kingdom (25424)/09) Grand Chamber (2003) §101 and §123, Ringvold v. Norway (34964)/97). §38 (2003).

Chapter Fifteen: The Principle of Legality of Crime and Punishment

15-1 Within the Framework of Egyptian Law

This principle is based on two basic pillars: protecting personal freedom and protecting the public interest.

In terms of protecting personal freedom, this principle sets clear limits for individuals on criminal acts before they are committed, through clear, specific texts for everything that is lawful or unlawful before they are committed. Thus, it guarantees them security and peace of mind in their lives, and thus prevents the control of the prosecution or judge, as none of them has the right to convict anyone unless the crime attributed to the accused and the punishment imposed on him were previously stipulated in the law before he committed that act.

The legal state - unlike the police state - is committed to the principle of the legality of crimes and punishments, as the law guarantees respect for the rights and freedoms of individuals in the face of the state.

On the other hand, the protection of the public interest is achieved by assigning the function of criminalization, punishment and criminal procedures to the legislator alone, in application of the principle of the legislator's exclusive jurisdiction in matters of rights and freedoms, considering that the values and interests protected by the penal code can only be determined by the representatives of the people, which was expressed by the Supreme Constitutional Court by saying: [The essential values that the penal code is issued to protect cannot be crystallized through the legislative authority elected by the citizens to represent them, and that its expression of their will requires it to have the power to decide on the actions that may be criminalized and their penalties, to ensure their legitimacy. Therefore, the application of this principle was necessary to enable citizens to connect with those values on which the structure of their society is based, in a way that unites them and ensures their social cohesion, so that they do not despise them, otherwise imposing a criminal penalty on them would be necessary to deter them].[2481]

In this way, people know in advance the values and interests on which society is built, and which are protected by the penal code, which contributes to the development of the social spirit and achieves social cohesion.

The principle of the legality of crimes and punishments means that there is no crime or punishment except based on a law, and there is no punishment except for actions subsequent to the date of the law's entry into force. This means that it is prohibited to file a lawsuit due to the commission of actions that were not criminalized at the time they were committed.[2482]

Crimes shall be punished in accordance with the law in force at the time of their commission.[2483]

Successive Egyptian constitutions have been keen to stipulate that a crime is only created by a legal text, and it is not permissible to assume its existence, nor to determine its elements in a way that is unknown to them. It has become a principle in those constitutions that there is no crime without a law or within its limits, and connected to this principle is that there is no

---

([2481]) The Supreme Constitutional Court, Case No. 48 of 17 Q, issued in the session of February 22, 1997, date of publication March 6, 1997, and published in the first part of the Technical Office Book No. 8, page No. 411, rule No. 27.

([2482] Article No. 95 of the Constitution.

([2483]) Article No. 5 of the Penal Code, see: The Supreme Constitutional Court, Case No. 1 of 41 Q, issued in the session of October 5, 2019, date of publication October 10, 2019, page No. 50.

punishment without a crime, no crime without a punishment, no retroactivity of criminal laws, and no punishment without a judicial ruling.[2484]

The principle of the legality of crimes and punishments does not necessarily require that the criminal penalty for acts deemed criminal by the legislator be directly specified. Rather, it is sufficient for the penal text to include those elements with which this penalty is capable of being specified, and thus determined through them. Thus, the penalty contained therein is neither vague nor leads to control but is based on foundations whose pillars the legislator has previously determined.[2485]

15-1-1 Drafting of Penal Texts

The principle of criminal legality "no crime or punishment except by law" came to achieve two important goals: first, the legislator's monopoly on issues of rights and freedoms, which is achieved by the principle of the exclusivity of legislation, and second, informing people of criminalization and punishment and what may threaten their freedoms before committing any act that exposes them to that. This is what is called legal certainty, and this legal certainty is achieved by the individual knowing clearly and specifically the actions to which he may be exposed, which requires special characteristics in criminal texts and in their interpretation. Therefore, legislation must be issued clearly and specifically, far from ambiguity and lack of specificity.

Therefore, it is required in criminal texts:

It must be specified in a certain manner, without ambiguity or vagueness:

The basic rules required by the Constitution in penal laws are that the degree of certainty governing their provisions should be at its highest levels, and more evident in these laws than in any other legislation, since penal laws impose the most serious restrictions on personal freedom and have the greatest impact. It is therefore necessary - in order to guarantee this freedom - that the acts punishable by these laws be defined in a decisive manner that prevents confusion with others, and that they should always be clear and explicit in stating the narrow limits of their prohibitions, since ignorance of them or their ambiguity in some aspects does not make those addressed by them aware of the reality of the acts that they must avoid. Likewise, the ambiguity of the content of the penal text means that the court of subject matter is prevented from applying disciplined rules that determine the elements of each crime and decide its punishment in a clear manner. These are rules that are not permitted and represent a framework for their work that may not be exceeded, since the goal sought by the constitution is to provide every citizen with full opportunities to exercise his freedoms within a framework of controls that it has restricted them with. It is necessary for the restrictions on freedom imposed by criminal laws to be certain because they call on those addressed by them to comply with them in order to protect their right to life and their freedoms from the dangers reflected by the punishment. The ambiguity of criminal laws has historically been linked to the abuse of power, and it was inevitable that the legislator would resort to new approaches in formulation that would not slip into those flexible, ambiguous or diluted expressions loaded with more than one meaning, with which the circle of criminalization expands, which would lead the court of subject matter to clear caveats that might end up - in the field of its application of penal texts - in inventing crimes that the legislator did not really intend to create, and in exceeding the limits that the constitution considered a vital area for exercising the rights and freedoms that it guaranteed,...

([2484]) The Supreme Constitutional Court, Case No. 17 of 28 Q, issued in the session of October 13, 2018, date of publication October 22, 2018, page No. 3.

([2485]) The Supreme Constitutional Court, Case No. 107 of 32 Q, issued in the session of March 14, 2015, date of publication March 25, 2015.

The characteristic of clarity and certainty in penal laws aims to guarantee individual freedom in the face of control, based on the belief of civilized nations in the sanctity of private life and the burden of restrictions that affect personal freedom, to ensure that every state exercises - in the field of imposing punishment in order to preserve the social order - the authority granted to it by taking into account the ultimate purposes of penal laws, which are incompatible with the conviction of the accused being an intended goal in itself. Whenever this is the case, the absence of ambiguity in these laws falls within the scope of the set of values that guarantee the rights of the accused the minimum level of protection that may not be waived or diminished.[2486]

The real scope of the principle of the legality of crimes and punishments is determined in light of several guarantees, the most important of which is the necessity of formulating penal texts in a clear and specific manner, without ambiguity or obscurity. Therefore, the law must define the elements that constitute the crime in clear and specific terms. If the legislator punishes a specific crime "malversation" without specifying its elements on which it is based, then the legislative text included in the law in this regard is not in accordance with the constitution. The European Court of Human Rights has also confirmed that the crime must be clearly defined in the legislation. With this clarity, individuals achieve legal stability and the principle of equality before the law is confirmed. These texts are not nets or traps cast by the legislator, hunting with their breadth or concealment for those who fall under them or make mistakes in their locations. These are guarantees whose purpose is to ensure that those addressed by penal texts are aware of their reality, so that their behavior is not contrary to them, but rather consistent with them and in compliance with them.[2487]

([2486]) The Supreme Constitutional Court, Case No. 3 of 10 Q, issued in the session of January 2, 1993, date of publication January 14, 1993, and published in the second part of the Technical Office Book No. 5, page No. 103, rule No. 10.

([2487]) Supreme Constitutional Court, Case No. 50 of 37 Q issued in the session of March 2, 2019, date of publication March 11, 2019, page 34, Case No. 24 of 29 Q issued in the session of May 5, 2018, date of publication May 13, 2018, page 36, Case No. 53 of 31 Q issued in the session of November 4, 2017, date of publication November 15, 2017, page 26, Case No. 13 of 37 Q issued in the session of June 3, 2017, date of publication June 13, 2017, page 35, Case No. 116 of 29 Q issued in the session of July 25, 2015, date of publication August 2, 2015, Case No. 114 of 29 Q issued in the session of January 14, 2017 2017 Publication date January 24, 2017 Page No. 3, Case No. 234 of 36 Q issued in the session of December 3, 2016 Publication date December 15, 2016 Page No. 36, Case No. 22 of 29 Q issued in the session of May 9, 2015 Publication date May 20, 2015, Case No. 22 of 25 Q issued in the session of March 14, 2015 Publication date March 25, 2015, Case No. 35 of 30 Q issued in the session of June 1, 2014 Publication date June 9, 2014

The Supreme Constitutional Court ruled on the constitutionality of Article 375 bis of the Penal Code, which states that: "Without prejudice to any more severe penalty stipulated in another text, whoever, by himself or through others, displays force, threatens violence, or uses either against the victim or his spouse, or one of his ascendants or descendants, with the intent to terrorize or intimidate him by causing him any physical or moral harm, or to damage his property, or to steal his money, or to obtain a benefit from him, or to influence his will to impose authority over him, or to force him to perform an act or to compel him to refrain from it, or to obstruct the implementation of laws or legislation, or to resist the authorities, or to prevent the implementation of judgments, orders or enforceable judicial procedures, or to disturb public security or tranquility, shall be punished by imprisonment for a period of not less than one year, whenever such act or threat is likely to strike terror into the soul of the victim, or to disturb his security, tranquility or peace, or to expose his life or safety to danger, or to cause damage to any of his property or His interests or infringement of his personal freedom, honor or reputation. The penalty shall be imprisonment for a period of not less than two years and not more than five years if the act is committed by two or more persons, or by bringing an animal that causes panic, or by carrying any weapons, sticks, machines, tools, flammable, corrosive, gaseous, narcotic, sleeping pills, or any other harmful substances, or if the act is committed against a female, or against someone who has not reached the age of eighteen years. In all cases, it stipulates that the convict be placed under police surveillance for a period equal to the period of the sentence imposed," where it was challenged on the grounds of unconstitutionality. The defendant complained about that text on the grounds that there was no social necessity to criminalize the acts subject to the challenged text, and that its wording was vague and ambiguous in a way that made it difficult for those addressed by it to ascertain the truth of the criminalized and punishable acts. The court saw that that complaint was refuted on the grounds that criminalizing the acts mentioned in this text finds its social necessity in protecting the safe from terror, preventing the violation of laws, and preserving the rule of law, which constitutes a constitutional justification for criminalizing them. The crimes mentioned in this text are primarily concerned with the seriousness of the criminal acts and

The restrictions imposed by criminal laws on personal freedom require that their provisions be formulated in a way that eliminates all controversy regarding the truth of their content, so that certainty about them reaches a level that protects them from controversy, and in a way that prevents public authority officials from applying them selectively, according to personal standards, mixed with whims, and that harm the innocent due to their lack of the objective foundations necessary to control them.[2488]

The origin of criminalization is for the legislator to seek to define the acts that involve a direct infringement on the protected interest. However, the modern development in the means and tools of committing the crime has required the legislator to confront organized crime and what it represents in terms of infringement on that interest, especially in the crimes that are most dangerous to society.[2489]

Criminal punishment must be limited to behaviors that harm a significant social interest that cannot be tolerated. Although criminal law agrees with other laws in its efforts to regulate the relationships of individuals with each other and with their relations with their society, this law differs from them in that it adopts criminal punishment as a tool to compel them to commit the actions it orders them to do, or to abandon those it forbids them from committing. In doing so, it seeks to determine, from a social perspective, what aspects of their behavior cannot be tolerated. This means that the punishment for their actions is not in violation of the constitution, unless it exceeds the limits of necessity required by the circumstances of the group at a stage of its development. If it is justified from a social point of view, the suspicion of a constitutional violation is removed. Therefore, the legislator must always strike a precise balance between the interests of society and the concern for its security and stability on the one hand, and the freedoms and rights of individuals on the other hand.[2490]

---

what they may cause in terms of infringement or aggression on rights, freedoms, and social interests subject to criminal protection. They are all considered rights, freedoms, and social interests. The legislator correctly estimated that protecting them from any acts that may infringe upon them or undermine them justifies criminalization. The constitution has mentioned most of them, such as the right to a safe life and dignity, the right to bodily integrity, personal freedom, the right to preserve honor and reputation, the right to property, and the right to security and tranquility, which the constitution was keen to emphasize in Articles (33, 35, 51, 54, 59, 60) thereof, so that each of the words mentioned in the text, whether specifying the act or the protected rights, freedoms, and interests, has a specific, regulated meaning, and thus the statement of expansion and dilution is removed from them, and the suspicion of obscurity and ambiguity is eliminated. There is no blame on the challenged text, as it took the multiplicity of perpetrators, or the perpetrator's bringing an animal that causes panic, or his carrying weapons, sticks, machines or tools used in aggression as circumstances that necessitate a harsher punishment, because the multiplicity and use of weapons or animals strengthen the resolve of the perpetrators and encourage them to commit the crime, and discourage the victims, undermine their resolve and instill terror in their souls. Nor is there any blame on the text for taking the victim's characteristics, namely femininity and childhood, as an aggravating circumstance, considering that they are, in most cases, less able to resist acts of bullying and more affected by threats and violence. It goes without saying that the crime stipulated in the contested article is an intentional crime, and error is not sufficient to establish guilt, regardless of its form or degree. The crime does not occur unless the act is committed with knowledge of its nature and the intention to do it, and the perpetrator's will is directed, with insight, towards threatening to harm one of the rights, freedoms and interests mentioned in this article. In addition to requiring the presence of a specific intent from among the multiple intents included in the text, it also goes without saying that the wording of this article has established the personality of responsibility, so that no one is held accountable for the crime except the one who actually committed it, as the sin is personal and does not accept representation. Therefore, the text of Article (375 bis) of the Penal Code is subject to the constitutional controls for criminalization, and does not violate Articles (54/1, 73, 92/2, 95) of the Constitution. See in this regard the Supreme Constitutional Court, Case No. 13 of Year 37 Q, issued in the session of June 3, 2017, publication date June 13, 2017, page No. 35.

([2488]) The Supreme Constitutional Court, Case No. 183 of 29 Q, issued in the session of November 4, 2012, date of publication November 14, 2012.

([2489]) The Supreme Constitutional Court, Case No. 97 of 28 Q, issued in the session of February 4, 2017, date of publication February 15, 2017, page No. 36.

([2490]) Supreme Constitutional Court, Case No. 24 of 29 Q issued in the session of May 5, 2018, date of publication May 13, 2018, page 36, Case No. 88 of 32 Q issued in the session of January 13, 2018, date of publication January 23, 2018, page 43, Case No. 53 of 31 Q issued in the session of November 4, 2017, date of publication November 15, 2017, page 26, Case No. 13 of 37 Q issued in the session of June 3, 2017, date of publication June 13, 2017, page 35, Case No. 114 of 29 Q issued in the

It is stipulated that the enforcement of restrictions imposed by criminal laws on personal freedom is subject to their constitutional legitimacy, and this includes that they be defined in a certain and unambiguous manner, since these laws call upon those addressed by them to comply with them in order to defend their right to life, as well as their freedoms, those risks reflected by the punishment, and thus it was inevitable that the penal texts be formulated in a way that prevents their flow, or the difference of opinions about their purposes, or the determination of criminal responsibility in areas other than their areas as an aggression on the personal freedom guaranteed by the constitution, and the ambiguity of the penal text means that the legislator is ignorant of the acts that he has criminalized, so their statement is not clear and obvious, nor their definition is decisive, or their understanding is straightforward, but rather vague and hidden from the masses, with their differences in understanding the penal text that criminalizes them, its significance, the scope of its application, and the truth of what it aims for, so that the enforcement of the text becomes linked to personal standards that refer to the assessment of those responsible for applying it of the truth of its content, and the replacement of their own understanding Its purposes are the place of its true aims, and its content is correct.[2491]

The crime in its legal concept is represented by a breach of a penal text, and its occurrence can only occur through an act or omission that achieves this breach. Every crime has a material element that cannot exist without it, which is essentially represented by an act or omission that occurred in violation of a penal text, thus revealing that what the criminal law initially relies on, in its deterrents and prohibitions, is the materiality of the act that is being held accountable for committing, whether this act is positive or negative. This is because the relationships that this law regulates in the field of its application to those addressed by its provisions, are centered on the acts themselves, in their external signs and real manifestations, and their material characteristics, as they are the basis of guilt and its cause, and they are what can be proven and denied, and they are what distinguishes between crimes from each other, and they are what the court of subject matter directs on the rule of reason to evaluate them and estimate the appropriate punishment for them. Rather, in the field of estimating the availability of criminal intent, the court of subject matter does not isolate itself from the incident in question that has been clearly and conclusively proven, but rather it turns its gaze It is a virtue in its elements of what the perpetrator really intended by committing it, and thus these elements reflect an external and material expression of a conscious will, and it is therefore inconceivable according to the provisions of the Constitution that a crime exists in the absence of its material element, nor is it possible to establish evidence of the availability of a causal relationship between the materiality of the criminal act and the results it caused, far from the reality of this act and its content.

It is necessary that all manifestations of the expression of human will - and not the intentions that a person harbors in the depths of his being - are considered to fall within the area of criminalization whenever they reflect external behavior that is legally punishable. If the matter is not related to actions caused by the will of the perpetrator and are expressed externally in material forms that are not mistaken by the eye, then there is no crime.

Whereas the origin of crimes is that they reflect a complex composition, considering that their foundation is a simultaneity between a hand that is connected to sin in its work, and a conscious

---

session of January 14, 2017, date of publication January 24, 2017, page 3, Case No. 234 of 36 Q issued in the session of December 3 For the year 2016, date of publication December 15, 2016, page No. 36, Case No. 146 for the year 20 Q issued in the session of February 8, 2004, date of publication March 4, 2004, and published in the first part of the Technical Office Book No. 11, page No. 222, Rule No. 34.

([2491]) The Supreme Constitutional Court, Case No. 161 of 26 Q, issued in the session of April 7, 2018, date of publication April 16, 2018, page No. 21.

mind that is mixed with it to dominate it, determining its steps, and directing itself to the result arising from its activity; so that criminal intent is a moral element in the crime, complementary to its material element, and compatible with the individual personality in its features and orientations. This conscious will is what civilized nations require in their approaches to criminalization, as it is a pillar of crime and a fixed principle inherent in its nature, and not something crude or foreign or alien to its characteristics. This is because freedom of will means freedom to choose between good and evil, and each has his own direction, so that crime - in its true meaning - is resolved into a relationship between the punishment imposed by the state through its legislation, and the will in which that criminal tendency operates, the correction of which and the response to its effects must be an alternative to pure revenge and retaliation against its owner. It has become a fixed matter - and as a general principle - that an act is not criminalized unless it is voluntary and based on free choice, and therefore intentional. Although it is permissible to say that determining the content of that will, standing on its nature, is still a difficult matter, its meaning - as a moral element in the crime - revolves in general around criminal intentions, or delinquent, or evil, deliberate tendencies, or those whose basis is deception, or those that are purely based on knowledge of the sin, coupled with the intent to breach its limits, so that all of them indicate the will to commit the act with malice.[2492]

One of the basic rules required by the Constitution in penal laws is that the degree of certainty, which regulates its provisions, should be at its highest levels, and more evident in these laws than in any other legislation, since penal laws impose the most serious and most effective restrictions on personal freedom. These are rules that are not permitted and represent a framework for their work that may not be exceeded, since the goal sought by the Constitution is to provide every citizen with full opportunities to exercise his freedoms, within a framework of controls that it has restricted them with.[2493]

Criminalization is not a judicial act, but rather an authentic legislative act undertaken by the legislator, who determines its suitability and scope, adhering to the aforementioned constitutional controls, and clearly and unambiguously explains the legal model that covers the physical act, the moral component of this model, and all the conditions and requirements of this model, then determines the penalty prescribed for that model, all of which is in implementation of the principle of the legality of crimes and penalties; the Supreme Constitutional Court's oversight does not invoke its jurisdiction to carry out oversight of legislative texts in order to

---

([2492]) Supreme Constitutional Court, Case No. 156 of 34 Q issued in the session of November 2, 2019, date of publication November 5, 2019, page 23, Case No. 186 of 33 Q issued in the session of October 13, 2018, date of publication October 22, 2018, page 34, Case No. 61 of 21 Q issued in the session of February 3, 2018, date of publication February 12, 2018, page 20, Case No. 139 of 29 Q issued in the session of January 13, 2018, date of publication January 23, 2018, page 35, Case No. 173 of 31 Q issued in the session of December 2, 2017, date of publication December 11, 2017, page 48, Case No. 97 of 28 Q issued in the session of From February 2017, date of publication February 15, 2017, page 36, case No. 289 of 24 Q issued in the session of March 5, 2016, date of publication March 14, 2016, case No. 124 of 25 Q issued in the session of January 14, 2007, date of publication January 28, 2007, published in the first part of the Technical Office Book No. 12, page 194, rule No. 21, case No. 114 of 21 Q issued in the session of June 2, 2001, date of publication June 14, 2001, published in the first part of the Technical Office Book No. 9, page 986, rule No. 119, case No. 49 of 17 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7 Page No. 739 Rule No. 48, Case No. 25 of 16 Q issued in the session of July 3, 1995, date of publication July 20, 1995, published in the first part of the Technical Office Book No. 7, Page No. 45 Rule No. 2, Case No. 5 of 15 Q issued in the session of May 20, 1995, date of publication June 8, 1995, published in the first part of the Technical Office Book No. 6, Page No. 686 Rule No. 43, Case No. 20 of 15 Q issued in the session of October 1, 1994, date of publication October 20, 1994, published in the first part of the Technical Office Book No. 6, Page No. 358, Case No. 105 of 12 Q issued in the session of February 12, 1994, date of publication March 3, 1994, published in the first part of the Technical Office Book No. 6, Page No. 154 Rule No. 17, Case No. 3 of Year 10 Q issued in the session of January 2, 1993, date of publication January 14, 1993, published in the second part of the Technical Office Book No. 5, page No. 103, Rule No. 10, Case No. 59 of Year 18 Q issued in the session of February 1, 1997, date of publication February 13, 1997, published in the first part of the Technical Office Book No. 8, page No. 286, Rule No. 19.

([2493]) The Supreme Constitutional Court, Case No. 173 of 31 Q, issued in the session of December 2, 2017, date of publication December 11, 2017, page No. 48.

extend the penalty prescribed therein to other than what is stipulated in the legislation, as this falls within the framework of the legislator's discretionary power. If he sees that making this amendment is inevitable, he may exercise his discretionary power in this regard, with the alternatives and adaptations he possesses.[2494]

The legislator has the discretionary power to regulate rights and duties - without prejudice to the public interest - to determine, on objective grounds and through the penal systems he approves, the elements of each crime without the constitution imposing specific methods on him to define them, and without prejudice to the necessity that the acts criminalized by these systems be conclusive in stating the narrow limits of their prohibitions, so that they are not tainted by ambiguity or interfere with legitimate acts protected by the constitution.

The ambiguity of the penal text means that the legislator is ignorant of the acts that he has deemed criminal, so their statement is not clear and distinct, nor is their definition conclusive or their understanding straightforward, but rather vague and hidden from the masses, with their disagreement about the content of the penal text that criminalizes them, its significance, the scope of its application, and the truth of what it aims at, so that the implementation of this text becomes linked to personal standards that refer to the assessment of those responsible for applying it of the truth of its content, and the substitution of their own understanding of its purposes for its true aims and the correctness of its content.[2495]

Since the original principle is that the legislative authority itself - through a law - undertakes to define crimes and specify their penalties, and therefore it cannot completely relinquish this mandate by entrusting it entirely to the executive authority, and although it is sufficient for it to define a general framework for the conditions of criminalization and the corresponding penalty, for the executive authority to detail some of its aspects, its intervention in the penal field is not considered except in accordance with the conditions and situations regulated by the law, which means that the legal texts alone - with their generality and lack of personality la Portée générale et impersonnelle - are the ones with which criminalization revolves, and it is not conceivable that it would arise apart from them, and this does not mean that the executive authority has a reserved area in which it alone regulates the conditions of criminalization, as its role remains subordinate to the legislative authority, and is defined in light of its laws, and it does not undertake it on its own initiative without support from an existing law [2496]

The basic principle is that every crime should have a specific penalty stipulated by law or determined - at least - according to the limits it specifies. Likewise, one of the initial rules required by the Constitution in penal laws is that the degree of certainty governing their provisions should be at its highest levels, and more evident in these laws than in any other legislation, since penal laws impose the most serious restrictions on personal freedom and have the greatest impact. It is therefore necessary - in order to guarantee this freedom - that the acts punishable by these laws be defined in a decisive manner that prevents confusion with others, and that they should always be clear and explicit in stating the narrow limits of their prohibitions, since ignorance of them or their ambiguity in some aspects does not make those addressed by them aware of the reality of the acts that they must avoid. Likewise, the ambiguity of the content of the penal text means that the court of subject matter is prevented from applying disciplined rules that determine the elements of each crime and decide its punishment in a clear manner. These are rules that are not permitted and represent a framework for their work that may not be

---

([2494]) See in this regard: The Supreme Constitutional Court, Case No. 173 of 31 Q, issued in the session of December 2, 2017, date of publication December 11, 2017, page No. 48.
([2495]) The Supreme Constitutional Court, Case No. 146 of 20 Q, issued in the session of February 8, 2004, date of publication March 4, 2004, and published in the first part of the Technical Office Book No. 11, page No. 222, rule No. 34.
([2496]) The Supreme Constitutional Court, Case No. 24 of 18 Q, issued in the session of July 5, 1997, date of publication July 19, 1997, and published in the first part of the Technical Office Book No. 8, page No. 709, rule No. 47.

exceeded, since the goal sought by the constitution is to provide every citizen with full opportunities to exercise his freedoms within a framework of controls that it has restricted them with. It is necessary for the restrictions on freedom imposed by criminal laws to be certain because they call on those addressed by them to comply with them in order to protect their right to life and their freedoms from the dangers reflected by the punishment. The ambiguity of criminal laws has historically been linked to the abuse of power, and it was inevitable that the legislator would resort to new approaches in formulation that would not slip into those flexible, ambiguous or diluted expressions loaded with more than one meaning, with which the circle of criminalization expands, which would lead the court of subject matter to clear caveats that might end up - in the field of its application of penal texts - in inventing crimes that the legislator did not really intend to create, and in exceeding the limits that the constitution considered a vital area for exercising the rights and freedoms that it guaranteed, which ultimately violates the essential controls on which a fair trial is based according to the text of Article 67 of the constitution.[2497]

The texts must include a clear definition of the controls for their application:

Every criminal penalty has a direct effect that returns to its nature and is represented in depriving a person of his right to life, freedom or property. This penalty has been, throughout dark stages in history, a flexible tool for oppression and tyranny, achieving the ambitions of the despotic authority, and distancing the punishment from its social purposes. It was logical and necessary for civilized countries to work to establish their penal legislation according to fixed foundations that guarantee in themselves the adoption of sound legal means in their objective and procedural aspects, to ensure that the penalty is not a tool that suppresses freedom, storming it with contradiction to the values that the group believes in in its interaction with civilized nations and its contact with them. It was necessary - in the field of supporting and establishing this trend - for contemporary constitutions to decide on the restrictions that they saw fit on the authority of the legislator in the field of criminalization, expressing their belief that human rights and freedoms may not be sacrificed except for a necessity dictated by a social interest that has its consideration, and in recognition of their recognition that freedom in its full dimensions is inseparable from the sanctity of life, and that the facts The bitter experience that humanity has experienced throughout its stages of development imposes an integrated system that guarantees the group's vital interests and protects – within the framework of its objectives – the individual's rights and basic freedoms in a way that prevents the misuse of punishment to distort its purposes. This was achieved in particular through strict controls and more precise standards to determine the nature of the acts that are prohibited from being committed, in a way that removes their ambiguity, and in a way that strips the court of the discretionary power with which it decides the occurrence of a crime or imposes a penalty without a text, so that the social interest - in its highest levels - remains a constraint on the legislative authority, seeking legitimacy in the reality of its content, and seeking justice in the depths of its sources.

The characteristic of clarity and certainty in penal laws aims to guarantee individual freedom in the face of control, based on the belief of civilized nations in the sanctity of private life and the burden of restrictions that affect personal freedom, to ensure that every state exercises - in the field of imposing punishment in order to preserve the social order - the authority granted to it by taking into account the ultimate purposes of penal laws, which are incompatible with the conviction of the accused being an intended goal in itself. Whenever this is the case, the

---

([2497]) The Supreme Constitutional Court, Case No. 3 of 10 Q, issued in the session of January 2, 1993, date of publication January 14, 1993, and published in the second part of the Technical Office Book No. 5, page No. 103, rule No. 10.

absence of ambiguity in these laws falls within the scope of the set of values that guarantee the rights of the accused the minimum level of protection that may not be waived or diminished.[2498]

The idea of punishment, whether criminal, disciplinary or civil, means that a certain error cannot be exceeded. This is determined in the criminal field through the penal texts, whose definition of the acts that the legislator has introduced into the field of criminalization is clear and decisive, meaning that a legal definition of the crime that specifies its elements is necessary (Nullum Crimen Sin lege). It is not permissible to make an analogy to it to attach others to it, considering that criminal legitimacy is based on those acts that the legislator has deemed sinful from a social perspective, and his prohibitions do not extend to others, even if committing them causes public disorder, or their content is crude and frivolous. Hence, this legitimacy, in view of the serious restrictions imposed by penal texts on personal freedom, restricts the interpretation of these texts and also determines the scope of their application in a way that does not confuse them with others, and on the assumption that penal texts may not be nets or traps cast by the legislator, hunting with their breadth or concealment those who fall under them or make mistakes in their locations, and because the punishment that these texts are compared to is not considered a necessary result of the crime to which they are connected, but rather a part of it that complements and completes it.[2499]

That the texts be governed by strict standards and sharp criteria that are consistent with their nature:

Criminal texts are governed by strict standards that relate to them alone, and by sharp criteria that are consistent with their nature, and are not challenged in their application by other legal rules.[2500]

Criminal texts should be formulated within narrow limits.

The origin of penal texts is that they are formulated within narrowly tailored limits, defining the acts that the legislator has criminalized, and specifying their nature, to ensure that ignorance of them does not lead to a violation of the rights guaranteed by the constitution to citizens, such as those related to the freedom to express opinions and ensure their flow from their various sources, as well as the right to the integrity of the personality and that every individual is safe against unlawful arrest or detention. Although it is permissible to say that assessing the punishment and determining the conditions for imposing it are part of the framework of organizing rights and fall under the discretionary authority of the legislator, this authority is limited by the rules of the constitution and it is necessary that penal texts not be nets or traps that the legislator casts, hunting with their breadth or concealment for those who fall under them or do not see their locations.[2501]

Legal evidence in the field of criminalization

It should be noted that the constitutionally established jurisdiction of the legislative authority - in the field of establishing crimes and determining their penalties - does not entitle it to interfere with the evidence it establishes in order to prevent the criminal court from carrying out its

([2498]) The Supreme Constitutional Court, Case No. 3 of 10 Q, issued in the session of January 2, 1993, date of publication January 14, 1993, and published in the second part of the Technical Office Book No. 5, page No. 103, rule No. 10.

([2499]) The Supreme Constitutional Court, Case No. 33 of 16 Q, issued in the session of February 3, 1996, date of publication February 17, 1996, and published in the first part of the Technical Office Book No. 7, page No. 393, rule No. 22.

([2500]) The Supreme Constitutional Court, Case No. 37 of 15 Q issued in the session of August 3, 1996, date of publication August 15, 1996, and published in the first part of the Technical Office Book No. 8, page No. 67, rule No. 3.

([2501]) The Supreme Constitutional Court, Case No. 49 of 17 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7, page No. 739, rule No. 48, Case No. 25 of 16 Q issued in the session of July 3, 1995, date of publication July 20, 1995, published in the first part of the Technical Office Book No. 7, page No. 45, rule No. 2.

original mission in the field of verifying the existence of the elements of the crime specified by the legislator in implementation of the principle of separation of the legislative and judicial authorities.

The legislator may not specify a specific fact and make its direct proof indirectly evidence of the occurrence of the moral element of the crime, thereby introducing the point of view he has deemed appropriate in a matter in which the matter is ultimately up to the court of subject matter, due to its connection to the investigation that it conducts itself in search of the objective truth when deciding on the criminal accusation; it is an investigation over which no one else has authority, and the outcome of what it reveals is the belief that it forms from the totality of the evidence presented to it.

Thus, the legislator - through the legal presumption he established - has violated mandatory procedural means that are closely related to the right to defense; by making the accused confront the fact imposed by the legal presumption against him, and requiring him to deny it contrary to the principle of innocence, dropping - from a realistic perspective - all the value that the constitution has bestowed on this principle [2502]

15-1-2 Interpretation of Penal Laws

The general rule in interpreting criminal law is that if the penal text is incomplete or ambiguous, it should be interpreted broadly in favor of the accused and narrowly against his interest, and that it is not permissible to take it into account in the penal code by analogy against the interest of the accused because there is no crime or punishment without a text in application of the principle of the legality of crimes and punishments, which took the guarantee of personal freedom as a basis for its approval and confirmation. However, this freedom itself restricts its content, so this principle is only enforced to the extent and within the limits that guarantee its preservation. It is not permissible, therefore, to apply penal texts that are misapplied to an existing position of an accused, nor to interpret them in a way that takes them out of their meaning or purposes, nor to extend the scope of criminalization - by analogy - to acts that the legislator has not criminalized. Rather, it is always necessary - whenever their content is open to more than one interpretation - for the judge to prefer, among them, what is more guaranteeing of personal freedom, within the framework of a logical relationship that he establishes between these texts and the will of the legislator, whether that which he declared or that which can be assumed. (rationally).[2503]

15-1-3 The law most favorable to the accused

The principle is that crimes are punished according to the law in force at the time they were committed. However, if a law is issued after the act has occurred and before a final judgment is made, which is more beneficial to the accused, then it is the law that is to be followed and no other.

If a law is issued after a final judgment that makes the act for which the criminal was convicted not punishable, the execution of the judgment shall be suspended and its criminal effects shall end.

([2502]) See: Supreme Constitutional Court, Case No. 96 of 27 Q, issued in the session of March 7, 2020, date of publication March 16, 2020, page No. 3.

([2503]) Appeal No. 27354 of year 59 Q issued in the session of November 15, 1994 and published in the first part of the Technical Office Book No. 45, page No. 1001, rule No. 157. See: the ruling of the Supreme Constitutional Court, case No. 81 of year 22 Q issued in the session of April 6, 2008, publication date April 21, 2008 and published in the first part of the Technical Office Book No. 12, page No. 979, rule No. 100.

However, if the lawsuit procedures are initiated or a conviction is issued for an act that was committed in violation of a law that prohibits its commission within a specific period, the expiry of this period does not prevent the lawsuit from proceeding or the penalties imposed. [2504]

The stability of the principle of the legitimacy of crimes and punishments in the concepts of civilized countries called for its confirmation among them. It was then echoed in many international covenants, including the last paragraph of Article 11 of the Universal Declaration of Human Rights, the first paragraph of Article 15 of the International Covenant on Civil and Political Rights, and Article 7 of the European Convention for the Protection of Human Rights. This principle is also repeated in many constitutions, including what is stipulated in Article 66 of the Constitution of the Arab Republic of Egypt, which states that there is no punishment except for actions subsequent to the entry into force of the law that stipulates them, and what is also stipulated in Article 187 of this Constitution, which stipulates that the principle of the provisions of laws is their application from the date of their entry into force, and they have no effect on what occurred before them except by a special text approved by the majority of the members of the legislative authority as a whole. [2505]

The provisions of the laws only apply to what occurs from the date of their enforcement, and they have no effect on what occurred before them. The principle of the non-retroactivity of the substantive provisions of the texts of criminal laws is derived from the rule of the legality of crime and punishment, which requires that they be limited to the punishment of crimes in accordance with the law in force at the time of their commission. The law that is most favourable to the accused is outside this scope.[2506]

It is decided, in application of the principle of the legality of crimes and punishments in both its aspects, that the rules of the Penal Code do not apply to the past, nor do they extend to events that occur after the end of their application, either due to their cancellation or the expiration of the specified time period for their application, meaning that these rules only apply with a direct effect, and the only exceptions to this rule are the texts that are more beneficial to the accused only, as they apply with a retroactive effect that extends to the past.[2507]

The time frame for the application of the legal rule is determined on the basis of the immediate and direct effect of the legislation, and retroactivity is only an exception under the conditions and situations guaranteed by the constitution, with it being absolutely impermissible in the field of penal texts unless it is more beneficial to the accused.[2508]

The issuance of a new law that removes the criminalization of acts that were criminalized by the old law creates a new legal status for the accused and undermines - by returning these acts to the circle of legitimacy - a previous status for them.[2509]

The law that is most suitable for the accused is the one that creates for him, from a substantive and not a procedural perspective, a position or status that is more suitable for him than the old law, by cancelling the crime attributed to him or some of its penalties, or reducing them, or

---

([2504] Article No. 5 of the Penal Code.

([2505]) The Supreme Constitutional Court, Case No. 84 of 17 Q, issued in the session of March 15, 1997, date of publication March 27, 1997, and published in the first part of the Technical Office Book No. 8, page No. 461, rule No. 30.

([2506] Appeal No. 11551 of 63 Q issued in the session of February 28, 1999 and published in the first part of Technical Office Book No. 50, page No. 147, rule No. 33.

([2507]) The Supreme Constitutional Court, Case No. 91 of 27 Q, issued in the session of December 2, 2007, date of publication December 13, 2007, and published in the first part of the Technical Office Book No. 12, page No. 769, rule No. 77.

([2508]) The Supreme Constitutional Court, Case No. 143 of 19 Q, issued in the session of November 12, 2006, date of publication November 21, 2006, and published in the first part of the Technical Office Book No. 12, page No. 127, rule No. 13.

([2509]) The Supreme Constitutional Court, Case No. 333 of 23 Q, issued in the session of June 10, 2007, date of publication June 17, 2007, and published in the first part of the Technical Office Book No. 12, page No. 551, rule No. 52.

establishing a way to exempt from criminal liability, or cancelling an element of the crime. In these cases and based on the significance of changing the policy of criminalization and punishment to mitigation, the accused has the right to benefit in his favor from those new texts from the date of their issuance.[2510]

Every new law that removes the criminalization of acts that were criminalized by the old law creates a new legal status for the accused and undermines - by returning these acts to the circle of legitimacy - a previous status.[2511]

If two laws are applied in succession and the second is not more favourable to the accused, the first law must always be applied to the acts that occurred before it was amended, because the second cannot be applied to an incident that preceded its issuance. It is established that criminal law has no retroactive effect on incidents prior to its enforcement, and this is a fundamental rule required by the legitimacy of crime and punishment.[2512]

But it must be taken into account that although the legislator stipulated in the second law the cancellation of the first law, he did not intend, obviously, for this cancellation to include non-punishment for the acts that were also punished in the second law.[2513]

It must also be considered that the penal laws that are compared with each other, specifically those that are most beneficial to the accused, assume that they all agree with the provisions of the Constitution, and that they are in conflict with one subject, and that they differ from one another in their punishments. Thus, the forms of punishment that are perpendicular to one subject do not prevail except those that are in their content, conditions, or amount less severe than others, and have a lighter effect. Accordingly, if the repealed law, under which the act was committed, is unconstitutional, the new law cannot be applied to the facts that occurred before its issuance. Otherwise, applying the new text to the facts prior to its enforcement would be a violation of the rule of legality of crimes and punishments, as it would apply in this case to non-criminal acts. Thus, the rule of the law that is most favorable to the accused is only applied on the assumption that the older and newer laws are constitutional.[2514]

Although criminal laws are originally not permissible to apply to facts that were fully formed before they came into force, the generality of this rule loses its meaning, since personal freedom, although it is threatened by the worst criminal law, this law protects and safeguards it if it is more lenient with the accused, whether by ending the criminalization of acts that were criminalized by a previous criminal law, or by amending its classification or the structure of some of the elements on which it is based, in a way that completely erases its penalties or makes them less severe, in implementation of the rule of the law that is best for the accused, that rule which, although it takes the text of Article 5 of the Penal Code as a basis and support, the

---

([2510]) General Authority for Criminal Matters, Appeal No. 48528 for year 76 Q issued in the session of April 21, 2009 and published in Technical Office Book No. 54, page No. 18, Rule No. 3, and see: Appeal No. 25203 for year 74 Q issued in the session of April 19, 2012 and published in Technical Office Book No. 63, page No. 322, Rule No. 50, Appeal No. 24966 for year 59 Q issued in the session of June 7, 1993 and published in the first part of Technical Office Book No. 44, page No. 566, Rule No. 84, Appeal No. 2081 for year 49 Q issued in the session of March 12, 1980 and published in the first part of Technical Office Book No. 31, page No. 364, Rule No. 67.

([2511]) The Supreme Constitutional Court, Case No. 22 of 15 Q, issued in the session of April 1, 2012, date of publication April 15, 2012.

([2512]) Appeal No. 13539 of 82 Q issued in the session of May 2, 2013 and published in Technical Office Book No. 64, page No. 548, Rule No. 77, Appeal No. 2898 of 84 Q issued in the session of November 25, 2014 and published in Technical Office Book No. 65, page No. 859, Rule No. 114, Appeal No. 17271 of 68 Q issued in the session of October 4, 1999 and published in the first part of Technical Office Book No. 50, page No. 498, Rule No. 115.

([2513] Appeal No. 15094 of 63 Q issued in the session of November 24, 2002 and published in Technical Office Book No. 53, Page No. 1128, Rule No. 189.

([2514]) The Supreme Constitutional Court, Case No. 183 of 31 Q, issued in the session of April 1, 2012, date of publication April 15, 2012.

protection of personal freedom guaranteed by the Constitution establishes and establishes this rule in a way that prevents the legislator from amending or departing from it, since what is considered a law that is best for the accused, even if it does not fall under the interpretative laws whose provisions are integrated into the interpreted law, and go back to the date of its enforcement as part of it, crystallizes the will of the legislator that he initially intended when he approved this law, except that every new law The criminalization of acts that were criminalized by the old law, or the modification of their classification or the structure of the elements on which they are based, or the modification of their punishments in a way that makes them less severe, creates a new legal status for the accused, and undermines a previous status, and thus the new law - which has become more lenient towards the accused, and more helpful in preserving personal freedom, which the constitution considered a natural right that cannot be touched - replaces the old law, so that they do not conflict or overlap, but rather the later of the two supersedes the earlier one.[2515]

Whenever a new law is issued that restores the situation to its state before criminalization or punishes with a lighter punishment than to restore to its owners that freedom that the old law had taken away from them, and that this law turns back on its heels, upholding the values that the new law has sided with, and assuming that preserving them does not violate public order, as it is a flexible, evolving concept, in light of the standards of reason, from which the most suitable law is not separate, but rather agrees with them and works in light of them, then its enforcement since its issuance is only to establish public order, in a way that prevents its disintegration, after this law has become more complete for the rights of those addressed by the old law, and more protective of their freedoms. [2516]

Any law that is more favorable to the accused and issued after the act has occurred - and before a final ruling is made on it - means that the subsequent law applies to acts that were criminalized by a previous law, and that it takes the text of Article 5 of the Penal Code as a basis and support. However, the protection of personal freedom that the Constitution guarantees in Article 41 thereof is what establishes and consolidates this rule in a way that prevents the legislator from amending or departing from it. That is because what is considered a law that is more beneficial to the accused, even if it does not fall under the interpretative laws whose provisions are integrated into the interpreted law and are considered part of it to the date of its enforcement, crystallizes the will of the legislator that he initially intended when he approved this law. However, every new law that erases the criminalization of acts that were criminalized by the old law creates a new legal status for the accused and undermines - by returning these acts to the circle of legitimacy - a previous status. Hence, the new law - which has become more lenient towards the accused and more helpful in preserving personal freedom, which the constitution considers a natural right that cannot be infringed - replaces the old law, so that they do not conflict or overlap, but rather the later one takes precedence over the earlier one. It has become necessary, therefore, in the field of implementing the substantive criminal laws (les lois penales de fond) that are more lenient towards the accused, to emphasize that preserving personal freedom on the one hand, and the necessity of defending the interests of the group and preserving its public order on the other hand, are two parallel interests that do not conflict. It

([2515]) Supreme Constitutional Court, Case No. 14 of 25 Q issued in the session of August 1, 2015, date of publication August 10, 2015, Case No. 82 of 18 Q issued in the session of March 14, 2015, date of publication March 25, 2015, Case No. 13 of 27 Q issued in the session of January 2, 2011, Case No. 81 of 22 Q issued in the session of April 6, 2008, date of publication April 21, 2008 and published in the first part of the Technical Office Book No. 12, page No. 979, rule No. 100, Case No. 116 of 29 Q issued in the session of July 25, 2015, date of publication August 2, 2015, Case No. 22 of 29 Q issued in the session of May 9, 2015, date of publication May 20 For the year 2015, Case No. 35 of the year 30 Q issued in the session of June 1, 2014, publication date June 9, 2014.

([2516]) The Supreme Constitutional Court, Case No. 158 of 26 Q, issued in the session of December 6, 2009, date of publication December 20, 2009.

has become a foregone conclusion - and whenever a new law is issued that restores the situation to its state before criminalization - that the freedom that the old law had taken away from its owners should be restored to them, and that this law should turn back on its heels, upholding the values that the new law has sided with, and assuming that preserving them does not violate public order as a flexible concept that develops in light of the standards of the collective mind from which the most appropriate law is not separate, but rather agrees with them and works in light of them, so its enforcement since its issuance is only to establish public order in a way that prevents its disintegration, after this law has become more guaranteeing of the rights of those addressed by the old law and more protective of their freedoms.[2517]

It is legally established in cases where the type of punishment is the same in the previous and subsequent laws, that the more appropriate of them is the one that determines a shorter period for it, whether in its maximum limit or minimum limit or both, provided that the law that is more appropriate for the accused is issued before he is sentenced with a final judgment that is not subject to appeal, opposition, or cassation. It is the same in this regard whether the judgment was issued without being subject to appeal, or whether it became so due to the expiration of the appeal deadlines, or the exhaustion of the aforementioned appeal methods. If the judgment is subject to appeal at the time of issuance of the new law that is more appropriate for the accused, then this law is the applicable law, whether the new law was issued during the appeal deadline or was issued during the period in which the case is before the appeal court. And in cases where there are multiple laws that must be applied during the period between the commission of the act and the final ruling in the case, such as if a law that is more favorable to the accused was issued after the law during which the criminal act was committed, and then this more favorable law was repealed by another law before the final ruling in the case. Therefore, the application of this most suitable law - despite its cancellation - is necessary, without the law of action or the law of the final judgment, in implementation of the considerations that led the legislator to establish the rule of retroactivity of the most suitable criminal laws for the accused.[2518]

Denying the retroactive effect of criminal laws assumes that their application in relation to the accused is harmful to him. If it is more beneficial to his legal position in the face of the prosecution authority, then their retroactivity is inevitable, in application of the rule of the law that is most beneficial to the accused.[2519]

Issuing an amendment to the law stipulating that a fine may be imposed instead of a prison sentence will achieve the meaning of the law that is most beneficial to the accused.[2520]

Law No. 71 of 2009 promulgating the Mental Health Care Law and amending some provisions of the Penal Code issued by Law No. 58 of 1937 achieves the meaning of the law that is most suitable for the accused in the ruling of the second paragraph of Article 5 of the Penal Code if the accused has a legal status that is more suitable for him than the old law, by stipulating equality between insanity and mental illness as reasons for exemption from punishment, while

---

([2517]) The Supreme Constitutional Court, Case No. 84 of 17 Q issued in the session of March 15, 1997, date of publication March 27, 1997, published in the first part of the Technical Office Book No. 8, page No. 461, rule No. 30, Case No. 48 of 17 Q issued in the session of February 22, 1997, date of publication March 6, 1997, published in the first part of the Technical Office Book No. 8, page No. 411, rule No. 27.

([2518]) The Supreme Constitutional Court, Case No. 82 of 18 Q, issued in the session of March 14, 2015, date of publication March 25, 2015.

([2519]) The Supreme Constitutional Court, Case No. 144 of 27 Q issued in the session of January 2, 2011, Case No. 71 of 27 Q issued in the session of January 2, 2011, date of publication January 8, 2011, Case No. 157 of 27 Q issued in the session of July 4, 2010, date of publication July 11, 2010, Case No. 167 of 26 Q issued in the session of June 6, 2010, date of publication June 20, 2010.

([2520] Appeal No. 23361 of 4 Q issued in the session of November 15, 2015 (unpublished).

the old law limited it to insanity and coma resulting from narcotic drugs of any kind if he took them by force or without his knowledge of them.[2521]

The law issued prohibiting the death penalty, life imprisonment, or hard labor for an accused who was not yet eighteen years old at the time of committing the crime is a law that is more favorable to the accused.[2522]

It is established that the rule of the application of the most suitable law stipulated in Article 5 of the Penal Code only applies with respect to substantive issues without procedures. It only affects texts related to criminalization and determining the punishment or amending it by mitigation or aggravation.[2523]

On the other hand, the issuance of a law that includes an objective rule that would restrict the state's right to punish, and thus it applies from the day of its issuance to the lawsuit as long as it has not ended with a final judgment, as it is the most suitable law for the accused according to Article Five of the Penal Code.[2524]

If the law has arranged effects on reconciliation, as it results in the expiration of the criminal case and the suspension of the execution of the sentence imposed, and the jurisdiction to suspend the execution is vested in the Public Prosecution if a final judgment is not issued in the case or the suspension of the execution of the sentence in the event that the judgment becomes final, then reconciliation is considered a waiver by the social body of its right in the criminal case in exchange for the consideration on which the reconciliation was based, and its effect occurs by force of law, which requires the court, if reconciliation is concluded during the consideration of the case, to rule that the criminal case has expired. However, if it is delayed until after the case is decided, then it necessarily results in the suspension of the execution of the criminal penalty imposed. The reconciliation system, as previously mentioned, is optional for the accused, as it allows him to adhere to the application of the most appropriate law on him and avoid the issuance of a judgment against him if he is likely to convict, and he may reject it if he returns acquittal, and he may even accept it in the latter case to avoid the moral harm to him from standing in the position of the accused before the judicial authorities. Since that was the case, and the reconciliation or settlement system, although it appears procedural, it establishes a substantive rule that restricts the state's right to punishment by deciding that the criminal case has expired. By reconciliation instead of punishing the accused, which is what achieves the meaning of the most suitable law in the concept of Article 5 of the Penal Code, as long as it creates a better situation for him [2525]

Although the rules of reconciliation appear to be procedural, their ruling establishes a substantive rule, because it benefits the state's right to punish by deciding the expiry of the criminal case for reconciliation instead of punishing the accused. Therefore, the issuance of a law permitting reconciliation in a criminal case applies from the day of its issuance to the case,

---

([2521] Appeal No. 26890 of 72 Q issued in the session of November 8, 2009 (unpublished).

([2522] Appeal No. 11356 of 74 Q issued in the session of December 21, 2010 and published in Technical Office Book No. 61, Page No. 716, Rule No. 94.

([2523]) Therefore, the legislator's establishment in Article 50 of Law No. 94 of 2015 issuing the Anti-Terrorism Law by creating circuits in criminal courts, each of which has the rank of a president in the Courts of Appeal to consider felonies of terrorist crimes, falls under the meaning of procedural laws, not substantive laws, since the rules that affect the formation of circuits in criminal courts are purely formal procedures, and as such they are implemented with immediate effect on pending lawsuits that have not been adjudicated, even if they relate to acts that occurred prior to their issuance, unless the law provides otherwise, Appeal No. 4745 of 88 Q issued in the session of November 4, 2018 (unpublished)

See: Appeal No. 21110 of 85 Q issued in the session of January 28, 2018 (unpublished).

([2524] Appeal No. 43943 of 85 Q issued in the session of December 2, 2015 (unpublished).

([2525]) Appeal No. 17275 of 84 Q issued in the session of April 20, 2016 and published in Technical Office Book No. 67, page No. 448, Rule No. 53, Appeal No. 1759 of 78 Q issued in the session of December 14, 2016 and published in Technical Office Book No. 67, page No. 909, Rule No. 112.

as it is the most suitable law for the accused in accordance with Article 5 of the Penal Code, as it created a situation for the accused that is more suitable for him than the previous law.[2526]

As for exceptional laws issued in emergency situations and in which there is no specific period for their validity, they are exempt from the application of the rule of the rule that is most favorable to the accused, according to the text of the last paragraph of Article Five of the Penal Code, which states that: ".... However, if the lawsuit procedures are carried out or a conviction is issued, and this is for an act that occurred in violation of a law that prohibits its commission within a specific period, then the expiry of this period does not prevent the lawsuit from proceeding or the execution of the penalties imposed. "[2527]

The cases of suspension of the period of the penalty do not include a rule of criminalization and determining the penalty, but rather fall under the meaning of procedural laws, not substantive laws, and relate to public order because they target the public interest, not the personal interest of the accused, which requires the application of its provisions with immediate effect from the day of their enforcement on the rulings prior to their issuance, even if this would worsen the position of the convict, as long as he did not acquire a right by completing the limitation period. There is no room in this regard to apply the exception of the most suitable law because Article 5 of the Penal Code only applies with respect to substantive issues without procedures, as it only affects texts related to criminalization and determining the penalty or amending it.[2528]

The laws amending jurisdiction are applied with immediate effect, as are the procedural laws. If the law amends the jurisdiction of an existing court by transferring some of the cases it was competent to consider according to the old law to another court or judicial authority, then this latter authority becomes competent and the court whose jurisdiction was amended has no effect after the new law comes into force, even if the case has already been brought before it as long as it has not ended with a final judgment. This is all unless the legislator provides for temporary provisions regulating the transitional phase. Therefore, if a law is issued that transfers jurisdiction to consider the criminal case arising from the crime attributed to the juvenile accused to the juvenile court during the period of his trial, then this law applies with immediate effect and there is no room for applying the rule of the application of the most suitable law, because the scope of applying that rule originally affects the substantive rules. As for the procedural rules, they shall apply from the date of their entry into force with immediate effect to cases that have not been adjudicated, even if they relate to crimes that occurred prior to their entry into force, unless the law provides otherwise.[2529]

The legislator excluded from the rule of the immediate effect of the litigation laws the laws amending the deadlines. The deadlines amended by the new law do not apply with immediate effect to the periods and deadlines that began under the repealed law, but rather the deadlines stipulated in the repealed law are applied until their period is completed. If the new law amends the deadlines for appeal by reducing or increasing the deadline, but the deadline for appeal began under the old law, then the period is completed according to the old law, and the criterion for knowing the law that must be applied in this case is the date of issuance of the judgment. There is no reason to adopt the rule that the law most favourable to the accused applies, in

---

([2526]) Appeal No. 11997 of 67 Q issued in the session of November 2, 2006 and published in Technical Office Book No. 57, page No. 848, Rule No. 92, Appeal No. 25421 of 64 Q issued in the session of May 30, 1999 and published in the first part of Technical Office Book No. 50, page No. 343, Rule No. 80.

([2527]) Appeal No. 12345 of 84 Q issued in the session of January 11, 2016 and published in Technical Office Book No. 67, page No. 115, Rule No. 12, Appeal No. 7719 of 84 Q issued in the session of November 2, 2014 and published in Technical Office Book No. 65, page No. 793, Rule No. 100.

([2528] Appeal No. 53603 of 75 Q issued in the session of June 11, 2006 and published in Technical Office Book No. 57, Page No. 726, Rule No. 74.

([2529] Appeal No. 10812 of 67 Q issued in the session of November 1, 2005 and published in Technical Office Book No. 56, Page No. 538, Rule No. 83.

implementation of Article 5 of the Penal Code, since the scope of application of that rule originally affects the substantive rules. As for the procedural rules related to the deadlines for appealing criminal rulings, the law in effect at the time of issuance of the ruling is the one that applies, in implementation of the exception contained in Article 1 of the Code of Civil Procedure.[2530]

Although the Constitution stipulates that there is no punishment for acts subsequent to the date of entry into force of the law that stipulates them, establishing the rule of non-retroactivity of penal laws, and also confirming this rule by what the Constitution has established that the principle of the provisions of laws is their application from the date of their entry into force, and the impermissibility of applying their effect to what occurred before them, and that there is no departure from this principle except by a special text, and in non-criminal matters, and with the approval of the majority of the members of the legislative authority as a whole, in order to prevent the imposition of a penalty for an act that was permissible at the time of its commission, or to increase it for an act for which the penalty was lighter, and the principle of non-retroactivity of penal laws restricts the legislative authority in application of the principle of the legality of crimes and penalties, and to protect personal freedom in a way that repels any aggression against it, this principle does not work alone, but rather it is complemented and alongside it is another rule, which is the retroactivity of the law that is most beneficial to the accused, which is a rule that benefits him from the texts that erase the criminal nature of the act, or reduce the penalty imposed as a penalty for committing it, to something less than it. [2531]

It is also legally stipulated that the new legislation applies to the ongoing crime even if its provisions are more severe than the previous ones due to the continued commission of the crime under the new provisions. The decisive factor in distinguishing between a temporary crime and a continuing crime is the nature of the material act constituting the crime as defined by the law, whether this act is positive or negative, committed or omitted. If the crime is completed and ends as soon as the act is committed, it is temporary. However, if the criminal situation continues for a period of time, the crime is ongoing throughout this period. The point of continuity here is the intervention of the perpetrator’s will in the punishable act, a successive and renewed intervention, and the time preceding this act in preparing to commit it and getting ready to commit it or the time following it in which its criminal effects continue in its aftermath is not taken into account. Since that was the case, the crime of the respondent’s failure to implement the engineering decision was based on a negative act that depends on the intervention of his will, a successive and renewed intervention in forming the punishable act of abstention. Therefore, it is a continuing crime that is subject to the provisions of the subsequent law as long as it continues, even if its provisions are more severe.[2532]

It is established that the law that is most suitable for the accused is the one that creates for him, from the substantive aspect - not the procedural aspect - a position or status that is more suitable for him than the old law, such as cancelling the crime attributed to him, or cancelling some of its penalties or mitigating them, or deciding a way to exempt from criminal liability without cancelling the crime itself, or requiring a new element for its establishment that was not present in the act of the accused. In these cases, the accused has the right - based on the significance of changing the policy of criminalization and punishment to mitigation - to benefit for

---

([2530] Appeal No. 2588 of 63 Q issued in the session of February 5, 1995 and published in the first part of Technical Office Book No. 46, page No. 319, rule No. 45.

([2531]) The Supreme Constitutional Court, Case No. 12 of 13 Q, issued in the session of November 7, 1992, date of publication December 3, 1992, and published in the second part of the Technical Office Book No. 5, page No. 68, rule No. 7.

([2532]) Appeal No. 1512 of year 51 Q issued in the session of November 3, 1981 and published in the first part of the Technical Office Book No. 32, page No. 805, rule No. 139. See: the Supreme Court ruling, in case No. 1 of year 8 Q issued in the session of April 16, 1977 and published in the first part of the Technical Office Book No. 1, page No. 230.

his benefit from those new texts from the date of their issuance, provided that the act he committed is not in violation of a law that prohibits its commission within a specific period, as the end of this period does not prevent the prosecution from proceeding or the execution of the penalties imposed in accordance with the text of the third paragraph of Article 5 of the Penal Code. Since resorting to the rule of the most suitable law in the above is only an exception to the established general principle that the criminal law governs the crimes that occur under it until the binding force is removed by a subsequent law that repeals its provisions, it is interpreted narrowly and revolves around it. Existence and non-existence with the reason that called for its establishment, because the reference in resolving the conflict between laws in terms of time is the intention of the legislator, which may not be confiscated in it. [2533]

15-1-4 Ignorance of the law is not an excuse.

The principle is that knowledge of the criminal law and the complementary penal laws is assumed for everyone, and therefore the plea of ignorance or error therein is not acceptable, just as the plea of ignorance of the amendments introduced to the law is not permissible, since that, as the law stipulates, is within the knowledge of all people.[2534]

Ignorance of the penal code and its complementary laws is not an excuse and does not waive responsibility.[2535]

Ignorance of the law or a mistake in understanding its texts does not negate criminal intent, given that knowledge of the penal law and its correct understanding is assumed for all people.[2536]

The court is not obligated to respond to the plea of ignorance of the law, and the court's failure to respond to that plea does not invalidate its ruling.[2537]

Providing those addressed by the law with sufficient information (Fair Notico) to guarantee their rights and freedoms stipulated by the constitution or mandated by the rules of international public law, can only be achieved through publishing it in the Official Gazette, which ensures publicity.[2538]

([2533]) General Authority for Criminal Matters, Appeal No. 8941 of Year 50 Q, issued in the session of April 7, 1981, and published in the first part of the Technical Office Book No. 32, page No. 3.

([2534]) Appeal No. 17275 of 84 Q issued in the session of April 20, 2016 and published in Technical Office Book No. 67, page No. 448, Rule No. 53, Appeal No. 26006 of 84 Q issued in the session of May 17, 2015 and published in Technical Office Book No. 66, page No. 468, Rule No. 65, Appeal No. 14934 of 83 Q issued in the session of February 4, 2014 and published in Technical Office Book No. 65, page No. 48, Rule No. 5, Appeal No. 28349 of 69 Q issued in the session of February 6, 2002 and published in Technical Office Book No. 53, page No. 253, Rule No. 46, Appeal No. 1582 of 37 Q issued in the session of November 20, 1967 and published in Part Three of the Office Book Technical No. 18, Page No. 1116, Rule No. 233.

([2535]) Appeal No. 6764 of 52 Q issued in the session of April 13, 1983 and published in the first part of the Technical Office Book No. 34, page No. 506, rule No. 104, Appeal No. 1321 of 42 Q issued in the session of January 21, 1973 and published in the first part of the Technical Office Book No. 24, page No. 78, rule No. 18, Appeal No. 1135 of 37 Q issued in the session of October 9, 1967 and published in the third part of the Technical Office Book No. 18, page No. 937, rule No. 188.

([2536]) Appeal No. 26006 of 84 Q issued in the session of May 17, 2015 and published in the Technical Office Book No. 66, page No. 468, rule No. 65, Appeal No. 14934 of 83 Q issued in the session of February 4, 2014 and published in the Technical Office Book No. 65, page No. 48, rule No. 5, Appeal No. 10015 of 63 Q issued in the session of January 19, 1995 and published in the first part of the Technical Office Book No. 46, page No. 211, rule No. 30, Appeal No. 6151 of 58 Q issued in the session of January 18, 1989 and published in the first part of the Technical Office Book No. 40, page No. 97, rule No. 13, Appeal No. 7588 of 53 Q issued in the session of March 28, 1985 and published In the first part of the Technical Office Book No. 36, page No. 460, rule No. 78, appeal No. 1104 for the year 45 Q issued in the session of October 26, 1975 and published in the first part of the Technical Office Book No. 26, page No. 630, rule No. 141.

([2537] Appeal No. 7204 of 82 Q issued in the session of March 10, 2013 and published in Technical Office Book No. 64, Page No. 354, Rule No. 41.

([2538]) The Supreme Constitutional Court, Case No. 20 of 15 Q, issued in the session of October 1, 1994, date of publication October 20, 1994, and published in the first part of the Technical Office Book No. 6, page No. 358.

Notifying the addressees of the legal rule, with its content, is considered a condition for informing them of its content, and its implementation, accordingly, assumes its announcement through publication, and the arrival of the specified date for the start of its enforcement. This meant that the entry of this rule into the implementation phase was linked to two events that occurred together and complemented each other - although the realization of the second was dependent on the occurrence of the first - namely its publication and the expiration of the period specified by the legislator for the start of its implementation. It was decided that every legal rule - whether included in a law or regulation - may not be considered as such, unless its mandatory nature, which distinguishes it from the moral rule, is compared to it, as this characteristic is considered part of it, and its components are not completed by its loss.

Whereas the above means that publishing a legal rule guarantees its publicity, the spread of its provisions, and its connection to those concerned with it, and prevents the claim of ignorance of it, and this publication is considered a guarantee of their awareness of its nature, content, and scope, preventing them from evading it, even if their knowledge of it has not become certain, or their understanding of its content is weak. And their compulsion before publishing it to abide by it - and they are strangers in the field of its application - includes a violation of their freedoms or the rights guaranteed by the constitution, without adhering to the legal means that have defined its boundaries and separated its conditions. It has been necessary to say that the legal rule that is not published does not include sufficient notification of its content or the conditions for its application, so its components are not complete, which the constitution considered to be fulfilled as a condition for the permissibility of interfering with it to regulate rights and freedoms of all kinds, and what is related to them in preserving personal freedom and the right to property.[2539]

On the other hand, it is permissible to excuse oneself on the grounds of ignorance of a provision of a law other than the Penal Code, provided that the person claiming this ignorance provides evidence that he has made sufficient investigation and that his belief that he is carrying out a lawful act has reasonable grounds. This is what is relied upon in the laws from which the legislator took the foundations of criminal liability, and it is what is inferred from all texts of the law.[2540]

Ignorance of a rule established in another law - other than criminal laws - is an ignorance composed of ignorance of this legal rule and of reality at the same time, which must be considered legally in criminal matters as a whole as ignorance of reality.[2541]

Ignorance of the provisions or rules of a law other than the Penal Code or an error in it, such as an error in understanding the foundations of administrative law, renders the committed act not punishable.[2542]

([2539]) The Supreme Constitutional Court, Case No. 95 of 23 Q, issued in the session of June 3, 2012, date of publication June 13, 2012.

([2540]) Appeal No. 18637 of 84 Q issued in the session of April 14, 2015 and published in Technical Office Book No. 66, page No. 360, Rule No. 51, Appeal No. 19077 of 76 Q issued in the session of November 18, 2008 and published in Technical Office Book No. 59, page No. 516, Rule No. 95, Appeal No. 21342 of 71 Q issued in the session of October 16, 2008 and published in Technical Office Book No. 59, page No. 438, Rule No. 81, Appeal No. 28529 of 70 Q issued in the session of September 19, 2006 and published in Technical Office Book No. 57, page No. 780, Rule No. 81, Appeal No. 13196 of 76 Q issued in the session of May 18, 2006 and published In the Technical Office Book No. 57, page No. 636, Rule No. 69, Appeal No. 892 of 74 Q issued in the session of February 26, 2006 and published in the Technical Office Book No. 57, page No. 320, Rule No. 36, Appeal No. 39618 of 72 Q issued in the session of January 16, 2003 and published in the Technical Office Book No. 54, page No. 112, Rule No. 11, Appeal No. 3842 of 56 Q issued in the session of November 20, 1986 and published in the first part of the Technical Office Book No. 37, page No. 924, Rule No. 176.

([2541]) Appeal No. 41358 of 75 Q issued in the session of October 10, 2012 and published in Technical Office Book No. 63, page No. 482, rule No. 81, Appeal No. 475 of 36 Q issued in the session of June 5, 1967 and published in the second part of Technical Office Book No. 18, page No. 744, rule No. 149, Appeal No. 1359 of 35 Q issued in the session of February 1, 1966 and published in the first part of Technical Office Book No. 17, page No. 86, rule No. 15.

15-2 Within the Framework of International Conventions

No one may be prosecuted on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed or omitted.

Criminal offences should be clearly defined and strictly enforced. No person may be prosecuted more than once for the same offence within the same jurisdiction.

No one shall be held guilty of any crime on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.[2543]

The prohibition on the retroactive application of criminal law may not be suspended under any circumstances, including states of emergency.[2544]

Criminal offences referred to in these standards include:

Crimes arising from national law - whether basic law or common law - as interpreted by the courts.[2545]

Acts or omissions that are criminalized under international treaty law or customary international law.

This means that prosecution may be brought against perpetrators of crimes that were criminal acts under international law when they were committed, such as genocide, war crimes, slavery, torture and enforced disappearance, even if they were not criminalised under national law at the time they were committed.[2546]

With regard to the ongoing crime, as is the case with enforced disappearance,[2547]

The institution of a prosecution shall not be considered retroactive if the criminal conduct on which the prosecution is based was established in national or international law before the crime was completed. In cases of enforced disappearance, the crime is considered to continue until the fate and whereabouts of the victim are revealed.[2548]

([2542] Appeal No. 1095 of 26 Q issued in the session of December 25, 1956 and published in Part Three of Technical Office Book No. 7, Page No. 1331, Rule No. 365.

([2543]) Article 11(2) of the Universal Declaration, Article 15 of the International Covenant, Article 19(1) of the Migrant Workers Convention, Article 7(2) of the African Charter, Article 9 of the American Convention, Article 15 of the Arab Charter, Article 7 of the European Convention, and Section N7(a) of the Principles on a Fair Trial in Europe; See Article 22 of the Rome Statute, European Court: Weber v. Estonia No. 2 (45771)/99, (2003) § 39-§ 37, Korbly v. Hungary (9174)/02), Grand Chamber (95-§ 69 (2008); De la Cruz Flois v. Peru, Inter-American Court § 104-§ 109 (2004) and 110-114; Dauda Jawara v. Gambia (147)/95 and 149/96), African Commission, Annual Report 13 § 62-§ 63 (2000).

([2544]) Article 4(2) of the International Covenant, Article 27(2) of the American Convention, Article 4(2) of the Arab Charter, and Article 15(2) of the European Convention.

([2545]) European Court: Cantoni v. France (17862)/91, § 29 (1996); Sáez Oceja and Others v. Spain (74182)/01 and 74186/01), (inadmissibility decision) (2007), under § 2.

([2546]) European Court: Papon v. France (No. 2) (54210)/00), (inadmissibility decision) (15 November 2001) Law, §2, Kolk and Kislaje v. Estonia (23052)/04 and 24018/04), (2006); Baumgarten v. Germany, Human Rights Committee, 2000/2003) UN Doc. CCPR/C/78/D/960) 5/9-3/ §9; see Interim Decision on Applicable Law (0111) - (STL-11, Appeals Chamber of the Special Tribunal for Lebanon (16 February 2011) §133 (2011).

([2547]) Bamaka-Velásquez v. Guatemala, Inter-American Court (2000) § 128; Grand Chamber of the European Court: Varnava and Others v. Turkey (90/16066-90/16064 and 16068-16073/90), § 148 (2009, Al-Masry v. The former Yugoslav Republic of Macedonia (39630)/09), § 240 (2012).

([2548]) See article 17(1) of the Declaration on Disappearances, general comment on enforced disappearance as a continuing crime of the Working Group on Enforced or Involuntary Disappearances; see article 14(2) of the draft articles on responsibility of States for internationally wrongful acts.

The above-mentioned standards provide a guarantee against arbitrariness in prosecution, conviction and punishment.[2549]

The principle of tolerance also embodies: that is, the principle that courts apply the law whose provisions are biased in favor of the accused in the event of differences between the criminal law in force at the time of the commission of the crime and the criminal law that was enacted after the commission of these crimes but before the final judgment in the case was issued.[2550]

Also, these standards mean that a person may not be prosecuted for an act that was prohibited by law at the time it was committed if, as a result of a change in the law, that act no longer constitutes a crime when the person is charged or a final judgment is rendered against him.[2551]

These criteria also:

It is prohibited to impose a more severe penalty than the penalty that was in force at the time the crime was committed;

Requires the application of changes in the law that mitigate the penalty;

It requires respect for the principle of legality.

The principle of legality imposes a duty on states to define criminal offences precisely in the body of the law. The principle of legality is met when an individual can know from the text of the relevant legal provision, and according to the interpretation of the courts, which actions or omissions could expose him to criminal prosecution.[2552]

The fact that a person needs legal advice to understand the law does not necessarily make it a very ambiguous law.[2553]

As a general rule, the wording of the law should be sufficient to deduce the definition of the limits of any crime - without the need for analogy -[2554]

In the event of ambiguity, it must be interpreted in the best interests of the accused.

The Inter-American Court has explained this as follows: “Crimes must be classified and described in precise and unambiguous language capable of narrowly defining the crime punishable... This means clearly defining criminal behavior, clarifying its elements and the factors that distinguish it from patterns of behavior that do not constitute crimes punishable by law or are punishable but not by imprisonment. Ambiguity in the description of crimes creates doubts and opens the door to abuse of power, especially when it comes to affirming the criminal responsibility of individuals and punishing them for their criminal conduct with penalties that affect their enjoyment of the most precious things, such as life and liberty. ”[2555]

([2549]) European Court: Strelitz and Others v. Germany (34044/96, 35532/97, 44802/98), § 50 (2001, AS. W. v. United Kingdom §34-§36, (1995), (92/20166), Corbeli v. Hungary (9174)/02), Grand Chamber §69 (2008); Pietraruya v. Uruguay (44)/1979), Human Rights Committee (1984) UN Doc. CCPR/C/OP/1) pp. 2/76, §13 and §17.

([2550]) Scoppola v. Italy (No. 2) (10249)/03), Grand Chamber of the European Court §106-§109 (2009); see Cochet v. France, Human Rights Committee, 2008/4/7-2/ §7 (2010) UN Doc. CCPR/C/100/D/1760.

([2551]) Cochet v. France, Human Rights Committee, / UN Doc. CCPR. 4/7-2/ §7 (2010) C/100/D/1760/2008.

([2552]) European Court: Kokkinakis v. Greece (14307)/88, (1993) §52, AS. W. v. United Kingdom (20166)/92), (36-§§34, (1995, Korbly v. Hungary (9174)/02), Grand Chamber - §70 §69 (2008); Prosecutor v. Mitar Vasiljević (IT-98-32-T), Trial Chamber of the International Tribunal for the Former Yugoslavia (29 November 2002) §201-§204; Prosecutor v. Zlatko Aleksovski (IT-95-14/1-A), Appeals Chamber of the International Tribunal for the Former Yugoslavia (24 March). §126- §127 (2000).

([2553]) European Court: Cantoni v. France (17862)/91), (1996) §29 and §35, Corbeli v. Hungary (9174)/02), Grand Chamber §69-§70 (2008), Sandy Thames v. United Kingdom (No. 1) (6538)/74), §49-§53 (1979).

([2554]) See, European Court, Korbly v. Hungary (9174)/02), Grand Chamber §69-§70 (2008), Weber v. Estonia No. 2 (45771)/§121 (99).

([2555]) Castillo Petruzzi et al. v. Peru, Inter-American Court (1999). §121.

A number of human rights bodies and mechanisms have raised concerns about the lack of specificity in counter-terrorism and national security laws.[2556]

The United Nations General Assembly urged States to ensure that laws criminalizing terrorist acts are easily accessible, are drafted in a precise manner that is non-discriminatory and non-retroactive, and is consistent with international law, including human rights law.[2557]

The principle of legality requires criminal courts to ensure that they do not punish acts that are not punishable by the laws mentioned in the charges.[2558]

It also requires the prosecution to prove each element of the crime stipulated in the legal standard.[2559]

In this context, the Inter-American Court ruled that a conviction by a court violated the principle of legality because it was based on the accused's membership in a terrorist organization and failure to report relevant information – rather than on the crime of complicity in terrorist acts, as charged.[2560]

Chapter Sixteen: Prohibition of Double Jeopardy for the Same Crime

16-1 Under Egyptian Law

This principle is known as the conclusiveness of the criminal judgment. According to this conclusiveness, the criminal judgment is considered a title of truth. Based on this, this conclusiveness has a positive aspect, which is that it is a conclusive legal presumption that cannot be proven otherwise, and a negative aspect, which is that the accused cannot be tried for the same act again.

Article 454 of the Code of Criminal Procedure stipulates this principle, stating that: "The criminal case against the accused and the facts attributed to him shall expire upon the issuance of a final judgment of acquittal or conviction..."

The Supreme Constitutional Court has raised this principle to the level of constitutional principles, ruling that the principle of not punishing a person twice for the same act is one of the principles that have been repeated by legal systems of all kinds, and is considered part of the basic rights included in international agreements for every human being, and its squandering violates personal freedom, the protection of which from aggression is considered an essential guarantee for the humanity of the individual and his right to life, because one crime does not

---

([2556]) Special Rapporteur on human rights and counter-terrorism, § § 13 (2005) UN Doc. E/CN. 4/2006/98, 26-27, 42-50 and 72, Spain, §6-§14 (2008) UN Doc. A/HRC/10/3/Add. 2, Israel, UN Doc §16 A/HRC/6/17/Add4; Concluding observations of the Human Rights Committee: Hungary, §9 (2010) UN Doc. CCPR/C/HUN/CO/5, Russian Federation, UN Doc § 7 (2009) CCPR/C/RUS/CO/6 and 24, United States of America, UN Doc § 11 (2006). CCPR/C/USA/CO/3/REV. 1, Libya, UN Doc 12 § (2007) CCPR/C/LBY/CO/4; Concluding observations of the Committee against Torture: Algeria, §4 (2008) UN Doc. CAT/C/DZA/CO/3; Venice Commission of the Council of Europe, Report on counter-terrorism measures and human rights, CoE §32-§34 (2010), Doc. CDL-AD(2010)022); Working Group on Enforced Disappearances, 31/1995/§25 (1994) UN Doc. E/CN. 4 (d); Concluding observations of the Human Rights Committee: Hong Kong SAR,. §14 (2006) UN Doc. CCPR/C/HKG/CO/2.

([2557]) Resolution 65/221 of the United Nations General Assembly, §6(1).

([2558]) De la Cruz Floys v. Peru, Inter-American Court (2004) §81-§82.

([2559]) Nicholas v. Australia, 2002/2004) UN Doc. CCPR/C/80/D/1080). 5/7-2/ §7.

([2560]) De la Cruz Floyd v. Peru, Inter-American Court (2004). §77 - § 103.

bear two burdens, and by fulfilling the penalty prescribed for its commission, the right to retribution has reached its ultimate goal.[2561]

Double criminal responsibility for a single act violates the law and harms justice. Therefore, it is prohibited to try a person twice for the same act.[2562]

The penalty must not include punishing a person more than once for a single act (double jeopardy), and this is a rule guaranteed by all legal systems and formulated by international conventions as a universal maxim between countries, the basis of which is that one crime does not bear two sins, and that although the principle is that the legislator should allocate for each crime the punishment that suits it, its imposition on its perpetrator and its fulfillment means that retribution has been completed by its imposition, and no one will have any recourse against its perpetrator after that.[2563]

Therefore, it is not permissible for a person to be exposed to the risk of being prosecuted with a criminal charge more than once for the same crime, nor for the state, with all its powers and resources, to try again to convict him for a crime it claims he committed - even through a criminal danger that it considers a crime in itself and attaches to it - because if it does so, it only keeps him anxious, disturbed, threatened by its whims, extending its wrath to him when it wants, so that he becomes subject to various types of suffering that he cannot bear, squandering his resources unnecessarily, faltering in his steps. Rather, his conviction, even if he is innocent, remains more likely the more the criminal charge is consecutive for the same crime.[2564]

The Supreme Constitutional Court ruled that Article 5 of Law No. 98 of 1945 regarding vagrants and suspects is unconstitutional, as it considered a suspect to be any person over the age of

---

([2561]) The Supreme Constitutional Court, Case No. 55 of 27 Q issued in the session of December 10, 2006, date of publication December 24, 2006, published in the first part of the Technical Office Book No. 12, page No. 168, rule No. 18, Case No. 3 of 10 Q issued in the session of January 2, 1993, date of publication January 14, 1993, published in the second part of the Technical Office Book No. 5, page No. 103, rule No. 10.

([2562]) Appeal No. 50733 for the year 85 Q issued in the session of November 22, 2016 and published in the Technical Office's letter No. 67, page No. 812, rule No. 101, Appeal No. 6752 for the year 80 Q issued in the session of February 12, 2012 and published in the Technical Office's letter No. 63, page No. 205, rule No. 26, Appeal No. 9606 for the year 79 Q issued in the session of October 17, 2011 and published in the Technical Office's letter No. 62, page No. 294, rule No. 48, Appeal No. 20557 for the year 62 Q issued in the session of March 3, 2002 and published in the Technical Office's letter No. 53, page No. 325, rule No. 59, Appeal No. 22145 for the year 64 Q issued in the session of December 31, 2000 and published in the Office's letter Technical No. 51, Page No. 866, Rule No. 171, Appeal No. 16595 for the year 63 Q issued in the session of October 4, 1999 and published in the first part of the Technical Office Book No. 50, Page No. 494, Rule No. 114, Appeal No. 17692 for the year 61 Q issued in the session of June 3, 1998 and published in the first part of the Technical Office Book No. 49, Page No. 778, Rule No. 102, Appeal No. 4735 for the year 60 Q issued in the session of March 29, 1997 and published in the first part of the Technical Office Book No. 48, Page No. 402, Rule No. 57, Appeal No. 413 for the year 60 Q issued in the session of January 25, 1995 and published in the first part of the Technical Office Book No. 46, Page No. 269, Rule No. 35, Appeal No. 8418 for the year 58 Q issued in the session of March 8, 1989 and published in the first part of the Technical Office Book No. 40, page No. 370, rule No. 59, Appeal No. 4460 for year 52 Q issued in the session of December 2, 1982 and published in the first part of the Technical Office Book No. 33, page No. 947, rule No. 196, Appeal No. 1282 for year 45 Q issued in the session of November 16, 1975 and published in the first part of the Technical Office Book No. 26, page No. 696, rule No. 153, Appeal No. 1991 for year 38 Q issued in the session of March 31, 1969 and published in the first part of the Technical Office Book No. 20, page No. 401, rule No. 87.

([2563]) The Supreme Constitutional Court, Case No. 9 of 28 Q issued in the session of November 4, 2007, date of publication November 13, 2007, published in the first part of the Technical Office Book No. 12, page No. 719, rule No. 71, Case No. 49 of 17 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7, page No. 739, rule No. 48.

([2564]) The Supreme Constitutional Court, Case No. 8 of 16 Q issued in the session of August 5, 1995, date of publication August 31, 1995, published in the first part of the Technical Office Book No. 7, page No. 139, rule No. 8, Case No. 49 of 17 Q issued in the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the Technical Office Book No. 7, page No. 739, rule No. 48, Case No. 9 of 25 Q issued in the session of April 4, 2004, published in the Technical Office Book No. 11, page No. 2817, rule No. 14.

fifteen who has been convicted more than once of one of the following crimes or who is known for acceptable reasons to have been accustomed to committing some of these crimes:

Assaulting or threatening to assault or harm one's person or property;

Mediation in the return of kidnapped persons or stolen or embezzled items;

Disrupting means of public transportation or intelligence;

Trafficking in toxic or narcotic substances or providing them to others;

Counterfeiting money, forging government banknotes or banknotes legally circulating in the country, or imitating or promoting any of the above;

Crimes of purchasing food supplies distributed by public sector institutions, consumer cooperatives and their branches, if this is not for personal use and for resale;

The crimes stipulated in Law No. 10 of 1961 regarding combating prostitution;

The crimes of explosives, bribery, embezzlement of public funds, aggression against them, and treachery stipulated in Chapters Two, Three, and Four of Book Two of the Penal Code;

Felonies or misdemeanors that harm the security of the government from abroad, as stipulated in Chapter One of Book Two of the Penal Code;

The crimes of prisoners escaping and concealing perpetrators stipulated in Chapter Eight of Book Two of the Penal Code;

Arms trafficking crimes;

Preparing others to commit crimes or training them to commit them, even if no crime occurs as a result of this preparation or training;

Harboring suspects in accordance with the provisions of this law with the intent to threaten or control others;

The crimes of fraud and deception stipulated in Law No. 48 of 1941 on the suppression of fraud and deception.

Article No. 6 of the same law punishes the suspect with one or more of the following preventive measures:

Determining residence in a specific place or location;

Prohibition of residence in a particular place;

Repatriation to the country of origin;

Place under police surveillance;

Deposit in one of the work institutions specified by a decision of the Minister of Interior.

The measure shall be for a period of not less than six months and not more than three years. In the event of recidivism or the suspect being caught carrying weapons, tools or other instruments that may cause injuries or facilitate the commission of crimes, the penalty shall be imprisonment and a ruling on one or more of the previous measures for a period of not less than one year and not more than five years.

Deportation of foreigners

This is because it involves punishing a person more than once for one act. He has been tried for all of his previous crimes, and the punishment for each one has been fulfilled. There is no other crime that he committed - consisting of an act or omission - for which a criminal case can be

brought. Rather, it is motivated by his dangerous condition, which the legislator assumed was based on his previous crimes, and based it on them. This does not detract from the fact that they are measures intended to confront and curb the criminal tendency latent in those with multiple criminal records. It is necessary to consider him a suspect in order to avoid his danger, since it is sufficient for the court of subject matter to estimate, on the occasion of the last crime he committed, the appropriate punishment for it, taking into account his criminal past.[2565]

However, for the defense to be valid, the force of res judicata in criminal matters must be met, which requires refraining from considering the case:

that there is a final criminal judgment previously issued in a specific criminal trial, and that there is a commonality between this trial and the next trial in which this plea is sought to be invoked in terms of subject matter, cause, and persons accused;

The judgment must be issued on the subject of the lawsuit, whether it rules on conviction and imposition of punishment or acquittal. However, if a judgment is issued on a matter that is not decisive on the subject, then the final judgment cannot be considered binding.[2566]

The basis for the validity of judgments is the unity of the parties, the subject matter and the reason. It is not sufficient that a final criminal judgment has previously been issued in a particular trial. Rather, there must be a union between this trial and the next trial in the subject matter, the reason and the persons accused.[2567]

If a lawsuit is filed for a specific incident with a specific description and a ruling is issued in it, it is not permissible to file a lawsuit for that same incident with a new description. The basis of the incident that prevents a retrial - even under a new description - is that the basis on which the facts were established in the two lawsuits is the same, meaning that each lawsuit does not have an independent subject and special circumstances that achieve the otherness that prevents saying that the cause is the same in them. Saying that the crime is the same or that it is multiple is a legal qualification that is subject to the discretion of the Court of Cassation.[2568]

([2565]) The Supreme Constitutional Court, Case No. 3 of 10 Q, issued in the session of January 2, 1993, date of publication January 14, 1993, and published in the second part of the Technical Office Book No. 5, page No. 103, rule No. 10.

([2566]) Appeal No. 61 of 88 Q issued in the session of November 25, 2018 (unpublished), Appeal No. 2199 of 87 Q issued in the session of February 15, 2018 (unpublished), Appeal No. 8951 of 79 Q issued in the session of September 18, 2011, Appeal No. 530 of 69 Q issued in the session of October 5, 2002 and published in Technical Office Book No. 53, page No. 936, Rule No. 156, Appeal No. 9731 of 67 Q issued in the session of July 22, 1999 and published in the first part of Technical Office Book No. 50, page No. 419, Rule No. 99, Appeal No. 10442 of 60 Q issued in the session of November 9, 1997 and published in the first part of Technical Office Book No. 48, page No. 1215 Rule No. 184, Appeal No. 5544 for the year 53 Q issued in the session of May 14, 1984 and published in the first part of the Technical Office Book No. 35, page No. 498, Rule No. 110, Appeal No. 109 for the year 43 Q issued in the session of June 11, 1973 and published in the second part of the Technical Office Book No. 24, page No. 732, Rule No. 152.

([2567] If the appellant argues in his appeal that the previously issued ruling did not address the appellant, but rather acquitted his brother, then everything he raises regarding the ruling's error in applying the law by not implementing the provisions of Articles 454 and 455 of the Code of Criminal Procedure and its failure to provide reasoning in this regard is unsound. Appeal No. 623 of 55 Q issued in the session of May 14, 1985 and published in the first part of Technical Office Book No. 36, page No. 654, Rule No. 116.

([2568] Appeal No. 23634 of year 67 Q issued in the session of June 2, 1998 and published in the first part of Technical Office Book No. 49, page No. 764, rule No. 101.

It was also ruled that the accused's issuance of several checks, all or some of them without funds, to the benefit of one person on one day and for one transaction - regardless of the date each one bears or the value for which it was issued - constitutes a single, indivisible criminal activity, which is what achieves the indivisible connection between these crimes. Article 32 of the Penal Code must be implemented and a single penalty must be imposed for these incidents. If a single final judgment of conviction or acquittal is issued for the issuance of any of the checks, the criminal case for this criminal activity shall expire in accordance with the provisions of the first paragraph of Article 454 of the Code of Criminal Procedure.

It is stipulated that in the event of a cheque being traded that has no balance available and can be withdrawn from one beneficiary to another by issuing it to the bearer or by endorsing it, a criminal action may not be brought against the drawer based on the request of each beneficiary of the cheque in the event of issuing it to the bearer or from the endorser each

It is not permissible to return to the criminal case after a final ruling has been issued based on a change in the legal description of the crime, nor to re-submit the case before the judiciary for the same act and against the same convicted accused.[2569]

Since the crime is carried out through successive, consecutive actions within the single criminal purpose that was in the mind of the perpetrator. Each of the actions that occur in implementation of this purpose is not punishable alone, but rather the punishment is for all of these actions as a single crime, such that if one of these actions does not appear until after the first trial, then the first ruling prevents the filing of a lawsuit regarding this action out of respect for the principle of the force of the thing judged upon.[2570]

However, if the two incidents attributed to one accused and another accused constitute a link in a chain of incidents committed by the two for a single criminal purpose, each incident has its own characteristics and special circumstances that establish the difference that prevents the claim of the unity of the cause in the two lawsuits.[2571]

As for crimes that continue in a continuous and renewed manner, the trial of the perpetrator for a continuing crime includes the criminal status prior to the filing of the lawsuit and until a final judgment is issued in it. The appellate court must combine the lawsuits filed against the accused

---

separately, and he shall be tried in each action and punished therein independently. Rather, the criminal action shall be brought based on the request of one of the beneficiaries of the cheque, and if a final judgment of conviction or acquittal is issued in it, then it is forbidden to retry him for the same cheque based on the initiation of the criminal action by another beneficiary, since the incident in question is the issuance of a cheque without a balance, regardless of the number of its bearers or endorsers.
Appeal No. 9082 of 71 Q issued in the session of October 13, 2002 and published in the Technical Office Book No. 53, page No. 951, rule No. 157, Appeal No. 47524 of 59 Q issued in the session of April 18, 1998 and published in the first part of the Technical Office Book No. 49, page No. 589, rule No. 75, Appeal No. 17692 of 61 Q issued in the session of June 3, 1998 and published in the first part of the Technical Office Book No. 49, page No. 778, rule No. 102, Appeal No. 8735 of 59 Q issued in the session of October 20, 1992 and published in the first part of the Technical Office Book No. 43, page No. 853, rule No. 131, Appeal No. 3505 of 56 Q issued in the session of February 26, 2011 1987 and published in the first part of the Technical Office Book No. 38, page No. 334, Rule No. 50, Appeal No. 43943 for the year 85 Q issued in the session of May 4, 2016 and published in the Technical Office Book No. 67, page No. 470, Rule No. 55, Appeal No. 12426 for the year 84 Q issued in the session of January 11, 2015 and published in the Technical Office Book No. 66, page No. 113, Rule No. 7, Appeal No. 4135 for the year 80 Q issued in the session of November 17, 2011 and published in the Technical Office Book No. 62, page No. 393, Rule No. 67, Appeal No. 18549 for the year 68 Q issued in the session of March 14, 2001 and published in the Technical Office Book No. 52, page No. 330, Rule No. 54, Appeal No. 191 for the year 46 Q issued in the session of May 17, 1976 and published in the first part of the Technical Office Book No. 27, page No. 497, Rule No. 111, Appeal No. 1165 of year 41 Q issued in the session of November 29, 1971 and published in the third part of the Technical Office Book No. 22, page No. 673, Rule No. 164.
The Court of Cassation ruled that since the accused had produced alcohol smuggled from the production fees and adulterated at the same time and had thereby committed one act that constituted the two crimes attributed to him, and the criminal case for the crime of evading the payment of fees had expired by reconciliation in accordance with the provisions of Article 22 of Law No. 363 of 1956, this had no effect on the other criminal case arising from the crime of fraud, as long as a final judgment of conviction or acquittal had not been issued in the subject of the incident, because such a judgment alone is what would, in accordance with the provisions of Article 454 of the Code of Criminal Procedure, end the criminal case for the entire incident, such that it would be prohibited to return to its consideration based on another description of the act constituting it. It is necessary to rule that the criminal case has been settled by reconciliation, and this applies only to the first charge. Appeal No. 369 of 51 Q issued in the session of December 13, 1984 and published in the first part of the Technical Office Book No. 35, page No. 897, rule No. 198.

([2569] Appeal No. 1668 of 48 Q issued in the session of June 17, 1979 and published in the first part of Technical Office Book No. 30, page No. 694, Rule No. 147.

([2570] Appeal No. 4547 of 67 Q issued in the session of June 4, 2006 and published in Technical Office Book No. 57, Page No. 718, Rule No. 72.

([2571] Appeal No. 812 of year 44 Q issued in the session of November 10, 1974 and published in the first part of the Technical Office Book No. 25, page No. 715, rule No. 155.

in a continuing crime and issue a single judgment with a single penalty as long as a final judgment has not yet been issued in it.[2572]

The plea of inadmissibility of examining the case due to a previous ruling on it is related to public order, and it is one of the essential pleas that the court must, when presented to it, investigate the truth of the situation in its regard, and it may be raised for the first time before the Court of Cassation as long as the records of the ruling indicate it.[2573]

The validity of the plea of res judicata in criminal matters requires that the previous ruling issued be a final criminal ruling that was previously issued in a criminal trial. The force of res judicata before the criminal courts is only for final criminal rulings. Therefore, the rulings issued by the administrative judiciary courts do not terminate the criminal case and do not have the force of res judicata before the criminal courts.[2574]

There is no conflict between administrative responsibility and criminal responsibility, as each operates in its own orbit and has its own area of jurisdiction, not restricted by the other. Punishing an employee in an administrative capacity or imposing a penalty on him by the disciplinary board for an act of his does not prevent either of them from being able to try him before the criminal courts in accordance with the general law for every crime that may consist of this act, due to the difference between disciplinary and criminal lawsuits in the subject, in the cause, and in the opponents, which makes it impossible for the judiciary in one of them to have the force of a res judicata with respect to the other.[2575]

The ruling issued by a disciplinary court does not have the force of res judicata before criminal courts, even if it was issued imposing the penalties of imprisonment or detention - as in the penalties stipulated in Police Authority Law No. 109 of 1971 - whether related to officers or others, as they are all purely disciplinary penalties, including the penalties of imprisonment and detention.[2576]

The force of res judicata is only for final judgments after they have become conclusive, and when the judgment becomes such, it becomes a title of the truth, and it is not right to undermine it or discuss the legal positions that have been established by it, and the judgment thus becomes an argument for all, an argument related to public order, which requires the courts to implement the requirements of this argument, even on their own initiative.[2577]

The ruling of the judiciary is the title of the truth, and it is even stronger than the truth itself.[2578]

The force of res judicata, of a criminal judgment, whether before a criminal court or before civil courts, is only for final judgments after they have become conclusive, and that the judgment,

---

([2572] Appeal No. 253 of 43 Q issued in the session of May 6, 1973 and published in the second part of the Technical Office Book No. 24, page No. 607, rule No. 123.

([2573]) Appeal No. 8951 of 79 Q issued in the session of September 18, 2011 (unpublished), Appeal No. 7113 of 80 Q issued in the session of October 5, 2010 (unpublished).

([2574] Appeal No. 18637 of 84 Q issued in the session of April 14, 2015 and published in Technical Office Book No. 66, Page No. 360, Rule No. 51.

([2575]) Appeal No. 15810 of 74 Q issued in the session of December 21, 2004 and published in Technical Office Book No. 55, page No. 868, Rule No. 128, Appeal No. 31768 of 73 Q issued in the session of April 20, 2004 and published in Technical Office Book No. 55, page No. 436, Rule No. 58.

([2576] Appeal No. 8635 of 67 Q issued in the session of July 1, 1997 and published in the first part of Technical Office Book No. 48, page No. 719, rule No. 110.

([2577] Appeal No. 9606 of 79 Q issued in the session of October 17, 2011 and published in Technical Office Book No. 62, Page No. 294, Rule No. 48.

([2578]) Appeal No. 10336 of 64 Q issued in the session of July 3, 2000 and published in Technical Office Book No. 51, page 511, rule No. 100, Appeal No. 3470 of 56 Q issued in the session of October 29, 1986 and published in the first part of Technical Office Book No. 37, page 808, rule No. 156, Appeal No. 5152 of 55 Q issued in the session of February 3, 1986 and published in the first part of Technical Office Book No. 37, page 235, rule No. 48.

when it becomes such, becomes a title of the truth, and it is not right to undermine it, nor to discuss the legal positions that have been established by it, and the judgment thus becomes an argument for all, an argument related to public order, which requires the courts to implement the requirements of this argument, even on their own initiative.[2579]

The order issued by the investigating authority stating that there is no reason to file a criminal case has the force of law that prevents the return to the criminal case as long as it is in effect and has not been cancelled. It is not permissible, while it remains in effect, to file a criminal case for the same incident in which it was issued, because it has within the scope of its force the force of res judicata that judgments have.[2580]

However, the order issued by the Public Prosecution stating that there is no reason to file a criminal case or to keep the papers in the reported crime has no force before the criminal courts in the case of false reporting of this crime, which must decide the case brought before it according to what its investigation concludes. The court before which the charge of false reporting is brought has the right to examine the charge of false reporting free from all restrictions.[2581]

It is also required that the judgment be issued about the lawsuit, whether it rules on conviction and imposition of punishment or acquittal. However, if a judgment is issued on a matter that is not decisive on the subject, then it is not permissible to have res judicata as a binding force. The judgment issued on the lack of jurisdiction and referral is not permissible at all.[2582]

Also, acquittal rulings based on non-personal reasons for the convicted persons, such that they deny the occurrence of the incident for which the lawsuit was filed, are considered a title to the truth, whether for these accused or for others who are accused in the same incident.[2583]

([2579] Appeal No. 6733 of 54 Q issued in the session of April 30, 1986 and published in the first part of Technical Office Book No. 37, page No. 526, rule No. 104.

([2580] Appeal No. 12426 of 84 Q issued in the session of January 11, 2015 and published in Technical Office Book No. 66, Page No. 113, Rule No. 7.

([2581]) Appeal No. 17444 of 63 Q issued in the session of September 28, 1999 and published in the first part of the Technical Office Book No. 50, page No. 484, rule No. 111, Appeal No. 12080 of 61 Q issued in the session of October 25, 1998 and published in the first part of the Technical Office Book No. 49, page No. 1151, rule No. 157, Appeal No. 8492 of 59 Q issued in the session of November 22, 1990 and published in the first part of the Technical Office Book No. 41, page No. 1046, rule No. 188, Appeal No. 1314 of 49 Q issued in the session of January 2, 1980 and published in the first part of the Technical Office Book No. 31, page No. 17, rule No. 2, Appeal No. 1874 of 44 Q issued in the session of February 3 For the year 1975 and published in the first part of the Technical Office Book No. 26, page No. 132, rule No. 29, Appeal No. 1874 for the year 44 Q issued in the session of February 3, 1975 and published in the first part of the Technical Office Book No. 26, page No. 132, rule No. 29, Appeal No. 389 for the year 43 Q issued in the session of May 27, 1973 and published in the second part of the Technical Office Book No. 24, page No. 653, rule No. 134, Appeal No. 571 for the year 40 Q issued in the session of June 8, 1970 and published in the second part of the Technical Office Book No. 21, page No. 848, rule No. 200, Appeal No. 182 for the year 37 Q issued in the session of April 4, 1967 and published in the second part of the Technical Office Book No. 18, page No. 496, rule No. 94.

([2582]) Appeal No. 5400 of 81 Q issued in the session of January 21, 2012 and published in Technical Office Book No. 63, page No. 109, Rule No. 13, Appeal No. 1916 of 56 Q issued in the session of April 17, 1986 and published in the first part of Technical Office Book No. 37, page No. 499, Rule No. 100.

([2583] Appeal No. 4135 of 80 Q issued in the session of November 17, 2011 and published in Technical Office Book No. 62, Page No. 393, Rule No. 67

The Court of Cassation ruled that: Since it was clear from the records of the contested judgment that the ruling to acquit the landowner was based on personal reasons closely related to the accused who was tried based on the failure to prove that he was the one who carried out the excavation of the land and was not related to the excavation incident committed by the appellant and proven against him, and the acquittal rulings are not considered a title to the truth, whether with respect to the accused therein or to others who are accused in the same incident, unless the acquittal was based on non-personal reasons with respect to those in whose favour the judgment was issued, such that it negates the occurrence of the incident for which the lawsuit was filed materially, which is something that was not available in the lawsuit at hand, then what the appellant raises in this regard is without merit. Appeal No. 3050 of 54 Q issued in the session of June 14, 1984 and published in the first part of Technical Office Book No. 35, page No. 595, rule No. 133.

The basic principle of judgments is that they are binding only on their operative part, and their effect does not extend to the reasons, except for what is complementary to the operative part and closely and indivisibly connected to it, such that the operative part has no basis without it. However, if the court draws a conclusion from a fact presented to it, then this conclusion does not have binding force and does not prevent another court from deducing from a similar fact what it sees as consistent with the circumstances of the case presented to it, because there is no binding force between two judgments in two cases that differ in subject matter and cause.[2584]

Also, the ruling issued in the public lawsuit stating that the right to file it has expired due to the death of the accused cannot be considered a ruling that would prevent the lawsuit from being reconsidered if it turns out that the accused is still alive. Because it is not issued in a lawsuit between two parties who are notified to attend or who are present, each of whom presents his argument to the court, and then it decides on it as a dispute between two disputants. Rather, it is issued in absentia without notification, not as a decision in a dispute or lawsuit, but merely as a declaration by the court that it cannot, due to the death of the accused, except to stop the criminal lawsuit at this point, since the judgment is not for a dead person or against a dead person. If it becomes clear that this was based on a false basis, then it is not correct to say that there is a ruling that has acquired the force of res judicata and cannot be deviated from. Therefore, the ruling that rules that the case cannot be considered on the grounds that it was previously decided by the ruling issued that the right to file it has lapsed due to the death of the accused, while it has become clear that the accused is still alive - this ruling is wrong and must be overturned.[2585]

16-2 Within the Framework of International Conventions

No one shall be tried or punished twice for the same offence under the same jurisdiction if he has already been finally convicted or acquitted thereof.

This prohibition on being tried twice for the same crime, also known as the “ne bis in idem” principle, prevents a person from being tried or punished more than once in the same jurisdiction for the same crime. Under some international standards, it is prohibited to try a person more than once for conduct arising from the same or similar set of facts.[2586]

The prohibition under the American Convention expressly includes new prosecutions based on “the same cause.” This means that a subsequent trial is prohibited if the charges relate to the same matter or the same set of facts, even if the accused is charged with a different crime.

While Article 4 of Protocol 7 to the European Convention expressly prohibits multiple prosecutions for the same offence, the European Court has made it clear that the prohibition on double jeopardy prohibits prosecution of a person for a second offence if that offence arose from facts similar to those on which the first prosecution was instituted or from facts substantially similar to them.

The prohibition would have been violated even if the person was acquitted in the second case, and the court found that the prohibition against double jeopardy was violated when an individual

---

([2584]) Appeal No. 7250 of 53 Q issued in the session of May 8, 1984 and published in the first part of the Technical Office Book No. 35, page No. 491, rule No. 108, Appeal No. 812 of 44 Q issued in the session of November 10, 1974 and published in the first part of the Technical Office Book No. 25, page No. 715, rule No. 155, Appeal No. 3423 of 31 Q issued in the session of June 12, 1962 and published in the second part of the Technical Office Book No. 13, page No. 546, rule No. 138.

([2585] Appeal No. 144 of 15 Q issued in the session of January 15, 1945 and published in the first part of the collection of legal rules No. 6, page No. 605, rule No. 461.

([2586]) Article 14(7) of the International Covenant, Article 18(7) of the Migrant Workers Convention, Article 8(4) of the American Convention, Article 19 of the Arab Charter, Article 4 of Protocol 7 of the European Convention, and Section N(8) of the Principles on Fair Trial in Africa.

was charged under the Penal Code with misconduct based on the same acts that had previously resulted in an “administrative” sentence of three days’ imprisonment.[2587]

Repeated punishment of conscientious objectors for refusal to perform military service may constitute a violation of the prohibition against double jeopardy if the subsequent refusal to serve is based “on a continuing conscientious objection” ([2588]

This prohibition applies to all criminal acts, regardless of their seriousness. Even if a state's laws do not "criminalize" an act, it may be considered a "criminal offense" under international standards based on the nature of the crime and the potential penalties.

The prohibition does not apply to disciplinary measures that do not amount to penalties for a criminal act.[2589]

The prohibition applies at all times, including during states of emergency, under the Arab Charter and the Seventh Protocol to the European Convention.[2590]

It is expressly guaranteed by international humanitarian law applicable in times of armed conflict.

Under the International Covenant, the Migrant Workers Convention and Protocol 7 to the European Convention, the prohibition on double jeopardy applies expressly after a final judgment of conviction or acquittal. Otherwise, the prohibition under the American Convention applies only in cases of innocence.[2591]

All judicial reviews and appeals applicable to the case must be finally exhausted, or the prescribed time limits must have expired. Therefore, the prohibition will not be violated if a higher court, while considering the (first) trial proceedings, quashes the conviction and orders a retrial.[2592]

The law prohibits new trials or new penalties for the same crime under the same jurisdiction. This principle shall not be violated if the same accused is subsequently tried for another crime or under another jurisdiction.[2593]

However, the prohibition does not prevent a person who has previously been tried and convicted in absentia from being retried, if the accused so requests.[2594]

The prohibition of repeated trials on the same charge does not prevent the reopening of case files (including new trials) in the event of a miscarriage of justice, if the trial proceedings appear to have lacked integrity, or if new evidence appears or such evidence is discovered.[2595]

A distinction must be made between reopening the case file or holding a new trial based on exceptional circumstances (which is permissible) and trying or punishing the accused for the same crime (which is prohibited).

([2587]) Zolotukhin v. Russia (14930)/03), Grand Chamber of the European Court §82-§83 (2009) and 110-111.

([2588]) General Comment 32 of the Human Rights Committee, §55; Opinion No. 24/2003 of the Working Group on Enforced or Involuntary Disappearances (Israel), UN Doc. 2004 (E/CN. 4/2005/6/Add. 1) pp. 18 - §30 22 p.; Resolution 1998/77 of the Commission on Human Rights, §5.

([2589]) General Comment 32 of the Human Rights Committee, §57; Gerardus Streeck v. the Netherlands, Human Rights Committee, 2001 / UN Doc. CCPR/C/76/D/1001. 3/ §7 (2002).

([2590]) Article 4(2) of the Arab Charter, and Article 4(3) of the Seventh Protocol to the European Convention.

([2591]) Article 8(4) of the American Convention.

([2592]) General Comment 32 of the Human Rights Committee, §56; Zolotukhin v. Russia (14939/03), Grand Chamber of the European Court §§107-§110 (2009).

([2593]) Human Rights Committee: A. R. J. ،3/ §7 (1987) ،(1986/204) A. P. v Italy 4/ §6 (1997) Doc. CCPR/C/60/D/692/1996 ،v Australia..

([2594]) General Comment 32 of the Human Rights Committee, §54.

([2595]) Article 4(2) of the Seventh Protocol to the European Convention.

New trials may therefore be held, for example, when new evidence emerges, after a conviction, of serious procedural irregularities, including the court's lack of independence or impartiality, or if new facts or evidence emerge or are discovered.[2596]

16-2-1 International Criminal Courts

Persons who have been tried before national courts for acts within the jurisdiction of the International Criminal Court or other international criminal tribunals may be tried again before such international criminal tribunals, without this meaning being tried twice for the same crime, if :[2597]

if the act for which the accused was tried before the national court is described as an ordinary crime (as opposed to being described as genocide, a crime against humanity or a war crime);

or if the proceedings before the national court were not independent or impartial, or if the proceedings before the national court were conducted in a manner intended to protect the accused from international criminal accountability;[2598]

Or if the consideration of the case before the national court lacks due diligence)[2599]

However, persons who have been tried before the International Criminal Court or other international criminal tribunals for acts within their jurisdiction may not subsequently be tried on the same charges before national courts.[2600]

Chapter Seventeen: The Right to a Trial Without Undue Delay

17-1 Within the Framework of Egyptian Law

The principle of speedy trial finds its constitutional basis in the text of Article 97 of the Constitution, which stipulates that the state shall work to expedite the settlement of cases.

The guarantee of speedy settlement of cases stipulated in the Constitution aims to settle the judicial dispute after it is presented to its judges within a period of time that does not exceed any reasonable limit in its length, nor is its shortness infinitely short.[2601]

The right to a fair trial inherently includes the right to a trial conducted without undue delay—a right of fundamental significance. This ensures that an accusation is not left pending for an extended period without justification, thereby sparing the accused unnecessary anxiety and the impairment of their constitutionally guaranteed rights and freedoms, such as freedom of expression, the right to assembly, and participation in public life. Prolonged delays may damage

---

([2596]) General Comment 32 of the Human Rights Committee, §56; Almonacid-Arellano et al. v. Chile, Inter-American Court §154 (2006).

([2597]) Article 9(2) of the Statute of the Rwanda Tribunal, Article 9(2) of the Statute of the Special Court for Sierra Leone, and Article 10(2) of the Statute of the Yugoslavia Tribunal.

([2598]) Article 20(3) of the Rome Statute.

([2599]) Article 20(3) of the Rome Statute.

([2600]) Article 20(2) of the Rome Statute, Article 9(1) of the Statute of the International Criminal Tribunal for Rwanda, Article 9(1) of the Statute of the Special Court for Sierra Leone, and Article 10 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

([2601]) The Supreme Constitutional Court, Case No. 11 of 24 Q, issued in the session of May 9, 2004, date of publication June 10, 2004, and published in the first part of the Technical Office Book No. 11, page No. 757, rule No. 127.

the accused's reputation, lead to societal contempt, or result in job loss. Moreover, an excessively protracted trial impedes the accused's ability to defend themselves effectively, potentially compromising access to witnesses, whose memories may fade or who may no longer be available to testify.

The psychological toll of prolonged legal uncertainty is severe, leaving the accused feeling perpetually haunted by accusations without resolution. Such delays may also arise from hasty and poorly substantiated charges lacking credible evidence. The right to a trial free from procedural delays is, however, a relative one, determined by the specific circumstances of the case, including the complexity and gravity of the offense, the variety of evidence, and the number of witnesses involved.

The harm caused by delays in resolving criminal charges is presumed and does not require explicit proof, particularly in cases where the delay is intentional or egregious, rather than incidental or minor in impact. Nevertheless, the right to an expeditious trial should not compromise its fairness by abbreviating or truncating procedures, thereby stripping the trial of its safeguards and reducing the final judgment to a superficial and insufficiently deliberated decision—a summary trial.[2602]

The ultimate guarantee of speedy settlement of cases is that the judicial dispute be settled - after being presented to its judges - within a period of time that does not exceed any reasonable limit in length, nor is its shortness infinite. This is because extending the time for deciding this dispute without necessity disrupts its objectives and makes the dispute lose its value. If its time is premature, the ruling on it will be hasty and contrary to the truths of justice.[2603]

The denial of the right to judicial satisfaction is achieved through the noticeable delay in providing it, and the result of that is that those who request judicial satisfaction do not obtain it at the appropriate time; which is considered a waste of the protection guaranteed by the constitution or the legislator for rights of all kinds, and a denial of the facts of justice in the essence of its features and orientations.[2604]

The public interest requires the speedy completion of the criminal trial in order to achieve general deterrence, which requires speed in the procedures and imposing the appropriate punishment in the event of conviction, in addition to the expenses incurred by the state due to the length of the procedures.

The accused has a personal interest in putting an end to the pain he is exposed to because of his position as a suspect, which affects his honor, reputation and standing among people, especially in light of the public nature of the trial procedures. This is psychological pain that befalls him and his family, in addition to affecting the principle of innocence of the accused, which requires not prolonging the accused’s position as a suspect. Also, the accused waiting a long time for the trial may weaken his ability to collect evidence that refutes the evidence of the accusation, and it may also lead to forgetting witnesses, which affects knowing the truth.

The legislator was keen to stipulate the guarantee of a speedy trial in some texts, an example of which is what is stipulated in Article No. 276 bis of the Criminal Procedure Code: “A ruling shall be made expeditiously in cases involving juveniles and crimes stipulated in Chapters One, Two,

---

([2602]) The Supreme Constitutional Court, Case No. 64 of 17 Q, issued in the session of February 7, 1998, date of publication February 19, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1108, rule No. 78.

([2603]) The Supreme Constitutional Court, Case No. 145 of 1998, issued in the session of June 6, 1998, date of publication June 18, 1998, and published in the second part of the Technical Office Book No. 8, page No. 1423, rule No. 109.

([2604]) The Supreme Constitutional Court, Case No. 55 of 20 Q issued in the session of March 4, 2000, date of publication March 20, 2000, published in the first part of the Technical Office Book No. 9, page No. 470, rule No. 57, Case No. 37 of 18 Q issued in the session of April 4, 1998, date of publication April 16, 1998, published in the second part of the Technical Office Book No. 8, page No. 1260, rule No. 95.

Two bis, Three, Four and Fourteen of Book Two of the Penal Code and crimes stipulated in Articles 302, 303, 306, 307 and 308 of the Penal Code if they occurred through newspapers and Law No. 394 of 1954 regarding weapons and ammunition, amended by Law No. 546 of 1954.

The accused shall be summoned to appear before the court in the cases mentioned in the previous paragraph one full day before the session is held in misdemeanour cases and three full days in felony cases, excluding the travel distance times.

The announcement may be made by a bailiff or a public authority official.

The case shall be considered in a session held within two weeks from the date of its referral to the competent court. If the case is referred to the criminal court, the president of the competent court of appeal shall set a session on the aforementioned date.

It is also not permissible to postpone the consideration of the case in the crimes of defamation by publication in a newspaper or other publication more than once for a period not exceeding thirty days, and the judgment shall be pronounced accompanied by its reasons.[2605]

Article 12 of the Anti-Prostitution Law stipulates that the court shall rule on the public lawsuit urgently within a period not exceeding three weeks.[2606]

The legislator did not limit the cases in which a criminal case must be adjudicated quickly. The speed of adjudicating cases within a reasonable time is a general duty that all courts are committed to in order to achieve the public and private interest. The reasonableness of the time to adjudicate the case depends on the circumstances of each case. It is a relative matter, the determination of which depends on the facts of each case. The judge is responsible for assessing the elements of the case and its nature, on which the determination of the reasonable time to adjudicate the case depends. It should be noted that the right to defense may not be violated in order to achieve that speed, because ensuring the speed of adjudication of the case may not be at the expense of another guarantee.

It is not permissible to confiscate the right of the defense to hear the witness of the incident on the grounds that he sought to prolong the litigation or escape punishment.[2607]

17-2 Within the Framework of International Conventions

Everyone charged with a criminal offence has the right to be tried without undue delay, the determination of which will depend on the circumstances of the case.

Criminal proceedings must be initiated and concluded within a reasonable time.[2608]

The American Convention and the European Convention differ from the other standards mentioned in two respects: First, they do not explicitly define criminal procedures. The second is that it requires that the proceedings be completed "within a reasonable period of time," rather than "without undue delay," although this linguistic difference does not seem to matter.

([2605] Article No. 123 of the Code of Criminal Procedure.

([2606] Article No. 12 of the Anti-Prostitution Law No. 10 of 1961.

([2607] Appeal No. 4355 of 57 Q issued in the session of February 9, 1988 and published in the first part of Technical Office Book No. 39, page No. 259, rule No. 33.

([2608]) Article 14/3(c) of the International Covenant, Article 40(2)(b)(iii) of the Convention on the Rights of the Child, Article 18(3)(c) of the Migrant Workers Convention, Article 7(1)(d) of the African Charter, Article 8(1) of the American Convention, Article 6(1) of the European Convention, Article 67(1)(c) of the Rome Statute, Article 20(4)(c) of the Statute of the International Criminal Tribunal for Rwanda, Article 21(4)(c) of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

The Committee on the Rights of the Child has made clear that the obligation to complete proceedings against children "without undue delay" under the Convention on the Rights of the Child requires greater expeditiousness.[2609]

When setting the timetable, the courts must:

Guaranteeing the right to defense with sufficient time and facilities to prepare the defense;

Taking into account the requirements for the fair administration of justice;

Respecting the right of the accused to have his criminal prosecution procedures completed without undue delay.[2610]

The International Criminal Court has warned that the need for speed cannot justify courts taking measures that are inconsistent with the rights of the accused or with the fairness of the trial in general.[2611]

The obligation of the State to expedite judicial proceedings becomes even more urgent for anyone accused of a criminal offence and detained pending trial, since when one is detained, the shorter the delay becomes reasonable. International standards, including Article 9 of the International Covenant, require that anyone charged with a criminal offence be released from detention pending trial if the period of detention pending trial exceeds what is considered reasonable in the circumstances of the case.

Ensuring a trial without undue delay in criminal cases is linked to the right to liberty, the presumption of innocence, and the right to defend oneself.[2612]

And also to ensure that his right to defend himself is not prejudiced due to the passage of an excessively long period of time, as the details of the facts may fade from the memory of the witnesses or be distorted, or they may be difficult to find, or other evidence may be destroyed or disappear.[2613]

This also aims to ensure that the period of anxiety experienced by the accused for fear of his fate and the suffering he endures as a result of the stigma attached to him as a result of being accused of committing a criminal act, despite the presumption of his innocence, is shortened. The right to a speedy trial embodies, in a nutshell, the wisdom that "slow justice is a kind of injustice."[2614]

The right to a trial within a reasonable time does not depend on the accused requesting the authorities to expedite the hearing of the case.[2615]

([2609]) General Comment 10 of the Committee on the Rights of the Child, §52.
([2610]) See Coim and Others v. Belgium (32492/96, 32547/96, 32548/96, 33209/96, 33210/96), European Court § 140 (2000).
([2611]) The Prosecutor v. Jean-Pierre Bemba Gambo (1386) - 08/01 - 05/01 (ICC-01), Appeals Chamber of the International Criminal Court (3 May 2011) §55.
([2612]) General Comment 32 of the Human Rights Committee, § 35; McFarlane v. Ireland (06/31333) Grand Chamber of the European Court § 155 (2010); Prosecutor v. Sefer Halilović (IT-01-48-A) Appeals Chamber of the International Tribunal for the Former Yugoslavia, Decision on Defence Request for Urgent Scheduling of Appeal (27 October 2006) § 19 (2006); see, Suárez Rosero v. Ecuador, Inter-American Court § 70 (1997).
([2613]) See Massie v. United Kingdom (14399)/02, European Court. §27 (2004).
([2614]) General Comment 32 of the Human Rights Committee, § 35; European Court: Salmoni v. France (25803)/94), Grand Chamber - § 118 § 107 (1999, Obuz v. Turkey (33401)/02), - § 151 § 150 (2009); Inter-American Court: Radilla-Pacheco v. Mexico, § 191 (2009, Las Palmeras v. Colombia, § 6266-6266 (2001); see also "Mapiripan Massacre" v. Colombia, Inter-American Court § 222 (2005); CEDAW Committee: Tayag Vertido v. Philippines, 2008/A. T. v Hungary (2010) 8§ /3؛ UN CEDAW/C/46/D/18 UN Doc. A/60/38, (2003/2) (Part I) (2005), Annex 4/ §8 3.
([2615]) McFarlane v. Ireland (31333)/06) Grand Chamber of the European Court. §152 (2010).

The accused is not required to prove that the unjustified delay caused him specific harm in order to demonstrate that his right not to be delayed was violated. Conversely, the burden of showing that the delay is justified remains with the State.[2616]

The standards do not guarantee that procedures will be completed without any delay; rather, they prohibit any undue delay. The period of time taken into account in determining whether the accused's right to a speedy hearing of his case has been respected begins from the moment he becomes aware that the authorities are taking specific steps to institute legal proceedings against him, i.e. when he is arrested or charged, for example.[2617]

It ends when the investigation is closed (by dropping the charges) or all means of appealing the issued ruling are exhausted or all deadlines expire and the ruling becomes final.[2618]

Ensuring the right to a trial without undue delay requires States to organize and provide adequate resources for their judicial systems.[2619]

Unjustified delays resulting from the accumulation of case files before the courts, the poor economic conditions of the judicial system or other conditions were considered;[2620]

A shortage of judges, or an increase in crime rates following an attempted military coup, are all sufficient justification for the state to be considered unable to guarantee this right.[2621]

17-2-1 What is meant by reasonable time?

“Reasonable time” is assessed based on the circumstances of each individual case. The elements to be considered in this context include: the complexity of the case; the conduct of the accused; the conduct of the authorities; what the accused stands to lose, including whether or not he is in detention and his health; the seriousness of the charges; and the possible penalties.[2622]

First: The complexity of the issue

There are many factors that are taken into account in determining whether the period over which proceedings were conducted was reasonable in light of the complexity of the circumstances of the case. These include the nature and seriousness of the alleged crime(s); the number of charges against the accused; the nature of the investigation required; the number of persons alleged to have been involved in the commission of the crime; the number of witnesses; the complexity of the facts; and any legal issues arising from the course of the case.)[2623]

([2616]) See, Barroso v. Panama, Human Rights Committee, UN CEDAW 5/ §8 (1995) C/54/D/473/1991; Hillier, Constantin, Benjamin and others v. Trinidad and Tobago, Inter-American Court 145 § (2002).

([2617]) McFarlane v. Ireland (31333)/06) Grand Chamber of the European Court §- § 143144 (2010); Suarez Rosero v. Ecuador, Inter-American Court § 70 (1997).

([2618]) Section N(5)(b) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, §35; Human Rights Committee: Mwamba v. Zambia, 2006/6/ §6 (2010) UN CCPR/C/98/D/1520, Kennedy v. Trinidad and Tobago, 1998/5/ §7 (2002) UN CCPR/C/74/D/845.

([2619]) Kelot v. France (36932)/97, European Court §27 (1999).

([2620]) Lubutu v. Zambia, Human Rights Committee, / UN CCPR 3/ §7 (1995) C/55/D/390/1990/Rev. 1; García-Astó and Ramírez-Rojas v. Peru, Inter-American Court §162-§172 (2005).

([2621]) Sextus v. Trinidad and Tobago, Human Rights Committee,. 2/ §7 (2001) UN CCPR/C/72/D/818/1998.

([2622]) Section N(5)(c) of the Principles on Fair Trial in Africa; see Principle 5 of the Principles on Persons Deprived of Liberty in the Americas, General Comment 32 of the Human Rights Committee, § 35; Kemache v. France (Nos. 1 and 2) (12325)/86 and 14992/89), § 60 (1991; McFarlane v. Ireland (06/31333), Grand Chamber of the European Court § 140-§ 156 (2010; Kudla v. Poland (30210)/96), Grand Chamber § 124-§ 131 (2000); Inter-American Court: Hilaire, Constantin, Benjamin and Others v. Trinidad and Tobago, § 143 (2002); Suárez Rosero v. Ecuador, § 72 (1997).

([2623]) The Prosecutor v. Prosper Mugiraneza (ICTR-99-50-AR73), Appeals Chamber of the International Tribunal for Rwanda (27 February 2004) Preamble §6(2).

However, even in complex cases, due care must still be taken to ensure that justice is administered expeditiously if the person detained is in custody.[2624]

The Human Rights Committee has repeatedly stressed that in cases involving serious charges, such as murder, where the accused is denied bail, the accused should be tried as expeditiously as possible.[2625]

In a case where a defendant in a murder case was detained for more than three and a half years before being acquitted, the Human Rights Committee found that the delay in issuing the indictment and in the trial was unjustified.[2626]

It is now recognized that economic or drug crimes involving a number of defendants, cases with international aspects, and those involving multiple murders or related to the activities of "terrorist" organizations are more difficult and complex than routine criminal cases, and therefore the reasonable time limit here is longer.

After examining the national legislation, examining the complexity of a case and the conduct of the authorities in Ecuador, the Inter-American Court considered that the fact that the court took 50 months to consider the case and complete its procedures constituted a violation of the American Convention.[2627]

In a case involving 723 defendants and 607 criminal offences, the European Court ruled that it was reasonable for the case to last eight and a half years. However, it considered that the subsequent delays and interruptions, including the three-year period it took for one court to prepare a written memorandum of reasons for judgment, and the appeals before two courts that lasted more than six years, exceeded the reasonable time limit.[2628]

The Human Rights Committee considered that the three-and-a-half-year continuation of an investigation in Belgium into allegations of criminal association and money laundering involving two men subject to UN and EU sanctions following the 9/11 events in the United States did not constitute a violation of the reasonable time requirement.[2629]

UN human rights mechanisms have expressed concerns about delays in proceedings for those detained by the United States at Guantanamo Bay, noting that the right to a trial without undue delay under the Covenant relates to the time at which trials should begin, as well as the time at which full proceedings should be completed. Human rights mechanisms considered that the US authorities had violated the right to a trial without undue delay by continuing to hold detainees without charge for years.[2630]

Second: The accused's behavior

The conduct of the accused shall be taken into account during the examination of the facts of the case when deciding whether or not the procedures were carried out without undue delay.[2631]

For example, delays caused by the accused's flight were taken into account when determining whether the proceedings were completed within a reasonable period of time.[2632]

([2624]) Peshchalnikov v. Russia (7025)/04), European Court (2009). §49.

([2625]) Sextus v. Trinidad and Tobago, Human Rights Committee, UN Doc. 2/ §7 (2001) CCPR/C/72/D/818/1998.

([2626]) Barroso v. Panama, Human Rights Committee, / UN Doc. CCPR. 5/ §8 (1995) C/54/D/473/1991.

([2627]) Suarez Rosero v. Ecuador, §73 (1997).

([2628]) European Court: Metap and Muftuoglu v. Turkey (15530)/89 and 32547/96 and 325448/96 and 33209/96 and 33210/96), §33-§37 (1996); see Coim and Others v. Belgium (32492)/96 and 32547/96 and 32548/96 and 33209/96 and 33210/96), §137-§141 (2000).

([2629]) Sovereignty and Fink v. Belgium, Human Rights Committee, / UN CCPR. 10/ §10 (2008) C/94/D/1472/2006.

([2630]) Joint report of the United Nations mechanisms on Guantanamo Bay detainees, 120/2006/§38 (2006) UN Doc. E/CN. 4.

([2631]) McFarlane v. Ireland (31333)/06) Grand Chamber of the European Court §148-§150 (2010).

However, the accused is not obliged to cooperate effectively in criminal proceedings against him. Furthermore, delays resulting from the accused exercising his procedural rights in good faith must not be taken into account when assessing whether the proceedings were completed within a reasonable period.[2633]

Third: The behavior of the authorities

The authorities have a duty to expedite the consideration of the case. If it fails to initiate proceedings at any stage due to negligence or allows delays in the investigation or in the facts of the case or takes more time than is reasonable to complete certain measures, the time period for considering the case shall be deemed to have exceeded the reasonable limit. Likewise, if the criminal justice system itself impedes the speedy handling of cases, this may be considered a violation of the accused's right to have his trial concluded within a reasonable time.

The Human Rights Committee found that article 14 of the International Covenant had been violated in a case in which the appeal in Canada took almost three years to be heard, primarily due to a 29-month delay in preparing the trial transcripts.[2634]

The European Court considered that the lapse of 15 and a half months between the filing of the appeal and its referral to the relevant court constituted an exceeding of the reasonable period.[2635]

In a complex case involving organized criminal activity, the court found that the length of time taken to prosecute the detained defendant – nearly four years and eight months for two judicial instances – was excessive. Where substantial periods passed without the authorities taking any action on the issue, without the government providing any satisfactory explanations for what happened.[2636]

Chapter Eighteen: The Defendant's Right to Self-Defense or Representation by a Lawyer

18-1 Under Egyptian Law

Every accused person has the right to seek legal counsel at all stages of the criminal case, as well as during all stages of the trial. Article 98 of the Constitution stipulates: "The right to defense, whether in person or by proxy, is guaranteed. The independence of the legal profession and the protection of its rights are guarantees to ensure the right of defense. The law guarantees financially incapable individuals the means to access justice and defend their rights."

Article 124 of the Code of Criminal Procedure reinforces this principle, stating: "In felonies and misdemeanors punishable by mandatory imprisonment, the investigator may not interrogate the accused or confront them with other accused individuals or witnesses without summoning their

(2632) Sri v. Turkey and Denmark (21889)/93, European Court (2001) §73-§100.

(2633) Yagci and Sargin v. Turkey (16419/90 and 16426/90), European Court § 66 (1995); Human Rights Committee: Tariqat and Others v. Algeria, 5/8-4/§ § 8 (2006) UN CCPR/C/86/D/1085/2002, Ngo v. Cameroon, 9/§ 7 (2009) UN CCPR/C/96/D/1397/2005, Ross v. Philippines,. 4/ §7 (2005) UN CCPR/C/84/D/1089/2002.

(2634) Pinckney v. Canada (27/R. 7) Human Rights Committee, UN CCPR/C/OP/1 (1981), §10 and §22, p. 95.

(2635) Bonket v. The Netherlands (13645)/88, European Court §22-§23 (1993).

(2636) Peshchalnikov v. Russia (7025)/04), European Court (2009) §48-§53.

lawyer to be present, except in cases of flagrante delicto or urgency due to fear of evidence being lost, as recorded by the investigator in the minutes.

The accused must notify the court clerk's office or the prison warden of their lawyer's name or inform the investigator. Alternatively, the lawyer may undertake this notification.

If the accused does not have a lawyer, or their lawyer does not appear after being summoned, the investigator must appoint a lawyer on their behalf.

The lawyer may record in the minutes any defenses, requests, or observations they consider relevant.

Upon the final resolution of the investigation, the investigator, upon the appointed lawyer's request, issues an order to determine the lawyer's fees based on the fee schedule issued by the Minister of Justice after consulting the General Bar Association. These fees are treated as judicial expenses."

Article 237 of the Code of Criminal Procedure provides: "In a misdemeanor punishable by imprisonment that the law mandates enforcement immediately upon judgment, the accused must appear in person. If the accused present in such a misdemeanor does not have a lawyer, the court must appoint one to defend them.

In other misdemeanors and infractions, the accused may appoint a representative to present their defense, without prejudice to the court's right to require their personal appearance."

The above makes it clear that the right to legal representation is mandatory for any accused individual in a felony or a misdemeanor punishable by mandatory imprisonment to ensure effective, substantive defense rather than mere formal representation. This recognition stems from the seriousness of accusations punishable by mandatory imprisonment, with the guarantee yielding its full benefit only when a lawyer is present during the trial to witness its proceedings and to provide the accused with active assistance through all possible means of defense.[2637]

In its keenness to ensure the effectiveness of this fundamental guarantee, the legislator imposed the penalty of a fine as stipulated in Article 375 of the Code of Criminal Procedure, which states: “Except in cases of valid excuse or a proven impediment, any lawyer—whether appointed by the investigating judge, the Public Prosecution, or the President of the Criminal Court, or engaged by the defendant—must defend the accused in court or appoint someone to act on their behalf. Otherwise, the Criminal Court shall impose a fine not exceeding fifty pounds, without prejudice to disciplinary proceedings if the situation warrants. The court may exempt the lawyer from the fine if it is proven that it was impossible for them to attend the session in person or appoint another on their behalf.”[2638]

However, the law does not require the presence of a lawyer for a defendant in a misdemeanor punishable by optional imprisonment, leaving this to the defendant’s discretion. Moreover, a lack of defense by the defendant or their lawyer in such misdemeanors—punishable by optional imprisonment—cannot form the basis for appealing the judgment on the grounds of a violation of the right to defense.[2639]

([2637]) Appeal No. 8307 of 5 Q issued in the session of July 16, 2016 and published in Technical Office Book No. 67, page No. 581, Rule No. 67, Appeal No. 14734 of 83 Q issued in the session of January 12, 2015 and published in Technical Office Book No. 66, page No. 127, Rule No. 8.

([2638]) Article No. 375 of the Criminal Procedure Code and see: Appeal No. 14734 of the 83rd year of the Civil Procedure Law, issued in the session of January 12, 2015, and published in Technical Office Book No. 66, page No. 127, Rule No. 8.

([2639] Appeal No. 23147 of 85 Q issued in the session of December 26, 2016 and published in Technical Office Book No. 67, Page No. 945, Rule No. 118.

While the law does not prohibit a lawyer from representing a defendant in misdemeanor or aggravated felony cases, if the session minutes show that the defendant was present in person and had the opportunity to defend themselves, they cannot complain that the court did not grant their request to reopen the case for oral defense by their lawyer, whether or not the court allowed them to submit a memorandum as claimed or as indicated in the session minutes.[2640]

The law does not mandate legal assistance for defendants in misdemeanors—punishable by optional imprisonment—or infractions. Thus, the misdemeanor judge has complete discretion to grant or deny a defendant's request for adjournment to arrange for a lawyer based on what appears reasonable and justified to them.[2641]

The presumption of innocence, which requires a defendant to be convicted only through fair proceedings that do not undermine their right to defense, necessitates procedural rules ensuring all substantive rights connected to the accusation. These rules must not compromise, affect, or restrict the defendant's rights, as their purpose is to protect individuals from tyranny or abuse of authority within a framework of organized freedom. There is no rule more established or vital than the necessity of providing the accused with a clear definition of the charges, specifying the evidence, and granting an adequate opportunity to present their perspective.

It is unacceptable for a person to be convicted of a crime they were not charged with. This principle applies equally to any accusation made without providing for a defense. Effective defense cannot exist without sufficient time for preparation. Informing the defendant of the witnesses prepared by the prosecution to prove its case ensures the possibility of confronting and challenging them. Furthermore, the defendant must not be deprived of compulsory measures to secure the appearance of witnesses for their benefit, chosen without restriction, nor should poverty deprive them of this right. They must not be denied access to review the documents submitted by the prosecution or discuss them, nor be isolated from direct or indirect contact with their lawyer, whether during judicial proceedings, prior to them, or during appeals of the final outcome. Otherwise, the right to defense becomes limited and of little value.

The right to defense is closely linked to the criminal case in terms of clarifying its aspects, rectifying its procedures, monitoring its progress, and presenting factual and legal issues that support the defendant's position. This ensures its coherence, counters opposing claims, and elucidates the truth on significant points, especially through evaluating various alternatives to identify the most relevant and likely to succeed, backed by the necessary documentation to substantiate them. Justice cannot be effectively achieved or fully realized in a complex criminal charge or one involving intertwined elements if the right to defense is absent or limited to the accusation stage or its adjudication, without extending to the investigation phase. During this phase, the focus is not merely on a crime whose facts and motives remain obscure but also on a specific individual suspected of committing it, surrounded by the investigating authority's questions and its measures of custody.[2642]

The presumption of innocence in criminal charges is constitutionally linked—ensuring its effectiveness—to procedural means that are intrinsically connected to the right to defense. Among these is the defendant's right to confront the evidence presented to prove their guilt and

---

([2640] Appeal No. 1623 of 20 Q issued in the session of February 19, 1951 and published in the second part of the Technical Office Book No. 2, page No. 646, rule No. 246.

([2641] Appeal No. 342 of 46 Q issued in the session of January 17, 1929 and published in Technical Office Book No. 1, Part No. 1, Page No. 142, Rule No. 116.

([2642]) The Supreme Constitutional Court, Case No. 64 of 17 Q, issued in the session of February 7, 1998, date of publication February 19, 1998, and published in the first part of the Technical Office Book No. 8, page No. 1108, rule No. 78.

the right to refute it through legally permissible means, ensuring a minimum level of protection for the defendant's rights that cannot be compromised or diminished.[2643]

The defendant's right to deny and refute the accusation represents the minimum level of protection that must be ensured for their right to defense.[2644]

In general criminal cases, and particularly in felonies, it is impermissible to compel the parties to rely solely on written submissions for their defense. The principle in such cases is that the defense should be presented orally unless the parties themselves request to provide it in writing. This is because criminal justice fundamentally concerns matters of life and liberty and is based primarily on the judge's conviction and what resonates within their conscience.[2645]

18-1-1 The Right of the Accused to Defend Themselves

If the court serves as the final refuge to uncover and assess the facts accurately, then failing to uphold this role would render the trial ineffective and unjustly block the accused from seeking defense. Such an outcome is categorically rejected by the principles of justice. Guided by these principles, the right of the accused to defend themselves has emerged as a sacred right, one that surpasses the collective rights of society. Society is far less harmed by the acquittal of a guilty party than it is by the conviction of an innocent individual, which injures both society and justice itself.[2646]

The essence of Article 98 of the Constitution does not merely lie in affirming the right of an individual to choose a lawyer to represent them. Rather, it underscores the personal dimensions of the right to defense by recognizing the foundational aspect of this right—the Right of Self-Representation. This affirms the independence of these two rights (self-representation and legal representation), ensuring they do not conflict. Choosing a lawyer as a representative is a form of assistance requested by the individual, but the lawyer's authority in legal disputes only operates with the original party's consent, who ultimately bears the outcomes of the case.[2647]

An individual's right to choose a lawyer as their representative reflects, in most cases, the evolution of judicial systems and the complexity of legal rules, which are often too intricate for most people to navigate. What might appear clear to legal professionals may remain shrouded in ambiguity for others, regardless of their level of education or expertise. This is particularly true in specialized areas of law, given their evolving dimensions and concealed aspects. However,

---

([2643] Appeal No. 15279 of 62 Q issued in the session of March 19, 2001 and published in Technical Office Book No. 52, page No. 343, Rule No. 57.

([2644] Appeal No. 15279 of 62 Q issued in the session of March 19, 2001 and published in Technical Office Book No. 52, page No. 343, Rule No. 57.

([2645] Appeal No. 28947 of 68 Q issued in the session of October 20, 2001 and published in Technical Office Book No. 52, Page No. 757, Rule No. 141.

([2646]) Appeal No. 20238 of 84 Q issued in the session of January 24, 2015 (unpublished), Appeal No. 76701 of 75 Q issued in the session of November 26, 2006 and published in Technical Office Book No. 57, page No. 913, Rule No. 102, Appeal No. 10228 of 71 Q issued in the session of November 15, 2001 and published in Technical Office Book No. 52, page No. 861, Rule No. 165, Appeal No. 4684 of 58 Q issued in the session of November 2, 1989 and published in the first part of Technical Office Book No. 40, page No. 819, Rule No. 138, Appeal No. 154 of 59 Q issued in the session of April 6, 1989 and published in the first part of Technical Office Book No. 40, page No. 661, Rule No. 112, Appeal No. 6097 of 53 Q issued in the session of February 15, 1984 and published in the first part of the Technical Office Book No. 35, page No. 153, rule No. 31, Appeal No. 1172 of 36 Q issued in the session of January 31, 1967 and published in the first part of the Technical Office Book No. 18, page No. 128, rule No. 24, Appeal No. 1209 of 34 Q issued in the session of January 25, 1965 and published in the first part of the Technical Office Book No. 16, page No. 87, rule No. 21.

([2647]) The Supreme Constitutional Court, Case No. 15 of 17 Q, issued in the session of December 2, 1995, date of publication December 21, 1995, and published in the first part of the Technical Office Book No. 7, page No. 316, rule No. 18.

the right of self-defense has always preceded the right to choose a lawyer, being more closely tied to personal human characteristics and the integrity of the individual.[2648]

The accused has the right to present their defense even if they have legal representation. The accused is the principal party in the criminal case, while the lawyer is merely their representative. The presence of a lawyer does not negate the accused's right to raise defenses or requests. The court must listen to the accused, even if their arguments conflict with their lawyer's views, and must address these arguments as long as they are substantive.[2649]

The right of the accused to defend themselves is inherently personal, as they are the primary party responsible for presenting their statements to the court. The lawyer's role is to assist by offering defenses they deem in the client's best interest, whether related to factual or legal matters. If the accused insists on being questioned regarding matters they believe are essential to their defense, the court must grant this request and listen to their testimony. Should the court refuse this and direct the defense to proceed with pleadings instead, it effectively denies the accused their fundamental constitutional and legal right to defend themselves.[2650]

It is established that exercising the accused's legitimate right to self-defense in court cannot be dismissed as insincere or criticized for being late, as the trial itself is the proper time for such defenses. The law ensures that every accused individual has the right to present their requests and defenses during trial, and the court is obligated to examine and address them as long as they contribute to uncovering the truth and reaching the correct outcome.[2651]

A delay in presenting a defense does not necessarily indicate a lack of seriousness, provided it is substantive and has the potential to negate the charge or alter the court's perspective on the case. Similarly, exercising the accused's legitimate right to defend themselves in court cannot under any circumstances be dismissed as insincere or labeled as tardy, because the trial is the appropriate time for such defenses. The law guarantees every accused individual the right to present their requests for investigation and their defenses during trial.[2652]

([2648]) The Supreme Constitutional Court, Case No. 15 of 17 Q, issued in the session of December 2, 1995, date of publication December 21, 1995, and published in the first part of the Technical Office Book No. 7, page No. 316, rule No. 18.
([2649] Appeal No. 726 of 35 Q issued in the session of June 14, 1965 and published in the second part of the Technical Office Book No. 16, page No. 576, rule No. 115.
([2650] Appeal No. 8322 of 75 Q issued in the session of May 16, 2006 and published in Technical Office Book No. 57, Page No. 628, Rule No. 67.
([2651]) Appeal No. 23449 of 71 Q issued in the session of February 5, 2002 and published in the Technical Office Book No. 53, page No. 224, rule No. 41, Appeal No. 3943 of 65 Q issued in the session of January 10, 1996 and published in the first part of the Technical Office Book No. 47, page No. 55, rule No. 6, Appeal No. 3539 of 59 Q issued in the session of October 11, 1989 and published in the first part of the Technical Office Book No. 40, page No. 758, rule No. 126, Appeal No. 2602 of 53 Q issued in the session of December 15, 1983 and published in the first part of the Technical Office Book No. 34, page No. 1056, rule No. 211, Appeal No. 79 of 48 Q issued in the session of April 24, 1978 And published in the first part of the Technical Office Book No. 29, page No. 442, Rule No. 84, Appeal No. 1217 for the year 46 Q issued in the session of February 20, 1977 and published in the first part of the Technical Office Book No. 28, page No. 277, Rule No. 60, Appeal No. 1415 for the year 42 Q issued in the session of January 22, 1973 and published in the first part of the Technical Office Book No. 24, page No. 95, Rule No. 23, Appeal No. 533 for the year 39 Q issued in the session of May 12, 1969 and published in the second part of the Technical Office Book No. 20, page No. 706, Rule No. 142.
([2652]) Appeal No. 6658 of 64 Q issued in the session of June 3, 1999 and published in the first part of the Technical Office Book No. 50, page No. 367, rule No. 86, Appeal No. 15 of 63 Q issued in the session of May 18, 1997 and published in the first part of the Technical Office Book No. 48, page No. 598, rule No. 88, Appeal No. 50161 of 59 Q issued in the session of November 12, 1996 and published in the first part of the Technical Office Book No. 47, page No. 1171, rule No. 168, Appeal No. 9463 of 64 Q issued in the session of April 10, 1996 and published in the first part of the Technical Office Book No. 47, page No. 505, rule No. 71, Appeal No. 17097 of 62 Q issued in the session of January 6, 1996 1994 and published in the first part of the Technical Office Book No. 45, page No. 61, rule No. 6, Appeal No. 2294 for the year 49 Q issued in the session of April 9, 1980 and published in the first part of the Technical Office Book No. 31, page No. 483, rule No. 90, Appeal No. 1415 for the year 42 Q issued in the session of January 22, 1973 and published in the first part of the Technical Office Book No. 24,

The manner in which an accused defends themselves using every available means cannot be used as evidence of their guilt. Furthermore, no individual should be condemned, even based on their own verbal or written confession, if such confession contradicts the truth or reality.[2653]

Additionally, the court is prohibited from considering documents or evidence that were not presented during the trial proceedings, after the conclusion of the pleadings and during deliberations. If the court relies on such documents without first informing the accused and allowing them the opportunity to examine and respond to them, this constitutes a violation of the accused's right to defense and renders the judgment invalid.[2654]

Inability of the Accused to Defend Themselves

If it is proven that the accused is unable to defend themselves due to a mental disorder that arose after the commission of the crime, the proceedings against them or their trial must be suspended until they regain their sanity. In such cases, the investigating judge, the magistrate judge, or the court handling the case—upon the request of the public prosecution—may issue an order to detain the accused in a facility designated for mental health care until their release is deemed appropriate, particularly if the case involves a felony or a misdemeanor punishable by imprisonment.[2655]

This provision aims to uphold the principles of justice and ensure the sanctity of the right to defense during both investigation and trial. The accused is the primary party responsible for their defense, and the legal requirement for the appointment of a lawyer in felonies, as well as the optional appointment in misdemeanors and violations, exists solely to assist and support the accused in their defense. Therefore, if the accused suffers from a mental disability after the commission of the alleged crime, even though their criminal responsibility does not lapse, the investigation or trial procedures must be suspended until they regain their mental capacity. This ensures that they can personally defend themselves against the charges and contribute alongside their legal representative in formulating their defense strategy with full cognitive and intellectual faculties.[2656]

The court cannot base its judgment regarding the absence of a mental disorder affecting the accused during trial on the premise that the accused failed to present evidence to substantiate such a claim. The court has a duty, in such cases, to safeguard the accused's right to defense by verifying whether they were mentally sound at the time of the trial, without requiring the accused to provide evidence of their claim. If the court deviates from this duty and fails to undertake the necessary steps to ascertain the validity of the plea and determine whether the

---

page No. 95, rule No. 23, Appeal No. 533 for the year 39 Q issued in the session of May 12, 1969 and published in the second part of the Technical Office Book No. 20, page No. 706, rule No. 142.

([2653] Appeal No. 751 of 38 Q issued in the session of June 3, 1968 and published in the second part of the Technical Office Book No. 19, page No. 657, rule No. 133.

([2654] Appeal No. 2244 of year 47 Q issued in the session of December 11, 1930 and published in the first part of the collection of legal rules, second year, No. 161, Rule No. 130.

([2655] Article No. 339 of the Code of Criminal Procedure.

([2656]) Appeal No. 29139 of 74 Q issued in the session of October 7, 2004 (unpublished), Appeal No. 5988 of 64 Q issued in the session of February 13, 1996 and published in the first part of the Technical Office Book No. 47, page No. 240, rule No. 34, Appeal No. 5590 of 57 Q issued in the session of December 29, 1988 and published in the second part of the Technical Office Book No. 39, page No. 1386, rule No. 211, Appeal No. 2788 of 56 Q issued in the session of October 29, 1986 and published in the first part of the Technical Office Book No. 37, page No. 804, rule No. 155, Appeal No. 133 of 48 Q issued in the session of June 4, 1978 and published in the first part of the Technical Office Book No. 29, page No. 546 Rule No. 103, Appeal No. 4 of Year 35 Q issued in the session of June 15, 1965 and published in the second part of the Technical Office Book No. 16, page No. 580, Rule No. 116.

accused was mentally impaired during the trial, this would constitute a significant shortcoming in its reasoning, a flaw in its inference, and a serious violation of the right to defense.[2657]

Moreover, illness constitutes a compelling excuse. Therefore, if the court establishes the presence of such an excuse, it must postpone the trial to allow the accused to adequately prepare their defense. If the court refuses to grant a postponement solely due to repeated requests without assessing the validity of the excuse presented by the defense attorney, it would be violating the accused's right to defense.[2658]

18-1-2 The Accused's Freedom to Choose Their Lawyer

One of the fundamental principles mandated by law is that having legal counsel is compulsory for every accused person referred to the Criminal Court for a felony. This requirement ensures a genuine defense, not merely a formal one, recognizing the gravity of being accused of a felony. The benefit of this safeguard is realized only when a lawyer is present during the trial to observe its proceedings and actively assist the accused by presenting all viable defense strategies. Moreover, it is well-established that the accused has an undisputed right to choose their lawyer. This right is fundamental and takes precedence over the judge's authority to appoint a defender. If the accused selects a lawyer, the judge cannot infringe upon this right by appointing another lawyer. Similarly, the judge cannot deny the present lawyer the opportunity to defend the appellant or obstruct an absent lawyer from fulfilling their role, especially if the defense is divided among multiple advocates.

The law stipulates that every accused person facing a felony must have legal representation, whether appointed or chosen, ensuring the presence of a lawyer alongside the accused during the trial to witness the proceedings and assist the accused with every possible aspect of their defense. It is not mandatory for more than one lawyer to accompany the accused in a felony case. However, if these rights conflict with the session chairman's authority to manage the proceedings and maintain the flow of the case, the chairman's right must be upheld. The chairman should have complete discretion in handling the proceedings, provided the accused is not left without a defense.[2659]

Denying an individual the right to choose a lawyer who they deem capable of protecting their interests and advocating for their rights is not only unjustified but also contrary to legitimate interests.[2660]

The court must enable the chosen lawyer to follow the trial proceedings from beginning to end, ensuring the effectiveness of the right to defense and the accused's freedom to choose their lawyer. This right takes precedence over the court's authority to appoint a lawyer. If the accused has selected a lawyer, the judge cannot override this choice and appoint another lawyer unless it becomes evident that the chosen lawyer is deliberately working to obstruct the proceedings.[2661]

([2657] Appeal No. 4 of year 35 Q issued in the session of June 15, 1965 and published in the second part of the Technical Office Book No. 16, page No. 580, Rule No. 116.

([2658] Appeal No. 449 of 21 Q issued in the session of June 4, 1951 and published in Part Three of Technical Office Book No. 2, Page No. 1208, Rule No. 441.

([2659] Appeal No. 13489 of 85 Q issued in the session of November 27, 2016 and published in Technical Office Book No. 67, Page No. 846, Rule No. 105.

([2660]) The Supreme Constitutional Court, Case No. 6 of 13 Q, issued in the session of May 16, 1992, date of publication June 4, 1992, and published in the first part of the Technical Office Book No. 5, page No. 344, rule No. 37.

([2661] Appeal No. 1619 of 37 Q issued in the session of October 2, 1967 and published in Part Three of Technical Office Book No. 18, Page No. 926, Rule No. 185.

The law does not require more than one lawyer to defend an accused person in a felony case.[2662]

18-1-3 Enabling the Lawyer to Follow Trial Proceedings from Beginning to End

It is generally accepted that the court is not at fault if it refuses a request for adjournment to allow for preparation, as long as the accused has been properly notified and has had the time between the notification and the trial session to prepare their defense.[2663]

However, if the accused has entrusted a lawyer with their defense, the court must listen to the lawyer's arguments. If the lawyer requests a postponement of the case and the court decides not to grant it, the court must inform the lawyer of the refusal so they can proceed with their defense or take other measures they deem necessary to protect the rights of their client.[2664]

Unless the court finds that an unavoidable excuse has arisen for the accused or their lawyer, preventing preparation, the court must grant sufficient time for defense preparation. Failure to do so would result in a judgment that breaches the right to defense.[2665]

If a lawyer attends the session scheduled for the trial and requests an adjournment due to illness, providing a medical certificate, and the court dismisses this request and proceeds with the trial without addressing or evaluating this excuse in its judgment, the court would have violated the accused's right to defense. Illness constitutes an unavoidable excuse that requires the court to postpone the trial until the accused can properly defend themselves. If the court fails to consider the validity of the excuse presented by the lawyer, it breaches the accused's right to defense. [2666]

However, if the lawyer appointed by the accused does not attend, and the court appoints another lawyer to argue the case, this does not invalidate the proceedings or infringe on the accused's right to defense, provided the accused does not object to this arrangement or request a postponement until the appointed lawyer is present.[2667]

If the defense lawyer claims that the court has denied their right to present a defense before closing arguments and reserving the case for judgment, the lawyer must provide evidence to substantiate this claim and record the violation in a written submission before the judgment is issued.[2668]

([2662] Appeal No. 61 of 88 Q issued in the session of November 25, 2018 (unpublished).

([2663]) Appeal No. 1133 of 18 Q issued in the session of June 14, 1948 and published in the first part of the collection of legal rules, the seventh year, page No. 603, rule No. 634, Appeal No. 852 of 7 Q issued in the session of March 1, 1937 and published in the first part of the collection of legal rules, the fourth year, page No. 52, rule No. 54.

([2664]) Appeal No. 35403 of 85 Q issued in the session of January 19, 2016 and published in Technical Office Book No. 67, page No. 130, Rule No. 16, Appeal No. 14734 of 83 Q issued in the session of January 12, 2015 and published in Technical Office Book No. 66, page No. 127, Rule No. 8.

([2665]) Appeal No. 1596 of 21 Q issued in the session of January 7, 1952 and published in the second part of the Technical Office Book No. 3, page No. 392, rule No. 149, Appeal No. 341 of 31 Q issued in the session of May 22, 1961 and published in the second part of the Technical Office Book No. 12, page No. 608, rule No. 116, Appeal No. 929 of 42 Q issued in the session of November 19, 1972 and published in the third part of the Technical Office Book No. 23, page No. 1240, rule No. 277, Appeal No. 27755 of 64 Q issued in the session of April 24, 2001 and published in the Technical Office Book No. 52, page No. 454, rule No. 77, Appeal No. 1826 of 11 Q issued in the session of November 3, 1941 And published in the first part of the set of rules, Book No. 5, Page No. 564, Rule No. 293.

([2666] Appeal No. 3436 of 31 Q issued in the session of June 25, 1962 and published in the second part of the Technical Office Book No. 13, page No. 556, rule No. 140.

([2667] Appeal No. 121 of 25 Q issued in the session of April 26, 1955 and published in Part Three of Technical Office Book No. 6, Page No. 903, Rule No. 269.

([2668] Appeal No. 21602 of 84 Q issued in the session of March 22, 2015 and published in Technical Office Book No. 66, Page No. 319, Rule No. 45.

Failure to allow the lawyer to present their defense defeats the purpose for which the legislator mandated their presence with the accused, resulting in the nullification of the trial proceedings.[2669]

When the accused entrusts their defense to a lawyer, the court must listen to the lawyer's arguments and facilitate their role. If the lawyer requests that the case be reserved for judgment with permission to submit a written memorandum, the court must either grant this request or notify the lawyer of its refusal so they can proceed with oral arguments. Failure to do so results in the court rendering a judgment without proper defense, violating fundamental principles of criminal proceedings and undermining the validity of the judgment.[2670]

However, if the accused's appointed lawyer fails to appear and the court appoints another lawyer to argue the case, this does not constitute a procedural violation or infringe on the accused's right to defense, provided the accused does not object to this measure or explicitly request a postponement until their appointed lawyer can attend.[2671]

If the accused attends the trial and personally defends themselves without mentioning that they have a lawyer, even if a lawyer is present in the courtroom but unaware that the case was being heard, this does not constitute a breach of the right to defense.[2672]

It is not permissible to appeal a court's judgment on the grounds that the convicted person's lawyer withdrew from the session due to a strike. The court—authorized by law to resolve disputes—is obligated to proceed without delay. Its primary duty in such circumstances is to allow the accused to present their defense independently. The court's refusal to grant the accused an opportunity to appoint a replacement lawyer does not constitute a breach of their right to defense.[2673]

18-1-4 Ensuring that there is no conflict between the accused when defending them

The general principle is that the law does not prohibit a single lawyer or a single defense team from representing multiple defendants in the same criminal case, provided that the circumstances of the case do not give rise to a genuine conflict of interest between their defenses. A genuine conflict arises when the conviction of one defendant necessarily leads to the acquittal of another. The determination of such a conflict requiring separate legal representation for each defendant is based on the actual facts and circumstances, not on hypothetical defenses that each might have raised but did not. Therefore, as long as the interests of the defendants in their defense are not genuinely in conflict, there is no requirement for separate representation.[2674]

([2669] Appeal No. 19888 of 72 Q issued in the session of November 15, 2009 and published in Technical Office Book No. 60, Page No. 436, Rule No. 59.

([2670] Appeal No. 1139 of 37 Q issued in the session of October 9, 1967 and published in Part Three of Technical Office Book No. 18, Page No. 943, Rule No. 190.

([2671] Appeal No. 3672 of 59 Q issued in the session of November 8, 1989 and published in the first part of Technical Office Book No. 40, page No. 893, rule No. 148.

([2672] Appeal No. 1508 of 14 Q issued in the session of October 16, 1944 and published in the first part of the collection of legal rules, sixth year, page No. 516, rule No. 376.

([2673] Appeal No. 342 of 46 Q issued in the session of January 17, 1929 and published in the first part of the collection of legal rules, first year, page No. 142, rule No. 116.

([2674]) Appeal No. 2189 of 84 Q issued in the session of November 1, 2014 and published in the Technical Office Book No. 65, page No. 775, Rule No. 99, Appeal No. 11598 of 79 Q issued in the session of September 18, 2011 (unpublished), Appeal No. 15465 of 72 Q issued in the session of October 19, 2009 (unpublished), Appeal No. 3506 of 78 Q issued in the session of December 17, 2008 and published in the Technical Office Book No. 59, page No. 557, Rule No. 99, Appeal No. 9407 of 69 Q issued in the session of October 8, 2007 and published in the Technical Office Book No. 58, page No. 585, Rule No. 113, Appeal No. 30419 of 70 Q issued in the session of July 2, 2009 2006, Appeal No. 20669 of 70 Q issued in the session of

The court must ensure there is no conflict of interest among defendants when a single lawyer or defense team represents them. If a case involves multiple defendants and their interests conflict—such that the defense of one requires incriminating another—each defendant must have their own lawyer. A single lawyer representing all of them in such a scenario constitutes a violation of their right to an adequate defense.[2675]

18-1-5 The lawyer's ability to defend

The lawyer must be capable of defending, and whether they are prepared or unprepared to defend the accused is a matter left to their discretion, guided by their conscience, professional judgment, and the traditions of their profession;[2676]

While the law requires that every accused in a felony case be represented by a lawyer before the criminal court, it does not prescribe specific defense strategies. Instead, it entrusts the lawyer—relying on the integrity of their profession and confidence in achieving its goals—with the freedom to conduct the defense in a manner that satisfies their conscience and legal

---

March 27, 2006 (unpublished), Appeal No. 45274 of 74 Q issued in the session of April 20, 2005 (unpublished), Appeal No. 18699 of 74 Q issued in the session of November 18, 2004 (unpublished), Appeal No. 8726 of 65 Q issued in the session of November 4, 2004 (unpublished), Appeal No. 1776 of 65 Q issued in the session of June 14, 2004 and published in Technical Office Book No. 55, Page No. 596, Rule No. 84, Appeal No. 38328 of 73 Q issued in the session of April 1, 2004 and published in Technical Office Book No. 55, Page No. 287, Rule No. 42, Appeal No. 27397 of 64 Q issued in the session of October 11, 2003 and published in the Technical Office Book No. 54, page No. 952, rule No. 126, Appeal No. 5233 of 68 Q issued in the session of December 12, 2000 and published in the Technical Office Book No. 51, page No. 814, rule No. 162, Appeal No. 24751 of 67 Q issued in the session of February 7, 2000 (unpublished), Appeal No. 14606 of 66 Q issued in the session of July 20, 1998 and published in the first part of the Technical Office Book No. 49, page No. 895, rule No. 116, Appeal No. 9228 of 64 Q issued in the session of April 7, 1996 and published in the first part of the Technical Office Book No. 47, page No. 466, rule No. 66, Appeal No. 2817 of 64 Q issued in the session of March 3, 1996 and published in the first part of the Technical Office Book No. 47, page No. 289, rule No. 43, Appeal No. 21258 of 62 Q issued in the session of October 11, 1994 and published in the first part of the Technical Office Book No. 45, page No. 855, rule No. 133, Appeal No. 2510 of 61 Q issued in the session of December 3, 1992 and published in the first part of the Technical Office Book No. 43, page No. 1110, rule No. 173, Appeal No. 86 of 60 Q issued in the session of January 21, 1991 and published in the first part of the Technical Office Book No. 42, page No. 147, rule No. 17, Appeal No. 15049 of 59 Q issued in the session of February 20, 1990 and published In the first part of the Technical Office Book No. 41, page No. 397, rule No. 64, appeal No. 5946 for year 56 Q issued in the session of January 14, 1987 and published in the first part of the Technical Office Book No. 38, page No. 92, rule No. 12, appeal No. 4106 for year 56 Q issued in the session of December 4, 1986 and published in the first part of the Technical Office Book No. 37, page No. 992, rule No. 190, appeal No. 3830 for year 56 Q issued in the session of November 16, 1986 and published in the first part of the Technical Office Book No. 37, page No. 888, rule No. 171, appeal No. 884 for year 55 Q issued in the session of May 9, 1985 and published in the first part of the Technical Office Book No. 36, page No. 631, rule No. 112, appeal No. 5801 For the year 53 Q issued in the session of February 28, 1984 and published in the first part of the Technical Office Book No. 35, page No. 205, rule No. 42, appeal No. 2107 for the year 51 Q issued in the session of March 9, 1982 and published in the first part of the Technical Office Book No. 33, page No. 305, rule No. 63, appeal No. 1068 for the year 49 Q issued in the session of February 24, 1980 and published in the first part of the Technical Office Book No. 31, page No. 262, rule No. 52, appeal No. 1210 for the year 49 Q issued in the session of January 31, 1980 and published in the first part of the Technical Office Book No. 31, page No. 148, rule No. 29, appeal No. 1521 for the year 48 Q issued in the session of January 8, 1979 and published in the first part of the Technical Office Book No. 30 Page No. 24 Rule No. 4, Appeal No. 1384 of 41 Q issued in the session of January 9, 1972 and published in the first part of the Technical Office Book No. 23 Page No. 30 Rule No. 9, Appeal No. 678 of 41 Q issued in the session of December 19, 1971 and published in the third part of the Technical Office Book No. 22 Page No. 767 Rule No. 184, Appeal No. 1001 of 41 Q issued in the session of December 6, 1971 and published in the third part of the Technical Office Book No. 22 Page No. 719 Rule No. 175, Appeal No. 674 of 39 Q issued in the session of May 19, 1969 and published in the second part of the Technical Office Book No. 20 Page No. 758 Rule No. 153.

([2675] Appeal No. 2046 of year 37 Q issued in the session of February 5, 1968 and published in the first part of Technical Office Book No. 19, page No. 154, rule No. 27.

([2676]) Appeal No. 9886 of 65 Q issued in the session of December 2, 1997 and published in the first part of the Technical Office Book No. 48, page No. 1324, rule No. 202, Appeal No. 22443 of 59 Q issued in the session of February 7, 1990 and published in the first part of the Technical Office Book No. 41, page No. 330, rule No. 54, Appeal No. 19721 of 86 Q issued in the session of December 28, 2016 and published in the Technical Office Book No. 67, page No. 961, rule No. 120, Appeal No. 3672 of 59 Q issued in the session of November 8, 1989 and published in the first part of the Technical Office Book No. 40, page No. 893, rule No. 148.

expertise. Accordingly, if a lawyer appears on behalf of the accused and presents what they believe constitutes an adequate defense, this is sufficient to fulfill the law's purpose, regardless of the content of that defense. For instance, if the lawyer concludes that the charges against the accused are substantiated by their confession or other evidence, they may base their defense on acknowledging the accuracy of the accusation while focusing on seeking leniency. They may even defer entirely to the court's judgment in the matter[2677]

The lawyer may choose to join forces with another lawyer representing the accused.[2678]

He is not obligated to adopt a specific plan in defense, but rather he may arrange his defense according to what he sees as being in the interest of the accused;)[2679]

They are not obligated to adopt a specific strategy but have the discretion to structure their defense according to what they believe serves the accused's best interest. The requirement to have a lawyer represent every accused in a felony case is intended to ensure a genuine, not merely a formal, defense. If the defense provided by the court-appointed lawyer is insufficient to achieve this purpose, it renders the trial proceedings and the verdict invalid.[2680]

If the court-appointed lawyer's defense is limited to asserting that the accused was not alone at the scene of the crime, suggesting that someone else may have committed the act, and requesting acquittal primarily while secondarily pleading for maximum leniency, this does not fulfill the intended purpose of requiring a lawyer's presence. Such a defense falls short of the intended objective and undermines the rationale behind this requirement. Consequently, the trial proceedings become invalid, affecting the verdict and necessitating its annulment to allow the accused the opportunity to present a comprehensive, genuine defense before the judiciary.[2681]

Similarly, if the court appoints a lawyer who limits their defense to requesting leniency based on the accused's youth, lack of criminal record, or financial need due to their military service, this does not fulfill the requirement of a genuine defense. Such proceedings are deemed invalid, and the judgment is affected accordingly.[2682]

However, in cases of misdemeanors where the law does not mandate the presence of a lawyer, the accused may either defend themselves or appoint a lawyer of their choosing. In such cases, it is up to the accused—not the court—to evaluate whether the lawyer's defense aligns with their interests. Since lawyers are not bound by specific methods in their defense, but rather act

---

([2677] Appeal No. 29653 of year 67 Q issued in the session of March 10, 1998 and published in the first part of the Technical Office Book No. 49, page No. 388, rule No. 53

The Court of Cassation ruled that: [The appellant's criticism of the conduct of his defense attorney - when he asked the court to treat him with mercy without asking the court to acquit him - is not a valid ground for objection to the ruling convicting him] Appeal No. 1355 of year 38 Q issued in the session of November 25, 1968 and published in the third part of the Technical Office Book No. 19, page No. 1008, rule No. 205, Appeal No. 116 of year 9 Q issued in the session of January 23, 1939 and published in the first part of the collection of legal rules, fourth year, page No. 446, rule No. 341.

([2678] The Court of Cassation ruled that: [If the lawyer is content to join his colleague, believing that the court is convinced of the innocence of their client, and then the court sentences the client to punishment, then this lawyer shall not be harmed later by the failure to fully defend the accused] Appeal No. 862 of the 5th year of Q issued in the session of April 1, 1935 and published in the first part of the collection of legal rules, third year, page No. 456, rule No. 354.

([2679] Appeal No. 860 of the 5th year of the Q issued in the session of April 1, 1935 and published in the first part of the collection of legal rules, the third year, page No. 455, rule No. 353.

([2680]) Appeal No. 6627 of 72 Q issued in the session of October 20, 2002 and published in Technical Office Book No. 53, page No. 982, rule No. 164, Appeal No. 86 of 66 Q issued in the session of March 5, 1997 and published in the first part of Technical Office Book No. 48, page No. 285, rule No. 41, Appeal No. 3722 of 58 Q issued in the session of October 20, 1988 and published in the first part of Technical Office Book No. 39, page No. 938, rule No. 141.

([2681] Appeal No. 474 of 60 Q issued in the session of May 7, 1991 and published in the first part of Technical Office Book No. 42, page No. 743, rule No. 106.

([2682] Appeal No. 22437 of 59 Q issued in the session of February 8, 1990 and published in the first part of Technical Office Book No. 41, page No. 355, rule No. 57.

according to their conscience and judgment, the accused cannot challenge the verdict based on the lawyer's poor handling of the defense.[2683]

18-2 Within the Framework of International Conventions

Every individual accused of committing a criminal act has the right to defend themselves personally or through a lawyer. They have the right to receive assistance from a lawyer of their choosing or a competent lawyer appointed to assist them in the interest of justice without charge if they are unable to afford the fees. Additionally, they have the right to communicate with their lawyer in a confidential setting.

18-2-1 The Right of the Accused to Defend Themselves

Every individual accused of committing a criminal act has the right to defend themselves against the charges brought against them.[2684]

This right to defense may be exercised either personally by the accused or with the assistance of a lawyer, although the accused may not always have complete freedom to choose between the two options.[2685]

All individuals charged with a criminal offense must be informed of their right to have a lawyer represent them.[2686]

This notification must be given well in advance of the trial to allow adequate time and resources for the preparation of the defense.

The decision to waive the right to legal representation, including during interrogation, must be made unequivocally and accompanied by sufficient safeguards.[2687]

An accused person who decides not to represent themselves has the right to be represented by a lawyer. Choosing to have a lawyer does not exclude the accused from participating in their own defense.[2688]

he accused and their lawyer must have the right to attend the trial, and an oral hearing must be held. Furthermore, the principle of equality of arms between the defense and the prosecution must be upheld, ensuring the defense has the right to present their case, summon witnesses, and cross-examine them.

The European Court of Human Rights has emphasized that if the accused is detained awaiting trial, the conditions of detention, including those within the courtroom, must not impede the preparation of their defense.[2689]

([2683] Appeal No. 1174 of 19 Q issued in the session of October 18, 1949 and published in the first part of Technical Office Book No. 1, page No. 10, rule No. 4.

([2684]) Article 11(1) of the Universal Declaration, Article 14(3)(d) of the International Covenant, Article 40/2(b)(2) of the Convention on the Rights of the Child, Article 18(3)(d) of the Migrant Workers Convention, Article 7(1)(c) of the African Charter, Article 8(2)(j) of the American Convention, Article 16(3) of the African Charter, Article 6(3)(c) of the European Convention, Section N(2)(a) of the Principles on Fair Trial in Africa, Principle 5 of the Principles on Persons Deprived of Liberty in the Americas, Article 67(1)(d) of the Rome Statute, Article 20(4)(d) of the Statute of the International Criminal Tribunal for Rwanda, Article 20/4/d of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

([2685]) See, for example, Maysett v. Russia (63378)/00, European Court §65 (2009).

([2686]) Guideline 5 of the Basic Principles on the Role of Lawyers, Guideline 43§ 3 of the Principles on Legal Aid, Section N(2)(b) of the Principles on Fair Trial in Africa, Article 67(1)(d) of the Rome Statute, Article 20(4)(d) of the Statute of the International Criminal Tribunal for Rwanda, Article 21(4)(d) of the Statute of the International Criminal Tribunal for the Former Yugoslavia; see Article 14(3)(d) of the International Covenant.

([2687]) See Principle 29§ 8 of the Principles on Legal Assistance, and Rule 112(1)(b) of the Rules of Procedure and Evidence of the International Criminal Court.

([2688]) General Comment 32 of the Human Rights Committee, §37.

([2689]) See Moiseyev v. Russia (62936)/00, European Court (2008) §222.

Similarly, the African Commission on Human and Peoples' Rights has concluded that restricting the opportunities for defense constitutes a violation of the right to defense as guaranteed under Article 7(c) of the African Charter.[2690]

Trials in which the accused and their defense counsel are not allowed to attend or cross-examine witnesses violate the accused's right to a public trial and to defend themselves, whether personally or through legal representation.[2691]

18-2-2 Permissible Restrictions on the Right of the Accused to Self-Representation

The right of an individual to represent themselves during trial or at the appellate stages is not absolute. It may be subject to restrictions when the court determines, in a specific case, that the interests of justice require the appointment of legal counsel for the accused contrary to their wishes. For example, if the accused is facing particularly serious charges, the court may determine that they are unable to act in a manner consistent with their own best interests. This also applies to cases where the accused persistently and substantially disrupts the proper conduct of the trial proceedings, continuing to interrupt despite warnings from the court, or when it is necessary to protect a vulnerable witness from suffering or intimidation if the accused conducts the cross-examination personally.[2692]

However, any restrictions on the accused's right to self-representation must not exceed what is necessary to preserve the interests of justice. Laws must not, under any circumstances, categorically prohibit an accused person from representing themselves in criminal proceedings.[2693]

18-2-3 The Right of the Accused to Be Represented by a Lawyer

The assistance of a lawyer is a primary means of ensuring the protection of the human rights guaranteed to individuals accused of criminal acts, particularly their right to a fair trial. Often, the ability of individuals to receive legal assistance determines whether they can meaningfully participate in legal proceedings.[2694]

Every individual accused of a criminal act has the right to legal assistance to protect and defend their rights.[2695]

([2690]) Malawi African Association and Others v. Mauritania (54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98), African Commission, Annual Report §96 (2000) 13.

([2691]) Human Rights Committee, Guerra de la Espriella v. Colombia, UN Doc. 3/ §9 (2010) CCPR/C/98/D/1623/2007, Becerra Barney v. Colombia, UN Doc. 2/ §7 (2006). CCPR/C/87/D/1298/2004, Rodríguez Orejuela v. Colombia, 1999/3/ §7 (2002) UN Doc. CCPR/C/75/D/848; see General Comment 32 of the Human Rights Committee, §23.

([2692]) Human Rights Committee, General Comment §32, §37, Correa de Matos v. Portugal, 2002/5/7-4/ §7 (2006) UN Doc. CCPR/C/1123/D/848; Prosecutor v. Vojislav Šešelj (IT-03-67-AR73. 3) Decision of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia on the Appeal against the Trial Chamber's Decision to Appoint Counsel for the Defence (20 October 2006).

([2693]) () Human Rights Committee, General Comment §37, 32, Correa de Matos v. Portugal, 2002/5/7-4/ §7 (2006) UN Doc. CCPR/C/1123/D/848, Hill v. Spain, 1993/2/ §14 (1997) UN Doc. CCPR/C/59/D/526; Milosevic v. Prosecutor (IT-02-54-AR73. 7), Appeals Chamber of the International Tribunal for the Former Yugoslavia (1 November 2004) §11-§21.

([2694]) See section N(2)(a) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, §10.

([2695]) Article 14(3)(d) of the International Covenant, Article 40(2)(b)(xxii) of the Convention on the Rights of the Child, Article 18(3)(d) of the Migrant Workers Convention, Article 7(1)(c) of the African Charter, Article 8(2)(d) and (e) of the American Convention, Article 16(3) and (4) of the Arab Charter, Article 6(3)(c) of the European Convention, Principle 1 of the Basic Principles on the Role of Lawyers, Rules 7/1 and 15/1 of the Beijing Rules, Section N(2)(a) and (c) of the Principles on Fair Trial in Africa, Article 67(1)(d) of the Rome Statute, Article 20(4)(d) of the Statute of the International Criminal Tribunal for Rwanda, Article 21(4)(d) of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

This right applies at all stages of criminal proceedings, including during the initial investigation, before and during the trial, and at all stages of appeal. In some cases, effective legal assistance may also be necessary to pursue constitutional remedies. For instance, the Human Rights Committee found a violation of the right to legal assistance when a trial judge allowed two prosecution witnesses to testify at a preliminary hearing without the defense lawyer present.[2696]

The Committee also expressed concerns about decisions to prohibit legal representation in customary courts in Botswana.[2697]

Similarly, the African Commission concluded that the right to defense was violated when a court refused to grant an adjournment or appoint a replacement lawyer after the defense counsel failed to attend the final hearing in a death penalty case, submitting a written argument instead.[2698]

The right to be represented by a lawyer applies even if the accused chooses not to attend the trial or is absent for other reasons.[2699]

This right includes the ability of the accused to meet and communicate with their lawyer in confidentiality, sufficient time and facilities to prepare their defense, and the freedom to appoint a lawyer of their choice or be provided with competent counsel.

First: The Right of the Accused to Choose Their Lawyer

Given the importance of trust and confidence between the accused and their lawyer, the accused generally has the right to choose their legal representative.[2700]

Principles related to fair trials in Africa explicitly state that judicial bodies must not appoint a lawyer for the accused if they already have a competent and qualified lawyer of their choice.[2701]

However, this right has been subject to violations, particularly in cases involving political crimes or terrorism-related offenses.[2702]

found a violation of the rights of a civilian and five military personnel when they were denied their choice of legal representation and instead assigned military lawyers with no relevant experience to represent them before a special military tribunal.[2703]

However, the right of the accused to be represented by a lawyer of their choice is not absolute.

([2696]) Human Rights Committee, Brown v. Jamaica, / UN Doc. CCPR 6/ §6 (1999) C/65/D/775/1997; see Hendricks v. Guyana, UN Doc. 4/ §6 (2002) CCPR/C/75/D/838/1998.

([2697]) Concluding observations of the Human Rights Committee: Botswana, UN Doc. §21 (2008) CCPR/C/BWA/CO/1.

([2698]) Lawyers Without Borders (on behalf of Bwambamye) v. Burundi (231)/99), African Commission, 14th Annual Report (31- § § 29 (2001); see Robinson v. Jamaica, Human Rights Committee, 1987/3/ § 10 (1989) UN Doc. CCPR/C/35/D/223..

([2699]) European Court: Poitrimole v. France (14032)/88, (1993) §34-§39.

([2700]) See article 14(3)(d) of the International Covenant, article 18(3)(d) of the Migrant Workers Convention, article 7(1)(c) of the African Charter, article 8(2)(d) of the American Convention, article 16(3) of the Arab Charter, article 6(3)(c) of the European Convention, principle 1 of the Basic Principles on the Role of Lawyers, section N(2)(a) and (d) of the Principles on Fair Trial in Africa, article 67(1)(d) of the Rome Statute, article 20(4)(d) of the Statute of the International Criminal Court for Rwanda, and article 21(4)(d) of the Statute of the International Criminal Court for the Former Yugoslavia.

([2701] Section N(2)(d) of the Principles on Fair Trial in Africa.

([2702]) See, for example, Human Rights Committee: Estrella v. Uruguay (74) / 1980), 6/ § § 8 (1983) UN Doc. CCPR/C/Op/2 and 10, Burgos v. Uruguay 5/§§11 (1981) UN Doc. A/36/40, (1979/52) and 13; Acosta v. Uruguay 2/§ § 13 (1984) UN Doc. Supp No. 40 A/39/40 (1981/110) and 15; Joint Report of the United Nations Mechanisms on the Detainees at Guantanamo Bay, UN Doc. §35 (2006) E/CN. 4/2006/120.

([2703]) Civil Liberties Organization, Legal Centre for Defence and Legal Aid Project v. Nigeria (218/98), African Commission (§28-§31 (2001); Commission on Human Rights Decision 1998/§2, 64(b); Ghazi Suleiman Legal Office v. Sudan (222/98 and 229/99), African Commission §58-§60 (2003); Amnesty International and Others v. Sudan (48/90, 50/91, 52/91 and 89/93), African Commission, Annual Report 13 §64-§66 (1999).

There must also be a logical and objective basis for imposing restrictions on the choice of lawyers, which must remain open to challenge before a court.[2704]

For example, the right to choose a lawyer may be restricted if the chosen lawyer fails to adhere to professional ethics, is themselves subject to criminal charges,[2705] or if he refuses to comply with the court procedures)[2706]

Such restrictions must align with the prohibition of any undue association between the lawyer and the client or their case due to the lawyer's professional obligations.[2707]

The accused does not have an unfettered right to choose their lawyer, especially if the state is covering the costs. In such cases, the European Court has noted that courts must consider the preferences of the accused when appointing a lawyer but may disregard these preferences if there are compelling reasons to believe it would not serve the interests of justice.[2708]

In death penalty cases, the Human Rights Committee emphasized that courts should prioritize appointing a lawyer chosen by the accused, even at the appellate stage, to ensure adequate and effective legal assistance.[2709]

Similarly, the African Commission highlighted the importance of allowing individuals to choose their representatives from a list of independent lawyers, free from government directives, particularly in death penalty cases. The absence of trust and confidence in the lawyer-client relationship can undermine the accused's ability to provide complete instructions to their lawyer[2710]

Second: The Right of the Accused to Have a Lawyer Appointed and Receive Free Legal Aid

If the accused has not appointed a lawyer of their choice, a lawyer may be appointed for them.[2711]

The American Convention, in Article 8(e), considered the right to be an established right if the accused chooses not to defend himself in person, or does not retain an attorney within the period prescribed by law for that purpose.

However, other international standards guarantee the right to be appointed by a lawyer when the interests of justice so require.

The decision whether the interests of justice require the appointment of a lawyer depends primarily on the seriousness of the crime, the serious risks that may arise from the absence of a lawyer, the likely punishment for the accused, and the complexity of the case or proceedings.[2712]

([2704]) Special Rapporteur on human rights and counter-terrorism, UN Doc. 41- § §38 (2008) A/63/223.
([2705]) Enslin, Baader and Raspe v. Federal Republic of Germany (7572/76, 7586/76 and 7587/76), European Commission (decision) 8 July 1978, in Law §20.
([2706]) See Guideline 70 of the ICC Guidelines.
([2707]) Principle 18 of the Basic Principles on the Role of Lawyers, and Section I(g) of the Principles on Fair Trial in Africa.
([2708]) European Court: Croissant v. Germany (13611)/88), (1992) §29, Lagerblom v. Sweden (26891)/95), §54 (2003, Mazet v. Russia (63378)/00), §66 (2005); see Prosecutor v. Blagojevic and Jokić (IT-02-60-A), ICTY Appeals Chamber (9 May 2007) §17.
([2709]) See Pinto v. Trinidad and Tobago, Human Rights Committee, . 5/ §12 (1990) UN CCPR/C/39/D/232/1987.
([2710]) Civil Liberties Organization, Legal Advocacy Centre and Legal Aid Project v. Nigeria (218)/98, §28-§31 (2001).
([2711]) Article 14(3)(d) of the International Covenant, Article 18(3)(d) of the Migrant Workers Convention, Principle 6 of the Basic Principles on the Role of Lawyers, Article 8(2)(e) of the American Convention, Article 16(4) of the Arab Charter, and Section H(a) of the Principles on Fair Trial in Africa; see Article 6(3)(c) of the Statute of the International Criminal Court for Rwanda, and Article 21(4)(d) of the Statute of the International Criminal Court for Yugoslavia.
([2712]) Principle 3 of the Principles on Legal Aid, and Section H(b)(i) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, § 38; European Court: Taleb v. Greece (2494)/94), (53- § 52 (1998), Quaranta v. Switzerland § 32- § 38 (1991), (87/12744).

It may also be based on the defendant's particular vulnerabilities resulting from age, health condition, disability, or economic or social difficulties.[2713]

The principle of equality of legal opportunity between the defense and the prosecution should also be taken into account.

The interests of justice require that a lawyer be appointed at all stages of the case to defend persons accused of crimes punishable by death, if the accused has not chosen and appointed a lawyer to defend them.[2714]

In accordance with the principles of legal aid, the State should ensure the right to legal assistance for any person arrested, detained, suspected or charged with a criminal offence punishable by imprisonment, at all stages of the criminal justice process. Furthermore, legal assistance should be provided, regardless of the accused's personal capacity, if the interests of justice so require, given the urgency or complexity of the case, for example.[2715]

The European Court also concluded that where a person is deprived of his liberty, the interests of justice require, in principle, that he be provided with legal representation.[2716]

International bodies have expressed concern about systems that provide free legal aid only in death penalty cases, and about systems that provide it only if the potential penalty exceeds five years' imprisonment.[2717]

The Human Rights Committee has concluded that States should provide legal assistance in the pursuit of constitutional claims, including following conviction, if the interests of justice so require. Such proceedings do not result in a decision on criminal charges but rather issue rulings on constitutional issues, including issues relating to the fairness of the trial.[2718]

Under some international standards, the state must provide free legal advice if two conditions are met. The first is that the interests of justice require the appointment of a lawyer. The second is that the accused lacks sufficient ability to pay the lawyer.[2719]

While other criteria differ in their view of this.

The Arab Charter guarantees the right to receive free assistance from a lawyer if the accused is unable to defend himself, or if the interests of justice so require.[2720]

While the American Convention requires that a state pay the appointed attorney only if national law requires it,[2721]

([2713]) See Principle 10 of the Principles on Legal Aid.

([2714]) Principle 20 § 3 of the Principles on Legal Aid, and Section H(c) of the Principles on Fair Trial in Africa, Human Rights Committee: General Comment § 38, 32, Alibueva v. Tajikistan, 2001/4/ § 6 (2005) UN CCPR/C/85/D/985, Robinson v. Jamaica, 1987/4/10-2/ § 10 (1989) UN CCPR/C/35/D/223, Aliyev v. Ukraine, 1997/3/7-2/ § 7 (2003) UN CCPR/C/78/D/781, Lavende v. Trinidad and Tobago, 1993/8/ § 5 (1997) UN CCPR/C/61/D/544.

([2715]) Principle 20-21 of the Principles on Legal Aid.

([2716]) European Court: Brizek v. Croatia (48185)/07), § 29 (2009, Quaranta v. Switzerland (12744)/87), § 32-§ 38 (1991); see R. D. v Poland 29692 (/96 and 34612/97), European Court §49-§52 (2001); see also in connection with the appeal proceedings: Maxwell v United Kingdom (18949)/91), European Court §40-§41 (1994).

([2717]) Concluding observations of the Human Rights Committee: Botswana, UN Doc §20 (2008) CCPR/C/BWA/CO/1; Concluding observations of the Committee against Torture: Turkey, §11 (2010) UN Doc. CAT/C/TUR/CO/3 (b)..

([2718]) Human Rights Committee: Kennedy v. Trinidad and Tobago, 10/ §7 (2002) UN CCPR/C/74/D/845/1998, Kelly v. Jamaica, . 7/ §9 (1996) UN CCPR/C/57/D/537/1993.

([2719]) Article 14(3)(d) of the International Covenant, Article 13(d) of the Migrant Workers Convention, Article 6(3)(c) of the European Convention, Principle 6 of the Basic Principles on the Role of Lawyers, Section H(a) of the Principles on Fair Trial in Africa, Article 67(1)(d) of the Rome Statute, Article 20(4)(j) of the Statute of the International Criminal Tribunal for Rwanda, Article 21(4)(d) of the Statute of the Yugoslavia Tribunal, and Rule 45 of the Rules of the Yugoslavia Tribunal.

([2720] Article 16 (4) of the Arab Charter.

([2721]) Article 8(2)(e) of the American Convention.

The Inter-American Court has made it clear that states must provide free legal advice if this is necessary to ensure a fair trial.[2722]

The principles of legal aid stipulate that legal aid should be granted to those whose financial means pass the means test, but who are unable to pay or to engage a lawyer whose assistance is required in the interests of justice and who could otherwise be assigned.[2723]

States must allocate sufficient resources to ensure that legal aid is adequately and effectively available throughout the country to those charged with criminal offences.[2724]

This is of utmost importance to ensure the right to a fair trial without discrimination, the right to equality before the courts, the right of those accused to defend themselves, and the principle of equal legal opportunity.

If the financial capabilities test is applied:)[2725]

Initial legal aid should be provided to individuals in need of it as soon as possible, pending the results of the means test;

Individual income, not family income, should be taken as the basis for assessment if there is conflict between family members or they do not have equal opportunities to benefit from family income;

A person who is denied legal aid based on a means examination should have the right to appeal the decision not to grant him aid.

Laws that require the accused to repay the costs of legal assistance if he loses the case are not consistent with the right to a defense lawyer.[2726]

The courts must ensure that the accused and his appointed counsel have adequate time and facilities to prepare their defense.[2727]

The right to legal assistance for defendants who lack sufficient financial resources, guaranteed under Article 13 of the Arab Charter, expressly applies at all times, including during states of emergency.[2728]

18-2-4 The Accused's Right to Contact their Lawyer in Confidentiality

The right to contact an attorney is an integral part of the right to a defense attorney. It is explicitly included in international standards that guarantee the right to adequate time and facilities to prepare a defense, or the right of accused persons to defend themselves.[2729]

([2722]) Inter-American Court, Advisory Opinion 90/1990 OC-11 28§ 25§.
([2723]) Guideline 41 § 1 (a) of the Principles on Legal Aid.
([2724]) Principle 3 of the Guidelines on the Role of Lawyers; Principles 15§ 2 and 10 and Guidelines 11-13 and 15-16 of the Principles on Legal Aid, General Comment 32 of the Human Rights Committee, § 10-§ 7; Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, § 22 (2008) UN Doc. CERD/C/USA/CO/6; Concluding observations of the Human Rights Committee: Argentina, §20 (2010) UN Doc. CCPR/C/ARG/CO/4; Tanzania, §21 (2009) UN Doc. CCPR/C/TZA/CO/4; see Special Rapporteur on the independence of judges and lawyers, UN Doc. 289/2011. A/66) §87 and §99.
([2725]) Guideline 41 § 1 (f) and (d) of the Principles on Legal Aid.
([2726]) See the concluding observations of the Committee against Torture: Latvia, UN Doc §6 (2004) 3/CAT/C/CR/31 (h).
([2727]) Among other standards, Principle 7 and Guideline 44§ 4(g), 45§ 5(b) and 12§ 62 of the Principles on Legal Aid, Chan v. Guyana, Human Rights Committee, 2000/UN CCPR/C/85/D/913 3/6-2/ §6 (2006); Sakhnovsky v. Russia (21272)/03), Grand Chamber of the European Court §§97-§107 (2010).
([2728]) Article 4(2) of the Arab Charter, and this right is guaranteed under international humanitarian law, which applies during armed conflicts.
([2729]) Article 14(3)(b) of the International Covenant, Article 18(3)(b) of the Migrant Workers Convention, Article 8(2)(d) of the American Convention, Article 16(3) of the Arab Charter, Section N(3)(e) of the Principles on Fair Trial in Africa, Article

This right remains included in other criteria.

Communications between the accused and his lawyer are confidential within the framework of their professional relationship.[2730]

The authorities must ensure that such communications remain confidential.

The right to communicate with a lawyer, under the International Covenant and the European Convention, includes the right to confidentiality of communications, although this is not expressly provided for in either treaty. The European Court considers the right of the accused to communicate with his lawyer in confidentiality as part of the basic requirements of a fair trial.[2731]

The authorities must provide the detained accused with adequate time and facilities to meet and communicate confidentially with his lawyer, including in person, by telephone and by letter. These meetings or phone calls may take place within sight of others but out of their hearing.[2732]

Detained persons should have the right to keep in their possession documents relating to their case.[2733]

The Special Rapporteur on the independence of judges and lawyers also stressed that lawyers' files and documents should be protected from seizure or inspection, and that no telephone calls or other electronic communications should be intercepted.[2734]

The European Court expressed its conviction that the routine examination of correspondence between a detained person and his lawyer constituted a violation of the principle of equality of arms and a serious infringement of the rights of the defense. Correspondence with lawyers, whatever its purpose, is always privileged, she said, and that: "The reading of communications received by a prisoner from his lawyer or sent to him by him is not permitted except in exceptional circumstances, when the authorities have reasonable grounds to believe that this privilege has been abused and that the content of the communication constitutes a danger to the security of the prison or to the safety of others, or is of a criminal nature."[2735]

The UN Special Rapporteur on human rights and counter-terrorism has expressed concern about violations of the right to confidential communication between individuals accused of

---

67(1)(b) of the Rome Statute, Article 20(4)(b) of the Statute of the International Criminal Court for Rwanda, and Article 21(4)(b) of the Statute of the International Criminal Court for the Former Yugoslavia.

([2730]) Article 8(2)(d) of the American Convention, Article 16(3) of the Arab Charter, Principles 8 and 22 of the Basic Principles on the Role of Lawyers, Principles 7 and 12 and Guidelines 3 §43(d), 44§4(g), 45§5(b) and 10 §53(d) of the Principles on Legal Aid, Rule 93 of the Standard Minimum Rules, Principle 18 of the Body of Principles, Section N(3)(X(1-2) of the Principles on Fair Trial in Africa, Rule 23/4 of the European Prison Rules, and Article 67(1)(b) of the Rome Statute; see Article 14(3)(b) of the ICCPR, and Article 6(3)(c) of the European Convention.

([2731]) Human Rights Committee, General Comment §34, 32, Gridin v. Russian Federation, 1997/5/ §8 (2000) UN CCPR/C/69/D/770, S v. Switzerland (12629)/87 and 13965/88), European Court §48 (1991).

([2732]) Principle 8 of the Basic Principles on the Role of Lawyers, Rule 93 of the Minimum Rules, Principle 18(4) of the Body of Principles, and Section N(3)(e) of the Principles on Fair Trial in Africa; see Principle 7 and Guideline 4 §44(g), §45(5)(b) and §62(12) of the Principles on Legal Aid

See the second general report of the Committee for the Prevention of Torture, CPT/Inf/(92)3, §38; the 21st general report of the Committee for the Prevention of Torture, CPT/Inf2011, §23; Mudarca v. Moldova (14437)/05), European Court (99- §§84 (2007).

Öcalan v. Türkiye (46221)/99, Grand Chamber of the European Court §131-§148 (2005); Arutyutyan v. Uzbekistan, Human Rights Committee, . 3/ §6 (2004) UN CCPR/C/80/D/917/2000.

([2733]) See Principle 28§ 7 of the Principles on Legal Aid.

([2734]) Special Rapporteur on human rights and counter-terrorism, §110 (2009) UN Doc. A/64/181; Zagaria v. Italy (28295)/00), European Court §§27-§36 (2007).

([2735]) Moiseev v. Russia (62936)/00), European Court (2008) §210.

terrorism-related offences and their lawyers, both during pre-trial detention and during the course of the trial.[2736]

He pointed out that "a decision to prosecute someone for a terrorist offence should never in itself have the effect of excluding or restricting confidential communications with counsel. If there are grounds for imposing restrictions in a particular case, communications between the lawyer and his client should be within sight but not within hearing of the authorities. "[2737]

The Inter-American Court concluded that the fact that a person accused of terrorism was unable to communicate freely and confidentially with his lawyer constituted a violation of Article 8(d) of the American Convention.[2738]

The European Court has ruled that in exceptional circumstances the confidentiality of communications may be lawfully restricted. But she said any such restrictions imposed must be prescribed by law and issued by court order. They must be proportionate to a legitimate purpose – such as preventing a serious crime involving death or injury – and be accompanied by adequate safeguards against misuse. The Council of Europe's non-treaty standards, including the European Prison Rules, are based on this jurisprudence.[2739]

The European Court has analysed the restrictions on the confidentiality of communication with a lawyer in the light of the right to private life. Such restrictions must be exceptional, prescribed by law, necessary and proportionate to achieve a legitimate aim, and accompanied by adequate safeguards to prevent abuse. It concluded that a review of written correspondence between the accused and his lawyer was justified on the basis of the requirements of protecting national security and preventing crime. I found that the guarantee was sufficient to prevent misuse when the messages were reviewed by a judge who had no connection with the proceedings of the criminal case and was duty bound not to disclose the information he had obtained.[2740]

A few years later, in another case, the European Court concluded that the fact that Abdullah Öcalan was not able to consult his lawyers in private may have prevented him from asking them questions of potential importance in relation to the preparation of his defense. It held that the restriction of visits by his lawyers to two one-hour meetings each week, and the restriction of his lawyers' access to his volumes of case files, constituted, given the complexity of the case, a violation of his right to a fair trial.[2741]

The right to confidentiality of communication between a person and his lawyer does not stop when a final judgment is issued in the case.[2742]

The Human Rights Committee has expressed concern that meetings between individuals sentenced to death and their lawyers to discuss applications for retrial in Japan remain subject to monitoring by prison staff until a court decides to retry the case.[2743]

Communications between a detained or imprisoned person and his lawyer shall not be accepted as evidence in the case unless they are associated with an ongoing or planned crime.[2744]

([2736]) Special Rapporteur on human rights and counter-terrorism, Egypt. §36 (2009) UN Doc. A/HRC/13/37/Add. 2.
([2737]) Special Rapporteur on human rights and counter-terrorism, §39 (2008) UN Doc. A/63/223.
([2738]) Cantoral-Benavides v. Peru, Inter-American Court (2000) §127-§128.
([2739]) Rule 23/5 of the European Prison Rules.
([2740]) Erdem v. Germany (46221)/99, Grand Chamber of the European Court §§133-§148 (2005).
([2741]) Öcalan v. Türkiye (46221)/99, Grand Chamber of the European Court §§133-§148 (2005).
([2742]) See Guideline 47 § 6 (a) of the Principles on Legal Aid.
([2743]) Concluding observations of the Human Rights Committee: Japan, / UN Doc. CCPR/C. §17 (2010) JPN/CO/5.
([2744]) Principle 18(5) of the Body of Principles.

18-2-5 The right to be assisted by an experienced, specialized and competent lawyer

Defense lawyers, including assigned lawyers, shall exercise their profession freely and shall perform their duties diligently and per the law, recognized standards and professional ethics. They must explain to their clients their rights guaranteed by law and the duties imposed on them, as well as any matters related to the existing legal system that are unclear to them. They must assist their clients in every appropriate manner and take the necessary measures to protect their rights and interests, and to assist them in defending themselves before the courts.[2745]

In protecting the rights of their clients and promoting justice, lawyers must strive to uphold the banner of human rights recognized by national and international law.[2746]

The American Committee considered that the right to counsel is violated when lawyers fail to fulfill their duties to defend their clients.[2747]

When the authorities begin to appoint a lawyer to defend an accused, they must ensure that they choose a lawyer who is experienced and specialised in handling cases that are of the same nature as the crime committed.[2748]

The authorities have a special duty to ensure that the appointed lawyer represents his client effectively.[2749]

States are responsible if they fail to do what they are required to do when questions arise about the lawyer's ineffectiveness before the authorities and the court, or when ineffectiveness is apparent.[2750]

If it becomes apparent that the appointed attorney lacks effectiveness, the court, or other authority, must ensure that he is performing his duties properly, or replace him.[2751]

The European Court considered that a court in Portugal should have seen that a foreign national accused, who was facing charges of drug-related offences and his passport, was not effectively represented by a lawyer appointed to defend him when it received objections from him (and not from his lawyer) in his mother tongue (Spanish).[2752]

The Inter-American Court concluded that the State had violated the accused's right to legal representation in a case in which the lawyer it had appointed for the accused was absent during the accused's interrogation and during most of the accused's pre-trial testimony.[2753]

If the lawyer represents an accused at the appeal stage, effective assistance includes the lawyer advising the accused whether the lawyer intends to withdraw the appeal or argue that it is not justified.[2754]

([2745]) Principles 13 and 6 of the Basic Principles on the Role of Lawyers, Principle 12 of the Principles on Legal Aid, and Section I(1) of the Principles on Fair Trial in Africa.

([2746]) Principle 14 of the Basic Principles on the Role of Lawyers, and Section (i(1) of the Principles on Fair Trial in Africa.

([2747]) Report on the human rights situation of the Miskito people of Nicaragua, Inter-American Commission, rev. 3(1983)‹doc. 10 ‹OEA/Ser. 1/V/11. 62 §19- §21 ‹at D)c(.

([2748]) Principle 6 of the Basic Principles on the Role of Lawyers, Principle 13 of the Principles on Legal Aid, and Section H(e)(2) of the Principles on Fair Trial in Africa; see Rule 22 of the Rules of Procedure and Evidence of the International Criminal Court, General Comment 32 of the Human Rights Committee, §38.

([2749]) Kelly v. Jamaica, Human Rights Committee, / UN CCPR 10/ §5 (1991) C/41/D/253/1987; Chaparro Alvarez and Lapo Iñiguez v. Ecuador, Inter-American Court 159 § (2007).

([2750]) Daoud v. Portugal (22600)/93, European Court 38 § (1998).

([2751]) Artico v. Italy (6694)/74), European Court § 36 (1980); see General Comment 32 of the Human Rights Committee, § 38.

([2752]) Daoud v. Portugal (22600)/93, European Court §34-§43 (1998).

([2753]) Chaparro Alvarez and Lapo Iniguez v. Ecuador, Inter-American Court §159 (2007).

The importance of effective legal representation in death penalty cases has also been repeatedly stressed by human rights bodies and courts.

18-2-6 Prohibition of harassment or intimidation of lawyers

Lawyers should be able to advise and represent people without restrictions, influence, pressure or improper interference from any party.[2755]

Lawyers should be immune from liability under criminal and civil law for oral or written statements made in good faith, whether in their legal briefs or in their pleadings before the courts. They should not suffer penalties for any work they do in accordance with their professional duties and recognized professional standards and ethics.[2756]

States have a positive obligation to protect lawyers who are threatened as a result of performing their duties.[2757]

The Human Rights Committee has found that article 14(d) is violated when courts or authorities obstruct appointed lawyers from carrying out their work effectively.[2758]

Governments must be careful not to equate the character of the lawyer with the character of his client or to hold him accountable for his case or for defending him.[2759]

The UN Special Rapporteur on the independence of judges and lawyers has raised concerns that lawyers are often held responsible for their clients' cases, particularly when lawyers defend individuals in politically sensitive cases or in cases involving large-scale corruption, organized crime, terrorism or drug trafficking. Lawyers have been investigated or charged with supporting their clients' alleged criminal activities, or accused of defamation. Lawyers have also been brought to trial for raising allegations that their clients have been ill-treated, or for exposing shortcomings in the justice system.[2760]

Chapter Nineteen: The Right to Attend Trials and Appeal Hearings

19-1 Under Egyptian Law

The final investigation - conducted by the court - is characterized by the necessity of conducting it in the presence of the opponents. The basic principle is that the Public Prosecution must be present because it is considered an integral part of the formation of the court, and the trial

---

([2754]) Human Rights Committee: Kelly v. Jamaica, / UN CCPR 10/ §5 (1991) C/41/D/253/1987; Kelly v. Jamaica, / UN CCPR 5/9-4/ §9 (1996) C/57/D/537/1993, Suklal v. Trinidad and Tobago, . 10/ §4 (2001) UN CCPR/C/73/D/928/2000.

([2755]) Principle 16 of the Basic Principles on the Role of Lawyers, Principles 16 § 2 and 12 of the Principles on Legal Aid, and Sections H(e)(3) and H(b) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, § 38.

([2756]) Principles 20 and 16(c) of the Basic Principles on the Role of Lawyers, and Sections I(b)(3) and (e) of the Principles on Fair Trial in Africa, Bagosora and Others v. The Prosecutor (ICTR-98-41-A), Appeals Chamber of the International Tribunal for Rwanda, Decision on the Application by Aloys Ntabakuzi for Orders against the Arrest and Investigation of the Head of the Defence Team Peter Lander by the Government of Rwanda (6 October 2010) §29-§30.

([2757]) Principle 17 of the Basic Principles on the Role of Lawyers, and Section I(f) of the Principles on Fair Trial in Africa, Special Rapporteur on the Independence of Judges and Lawyers, UN Doc §68-§69 (2009) 181/A/64; PEN International, Constitutional Rights Project, Rights International on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v. Nigeria (137/94, 139/94, 154/96 and 161/97), African Commission, Annual Report 12 §97-§101 (1998).

([2758]) General Comment 32 of the Human Rights Committee, §38.

([2759]) Principle 18 of the Basic Principles on the Role of Lawyers, and Section I(g) of the Principles on Fair Trial in Africa.

([2760]) Special Rapporteur on the independence of judges and lawyers, UN Doc (2009) 181/A/64 §64- §67.

sessions cannot be held without it. As for the accused, they must be enabled to attend the final investigation procedures, as is the case for the civil plaintiff and the person responsible for civil rights.

The presence of the accused is a condition for the validity of the trial procedures. Therefore, the unjustified exclusion of the accused from attending some of the trial procedures leads to its invalidity, invalidity related to public order.[2761]

If the accused is detained, the court has the right to compel them to attend, because this compulsion is a feature of restricting their freedom based on their pre-trial detention.

This principle stems from the fact that the judge may not base their ruling on procedures taken in the absence of the accused without giving them the opportunity to attend. Accordingly, if the prosecution submits reports or documents after the case has been reserved for judgment, the court may not rely on them in convicting, unless it first enables the accused to review them.

However, the decision issued to refer the case from one circuit to another circuit in the same court is something that the law does not require notification of absent opponents.[2762]

The second paragraph of Article 270 of the Code of Criminal Procedure stipulates that: "The accused may not be removed from the session during the consideration of the case unless they cause a disturbance that requires this, in which case the procedures shall continue until they can be conducted in their presence." The court must inform them of the procedures that took place in their absence and enable them to review them. Therefore, the court may not close the door to pleading while the accused is removed from the session, as this procedure entails a waste of the duty to inform them of the procedures that took place in their absence, which prevents them from discussing them in the session.

19-1-1 The extent to which the accused may be absent from attendance and be represented by a lawyer

Every person accused of a misdemeanor punishable by imprisonment, which the law requires to be executed immediately after the issuance of the judgment, must appear in person. The first paragraph of Article 237 of the Code of Criminal Procedure states that: "The person accused of a misdemeanor punishable by imprisonment, which the law requires to be executed immediately after the issuance of the judgment, must appear in person..."[2763]

([2761] Appeal No. 1999 of the 3rd year of the Q issued in the session of December 27, 1933 and published in the first part of the collection of legal rules, the third year, page No. 229, rule No. 177
The same applies if the accused was unable to attend because their name was included in the session's "roll" with a name other than their real name and they was called by this different name, Appeal No. 1897 of Year 37 Q issued in the session of December 25, 1967 and published in Part Three of Technical Office Book No. 18, Page No. 1298, Rule No. 277.
([2762] Appeal No. 1535 of 45 Q issued in the session of January 18, 1976 and published in the first part of Technical Office Book No. 27, page No. 70, Rule No. 14.
([2763]) Article No. 237 of the Criminal Procedure Code, Appeal No. 4307 of 81 Q issued in the session of January 9, 2013 and published in the Technical Office Book No. 64, page No. 59, Rule No. 8, Appeal No. 26027 of 64 Q issued in the session of December 18, 2000, Appeal No. 29703 of 59 Q issued in the session of October 16, 1996 and published in the first part of the Technical Office Book No. 47, page No. 1035, Rule No. 147, Appeal No. 26730 of 59 Q issued in the session of February 2, 1995 and published in the first part of the Technical Office Book No. 46, page No. 295, Rule No. 42, Appeal No. 19736 of 59 Q issued in the session of May 24, 1993 and published in the first part of the Technical Office Book No. 44 Page No. 538 Rule No. 77, Appeal No. 4340 of Year 56 Q issued in the session of February 10, 1987 and published in the first part of the Technical Office Book No. 38 Page No. 242 Rule No. 36, Appeal No. 7120 of Year 53 Q issued in the session of March 7, 1984 and published in the first part of the Technical Office Book No. 35 Page No. 254 Rule No. 53, Appeal No. 2088 of Year 53 Q issued in the session of January 22, 1984 and published in the first part of the Technical Office Book No. 35 Page No. 85 Rule No. 17, Appeal No. 540 of Year 40 Q issued in the session of May 25, 1970 and published in the second part of the Technical Office Book No. 21 Page No. 732 Rule No. 173.

The cases of mandatory imprisonment are those in which the court of first instance must include in its ruling the imprisonment being enforceable despite its appeal.[2764]

The accused must also attend the appeal trial sessions in person, because all sentences of imprisonment issued by a second-degree court are by nature immediately enforceable.[2765]

The Court of Cassation has settled that the presence of the accused in person in a misdemeanor in which imprisonment is permissible is necessary before the Court of Appeal in order for its ruling to be described as an in-person ruling, given that the principle is that all rulings issued by this court with imprisonment must be implemented immediately by their nature. Otherwise, the ruling would be in absentia if the accused did not appear in person but was represented by a representative. Therefore, despite the presence of a representative for the accused, the ruling would have been issued in reality - with respect to the convicted person - in absentia and could be challenged, even if the court described it as in-person, contrary to reality, since the criterion for describing the ruling as in-person or in absentia is the reality of the case, not what is stated in the operative part.[2766]

If the court makes a mistake and hears the lawyer's argument, all of its procedures will be invalid with a nullity related to public order, as it relates to one of the rules that regulate the presence of the accused or their representation in the session, and its ruling in this case will be in absentia, even if the court mistakenly described it as in the presence of the accused.[2767]

In other misdemeanors and violations, the accused may appoint a representative to represent them in their defense, without prejudice to the court's right to order their personal attendance.

Article No. 237 of the Code of Criminal Procedure states that: "..." In other misdemeanors and violations, they may appoint a representative to present their defense, without prejudice to the court's right to order their personal attendance."

([2764]) Article No. 463 of the Criminal Procedure Code, Appeal No. 25889 of 59 Q issued in the session of November 17, 1992 and published in the first part of the Technical Office Book No. 43, page No. 1047, rule No. 160, Appeal No. 3654 of 57 Q issued in the session of March 1, 1990 and published in the first part of the Technical Office Book No. 41, page No. 446, rule No. 74, Appeal No. 494 of 58 Q issued in the session of February 22, 1989 and published in the first part of the Technical Office Book No. 40, page No. 310, rule No. 49, Appeal No. 5634 of 58 Q issued in the session of December 1, 1988 and published in the second part of the Technical Office Book No. 39, page No. 1201, rule No. 185.

([2765]) Appeal No. 19582 of 66 Q issued in the session of July 25, 2006 (unpublished), Appeal No. 18598 of 70 Q issued in the session of January 4, 2006 and published in Technical Office Book No. 57, page No. 58, Rule No. 6, Appeal No. 10667 of 71 Q issued in the session of May 5, 2002 and published in Technical Office Book No. 53, page No. 717, Rule No. 120, Appeal No. 1609 of 62 Q issued in the session of November 4, 2001 and published in Technical Office Book No. 52, page No. 800, Rule No. 151, Appeal No. 19736 of 59 Q issued in the session of May 24, 1993 and published in the first part of Technical Office Book No. 44, page No. 538, Rule No. 77, Appeal No. 7961 of 58 Q issued in the session of May 31, 1990 and published in the first part of the Technical Office Book No. 41, page No. 786, rule No. 136, Appeal No. 5459 of 58 Q issued in the session of February 7, 1990 and published in the first part of the Technical Office Book No. 41, page No. 322, rule No. 52, Appeal No. 7779 of 59 Q issued in the session of January 18, 1990 and published in the first part of the Technical Office Book No. 41, page No. 177, rule No. 26, Appeal No. 1912 of 58 Q issued in the session of December 20, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1255, rule No. 202, Appeal No. 2825 of 55 Q issued in the session of December 25, 1986 And published in the first part of the Technical Office Book No. 37, page No. 1128, rule No. 215, appeal No. 663 of year 55 Q issued in the session of April 8, 1985 and published in the first part of the Technical Office Book No. 36, page No. 551, rule No. 94, appeal No. 2088 of year 53 Q issued in the session of January 22, 1984 and published in the first part of the Technical Office Book No. 35, page No. 85, rule No. 17.

([2766]) Appeal No. 10368 of 85 Q issued in the session of May 4, 2019 (unpublished), Appeal No. 5226 of 4 Q issued in the session of September 16, 2014 and published in Technical Office Book No. 65, page No. 617, Rule No. 77, Appeal No. 4 of 2010 Q issued in the session of March 19, 2012 and published in Technical Office Book No. 55, page No. 27, Rule No. 5, Appeal No. 9547 of 66 Q issued in the session of February 7, 2006, Appeal No. 24829 of 71 Q issued in the session of January 8, 2006, Appeal No. 21540 of 65 Q issued in the session of April 22, 2004 and published in Technical Office Book No. 55, page No. 442, Rule No. 59.

([2767] Appeal No. 20677 of 69 Q issued in the session of May 18, 2005 and published in Technical Office Book No. 56, page No. 330, Rule No. 50.

In this case, the ruling is considered to be in absentia as long as the accused's lawyer is present in accordance with the law. This is not prevented by the court ordering the accused to appear in person and they refuses to comply with the court order, because the mere presence of the lawyer in accordance with the law is equivalent to the presence of the accused themself from a legal standpoint.[2768]

If the crime attributed to the accused is punishable by imprisonment or a fine, and a fine is initially imposed, and the accused alone appeals this ruling and the prosecution does not appeal it, then their attorney may represent the accused before the appellate court, which has no choice but to uphold the fine ruling or amend it in the interest of the accused, as it cannot rule imprisonment.[2769]

When a lawsuit is filed against them by way of direct prosecution, the accused may appoint a representative at any stage of the lawsuit to present their defense.[2770]

If the lawsuit is filed against the accused by way of direct prosecution - in cases where this is permissible - and the accused has appointed a representative who attended the pleading sessions before the Court of Appeal and presented their defense, then the appeal ruling shall be in the presence of the accused and shall not be subject to objection.[2771]

If the party who is required to appear according to the law does not appear on the day specified in the summons and does not send a representative on their behalf in the cases in which this is permissible, a judgment may be rendered in their absence after reviewing the papers, unless the summons was delivered to them in person and the court finds that there is no justification for their failure to appear, in which case the judgment shall be deemed to be in their presence.

The court may, instead of ruling in absentia, postpone the case to a subsequent session and order the opponent to be re-notified at their residence, while notifying them that if they fail to attend this session, the ruling issued will be considered to be in their presence. If they do not attend and the court finds that there is no justification for their absence, the ruling will be considered in their presence.[2772]

The judgment is considered in the presence of all the parties who attend when the case is called, even if they leave the session afterwards or fail to attend the sessions to which the case is adjourned without presenting an acceptable excuse, provided that the trial sessions to which the case is adjourned continue without interruption - so that it can be said that the accused is aware of them.[2773]

([2768]) Article No. 237 of the Criminal Procedure Code, Appeal No. 16290 of 61 Q issued in the session of May 18, 1999 and published in the first part of the Technical Office Book No. 50, page No. 321, rule No. 73, Appeal No. 41964 of 59 Q issued in the session of November 7, 1995 and published in the first part of the Technical Office Book No. 46, page No. 1162, rule No. 174, Appeal No. 8695 of 58 Q issued in the session of May 31, 1990 and published in the first part of the Technical Office Book No. 41, page No. 802, rule No. 139, Appeal No. 4892 of 58 Q issued in the session of December 28, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1364, rule No. 218.

([2769] Appeal No. 3666 of 55 Q issued in the session of December 25, 1986 and published in the first part of Technical Office Book No. 37, page No. 1132, rule No. 216.

([2770]) Article No. 63 of the Criminal Procedure Code, Appeal No. 22221 of 75 Q issued in the session of May 4, 2006 (unpublished).

([2771] Appeal No. 22221 of 75 Q issued in the session of May 4, 2006 (unpublished).

([2772] Article No. 238 of the Code of Criminal Procedure.

([2773]) Article No. 239 of the Criminal Procedures Law, Appeal No. 21624 of year 66 Q issued in the session of July 27, 2006 (unpublished), Appeal No. 2965 of year 66 Q issued in the session of January 5, 2006 (unpublished), Appeal No. 2966 of year 66 Q issued in the session of January 5, 2006 (unpublished), Appeal No. 11163 of year 65 Q issued in the session of January 1, 2004 (unpublished), Appeal No. 25048 of year 64 Q issued in the session of April 16, 2002 and published in Technical Office Book No. 53, page No. 638, Rule No. 106, Appeal No. 10735 of year 62 Q issued in the session of March 11, 2002 and published in Technical Office Book No. 53, page No. 460, Rule No. 75, Appeal No. 8777 of 62 Q issued in the session of February 7, 2002 and published in the Technical Office Book No. 53, page No. 261, rule No. 47, Appeal No. 14845 of 70 Q

However, if the connection between sessions is interrupted due to the lapse of one of them or the change of the court's location from one location to another, then it is obligatory to notify the accused with a new notification of the session they have set to hear the case at the new location.[2774]

If the lawsuit stumbles on its way and is interrupted and then is suddenly expedited by the prosecution, it is necessary to notify the accused with a valid summons so that its effect can result - if the accused does not appear and is not notified at all - the court does not have the right to address the lawsuit. If it does, its ruling is invalid because it was issued without the accused having the opportunity to defend themself. Such a ruling cannot be considered in the presence of the accused as long as they were not present at the procedures that took place after the lawsuit was initiated and were not aware of them - because the trial procedures must be considered together and given a single ruling in that regard.[2775]

The intended meaning of attendance is the presence of the accused in person or through a representative in the cases in which it is permissible to do so in the session in which the pleading took place so that they have the opportunity to defend themself. However, the legislator, for lofty considerations related to justice in itself, considered the judgment issued in a misdemeanor or contravention in some cases to be in attendance, by force of law, in the event that the opponent is present when the case is called, even if they leaves the session after that or fails to attend the sessions to which the case is adjourned without presenting an acceptable excuse. If one or both of the two matters are absent, such that they fails to attend at all or

---

issued in the session of September 26, 2000 and published in the Technical Office Book No. 51, page No. 558, rule No. 109, Appeal No. 16398 of 60 Q issued in the session of October 27, 1998 and published in the first part of the Technical Office Book No. 49, page No. 1155, rule No. 158, Appeal No. 21867 of 63 Q issued in the session of September 20, 1998 and published in the first part of the Technical Office Book No. 49, page No. 921, rule No. 119, Appeal No. 537 of 55 Q issued in the session of March 20, 2011 1985 and published in the first part of the Technical Office Book No. 36, page No. 431, rule No. 73, appeal No. 2045 for year 49 Q issued in the session of March 1, 1981 and published in the first part of the Technical Office Book No. 32, page No. 190, rule No. 30, appeal No. 1371 for year 48 Q issued in the session of December 17, 1978 and published in the first part of the Technical Office Book No. 29, page No. 940, rule No. 194, appeal No. 135 for year 42 Q issued in the session of May 21, 1972 and published in the second part of the Technical Office Book No. 23, page No. 748, rule No. 166, appeal No. 40 for year 42 Q issued in the session of February 28, 1972 and published in the first part of the Technical Office Book No. 23, page No. 253, rule No. 61, Appeal No. 1120 of 40 Q issued in the session of November 1, 1970 and published in the third part of the Technical Office Book No. 21, page No. 1024, rule No. 245, Appeal No. 1652 of 39 Q issued in the session of May 4, 1970 and published in the second part of the Technical Office Book No. 21, page No. 651, rule No. 154, Appeal No. 1652 of 39 Q issued in the session of May 4, 1970 and published in the second part of the Technical Office Book No. 21, page No. 651, rule No. 154, Appeal No. 282 of 38 Q issued in the session of June 4, 1968 and published in the second part of the Technical Office Book No. 19, page No. 661, rule No. 134, Appeal No. 752 of 37 Q issued in the session of June 12, 1967 and published In the second part of the Technical Office Book No. 18, page No. 788, rule No. 159, appeal No. 149 for year 37 Q issued in the session of March 27, 1967 and published in the first part of the Technical Office Book No. 18, page No. 449, rule No. 85, appeal No. 1772 for year 35 Q issued in the session of March 22, 1966 and published in the first part of the Technical Office Book No. 17, page No. 343, rule No. 68, appeal No. 1249 for year 34 Q issued in the session of January 19, 1965 and published in the first part of the Technical Office Book No. 16, page No. 83, rule No. 20, appeal No. 140 for year 34 Q issued in the session of May 12, 1964 and published in the second part of the Technical Office Book No. 15, page No. 376, rule No. 73, appeal No. 668 for year 30 Q issued in the session of November 15, 1960 and published in the third part of the Technical Office Book No. 11, page No. 792, rule No. 152, Appeal No. 305 for year 28 Q issued in the session of June 17, 1958 and published in the second part of the Technical Office Book No. 9, page No. 681, rule No. 172, Appeal No. 1331 for year 26 Q issued in the session of February 5, 1957 and published in the first part of the Technical Office Book No. 8, page No. 118, rule No. 36, Appeal No. 72 for year 25 Q issued in the session of April 9, 1955 and published in the third part of the Technical Office Book No. 6, page No. 804, rule No. 248, Appeal No. 1119 for year 22 Q issued in the session of December 30, 1952 and published in the first part of the Technical Office Book No. 4, page No. 297 Rule No. 115, Appeal No. 486 of 22 Q issued in the session of May 26, 1952 and published in Part Three of Technical Office Book No. 3, Page No. 1001, Rule No. 372.

([2774] Appeal No. 1652 of year 39 Q issued in the session of May 4, 1970 and published in the second part of the Technical Office Book No. 21, page No. 651, rule No. 154.

([2775] Appeal No. 8777 of 62 Q issued in the session of February 7, 2002 and published in Technical Office Book No. 53, Page No. 261, Rule No. 47.

attends and then leaves the session or fails to attend the following sessions after presenting an acceptable excuse, and the court was able to pave its way in investigating the existence or non-existence of this excuse, and despite that it did not do so, then its judgment is in reality an in absentia judgment that may be challenged by returning to the general principle of the absence of the reason for considering it as in absentia due to the absence of one of its conditions, since the criterion in describing the judgment as in attendance or in absentia is the reality of the situation in the case, not what the court says about it.[2776]

Although what is meant by attendance in the eyes of the law is the presence of the accused in the session in person or through a representative on their behalf in the cases in which this is permissible, even if they does not speak or defend themself, it is sufficient for the judgment to be described as in their presence that the accused witnessed the session in which the trial took place and was given the opportunity to defend themself, as long as the court's work after that was limited to pronouncing the judgment.[2777]

The judgment is considered to be in absentia if the accused attended the session in which the case was heard, the pleadings were held and the judgment was reserved. This does not change if the accused failed to attend the session in which the judgment was pronounced, as long as they did not claim that their absence was due to a compelling reason.[2778]

Although it is true that what is meant by attendance is the presence of the accused in the session in person or through a representative in the circumstances in which this is permissible, even if they does not speak and defend themself, it is a condition, in order for the ruling to be considered in their presence, that the accused witnessed the session in which the trial took place and was given the opportunity to defend themself. If they had attended a previous session or sessions and then failed to attend the pleading session, or had attended when called upon to attend the session and then withdrew before their case was heard and the trial and pleading took place in their absence, then the judgment is considered in absentia, because attendance in criminal cases must be real, while the nominal attendance mentioned in the Civil and Commercial Procedures Law is not taken into account in criminal trial procedures.[2779]

It is clear from this that the criterion for describing the ruling as in person or in absentia is the reality of the case, not what the court says about it. The basis for considering the ruling in person is the attendance of the sessions in which the pleading took place, whether the ruling was issued in them or in another session. The presence of the lawyer is not taken into account in this case.[2780]

([2776]) Appeal No. 1678 of 39 Q issued in the session of February 2, 1970 and published in the first part of the Technical Office Book No. 21, page No. 225, rule No. 56, Appeal No. 395 of 27 Q issued in the session of June 25, 1957 and published in the second part of the Technical Office Book No. 8, page No. 709, rule No. 192, Appeal No. 4307 of 81 Q issued in the session of January 9, 2013 and published in the Technical Office Book No. 64, page No. 59, rule No. 8, Appeal No. 12405 of 66 Q issued in the session of May 4, 2006, Appeal No. 12677 of 66 Q issued in the session of January 3, 2006, Appeal No. 23511 of 64 Q issued in the session of January 28, 2001 And published in the Technical Office Book No. 52, Page No. 178, Rule No. 28, Appeal No. 26027 for the year 64 Q issued in the session of December 18, 2000, Appeal No. 395 for the year 27 Q issued in the session of June 25, 1957 and published in the second part of the Technical Office Book No. 8, Page No. 709, Rule No. 192.

([2777]) Appeal No. 917 of 28 Q issued in the session of June 23, 1958 and published in the second part of the Technical Office Book No. 9, page No. 706, rule No. 178, Appeal No. 3944 of 64 Q issued in the session of February 21, 1999 and published in the first part of the Technical Office Book No. 50, page No. 132, rule No. 28.

([2778] Appeal No. 1076 of 28 Q issued in the session of October 27, 1958 and published in Part Three of Technical Office Book No. 9, Page No. 852, Rule No. 209.

([2779]) Appeal No. 5693 of 56 Q issued in the session of March 5, 1987 and published in the first part of Technical Office Book No. 38, page No. 383, Rule No. 59, Appeal No. 2086 of 13 Q issued in the session of December 20, 1943 and published in the first part of the collection of legal rules, sixth year, page No. 363, Rule No. 277.

([2780]) Appeal No. 29703 of 59 Q issued in the session of October 16, 1996 and published in the first part of the Technical Office Book No. 47, page No. 1035, rule No. 147, Appeal No. 49023 of 59 Q issued in the session of April 17, 1994 and published in the first part of the Technical Office Book No. 45, page No. 531, rule No. 86, Appeal No. 16705 of 59 Q issued in

Misdemeanors brought before the Criminal Court are subject to the general provisions stipulated for attendance and absence before the Misdemeanor Court. The accused in a misdemeanor punishable by imprisonment, which the law requires to be executed immediately after the issuance of the judgment, must appear in person.[2781]

19-1-2 The presence of some of the accused and the absence of others

If the case is brought against several persons for one incident and some of them attend and others fail to attend despite being ordered to attend according to the law, the court must adjourn the case to a subsequent session and order that those who failed to attend be re-notified at their domicile, warning them that if they fail to attend this session, the judgment issued will be considered to be in their presence. If they do not attend and the court finds that there is no justification for their failure to attend, the judgment will be considered in their presence.[2782]

19-2 Within the Framework of International Conventions

Everyone charged with a criminal offence has the right to be present at their trial, to hear the prosecution's case and to defend themself. Persons convicted in absentia should, if arrested, be given a new trial before a different court.

---

the session of May 9, 1993 and published in the first part of the Technical Office Book No. 44, page No. 452, rule No. 64, Appeal No. 2449 of 59 Q issued in the session of February 28, 1991 and published in the first part of the Technical Office Book No. 42, page No. 437, rule No. 62, Appeal No. 7961 of 58 Q issued in the session of May 1990 and published in the first part of the Technical Office Book No. 41, page No. 786, rule No. 136, appeal No. 1912 for year 58 Q issued in the session of December 20, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1255, rule No. 202, appeal No. 494 for year 58 Q issued in the session of February 22, 1989 and published in the first part of the Technical Office Book No. 40, page No. 310, rule No. 49, appeal No. 5634 for year 58 Q issued in the session of December 1, 1988 and published in the second part of the Technical Office Book No. 39, page No. 1201, rule No. 185, appeal No. 2825 for year 55 Q issued in the session of December 25, 1986 and published in the first part of the Technical Office Book No. 37, page No. 1128 Rule No. 215, Appeal No. 3666 for the year 55 Q issued in the session of December 25, 1986 and published in the first part of the Technical Office Book No. 37, page No. 1132, Rule No. 216, Appeal No. 6913 for the year 53 Q issued in the session of November 14, 1984 and published in the first part of the Technical Office Book No. 35, page No. 763, Rule No. 169, Appeal No. 7120 for the year 53 Q issued in the session of March 7, 1984 and published in the first part of the Technical Office Book No. 35, page No. 254, Rule No. 53, Appeal No. 2088 for the year 53 Q issued in the session of January 22, 1984 and published in the first part of the Technical Office Book No. 35, page No. 85, Rule No. 17, Appeal No. 2519 for the year 52 Q issued in the session of November 14, 1982, published in the first part of the Technical Office Book No. 33, page No. 874, rule No. 180, Appeal No. 352 for year 50 Q issued in the session of June 15, 1980, published in the first part of the Technical Office Book No. 31, page No. 766, rule No. 148, Appeal No. 1029 for year 47 Q issued in the session of February 26, 1978, published in the first part of the Technical Office Book No. 29, page No. 175, rule No. 30, Appeal No. 1254 for year 45 Q issued in the session of November 30, 1975, published in the first part of the Technical Office Book No. 26, page No. 807, rule No. 177, Appeal No. 1130 for year 43 Q issued in the session of December 24, 1973, published in the third part of the Technical Office Book No. 24, page No. 1268 Rule No. 258, Appeal No. 1004 of 43 Q issued in the session of December 9, 1973 and published in the third part of the Technical Office Book No. 24, page No. 1167, Rule No. 238, Appeal No. 445 of 37 Q issued in the session of April 17, 1967 and published in the second part of the Technical Office Book No. 18, page No. 531, Rule No. 102, Appeal No. 149 of 37 Q issued in the session of March 27, 1967 and published in the first part of the Technical Office Book No. 18, page No. 449, Rule No. 85, Appeal No. 1757 of 35 Q issued in the session of December 6, 1965 and published in the third part of the Technical Office Book No. 16, page No. 910, Rule No. 175, Appeal No. 3155 of 31 Q issued in the session of May 29, 1962, published in the second part of the Technical Office Book No. 13, page 506, rule 129, Appeal No. 1220 of 29 Q issued in the session of November 30, 1959, published in the third part of the Technical Office Book No. 10, page 958, rule 196, Appeal No. 662 of 25 Q issued in the session of November 7, 1955, published in the fourth part of the Technical Office Book No. 6, page 1305, rule 383.

([2781]) Appeal No. 25048 of 64 Q issued in the session of April 16, 2002 and published in Technical Office Book No. 53, page No. 638, Rule No. 106, Appeal No. 636 of 71 Q issued in the session of March 3, 2002 and published in Technical Office Book No. 53, page No. 346, Rule No. 62, Appeal No. 1130 of 43 Q issued in the session of December 24, 1973 and published in Part Three of Technical Office Book No. 24, page No. 1268, Rule No. 258.

([2782] Article No. 240 of the Code of Criminal Procedure.

19-2-1 Right to a trial in person

Every person accused of committing a criminal act has the right to be tried in their presence so that they can hear the prosecution's argument, refute its claim and defend themselves.[2783]

The right to a trial in person is an integral part of the accused's right to defend themself.

The Human Rights Committee has made it clear that, in order to guarantee the rights of the defense, "all criminal proceedings must afford the accused the right to an oral hearing, at which they may appear in person or be represented by counsel and be able to present evidence and examine witnesses". [2784]

Although the right to a trial in person is not expressly provided for in the European Convention, the European Court has considered it to be of "decisive importance". She argued that it was "difficult to see" how a person could exercise their right to defend themself in person, examine and cross-examine witnesses, and obtain the free assistance of an interpreter when necessary "without being present". [2785]

Article 8(d) of the American Convention guarantees the right of the accused to defend themself in person. The right to attend court sessions is inherent in this right, as is their right to make statements (Article 8) and to question witnesses (Article 8).[2786]

While the African Charter does not explicitly provide for the right of the accused to be present at their trial, the principles of fair trial in Africa have enshrined this right.[2787]

The right to attend trials imposes on the authorities the duty to notify the accused (and their lawyer) of the place and time of the trial well in advance of its commencement, and to summon the accused to attend it rather than to exclude them, in an unlawful manner, from attending its sessions.[2788]

If the hearing dates are rescheduled, the accused must be notified of the new hearing dates and location.[2789]

Although there are limits to the efforts that the authorities are expected to make to notify the accused of their trial, the Human Rights Committee has considered that the right to be present at the trial was violated in a case where, in the former Zaire, the authorities did not issue the summons until three days before the trial began and did not attempt to send it to the accused who was living abroad, despite knowing their place of residence.[2790]

The right of the accused to attend their trial sessions may be restricted, temporarily and in exceptional circumstances, if they violate the procedures followed in the court to the extent that

---

([2783]) Article 14(3)(d) of the International Covenant, Article 18(3)(d) of the Migrant Workers Convention, Article 16(3) of the Arab Charter, Section N(6)(c) of the Principles on Fair Trial in Africa, Articles 63(1) and 67(d) of the Rome Statute, Article 20(4)(d) of the Statute of the International Criminal Court for Rwanda, and Article 21(4)(d) of the Statute of the International Criminal Court for Yugoslavia.

([2784]) Gora de la Espriella v. Colombia, Human Rights Committee, 3/ §9 (2010) 2007/UN CCPR/C/98/D/1623; see General Comment 32 of the Human Rights Committee, §§23 and 28, Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v. Georgia, Human Rights Committee, / UN Docs. CCPR ,CCPR/C/62/D/626/1995 ,CCPR/C/62/D/624/1995 ,C/62/D/623/1995 9/ §18 (1998) ‹CCPR/C/62/D/627/1995.

([2785]) European Court: Hermi v. Italy (18114)/02), Grand Chamber §58-§59 (2006), Sedovic v. Italy (56581)/00), Grand Chamber §81 (2006), Colozza v. Italy (9024)/80), §27 (1985).

([2786]) Article 8(2)(d) of the American Convention; see Principle 5 of the Principles on Persons Deprived of Liberty in the Americas.

([2787] Section N(6)(c) of the Principles on Fair Trial in Africa.

([2788]) Mbengue v. Zaire (16) / 1977), Human Rights Committee, 1983 (2 Sel Dec. 76, pp. 2/14-1/§14, 78; see General Comment 32 of the Human Rights Committee, §31 and §36.

([2789]) Osyuk v. Belarus, Human Rights Committee, / UN CCPR. 3/8-2/ §8 (2009) C/96/D/1311/2004.

([2790]) Mbengue v. Zaire (16) / 1977), Human Rights Committee, 1983 (2 Sel Dec. 76, pp. 2/14-1/§14, 78.

the court considers it impractical to continue hearing the case in their presence. In such circumstances, the court may remove the accused from the courtroom, but it must consider ways to preserve the rights of the defense, such as ensuring that the accused is able to observe the trial and give instructions to their lawyer in person and away from the courtroom, for example through video link. Such measures may only be taken after it has been proven that other reasonable alternatives are no longer sufficient, and such measures shall be limited to the period of time during which they are indispensable for the proper conduct of the trial.[2791]

Such restrictions must be necessary and proportionate.

The accused may waive their right to attend the sessions, provided that this waiver is recorded in an unambiguous manner, and it is preferable that it be done in writing, and this must be accompanied by guarantees that are equal in importance to their attendance, and that it does not conflict with any important public interest.[2792]

In 1983, the Human Rights Committee concluded that an accused may be considered to have waived their right to be present at trial if they fail to appear before the court after being given proper notice and sufficient time in advance of the trial.[2793]

Whether this conclusion, reached in relation to an accused who was in exile in another country, can today be considered consistent with the law on extradition, with the prohibition imposed by the principle of non-refoulement and with human rights, remains an open question.

The defendant's waiver of their right to attend their trial sessions, or their trial in absentia, does not mean that they lose their right to be represented by a lawyer to defend them before the court.

19-2-2 Trial in absentia

A trial in absentia means that the court holds its sessions in the absence of the accused.

The statutes of the international criminal courts do not give any of them the authority to hold trials in absentia.

Trials in absentia are expressly prohibited under the principles of fair trial in Africa.[2794]

Any literal interpretation of Article 14(d) of the ICCPR leaves no doubt that the trial of an accused may not proceed in their absence.

However, the Human Rights Committee has made it clear that, in certain exceptional circumstances, an accused may be tried in absentia if the interests of justice so require. For example, a trial may be allowed to proceed after the accused has been informed of the charges, and of the date and place of the trial, well in advance of its commencement, but without appearing in the courtroom.[2795]

Before starting its sessions in the absence of the accused, the court must ensure that they have been duly notified of the case and of the time and place of the proceedings.[2796]

([2791]) Article 63(2) of the Rome Statute.

([2792]) Section N(6)(c)(3) of the Principles on Fair Trial in Africa, European Court: Colozza v. Italy (9024)/80), § 28 (1985, Poitremol v. France (14032)/88), § 31 (1993, Hermi v. Italy (02/18114), Grand Chamber § 73 (2006).

([2793]) See Mbengue v. Zaire (16)/1977), Human Rights Committee, 1983 (2 Sel Dec. 76, p. 1/§14, 78.

([2794]) Section N(6)(c)(ii) of the Principles on Fair Trial in Africa.

([2795]) Human Rights Committee, General Comment §§36, 32 and 31, Mbengue v. Zaire (1983) Sel Dec. 76 2, (1977/16)), p. 1/ §14, 78, Saleh v. Uzbekistan, 4/ §9 (2009) UN CCPR/C/95/D/1382/2005.

([2796]) Maliki v. Italy, Human Rights Committee, / UN CCPR. 4/ §9 (2009) 1996/C/66/D/699.

Human rights monitoring mechanisms, which consider that trials may be conducted in absentia in exceptional circumstances, have stressed that in such cases, greater caution and vigilance must be exercised to ensure the rights of the defense.[2797]

These rights include the right to have legal counsel, even if the accused chooses not to attend the trial, and to be represented by a lawyer.[2798]

Individuals convicted in absentia have the right to seek remedies, including retrial in their presence, in particular if they were not properly notified of their trial or if they were unable to appear at the trial for reasons beyond their control.[2799]

In assessing the right of an accused to a retrial, following a trial in absentia, the burden of proof does not lie on the accused to show that they were not trying to evade justice or that their absence was due to reasons beyond their control. However, the court may consider whether there is an acceptable reason for the accused's absence.[2800]

The Special Rapporteur on human rights expressed concern about allegations that individuals who were extradited to Egypt outside the formal extradition procedure and who had previously been sentenced to death following trials in absentia were executed shortly after their arrival without a new trial.[2801]

Amnesty International calls for, if a person is arrested following a trial in which they were convicted in absentia, for the conviction in absentia to be quashed and for them to be retried in new and fully fair proceedings before an independent and impartial court.[2802]

It should be noted that the prohibition on a person being tried twice for the same offence does not prevent a person convicted in absentia from being retried if that person requests a retrial.[2803]

19-2-3 Right to attend appeal hearings

The right to attend appeal hearings (following conviction) depends on the nature of the proceedings. It depends, in particular, on whether the first-instance hearings are public, on whether the Court of Appeal has jurisdiction to decide on both legal and procedural aspects, on whether legal and procedural issues are raised for consideration by the Court of Appeal, and on the manner in which the interests of the accused are presented and protected.[2804]

If the Court of Appeal considers the case from both its legal and procedural aspects, justice generally requires the presence of the accused, as well as the defense lawyer, if they are present.[2805]

The European Court found that the rights of the accused (who was represented by a defense lawyer) were not violated when they were not allowed to attend a part of their appeal that was devoted solely to legal aspects. However, the court said that their absence while the court was

---

([2797]) Concluding observations of the Human Rights Committee: Tajikistan, UN Doc. §19 (2004) CCPR/CO/84/TJK.

([2798]) Section N(6)(f)(4) of the Principles on Fair Trial in Africa, European Court: Beladouah v. the Netherlands (16737)/90), § 41 (1994, Poitrimole v. France (14032)/88), § 34 (1993).

([2799]) See section N(6)(c)(ii) of the Principles on Fair Trial in Africa, Coluzza v. Italy (9024)/80), European Court, § 29 (1985); Human Rights Committee: Malki v. Italy, 1996/2009 (UN CCPR/C/66/D/699) 5/ § 9, Concluding Observations: Croatia, § 11 (2009) UN CCPR/C/HRV/CO/2.

([2800]) European Court, Hermi v. Italy (18114)/02), Grand Chamber §75 (2006). Sedovic v. Italy (56581)/00, Grand Chamber (2006) 88-§ 87; see Medina v. Switzerland (20491)/92, European Court. §57 (2001).

([2801]) Special Rapporteur on human rights and counter-terrorism, Egypt. §42 (2009) UN Doc. A/HRC/13/37/Add. 2.

([2802]) See, for example, Amnesty International, Italian pardon of US Army officer opens door to impunity, doc. no.: EUR 30/005/2013.

([2803]) General Comment 32 of the Human Rights Committee, §54.

([2804]) Belziuk v. Poland (23103)/93), European Court 37 § (1998) (2).

([2805]) Sibgatulin v. Russia (32165)/02), European Court (2009) §38-§50.

considering whether their sentence should be modified, in light of factors including their character, motives and the gravity of the offence, constituted a breach of the state's duty to ensure their right to defend themself in person.[2806]

Since the prosecutor, the defense lawyer and the accused were not present during the appeal hearing in which the Court of Appeal decided to increase the sentence, the European Court considered that the accused's rights to a fair trial and to defend themself had been violated.[2807]

The European Court found that the rights of the accused had been violated in a case heard by the Supreme Court of Norway, in which the accused was convicted and sentenced, thereby overturning the acquittal of a lower court, after examining the legal and procedural aspects of the previous judgment, without summoning the accused to appear before the court.[2808]

The European Court considered that the participation of a convicted person via video link in an appeal of legal and procedural aspects of their case did not unduly restrict their right to defense. The accused could see and hear what was happening in the courtroom (including witness testimony), and they could participate and have their voice heard in the courtroom. While the defendant's attorney was present in the courtroom and able to confer with their client privately (via a secure telephone line). [2809]

If the Court of Appeal is only considering legal aspects, including whether the appeal should be granted, the European Court considers that the accused does not necessarily have the right to be present.[2810]

However, if the prosecution is present and has the opportunity to argue points of law relevant to the case, it is normally necessary, in the interests of justice and in particular equality of arms, for the accused's counsel to be present at a minimum.[2811]

Some additional factors taken into account in this regard were: whether the trial sessions were held in public.[2812]

Whether the accused was notified of the hearing and required to attend the appeal hearing (and the length of time prior to the notification if they were detained.;[2813]

Whether the accused's freedom is at risk.[2814]

In a case where the accused no longer had legal representation, the prosecution discussed before a panel of three judges whether the accused should be allowed to appeal their conviction on legal grounds. Since the accused was not present at the hearing and was unable to respond orally to the prosecution's argument in a manner consistent with the principle of equality of arms, this was considered a violation of their right to a fair trial.[2815]

([2806]) European Court: Cook v. Austria (25878)/94), (44- § § 36 (2000, Kremsau v. Austria (12350)/86), (69- § § 65 (1993, and for comparison, Kucera v. Austria (40072)/98), § 28-§ 29 (2002).
([2807]) Sikos v. Hungary (37251)/04), European Court § 21 (2006).
([2808]) See Botten v. Norway (16206)/90, European Court (1996) §48-§53.
([2809]) Viola v. Italy, European Court §70-§76 (2006); see Golubev v. Russia (26260)/02) European Court, decision (inadmissibility). (2006).
([2810]) See, European Court: Gok v. Ukraine (45783)/05), (2010) §32; Maksimov v. Azerbaijan (38228)/05), §39-§43 (2009).
([2811]) Bacchelli v. Germany (8398)/78, European Court §§35-§41 (1983).
([2812]) Hermi v. Italy (18114)/02), Grand Chamber of the European Court. §61 (2006).
([2813]) European Court: Gok v. Ukraine (45783)/05), § 34 (2010, Hermi v. Italy (18114)/02), Grand Chamber of the European Court (2006) § 98- § 101, Maksimov v. Azerbaijan (38228)/05), § 39- § 43 (2009, Sobolowicz v. Poland (No. 2) (19847)/07), § 38 (2009), § 42- § 43.
([2814]) Jock v. Ukraine (45783)/05), § 29 (2010).
([2815]) European Court: Gok v. Ukraine (45783)/05), (- § § 23 (2010) 35; see Maksimov v. Azerbaijan (38228)/05), § 39 - § 43 (2009).

Chapter Twenty: The Right to Call and Examine Witnesses

20-1 Under Egyptian Law

20-1-1 Definition of Testimony

Testimony is the process of proving a specific fact through what a person states about what they have seen, heard, or perceived with their senses concerning that fact in a direct manner. It involves a person's account of what they have personally witnessed, heard, or generally perceived with their senses. By its very nature, testimony requires that the individual providing it possesses the ability to discern and distinguish.[2816]

Testimony is a person's account of what they have personally seen, heard, or generally perceived with their senses.[2817]

It is established that the court may accept the statements of a witness even if they are based on hearsay.[2818]

([2816]) Appeal No. 15357 of 59 Q issued in the session of December 21, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1289, rule No. 207, Appeal No. 518 of 34 Q issued in the session of June 15, 1964 and published in the second part of the Technical Office Book No. 15, page No. 493, rule No. 98.

([2817]) Appeal No. 24101 of 86 Q issued in the session of November 13, 2018 (unpublished), Appeal No. 23908 of 65 Q issued in the session of May 1, 1998 and published in the first part of the Technical Office Book No. 49, page No. 26, rule No. 4, Appeal No. 15357 of 59 Q issued in the session of December 21, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1289, rule No. 207, Appeal No. 518 of 34 Q issued in the session of June 15, 1964 and published in the second part of the Technical Office Book No. 15, page No. 493, rule No. 98, Appeal No. 826 of 48 Q issued in the session of February 6, 1978 and published in the first part of the Technical Office Book No. 29, page No. 136 Rule No. 25, Appeal No. 18793 of 83 Q issued in the session of March 11, 2014 and published in Technical Office Book No. 65, page No. 153, Rule No. 14, Appeal No. 12754 of 82 Q issued in the session of April 2, 2014 and published in Technical Office Book No. 65, page No. 185, Rule No. 20, Appeal No. 10857 of 63 Q issued in the session of January 24, 1995 and published in the first part of Technical Office Book No. 46, page No. 246, Rule No. 33, Appeal No. 2296 of 52 Q issued in the session of March 3, 1983 and published in the first part of Technical Office Book No. 34, page No. 314, Rule No. 61, Appeal No. 13665 of 70 Q issued in the session of March 22, 2001 And published in the Technical Office Book No. 52, page No. 353, Rule No. 59, Appeal No. 5831 for the year 56 Q issued in the session of March 5, 1987 and published in the first part of the Technical Office Book No. 38, page No. 387, Rule No. 60, Appeal No. 2003 for the year 48 Q issued in the session of April 2, 1979 and published in the first part of the Technical Office Book No. 30, page No. 426, Rule No. 90, Appeal No. 518 for the year 34 Q issued in the session of June 15, 1964 and published in the second part of the Technical Office Book No. 15, page No. 493, Rule No. 98, Appeal No. 24880 for the year 59 Q issued in the session of April 5, 1990 and published in the first part of the Technical Office Book No. 41, page No. 590, Rule No. 101, Appeal No. 32891 For the year 83 Q issued in the session of November 11, 2015 and published in the Technical Office Book No. 66, page No. 778, rule No. 116, appeal No. 3307 for the year 56 Q issued in the session of October 22, 1986 and published in the first part of the Technical Office Book No. 37, page No. 792, rule No. 152, appeal No. 49438 for the year 72 Q issued in the session of November 19, 2006 and published in the Technical Office Book No. 57, page No. 875, rule No. 97, appeal No. 3559 for the year 81 Q issued in the session of December 25, 2012 and published in the Technical Office Book No. 63, page No. 878, rule No. 160, appeal No. 4844 for the year 55 Q issued in the session of October 28, 1987 and published in the second part of the Technical Office Book No. 38, page No. 887 Rule No. 161, Appeal No. 597 for the year 51 Q issued in the session of November 12, 1981 and published in the first part of the Technical Office Book No. 32, page No. 893, Rule No. 154, Appeal No. 2384 for the year 63 Q issued in the session of December 1, 2001 and published in the Technical Office Book No. 52, page No. 926, Rule No. 177, Appeal No. 18358 for the year 64 Q issued in the session of October 2, 1996 and published in the first part of the Technical Office Book No. 47, page No. 944, Rule No. 135, Appeal No. 4147 for the year 59 Q issued in the session of November 23, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1048, Rule No. 169, Appeal No. 20350 for the year 64 Q issued in the session of October 20, 1996, published in the first part of the Technical Office Book No. 47, page No. 1065, rule No. 152, Appeal No. 6506 for the year 62 Q, issued in the session of December 15, 1993, published in the first part of the Technical Office Book No. 44, page No. 1164, rule No. 181, Appeal No. 15357 for the year 59 Q, issued in the session of December 21, 1989, published in the first part of the Technical Office Book No. 40, page No. 1289, rule No. 207.

20-1-2 Witness Eligibility

A witness, in the language, is someone who has seen and observed something. Testimony is the name for observation, which is seeing something with one's own eyes. A person is considered a witness simply by being called upon to give testimony, whether they give it after taking an oath or without taking it.[2819]

Discernment is the basis of perception, and therefore the witness must be of the age of discernment, otherwise their testimony is invalid and devoid of effect, and it is not permissible to rely on that testimony even as evidence.[2820]

Testimony obviously requires the person who performs it to have reason and discernment, since the basis for the obligation to perform it is the ability to bear it.[2821]

This means that in order for the witness's testimony to be accepted, they must be discerning. If they are not discerning, their testimony will not be accepted, even as evidence.[2822]

Therefore, the testimony of a madman, a child who is not sane, or anyone else who makes the person unable to distinguish cannot be accepted.[2823]

([2818]) Appeal No. 12754 of 82 Q issued in the session of April 2, 2014 and published in Technical Office Book No. 65, page No. 185, Rule No. 20, Appeal No. 13665 of 70 Q issued in the session of March 22, 2001 and published in Technical Office Book No. 52, page No. 353, Rule No. 59, Appeal No. 3559 of 81 Q issued in the session of December 25, 2012 and published in Technical Office Book No. 63, page No. 878, Rule No. 160.

([2819]) Appeal No. 4307 of 81 Q issued in the session of January 9, 2013 and published in the Technical Office Book No. 64, page No. 59, rule No. 8, Appeal No. 20640 of 67 Q issued in the session of March 25, 2007 and published in the Technical Office Book No. 58, page No. 311, rule No. 59, Appeal No. 6280 of 68 Q issued in the session of March 21, 2007 and published in the Technical Office Book No. 58, page No. 293, rule No. 56, Appeal No. 5769 of 60 Q issued in the session of March 11, 1999 and published in the first part of the Technical Office Book No. 50, page No. 159, rule No. 37, Appeal No. 1280 of 61 Q issued in the session of November 9, 1992 and published in the first part of the Office Book Technical No. 43, Page No. 1014, Rule No. 156, Appeal No. 3604 of Year 57 Q issued in the session of November 12, 1987 and published in the second part of Technical Office Book No. 38, Page No. 960, Rule No. 175, Appeal No. 1285 of Year 50 Q issued in the session of November 24, 1980 and published in the first part of Technical Office Book No. 31, Page No. 1029, Rule No. 199, Appeal No. 190 of Year 43 Q issued in the session of April 16, 1973 and published in the second part of Technical Office Book No. 24, Page No. 525, Rule No. 109.

([2820]) Appeal No. 984 of 67 Q issued in the session of October 7, 1997 and published in the first part of the Technical Office Book No. 48, page No. 1041, rule No. 155, Appeal No. 7896 of 60 Q issued in the session of October 7, 1991 and published in the first part of the Technical Office Book No. 42, page No. 973, rule No. 134, Appeal No. 1707 of 55 Q issued in the session of November 27, 1985 and published in the first part of the Technical Office Book No. 36, page No. 1052, rule No. 193, Appeal No. 1197 of 45 Q issued in the session of November 17, 1975 and published in the first part of the Technical Office Book No. 26, page No. 701, rule No. 154.

([2821]) Appeal No. 24101 of 86 Q issued in the session of November 13, 2018, Appeal No. 2384 of 63 Q issued in the session of December 1, 2001 and published in the Technical Office Book No. 52, page No. 926, Rule No. 177, Appeal No. 18358 of 64 Q issued in the session of October 2, 1996 and published in the first part of the Technical Office Book No. 47, page No. 944, Rule No. 135, Appeal No. 15357 of 59 Q issued in the session of December 21, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1289, Rule No. 207, Appeal No. 4844 of 55 Q issued in the session of October 28, 1987 and published in the second part of the Technical Office Book No. 38, page No. 887 Rule No. 161, Appeal No. 3307 for the year 56 Q issued in the session of October 22, 1986 and published in the first part of the Technical Office Book No. 37, page No. 792, Rule No. 152, Appeal No. 2003 for the year 48 Q issued in the session of April 2, 1979 and published in the first part of the Technical Office Book No. 30, page No. 426, Rule No. 90, Appeal No. 1561 for the year 45 Q issued in the session of January 25, 1976 and published in the first part of the Technical Office Book No. 27, page No. 94, Rule No. 20, Appeal No. 518 for the year 34 Q issued in the session of June 15, 1964 and published in the second part of the Technical Office Book No. 15, page No. 493, Rule No. 98.

([2822]) Appeal No. 18793 of 83 Q issued in the session of March 11, 2014 and published in the Technical Office Book No. 65, page No. 153, rule No. 14, Appeal No. 2384 of 63 Q issued in the session of December 1, 2001 and published in the Technical Office Book No. 52, page No. 926, rule No. 177, Appeal No. 18358 of 64 Q issued in the session of October 2, 1996 and published in the first part of the Technical Office Book No. 47, page No. 944, rule No. 135, Appeal No. 15357 of 59 Q issued in the session of December 21, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1289, rule No. 207, Appeal No. 518 of 34 Q issued in the session of June 15, 2014 1964 and published in the second part of the Technical Office Book No. 15, page No. 493, rule No. 98.

Therefore, if the court decides to accept the testimony of a witness whose ability to distinguish is seriously disputed, it must investigate this dispute to the end in order to ascertain the ability of this witness to bear testimony or respond to it with something that refutes it.[2824]

Determining the nature of a mentally ill person and reaching the point of their or her incomplete capacity to give testimony, is considered a purely technical matter that the court cannot find its way to express an opinion on by itself, but rather must investigate it through a technical specialist.[2825]

There is nothing in the law that prohibits hearing the testimony of a deaf-mute person as long as they retain their other senses and has the ability to distinguish, and the court may accept their testimony according to their own way of expression.[2826]

The legislator also stipulated in the second paragraph of Article No. 283 of the Code of Criminal Procedure that: "..." It is permissible to hear witnesses who have not reached the age of fourteen years without taking an oath as a means of evidence," meaning that the law permits hearing witnesses who have not reached the age of fourteen years without taking an oath as a means of evidence, and does not prevent the judge from accepting their statements that they gives if they finds them to be truthful, as an element of evidence that the judge assesses according to their conviction.[2827]

A person sentenced to a criminal penalty does not have the procedural capacity to testify before the courts, and therefore it is not permissible to put them under oath. All that is permissible is to hear their statements and explanations for the purpose of evidence, and the court, within the limits of its discretionary authority, may be convinced by those statements.[2828]

([2823]) Appeal No. 18793 of 83 Q issued in the session of March 11, 2014 and published in Technical Office Book No. 65, page No. 153, Rule No. 14, Appeal No. 518 of 34 Q issued in the session of June 15, 1964 and published in the second part of Technical Office Book No. 15, page No. 493, Rule No. 98.

([2824]) Appeal No. 1561 of 45 Q issued in the session of January 25, 1976 and published in the first part of the Technical Office Book No. 27, page No. 94, rule No. 20, Appeal No. 2296 of 52 Q issued in the session of March 3, 1983 and published in the first part of the Technical Office Book No. 34, page No. 314, rule No. 61, Appeal No. 18793 of 83 Q issued in the session of March 11, 2014 and published in the Technical Office Book No. 65, page No. 153, rule No. 14, Appeal No. 18358 of 64 Q issued in the session of October 2, 1996 and published in the first part of the Technical Office Book No. 47, page No. 944, rule No. 135

The Court of Cassation ruled that: [The law does not require that the person afflicted with a mental disability lose both awareness and discrimination, but rather it is fulfilled by the loss of one or both of them. The appellant had accused the victim of being unable to testify due to his suffering from a mental illness. The victim stated, when questioned before the court of first instance, that they was suffering from psychological distress, and submitted a photocopy of a notification of his permanent partial disability, the nature of which they did not explain. Given that, and the court, as is evident from the papers and the judgment records, had failed to ascertain the victim's ability as a witness to discern, or to examine the characteristics of his will and general awareness to ensure the integrity of his eligibility to testify, and had relied, among other things, in its judgment of conviction on his testimony, this renders its judgment defective in reasoning and a violation of the right to defense, which invalidates it], Appeal No. 4844 of Year 55 Q issued in the session of October 28, 1987 and published in the second part of the Technical Office Book No. 38, page No. 887, Rule No. 161.

([2825] Appeal No. 18793 of 83 Q issued in the session of March 11, 2014 and published in Technical Office Book No. 65, Page No. 153, Rule No. 14.

([2826] Appeal No. 23908 of 65 Q issued in the session of May 1, 1998 and published in the first part of Technical Office Book No. 49, page No. 26, rule No. 4.

([2827]) Article No. 283 of the Criminal Procedure Code, see: Appeal No. 28462 of year 67 Q issued in the session of May 7, 1998 and published in the first part of the Technical Office Book No. 49, page No. 666, rule No. 85, Appeal No. 23908 of year 65 Q issued in the session of May 1, 1998 and published in the first part of the Technical Office Book No. 49, page No. 26, rule No. 4, Appeal No. 6430 of year 62 Q issued in the session of November 8, 1993 and published in the first part of the Technical Office Book No. 44, page No. 949, rule No. 148, Appeal No. 3204 of year 54 Q issued in the session of February 18, 1985 and published in the first part of the Technical Office Book No. 36, page No. 264, rule No. 44.

([2828] Article No. 25 of the Penal Code states that: "Every sentence of a felony penalty necessarily entails depriving the convict of the following rights and benefits: (First)... (Thirdly) Testimony before the courts during the sentence, except for the purpose of evidence... »

20-1-3 The investigator shall hear any witness they deem necessary to hear, or upon the request of the parties.

The investigator shall hear the testimony of witnesses whom the parties request to hear unless they see no benefit in hearing them. They may hear the testimony of any witness whom they deem necessary to hear about the facts that prove or lead to proving the crime, its circumstances, and attributing it to the accused or acquitting them of it. [2829]

The civil claimant may request the investigator to hear witnesses in the case, and they may make their comments on the witness's statements after hearing them, and they may request to hear the witness's statements on other points that they did not prove.

The investigator may always refuse to ask any question that is not related to the case, or that is worded in a way that offends others.

The legislator left the investigator with the authority to decide which witnesses the parties request to hear, and which they do not see any benefit in hearing.[2830]

The investigator must respect the witness, treat them well, and avoid giving them any hint or statement that would indicate disdain for him, so that they do not reach a state of denying the testimony that would harm justice.[2831]

It is not permissible for the investigator to appear before the witnesses as if they is doubting their statements by making comments or signs that instill fear in their souls and prevent them from stating the facts they claim to have stated.[2832]

The witness is supposed to give their testimony freely and freely, and therefore the investigator may behave towards them objectively and honestly, and not use means of deception, threat or intimidation with him, and they may not suggest a specific answer to the witness, or direct questions to them that involve incitement and enticement. It is established that the witness listens and is not interrogated, so the investigator may not behave with them in an interrogation manner. The investigator must let them give their testimony about the incident to be proven with complete freedom and without interference from him. After that, the investigator intervenes with their detailed questions to determine the framework and limits of the testimony, and through that they may draw their attention to any contradictions that may occur in their testimony or confront them with facts that have been proven to be the opposite in the investigation. The investigator must clarify whether the facts provided by the witness are from their direct and personal information or are they merely indirect hearsay information transmitted from others or are they merely conjectural conclusions. In all cases, the investigator must ensure that the testimony expresses the personality of the witness, and that it responds to their sensory information, not their conjectural conclusions.

The Court of Cassation ruled that: [Since it is established that the statement of one accused person against another is a testimony that the court may rely on in convicting, and the court of subject matter has the right to rely in its ruling of conviction on testimony heard as evidence without taking an oath, as is the case with regard to those who are prohibited from giving testimony under an oath, including those sentenced to a felony sentence for the duration of their sentence in accordance with Clause (Third) of Article 25 of the Penal Code] Appeal No. 5942 of Year 64 Q issued in the session of February 14, 1996 and published in the first part of the Technical Office Book No. 47, page No. 247, Rule No. 36.

([2829] Articles Nos. 110 and 208 of the Code of Criminal Procedure.

([2830] Appeal No. 1273 of 22 Q issued in the session of March 3, 1953 and published in the second part of the Technical Office Book No. 4, page No. 590, Rule No. 217.

([2831] Article No. 162 of the Judicial Instructions of the Public Prosecution.

([2832] Article No. 163 of the Judicial Instructions of the Public Prosecution.

The investigator must take care to record the testimony in the witness's own style, no matter how colloquial or clumsy it may be. Any intervention by the investigator to correct or shorten the witness's style without their consent entails a change in the truth.[2833]

If the report submitted to the Public Prosecution is of particular importance to the complainant, the Public Prosecution must hear the statements of the complainant alone in detail, then send the report to the Attorney General of the General Prosecution or the First Attorney General of the Appeal Prosecution, as the case may be, to seek an opinion on what follows.[2834]

The members of the prosecution must be economical in requesting officers, doctors and prison employees for investigation. They must also, in order to thwart the purpose that some prisoners seek in reporting that they have committed a crime in order to provide an opportunity to leave prison, go to the prison to question these prisoners instead of requesting them to the prosecution office.[2835]

When summoning employees of the civil registry departments to hear their statements on some technical points related to civil status work, members of the prosecution must address the inspectors of the civil status departments in the capitals of the governorates so that they can collect the correct information and data about the incident under investigation and present it to the prosecution to determine the truth of the matter when questioning the employee summoned for investigation.[2836]

Members of the Public Prosecution must be economical in requesting employees of the Central Agency for Public Mobilization and Statistics to question them as witnesses in investigations regarding crimes stipulated in Law No. 87 of 1960, as amended, regarding general mobilization, and must be satisfied with correspondence received from the aforementioned agency in this regard.

If the investigation requires summoning one of the agency's employees to question him, the agency must be notified to send the employee specialized in the subject of the investigation to give testimony in it, taking into account what the instructions require with regard to the prosecution offices located outside Greater Cairo, regarding sending a memorandum about the incident of the case and the required investigation, to the competent prosecution office within whose jurisdiction the aforementioned agency is located, for one of its members to carry it out.[2837]

If the investigation requires hearing from multiple drivers of vehicles from the Mechanical Transport Department, care should be taken not to require them to attend all at once, as this would disrupt the work of the department to which they belong. Rather, the Public Prosecution must summon them individually and at different times, taking the initiative to question those who attend to avoid requesting them for investigation more than once.

If a criminal case is filed against any of the aforementioned drivers, the members of the Public Prosecution must work to resolve it quickly.[2838]

The Public Prosecutions must include in the correspondence they issue to the Labor Department and in the requests for the attendance of representatives of this department as witnesses, the serial numbers that the inspectors of the department record in the papers and

---

(2833) D. Ahmed Fathy Sorour, The Mediator in Criminal Procedures, p. 302.
(2834) Article No. 252 of the Judicial Instructions of the Public Prosecution.
(2835) Article No. 253 of the Judicial Instructions of the Public Prosecution.
(2836) Article No. 263 bis of the Judicial Instructions of the Public Prosecution.
(2837) Article No. 269 of the Judicial Instructions of the Public Prosecution.
(2838) Article No. 280 of the Judicial Instructions of the Public Prosecution.

reports that they send to the Public Prosecution regarding the cases in which the correspondence or request for witnesses was issued.[2839]

20-1-4 Declaration of witnesses

The Public Prosecution shall notify the witnesses whom the investigating judge decides to hear. They shall be summoned to attend by bailiffs or by public authority personnel. The investigator may hear the testimony of any witness who attends of their own accord, and in this case, this shall be recorded in the report.[2840]

The Public Prosecution shall announce the witnesses whom the investigating judge decides to hear, and this shall be done through the bailiffs or public authority personnel. If witnesses other than those requested by the judge are presented to the Public Prosecution at a time when it is difficult to present them to him, it shall record them in a report and hear the statements of these witnesses therein briefly and present them with the report to the judge as soon as possible.[2841]

The general rule is that if someone does not have to be listened to, they do not have to be called.[2842]

Anyone summoned to appear before the investigating judge to give evidence must appear based on the request written to him. Otherwise, the judge may, after hearing the statements of the Public Prosecution, sentence them to pay a fine not exceeding fifty pounds. they may issue an order to summon them to appear again at their own expense, or issue an order to arrest and bring them in.[2843]

It is established that the correct announcement of the testimony is what imposes on the witness the duty of attendance, so the crime of refusing to testify does not occur if the announcement is invalid because this duty only arises from a correct announcement.[2844]

If the witness appears before the judge after being summoned to appear a second time or of their own accord and presents acceptable excuses, they may be exempted from the fine after hearing the statements of the Public Prosecution. they may also be exempted based on a request submitted by them if they are unable to appear in person.[2845]

The legislator has specified in the Criminal Procedures Law procedures that must be followed in the event that a witness fails to appear before the investigator to hear their testimony about the facts that prove or lead to proving the crime and its circumstances and attributing it to the accused or their innocence thereof, including taking measures to arrest and bring them in, or imposing a fine not exceeding fifty pounds. If the witness appears after being summoned to appear and presents acceptable excuses, they may be exempted from the fine.

There is nothing in the law that prevents summoning officers, investigating judges, and members of the Public Prosecution - as well as investigation clerks - as witnesses in cases in which they have work, except that summoning any of them shall only be done when the court or authority before which the testimony is given sees a reason for that.[2846]

([2839]) Article No. 287 of the Judicial Instructions of the Public Prosecution.
([2840] Articles Nos. 111 and 208 of the Code of Criminal Procedure.
([2841] Article No. 642 of the Judicial Instructions of the Public Prosecution.
([2842] Appeal No. 26730 of 59 Q issued in the session of February 2, 1995 and published in the first part of Technical Office Book No. 46, page No. 295, Rule No. 42.
([2843] Article No. 117 of the Code of Criminal Procedure.
([2844]) Crim. 18 oct. 1956, J. C. P. 57 II 9713, 7 nov. 1971, Crim. no: 301.
([2845] Article No. 118 of the Code of Criminal Procedure.
([2846] Appeal No. 6200 of 56 Q issued in the session of February 5, 1987 and published in the first part of Technical Office Book No. 38, page No. 231, rule No. 33.

20-1-5 Going to hear the witness at their place of residence

If the witness is ill or has something that prevents them from attending, their testimony shall be heard in the place where it is. If the investigator goes to hear their testimony and it becomes clear to them that the excuse is invalid, they may sentence them to a fine not exceeding two hundred pounds. The partial judge has jurisdiction over this if the Public Prosecution is the one that conducted the investigation. The convicted person may challenge the ruling issued against them by way of opposition or appeal against that ruling.[2847]

Members of the Public Prosecution shall not go to government hospitals to question injured persons present therein except after receiving a written notice or a telephone signal from the hospital that they may be questioned. They may, when necessary, if the condition of the injured persons is dangerous or the interest of the investigation requires that they be questioned quickly, go to the hospital without delay and at any time, provided that they notify the hospital in a timely manner of their move whenever possible, and that they contact, upon their arrival at the hospital, its director or its first physician or their representative, if any, and inquire from them about the condition of the injured persons and their ability to answer the questions directed to them rationally, and that they record all of that in the report.[2848]

20-1-6 Procedures for hearing testimony before the court

Questions shall be directed to the witnesses by the Public Prosecution first, then by the victim, then by the civil rights claimant, then by the accused, then by the person responsible for the civil rights. The Public Prosecution, the victim, and the civil rights claimant may interrogate the aforementioned witnesses a second time to clarify the facts about which they testified in their answers.[2849]

However, hearing witnesses in the aforementioned order is a matter of organizing the proceedings in the session and violating it does not result in nullity. The principle is that nullity results from failure to observe the provisions related to any essential procedure. A procedure is considered essential if its purpose is to preserve the public interest or the interest of the accused or one of the opponents. However, if its purpose is only guidance and direction, it is not essential and failure to observe it does not result in nullity. Clarifying the order of procedures in the session, although it is in itself useful in organizing the course of the lawsuit and facilitating its consideration, it was not made obligatory and was not intended to protect an essential interest of the opponents. If the alleged breach of that order did not deprive the accused of presenting their defense and requests and of responding to the defense of their opponent and did not affect their established right to be the last to speak, then nullity does not result from it.[2850]

The court may dispense with hearing absent witnesses with the consent of the accused or their defense attorney. The failure to hear them before the court does not prevent it from relying in its

---

([2847]) Articles Nos. 121 and 208 of the Code of Criminal Procedure.

([2848]) Article No. 234 of the Judicial Instructions of the Public Prosecution.

([2849]) Article No. 271 of the Code of Criminal Procedure.

([2850]) Appeal No. 13196 of 76 Q issued in the session of May 18, 2006 and published in the Technical Office Book No. 57, page No. 636, rule No. 69, Appeal No. 59602 of 74 Q issued in the session of January 17, 2006 and published in the Technical Office Book No. 57, page No. 115, rule No. 11, Appeal No. 8787 of 64 Q issued in the session of March 31, 1996 and published in the first part of the Technical Office Book No. 47, page No. 415, rule No. 59, Appeal No. 3053 of 54 Q issued in the session of March 14, 1985 and published in the first part of the Technical Office Book No. 36, page No. 403, rule No. 69, Appeal No. 140 of 24 Q issued in the session of March 11, 1954 And published in the second part of the Technical Office Book No. 5, page No. 420, Rule No. 141, Appeal No. 332 of the 22nd Q issued in the session of June 14, 1952 and published in the third part of the Technical Office Book No. 3, page No. 1103, Rule No. 413.

ruling on their statements in the investigations as long as they are presented for discussion in the session.[2851]

The court may be satisfied with the accused's confession before it, and sentence them without hearing witnesses.[2852]

The witnesses are called by their names, and after they answer, they are detained in the room designated for them, and they do not leave it except in succession to give testimony before the court. Whoever is heard from them remains in the courtroom until the door to the pleadings is closed, unless the court permits them to leave. It is permissible, when necessary, to remove a witness while hearing another witness, and it is permissible for witnesses to confront each other.[2853]

Also, the law does not stipulate that violating these procedures or not indicating that they were followed in the minutes of the session is invalid. All that matters is the assessment of the witness's testimony given in this circumstance.[2854]

Proving that a witness answered in the minutes of the session as if they were present, while they was not present and their statements were read out in the session, is a material error that has no effect on the validity of the ruling.[2855]

As long as the witness has heard in the presence of the accused and has not objected to hearing him, their right to this objection is forfeited if they do not assert it at the appropriate time.[2856]

The law does not require the court to hear all witnesses in one session or to conduct a confrontation between them, even if it allows that.[2857]

The witness's failure to appear despite the adjournment of the case for notification - and even after they has been summoned to appear before the court - does not mean that hearing them has become impossible.[2858]

([2851]) Appeal No. 3053 of 54 Q issued in the session of March 14, 1985 and published in the first part of Technical Office Book No. 36, page No. 403, rule No. 69.

([2852]) Appeal No. 89 of 35 Q issued in the session of May 24, 1965 and published in the second part of Technical Office Book No. 16, page No. 505, rule No. 102, Appeal No. 396 of 27 Q issued in the session of May 27, 1957 and published in the second part of Technical Office Book No. 8, page No. 545, rule No. 150, Appeal No. 1259 of 25 Q issued in the session of February 21, 1956 and published in the first part of Technical Office Book No. 7, page No. 254, rule No. 76, Appeal No. 784 of 22 Q issued in the session of October 6, 1952 and published in the first part of Technical Office Book No. 4, page No. 12, rule No. 6.

([2853] Article No. 278 of the Code of Criminal Procedure.

([2854]) Appeal No. 18637 of 84 Q issued in the session of April 14, 2015 and published in Technical Office Book No. 66, page No. 360, Rule No. 51, Appeal No. 9841 of 70 Q issued in the session of March 18, 2002 and published in Technical Office Book No. 53, page No. 485, Rule No. 80, Appeal No. 987 of 33 Q issued in the session of December 9, 1963 and published in Part Three of Technical Office Book No. 14, page No. 894, Rule No. 163, Appeal No. 987 of 33 Q issued in the session of December 9, 1963 and published in Part Three of Technical Office Book No. 14, page No. 894, Rule No. 163, Appeal No. 681 of 25 Q issued in the session of November 14, 1955 and published in Part Fourth from the Technical Office Book No. 6, Page No. 1317, Rule No. 388.

([2855] Appeal No. 681 of 25 Q issued in the session of November 14, 1955 and published in Part Four of Technical Office Book No. 6, Page No. 1317, Rule No. 388.

([2856]) Appeal No. 9841 of 70 Q issued in the session of March 18, 2002 and published in Technical Office Book No. 53, page No. 485, Rule No. 80, Appeal No. 614 of 44 Q issued in the session of June 16, 1974 and published in the first part of Technical Office Book No. 25, page No. 600, Rule No. 128.

([2857] Appeal No. 1782 of year 39 Q issued in the session of February 8, 1970 and published in the first part of Technical Office Book No. 21, page No. 238, rule No. 59.

([2858] Appeal No. 1242 of 52 Q issued in the session of April 29, 1982 and published in the first part of Technical Office Book No. 33, page No. 540, Rule No. 110.

If the witness gives acceptable excuses for their inability to attend, the court may go to them and hear their testimony after notifying the Public Prosecution and the rest of the parties. The opponents may attend in person or through their representatives, and may direct to the witness the questions they deem necessary to direct to him.[2859]

The civil rights claimant is heard as a witness and takes an oath.[2860]

20-1-7 Hearing the witness in private and confronting them with each other or with the accused

The investigator hears each witness individually, and they may confront the witnesses with each other and with the accused.[2861]

The investigator must respect the witness, treat them well, and avoid giving them any hint or statement that would indicate disdain for him, so that they do not reach a state of denying the testimony that would harm justice.[2862]

It is not permissible for the investigator to appear before the witnesses as if they is doubting their statements by making comments or signs that instill fear in their souls and prevent them from stating the facts they claim to have stated.[2863]

Since the legislator stipulated that the investigator should hear each witness individually, and that they may confront the witnesses with each other and with the accused, this did not result in a violation of these procedures being invalid. All that matters is that the court has the right to assess the witness's testimony given in these circumstances.[2864]

It is not permissible to initiate specific questions with the witness in the details of the investigation. Rather, the witness must be left to express their information first without the investigator stopping him, unless it becomes clear to them that what they say is not connected to the subject of the investigation. Then they begin to discuss with them that they has said, to clarify any ambiguity that may have affected it, any apparent contradiction or conflict between it and the statements of those who preceded him, or what they sees as not being consistent with reality and reason, or anything else that requires discussion. The sequence and coherence of the investigation must be taken into account. As for the abundance of useless questions, the investigator will only reap the loss of effort in vain and the investigation will be far from the areas of accuracy, making it a target for the defense's objections, due to the confusion that may be tainted by it or the suggestion and surprise that may be revealed about it. The witness must, as much as possible, clarify the time and place of the incident, the perpetrator, the manner in which it occurred, and the motive for it. The investigator's intelligence does not escape them that accuracy, patience, perseverance, and broad-mindedness greatly help in uncovering subtle or obscure matters.[2865]

If the police officer refuses to mention how they arrested an accused person or how they knew that some of the perpetrators intended to commit a crime, it is sufficient to record that in the

---

([2859] Article No. 281 of the Code of Criminal Procedure.
([2860] Article No. 288 of the Code of Criminal Procedure.
([2861] Articles Nos. 112 and 208 of the Code of Criminal Procedure.
([2862] Article No. 162 of the Judicial Instructions of the Public Prosecution.
([2863] Article No. 163 of the Judicial Instructions of the Public Prosecution.
([2864]) Appeal No. 1702 of 66 Q issued in the session of January 5, 1998 and published in the first part of the Technical Office Book No. 49, page No. 50, Rule No. 5, Appeal No. 23075 of 61 Q issued in the session of November 15, 1993 and published in the first part of the Technical Office Book No. 44, page No. 988, Rule No. 154, and Appeal No. 1316 of 8 Q issued in the session of May 2, 1938 and published in the first part of the Legal Rules Collection No. 4, page No. 226, Rule No. 215.
([2865] Article No. 231 of the Judicial Instructions of the Public Prosecution.

investigation report, and they are not asked to state what they refused to mention unless the interests of the investigation require that.[2866]

Members of the Public Prosecution must take the initiative to question the injured, even if their injuries are minor, without waiting for them to recover, unless they learn from the treating physician that there is a danger to the injured person from questioning him, in which case their questioning is postponed to another time, and they must alert the judicial police officers to take this into account in their investigations.[2867]

The Court of Cassation ruled that: [It is established that the defect in the investigation conducted by the prosecution has no effect on the soundness of the ruling. If the prosecution conducts an investigation in the absence of the accused, then that is its right and there is no invalidity in it. The principle is that what matters at trial is the investigation conducted by the court itself. As long as the defense does not ask it to complete any deficiency or defect in the initial investigations, it does not have the right to use that as a reason to prevent it.[2868]

It also ruled that the mere absence of the accused when the witness was questioned does not invalidate their statements.[2869]

20-1-8 The accused requested to hear witnesses.

Witnesses shall be summoned to appear at the request of the parties by one of the bailiffs or the police officers twenty-four hours before the session, excluding travel times, and shall be notified in person or at their place of residence by the methods prescribed in the Civil and Commercial Procedures Law, except in the case of flagrante delicto, in which case they may be summoned to appear at any time, even verbally, by one of the judicial police officers or one of the police officers. The witness may attend the session without notice at the request of the parties.

Without prejudice to the provisions of the first paragraph of this article, the parties shall specify the names of the witnesses, their information and the method of relying on them, and the court shall decide whose testimony it deems necessary to hear. If the court decides that it is not necessary to hear the testimony of any of them, it must state the reasons for that in its ruling.

During the hearing of the case, the court may summon and hear the statements of any person, even by issuing an arrest warrant, if necessary, and it may order that they be summoned to appear at another session.

The court may hear the testimony of any person who appears of their own accord to provide information in the case.[2870]

It is established that when the law outlined the path that the accused follows in announcing the witnesses whom they sees as in their interest to hear before the court, it did not intend thereby to undermine the essential foundations of criminal trials, which are based on the oral investigation that the court conducts in the trial session in the face of the accused and in which it hears the witnesses, whether to prove the charge or to deny it, as long as hearing them is

---

([2866] Article No. 232 of the Judicial Instructions of the Public Prosecution.

([2867] Article No. 233 of the Judicial Instructions of the Public Prosecution.

([2868] Appeal No. 525 of 50 Q issued in the session of June 15, 1980 and published in the first part of Technical Office Book No. 31, page No. 775, rule No. 150.

([2869]) The Court of Cassation ruled that: [The Public Prosecution may conduct the investigation in the absence of the accused if his presence is not possible, and all that the accused has to do is to insist before the court on what they sees as a defect, and the court's assessment of that falls within its authority, given that the Public Prosecution's investigation is evidence of the case that the court is independent in assessing, and the mere absence of the accused when questioning the witness does not invalidate his statements] Appeal No. 1861 of Year 40 Q issued in the session of March 7, 1971 and published in the first part of the Technical Office Book No. 22, page No. 194, Rule No. 47.

([2870] Article No. 277 of the Code of Criminal Procedure.

possible, and then it combines what it extracts from their testimony with the total of its belief in the case.[2871]

The defense must respond to its request to hear witnesses to the incident even if they are not mentioned in the list of prosecution witnesses or the accused announces them because they are not considered witnesses for the defense in the full sense of the word so they is obligated to announce them, and because the court is the last resort that must be given space to investigate and investigate the incident in the correct manner, not restricted in that by the actions of the public prosecution in what it states in the list of prosecution witnesses or omitting it from the names of witnesses who witnessed the incident or who may have witnessed it, otherwise the seriousness in the court will be lost and the door of defense will be closed in the face of its unjust approaches, which is something that justice vehemently refuses.[2872]

If the accused does not request to hear the testimony of the civil rights plaintiff, they will not have the right - later - to complain to the court for not taking this action that they did not request from it.[2873]

The trial must be based on the oral investigation conducted by the court in the session, in which it hears the prosecution witnesses in the presence of the accused, as long as it is possible to hear them. It is permissible to suffice with the testimony of the witness if it is impossible to hear them or the accused or their defense accepts that. However, if the defense insists on the necessity of hearing the prosecution witnesses, and the court refuses to respond to its request with an invalid response, then that is considered a violation of the right of defense.[2874]

The courts may, during the examination of the case - in order to complete their conviction and seek to obtain the truth - hear witnesses whose names are not included in the list or who were not announced by the parties - whether on their own initiative or at the request of the parties or based on the witness's presence of their own initiative without being announced, and to summon any person whose testimony they see as beneficial to hear.[2875]

There is nothing in the law that makes notification a condition for hearing the witness. The court may hear the witness's statements even if they have not been notified to attend in accordance with the law, whenever it sees that they may make statements that would reveal the truth. All that the objecting party must do in this case is to present their full defense regarding the statements made by this witness, and the court must work to remove the harm that may befall them in a manner that does not lead to a violation of the right to defense.[2876]

If the witness fails to appear before the court after being summoned, they may be sentenced, after hearing the statements of the Public Prosecution, to pay a fine not exceeding ten pounds in violations, thirty pounds in misdemeanors, and fifty pounds in felonies.

([2871]) Appeal No. 2957 of 66 Q issued in the session of February 15, 1998 and published in the first part of the Technical Office Book No. 49, page No. 243, rule No. 36, Appeal No. 655 of 50 Q issued in the session of October 2, 1980 and published in the first part of the Technical Office Book No. 31, page No. 821, rule No. 158.

([2872] Appeal No. 2957 of 66 Q issued in the session of February 15, 1998 and published in the first part of Technical Office Book No. 49, page No. 243, rule No. 36.

([2873]) Appeal No. 18327 of 62 Q issued in the session of May 27, 1997 and published in the first part of the Technical Office Book No. 48, page No. 663, rule No. 99, Appeal No. 589 of 59 Q issued in the session of December 27, 1990 and published in the first part of the Technical Office Book No. 41, page No. 1114, rule No. 201.

([2874] Appeal No. 6301 of 61 Q issued in the session of June 9, 1993 and published in the first part of Technical Office Book No. 44, page No. 585, rule No. 87.

([2875] Appeal No. 655 of 50 Q issued in the session of October 2, 1980 and published in the first part of Technical Office Book No. 31, page No. 821, rule No. 158.

([2876] Appeal No. 499 of 37 Q issued in the session of May 8, 1967 and published in the second part of the Technical Office Book No. 18, page No. 605, rule No. 116.

If the court deems their testimony necessary, it may adjourn the case to re-submit them to appear, and it may order their arrest and appearance.

If the witness appears after being summoned to appear a second time or of their own accord and presents acceptable excuses, they may be exempted from the fine after hearing the statements of the Public Prosecution.

If the witness does not appear the second time, they may be sentenced to a fine not exceedingly twice the maximum prescribed limit, and the court may order their arrest and bringing them to the same session, or to another session to which the case is adjourned.[2877]

If the witness gives acceptable excuses for their inability to attend, the court may go to them and hear their testimony after notifying the Public Prosecution and the rest of the parties. The opponents may attend in person or through their representatives and may direct to the witness the questions they deem necessary to direct to him.[2878]

The civil rights claimant shall be heard as a witness and shall take an oath, if they so request or the court so requests, either on its own initiative or at the request of the parties.[2879]

The judgment is not flawed if it relies in its judgment of conviction on the statements of the plaintiff in the civil case, as long as the law permits hearing them as a witness.[2880]

If the accused does not request to hear the plaintiff's testimony in civil proceedings, they have no right to complain to the court for not taking a measure that they did not request from it.[2881]

20-1-9 Minutes of hearing witnesses

The investigator shall ask each witness to state their name, surname, age, profession, residence, and relationship to the accused. They shall record this information and the testimony of the witnesses without erasure or interpolation. No correction, deletion, or addition shall be accepted unless it is approved by the investigator, the clerk, and the witness.[2882]

The investigator and the clerk shall sign the testimony, as shall the witness, after it has been read to them and they have acknowledged that they is insisting on it. If they refuse to sign or stamp it, or are unable to do so, this shall be recorded in the minutes, along with the reasons they give. In all cases, both the investigator and the writer shall sign each page first.[2883]

The absence of the witness's signature in the minutes of the prosecution's investigation session does not invalidate the procedures nor does it affect the validity of the ruling based on their statements. What the law stipulates regarding the necessity for the witness to sign their testimony after it has been read to them and their acknowledgement that they insists on it, and to prove the witness's refusal to put their signature or seal in the minutes or their inability to do

---

([2877] Articles Nos. 279 and 280 of the Code of Criminal Procedure.
([2878] Article No. 281 of the Code of Criminal Procedure.
([2879]) Article No. 288 of the Criminal Procedure Code, and see: Appeal No. 149 of Year 37 Q issued in the session of March 27, 1967 and published in the first part of Technical Office Book No. 18, page No. 449, Rule No. 85.
([2880] Appeal No. 145 of 42 Q issued in the session of December 24, 1972 and published in Part Three of Technical Office Book No. 23, Page No. 1431, Rule No. 322.
([2881]) Appeal No. 589 of 59 Q issued in the session of December 27, 1990 and published in the first part of the Technical Office Book No. 41, page No. 1114, rule No. 201, Appeal No. 18327 of 62 Q issued in the session of May 27, 1997 and published in the first part of the Technical Office Book No. 48, page No. 663, rule No. 99, Appeal No. 1627 of 50 Q issued in the session of January 8, 1981 and published in the first part of the Technical Office Book No. 32, page No. 32, rule No. 2, Appeal No. 826 of 48 Q issued in the session of February 6, 1978 and published in the first part of the Technical Office Book No. 29, page No. 136, rule No. 25, Appeal No. 1350 of 42 Q issued in the session of January 22, 1973 And published in the first part of the Technical Office Book No. 24, page No. 90, rule No. 22.
([2882] Articles 113 and 208 of the Code of Criminal Procedure.
([2883] Articles 114 and 208 of the Code of Criminal Procedure.

so, with mention of the reasons they gives, is only a type of regulatory procedure for which the law does not stipulate invalidity for violating it, in addition to the fact that the investigator's and clerk's signature on the investigation minutes indicates the validity of what was proven in them.[2884]

Witnesses may make their comments on the testimony after hearing the witness's statements, and they may ask the investigating judge to hear the witness' statements on other points they make, and the investigator may always refuse to direct any question that is not related to the case, or that is worded in a way that harms others.[2885]

20-1-10 Witness Protection

Article No. 113 bis of the Criminal Procedure Code stipulates that: "It is not permissible for police officers or investigation authorities to disclose the victim's data in any of the crimes stipulated in Chapter Four of Book Three of the Penal Code issued by Law No. 58 of 1937, or in any of Articles (306 bis/A, 306 bis/B) of the same law, or in Article (96) of the Child Law issued by Law No. 12 of 1996, except to the concerned parties. "[2886]

Whereas the Constitution, in the last paragraph of Article (96), obligated the state - among other things - to protect victims in accordance with what is regulated by law, the Egyptian Constitution stipulated in its last paragraph of Article 96 that it obligated the state, among other things, to protect victims in accordance with what is regulated by law.

The proposed draft law came from the state's keenness to carry out its national responsibilities in protecting the reputation of the victim by not revealing their identity in crimes related to indecent assault, corruption of morals, exposure to others, and harassment stipulated in the Penal Code and the Child Law, for fear that the victim will refrain from reporting these crimes."

The law aims to protect the reputation of the victim by not revealing their identity in crimes related to indecent assault, corruption of morals, exposure to others and harassment stipulated in the Penal Code and the Child Law, for fear that the victim will refrain from reporting these crimes, as Article No. 113 bis added to the Criminal Procedures Law prohibits police officers or investigation authorities from disclosing the victim's data in any of the crimes stipulated in Chapter Four of Book Three of the Penal Code issued by Law No. 58 of 1937, or in any of Articles (306 bis/A, 306 bis/B) of the same law, or in Article (96) of the Child Law issued by Law No. 12 of 1996, except for those concerned.

The explanatory memorandum submitted by the government stated that the amendments aim to protect the reputation of the victim by not revealing their identity in crimes related to indecent assault, corruption of morals, exposure to others and harassment included in the Penal Code and the Child Law, for fear that the victim will refrain from reporting these crimes.

This is especially true since the crimes of indecent assault, corruption of morals, assault of others, and harassment included in the Penal Code and the Child Law issued by Law No. 12 of 1996 are crimes that affect the reputation of the victim, which may be a reason for refraining from reporting for fear of damaging the reputation.

Based on the state's keenness to carry out its national responsibilities in protecting the reputation of the victim by not revealing their identity in crimes related to indecent assault, corruption of morals, assault of others and harassment stipulated in the Penal Code and the Child Law, for fear that the victim will refrain from reporting these crimes.

([2884]) Appeal No. 10461 of 80 Q issued in the session of January 4, 2011 (unpublished), Appeal No. 1649 of 28 Q issued in the session of January 12, 1959 and published in the first part of Technical Office Book No. 10, page No. 15, Rule No. 4.

([2885] Articles 115 and 208 of the Code of Criminal Procedure.

([2886] Article No. 113 bis of the Code of Criminal Procedure.

Article 113 bis came about because some victims were reluctant to report crimes committed against them for fear - from their point of view - of scandal, and to address the phenomenon of reluctance to report in these cases for fear of being defamed, and to avoid any negative effects resulting from announcing them, by creating a sub-file with the investigator that will be presented to the court when necessary, which is a procedure that does not prejudice anything and the investigation will not be affected by this procedure, because only the person's data will be withheld.

The legislator aims to protect the reputation of the victim by not revealing their identity in crimes related to indecent assault, corruption of morals, exposure to others and harassment stipulated in the Penal Code and the Child Law, for fear that the victim will refrain from reporting these crimes.

Disclosing the data of victims is a procedural violation and does not constitute a punishable crime. It is a procedural violation that only results in the invalidity of the disclosure according to the Criminal Procedure Code as well. Therefore, it does not constitute a punishable crime according to the law, although this violation may constitute a reason for a civil lawsuit for compensation later if it is proven to have been committed.

The text of the article is limited to prohibiting the data of victims in cases of sexual assault and endangering the life of a child only, and the prohibition does not include the data of witnesses to the incident.

The legislator prohibited law enforcement officers or investigation authorities from disclosing the victim's data in any of the crimes related to indecent assault, corruption of morals, exposure to others, and harassment contained in the Penal Code and the Child Law, for fear that the victim would refrain from reporting these crimes.

This comes especially since the crimes of indecent assault, corruption of morals, exposure to others, and harassment stipulated in the Penal Code and the Child Law issued by Law No. 12 of 1996 are crimes that affect the reputation of the victim, which may be a reason to refrain from reporting for fear of damaging the reputation except to those concerned. Article No. 113 bis of the Criminal Procedure Code stipulates that: "It is not permissible for police officers or investigation authorities to disclose the victim's data in any of the crimes stipulated in Chapter Four of Book Three of the Penal Code issued by Law No. 58 of 1937, or in any of Articles (306 bis/a, 306 bis/b) of the same law, or in Article (96) of the Child Law issued by Law No. 12 of 1996, except to those concerned" ([2887]

Reporting crimes is generally considered one of the basic human rights guaranteed by international conventions and national legislation. In fact, this right often rises to the level of a duty when exercised by public employees, as reporting a crime can often prevent it from occurring, as well as avoid the serious consequences that may result from it, which contributes to building trust and reassurance in society, and leads to enhancing the participation of individuals in particular and society in general in combating crime in all its forms, and assisting public authorities in carrying out their duties in this regard.

The United Nations Convention against Corruption recognizes the right of civil society, non-governmental organizations, individuals and local organizations to actively participate in preventing, combating and exposing corruption.

The Egyptian Constitution also recognized the right of every individual to report in Article 85, which states that: "Every individual has the right to address the public authorities in writing and with their signature. Addressing them may not be in the name of groups except for legal

([2887] Article No. 113 bis of the Criminal Procedure Code, added by Law No. 177 of 2020.

persons." The right to report is also supported by Article 25 of the Code of Criminal Procedure, which states that: "Everyone who learns of the occurrence of a crime for which the Public Prosecution may file a lawsuit without a complaint or request shall notify the Public Prosecution or one of the judicial police officers of it."

Accordingly, the legislator has established the general rule in Article 25 of the Code of Criminal Procedure based on a constitutional principle stipulated in Article 85 of the Constitution, thereby establishing an inherent right for every citizen to report crimes whenever they are punishable without requiring that the reporter be the victim himself or any of their relatives, in-laws or those related to him. It is an absolute right for all, the only restriction on which is that the crime should not be one of the crimes that the law has subjected to the restriction of a complaint or request as a restriction on the right of the Public Prosecution to initiate criminal proceedings in this regard, such as crimes of adultery and theft between parents and children, for which the legislator required the victim to submit a complaint to the Public Prosecution in order for it to have the right to initiate public proceedings against their perpetrators, and the victim remains the owner of the right to the lawsuit and its continuation or not, and such as the crimes stipulated in Articles 8 and 9 of the Code of Criminal Procedure, for which the Public Prosecution must have the right to initiate public proceedings in them, that this be preceded by a request from the Minister of Justice or the head of the competent authority or department.

The legislator has criminalized ordering the torture of any accused person in order to force them to confess. Article 126 of the Penal Code states that: "Any public employee or worker who orders the torture of an accused person or does so himself in order to force them to confess shall be punished with rigorous imprisonment or imprisonment from three to ten years."

If the victim dies, the penalty prescribed for premeditated murder shall be imposed.

Article 129 of the Penal Code also criminalizes the use of cruelty by an employee towards people based on their job, stating that: "Every public employee or worker and every person charged with a public service who uses cruelty towards people based on their job, such that they violates their honor or causes them physical pain, shall be punished by imprisonment for a period not exceeding one year or a fine not exceeding two hundred Egyptian pounds."

To encourage witnesses to report crimes, the legislator has permitted the reporting of crimes if the report is submitted to judicial and administrative authorities, and if the reporting party has reported truthfully and in good faith against the person being reported against, and with a matter that requires punishment for its perpetrator, i.e. a prohibited act. Article 303 of the Penal Code stipulates that "slander shall be punished by a fine of not less than five thousand pounds and not more than fifteen thousand pounds." If the slander is committed against a public employee or a person with a public representative capacity or charged with a public service, and it is due to the performance of the job, representation or public service, the penalty shall be a fine of not less than ten thousand pounds and not more than twenty thousand pounds. Article 304 of the Penal Code stipulates that "this penalty shall not be imposed on anyone who informs the judicial or administrative rulers, truthfully and without malicious intent, of a matter that requires the punishment of its perpetrator." This means that the following conditions must be met in order for the action of the informant to be permissible:

The notification must be made to one of the judicial or administrative judges, who are public authority officials responsible for receiving reports and taking the measures that result from the notification, or to administrative officials with regard to administrative and disciplinary violations committed by public employees.

The report must be true, and the intended meaning of the truth of the incident is its validity in itself. The reporter benefits from permission if they submit their report and supports it with the

evidence they knows, or if they does not support it with any evidence, but the validity of their report is confirmed based on procedures carried out by the public authorities.

And that this be done in good faith, meaning that the reporter aims to achieve the public interest and assist the public authorities in identifying crimes and their perpetrators. Good faith is negated if the reporter knows that the report is false or believes it to be true but aims to defame the person against whom the report is made.

Finally, the matter reported must require punishment for its perpetrator, i.e. it constitutes a criminal act punishable by law or disciplinary action, in the case of public employees.

Thus, the reason for permissibility is that society has a fundamental interest in knowing about crimes that are committed in order to take the measures specified by law regarding them. Whoever informs the public authorities achieves this interest in society.

The Court of Cassation has ruled that: [It is established that the basic element in the crime of false reporting is the intentional lying in reporting, and this requires that the reporter be certain of the fact that they reported is false and that the person against whom the report is made is innocent of it. In order for the ruling that the report is false to be valid, the court must prove with certainty that this certain knowledge is available and must support this in its ruling with evidence that it produces rationally.[2888]

It ruled that: [It is legally established that in order to establish the crime of false reporting, two elements must be present: proof of the falsehood of the reported facts, that the perpetrator knew of their falsehood and intended to harm the victim, and that the matter reported is something that requires punishment for its perpetrator even if no lawsuit is filed regarding what they reported] ([2889]

From the above, it is clear that when the legislator decided on the reason for permission referred to in Article 304 of the Penal Code, they intended by that cases of truthful reporting of criminal or disciplinary incidents for which the perpetrator must be punished. Therefore, they did not impose responsibility on the reporter except in the case of false reporting in order to protect the rights of others. However, they may benefit from the reason for permission in the case of truthful reporting in order to protect people and encourage them to report crimes and fight corruption.

20-1-11 Witness Swearing Oath

Witnesses who have reached the age of fourteen must take an oath before giving testimony that they are testifying to the truth and telling nothing but the truth.

Witnesses who have not reached the age of fourteen may be heard without taking an oath as evidence. [2890]

The principle is that a witness must be truthful in their testimony. In order to force them to be truthful, the law requires witnesses who have reached the age of fourteen to take an oath before giving testimony that they are testifying to the truth and will only tell the truth. If the witness refuses to take the oath or to answer in circumstances other than those in which the law permits them to do so, they shall be sentenced in cases of violations to a fine not exceeding ten pounds, and in cases of misdemeanors and felonies to a fine not exceeding two hundred pounds.

([2888] Appeal No. 1067 of 41 Q issued in the session of May 14, 1972 and published in the second part of the Technical Office Book No. 23, page No. 691, rule No. 155.
([2889] Appeal No. 203 of 40 Q issued in the session of April 5, 1970 and published in the second part of the Technical Office Book No. 21, page No. 514, rule No. 124.
([2890] Articles Nos. 116 and 283 of the Code of Criminal Procedure.

If the witness changes their mind before the closing of the pleadings, they will be exempted from all or part of the penalty imposed on him.[2891]

Testimony is not valid unless it is preceded by an oath that the testimony is to be true and that the witness only tells the truth.

The swearing of a witness is one of the guarantees that were legislated for the benefit of the accused, because the oath reminds the witness of the God who is in charge of every soul and warns them of their wrath if they decides otherwise, and because it is suspected that this intimidation may result in the witness making statements in the interest of the accused that may be accepted by the judge and they may take them as a basis for forming their belief, and it is not permissible for invalidity to result from taking this guarantee that was intended to compel the witness to tell the truth.[2892]

However, the oath is stipulated in the interest of the opponents. If the witness is heard without taking the oath, and in the presence of the defendant's lawyer without any objection from him, then this results in the loss of their right to claim its invalidity.[2893]

This means that the elements of testimony are not legally complete except by taking an oath. However, the failure to take an oath does not negate the fact that the statements made by the witness without taking an oath are testimony.[2894]

The Court of Cassation ruled: [Even though the elements of testimony are not legally complete unless the witness takes an oath, this does not negate the fact that the statements made by the witness without taking an oath are testimony. A witness, in the language, is someone who has seen and observed something. Testimony is a noun derived from observation, which is seeing something with one's own eyes. The law, in Article 283 of the Code of Criminal Procedure, considers a person a witness simply by calling them to testify, whether they testifie after taking

---

([2891]) Articles No. 283 and 284 of the Criminal Procedure Code, and see: Appeal No. 1280 of Year 61 Q issued in the session of November 9, 1992 and published in the first part of Technical Office Book No. 43, page No. 1014, Rule No. 156.

([2892]) Appeal No. 987 of 33 Q issued in the session of December 9, 1963 and published in the third part of the Technical Office Book No. 14, page No. 894, rule No. 163, Appeal No. 7 of 31 Q issued in the session of April 17, 1961 and published in the second part of the Technical Office Book No. 12, page No. 442, rule No. 82.

([2893]) Appeal No. 168 of 27 Q issued in the session of April 1, 1957 and published in the second part of the Technical Office Book No. 8, page No. 322, rule No. 86, Appeal No. 2443 of 24 Q issued in the session of February 26, 1955 and published in the second part of the Technical Office Book No. 6, page No. 573, rule No. 186

The Court of Cassation ruled that: [If the witness takes the legal oath and then testifies, there is no need to have them re-swear if the court deems it necessary to clarify matters related to what they previously stated or new facts. This is because the oath taken by the witness applies to everything they testifies in the case] Appeal No. 1189 of the 7th year of the Q issued in the session of May 10, 1937 and published in the Technical Office Book No. 4, Part No. 1, Page No. 71, Rule No. 80.

([2894]) Appeal No. 4307 of 81 Q issued in the session of January 9, 2013 and published in the Technical Office Book No. 64, page No. 59, rule No. 8, Appeal No. 66149 of 75 Q issued in the session of April 4, 2006 and published in the Technical Office Book No. 57, page No. 493, rule No. 56, Appeal No. 4184 of 73 Q issued in the session of September 29, 2003 and published in the Technical Office Book No. 54, page No. 884, rule No. 120, Appeal No. 5769 of 60 Q issued in the session of March 11, 1999 and published in the first part of the Technical Office Book No. 50, page No. 159, rule No. 37, Appeal No. 1280 of 61 Q issued in the session of November 9, 1992 and published in the first part of the Office Book Technical No. 43, Page No. 1014, Rule No. 156, Appeal No. 4060 for the year 57 Q issued in the session of February 10, 1988 and published in the first part of the Technical Office Book No. 39, Page No. 269, Rule No. 35, Appeal No. 3604 for the year 57 Q issued in the session of November 12, 1987 and published in the second part of the Technical Office Book No. 38, Page No. 960, Rule No. 175, Appeal No. 190 for the year 43 Q issued in the session of April 16, 1973 and published in the second part of the Technical Office Book No. 24, Page No. 525, Rule No. 109, Appeal No. 1137 for the year 38 Q issued in the session of October 21, 1968 and published in the third part of the Technical Office Book No. 19, Page No. 841, Rule No. 166, Appeal No. 1891 for the year 34 Q issued in the session of March 1, 1965 and published in the first part of the Technical Office Book No. 16, page No. 187, Rule No. 40.

the oath or without taking it. Therefore, the ruling is not flawed by describing the statements of the victim who did not take the oath as testimony.[2895]

Anyone other than the accused against whom the criminal case has been brought, whose testimony contains information related to the case, both for proof and denial, is a witness who the law requires to take an oath before giving testimony, provided that they have reached the age of fourteen years.[2896]

The law also punishes false testimony and helping the perpetrator to escape justice by providing incorrect information related to the crime. Swearing a witness is one of the guarantees that were legislated for the benefit of the accused, because the oath reminds the witness of the God who is in charge of their soul and warns them of their wrath if they decides otherwise, and because it is suspected that this intimidation may result in the witness making statements in the interest of the accused that may be accepted by the judge, who may take them as a basis for forming their belief.[2897]

It is established that the statements of one accused against another accused are not considered testimony in the strict sense, since the accused does not take an oath, so their statements are not considered legal testimony as evidence of proof, although there is no harm in the court calling these statements testimony in deviating from the principle, considering them as evidence of conviction in the case. Accordingly, it is not permissible to hear the statements of the accused as a witness unless the accusation against them is finally cleared.[2898]

There is nothing in the law that prevents the court from accepting statements heard as evidence from someone who was accused in the same incident after it was decided not to file a criminal case against them if it finds them to be truthful.[2899]

The accused or their defense attorney must explicitly object to hearing the testimony of a witness without an oath. If the testimony is given in their presence and they do not object, then they has lost their right to claim this invalidity, which is related to one of the investigation procedures in the session, in accordance with Article 333 of the Code of Criminal Procedure. The judgment will not be flawed - subsequently - if it relied on this testimony.[2900]

([2895] Appeal No. 1137 of 38 Q issued in the session of October 21, 1968 and published in Part Three of Technical Office Book No. 19, Page No. 841, Rule No. 166.

([2896] Appeal No. 26183 of 67 Q issued in the session of March 12, 2000 and published in Technical Office Book No. 51, page No. 272, Rule No. 51.

([2897] Appeal No. 1891 of year 34 Q issued in the session of March 1, 1965 and published in the first part of Technical Office Book No. 16, page No. 187, rule No. 40.

([2898] Appeal No. 13196 of 76 Q issued in the session of May 18, 2006 and published in Technical Office Book No. 57, Page No. 636, Rule No. 69.

([2899]) Appeal No. 5769 of 60 Q issued in the session of March 11, 1999 and published in the first part of the Technical Office Book No. 50, page No. 159, rule No. 37, Appeal No. 884 of 22 Q issued in the session of July 2, 1953 and published in the third part of the Technical Office Book No. 4, page No. 1064, rule No. 370

The Court of Cassation ruled that: [Deprivation from giving testimony under oath for a group of persons sentenced to a felony is in fact a punishment whose apparent meaning is to belittle these persons and treat them as persons lacking legal capacity throughout the term of the sentence. Upon its expiration, their eligibility to give testimony under oath returns to them. It is not a deprivation of a right or privilege as long as what is observed in giving testimony before the courts is to uphold the interests of justice. If such persons take an oath during the period of being deprived of taking it, there is no invalidity, since invalidity cannot result from taking a precautionary guarantee stipulated by the law when it required taking an oath to force the witness to tell the truth], Appeal No. 7 of Year 31 Q issued in the session of April 17, 1961 and published in the second part of the Technical Office Book No. 12, page No. 442, Rule No. 82.

([2900] The first paragraph of Article 333 of the Code of Criminal Procedure states that: "..." The right to plead the invalidity of the procedures related to gathering evidence, the preliminary investigation, or the investigation in the session in misdemeanors and felonies shall be forfeited if the accused has a lawyer and the procedure took place in his presence without his objection... ".

The civil rights claimant is heard as a witness and takes an oath.[2901]

The civil rights plaintiff's swearing of an oath was not legislated to protect him, neither as a witness nor as a plaintiff, but rather as a guarantee for the accused against whom the testimony was given. Therefore, the civil rights plaintiff who did not swear the oath and whose testimony was not accepted by the court against the accused cannot complain about the procedures for their failure to swear the oath.[2902]

20-1-12 The witness cannot be rejected

Witnesses may not be rejected for any reason.[2903]

While it is permissible for the accused's ascendants, descendants, relatives, in-laws up to the second degree, and their spouse, even after the marital bond has ended, to refrain from testifying against him, unless the crime was committed against the witness or against one of their closest relatives or in-laws, or if they was the one who reported it, or if there is no other evidence to prove it.[2904]

This means that the witness does not refrain from testifying about the facts that they saw or heard, even if the person testifying against them is a relative or their spouse. Rather, they is exempted from giving testimony if they so wishes.[2905]

Accepting the testimony of a witness, even if they are a relative of the victim, is a matter left to the court's satisfaction with the veracity of what they testified to.[2906]

20-1-13 The witness's right to refrain from giving testimony

The witness must be completely neutral and must not have a personal interest that conflicts with their testimony, or conflicts with their capacity in the case with the capacity of the witness. The witness may refrain from testifying against the accused, their ancestors, descendants, relatives, and in-laws up to the second degree, and their wife, even after the marital bond has ended, unless the crime was committed against the witness or against one of their closest relatives or in-laws, or if they was the one who reported it, or if there is no other evidence to prove it.[2907]

However, if the witness appears before the investigator and refuses to testify or take the oath, the investigating judge in the cases they is investigating shall sentence them to a fine not exceeding two hundred pounds, after hearing the statements of the Public Prosecution. If the Public Prosecution is the one investigating the case, the judgment shall be issued against the

---

See: Appeal No. 3381 of Year 50 Q issued in the session of May 14, 1981 and published in the first part of Technical Office Book No. 32, page No. 507, Rule No. 89.

([2901] Article No. 288 of the Code of Criminal Procedure.

([2902] Appeal No. 79 of 23 Q issued in the session of March 30, 1953 and published in the second part of the Technical Office Book No. 4, page No. 662, rule No. 240.

([2903] Articles Nos. 116, 208, 285 of the Code of Criminal Procedure.

([2904] Articles Nos. 285 and 286 of the Code of Criminal Procedure.

([2905]) Appeal No. 17203 of 83 Q issued in the session of May 12, 2014 and published in Technical Office Book No. 65, page No. 369, rule No. 41, Appeal No. 3506 of 78 Q issued in the session of December 17, 2008 and published in Technical Office Book No. 59, page No. 557, rule No. 99, Appeal No. 6281 of 53 Q issued in the session of March 27, 1984 and published in the first part of Technical Office Book No. 35, page No. 353, rule No. 76, Appeal No. 826 of 48 Q issued in the session of February 6, 1978 and published in the first part of Technical Office Book No. 29, page No. 136, rule No. 25, Appeal No. 1970 of 30 Q issued in the session of March 7, 1961 and published in the part The first of the Technical Office Book No. 12, page No. 324, Rule No. 62, Appeal No. 1194 for the year 29 Q issued in the session of February 2, 1960 and published in the first part of the Technical Office Book No. 11, page No. 128, Rule No. 26.

([2906] Appeal No. 136 of 25 Q issued in the session of May 31, 1955 and published in Part Three of Technical Office Book No. 6, Page No. 1056, Rule No. 310.

([2907] Articles Nos. 116 and 286 of the Code of Criminal Procedure.

witness if they refuse to testify or take the oath by the partial judge in the jurisdiction in which the witness was requested to appear, according to the usual circumstances.[2908]

If the witness is a relative or spouse of the person against whom they testify, they are not prevented from testifying about the facts they saw or heard, but they are exempt from giving testimony if they so wish. In this regard, the Court of Cassation ruled that: [The meaning of the text of Article 286 of the Code of Criminal Procedure is that the witness is not prevented from testifying about the facts they saw or heard, even if the person against whom they testify is a relative or spouse, but they are exempted from giving testimony if they so wishes. As for the text of Article 67 of the Evidence Law, it prevents one of the spouses from disclosing without the consent of the other what they may have informed them of during the marriage, even after its expiration, except in the case of a lawsuit filed by one of them due to a felony or misdemeanor committed by them against the other. Since it is clear from the attached details that these two witnesses did not request to be exempted from giving testimony or objected to giving it, and it was established from the records of the contested judgment that they testified to what they saw or heard during the incident, then their testimony is beyond invalidity and it is valid in law to base the judgment on To their sayings.[2909]

The prohibition stipulated in the Evidence Law that neither spouse may disclose, without the consent of the other, what was communicated to him/her during the marriage, even after its separation, only applies in the event that a lawsuit is filed by one of them against the other or a lawsuit is filed against one of them due to a felony or misdemeanor committed by him/her against the other. However, if the felony or misdemeanor was committed by one of the spouses against another, this prohibition does not apply. Article No. 67 of the Evidence Law states that: “Neither spouse may disclose, without the consent of the other, what was communicated to him/her during the marriage, even after its separation, except in the event that a lawsuit is filed by one of them against the other or a lawsuit is filed against one of them due to a felony or misdemeanor committed by him/her against the other. ”[2910]

The Court of Cassation ruled that the testimony of the accused’s wife against them in the crime of killing her grandmother was valid, as long as the accused did not show their dissatisfaction with that during the investigations.[2911]

Exemption from testimony is a license granted to a relative or spouse and is subject to their request. It is permissible to hear their testimony and rely on it as long as they do not object to its performance.[2912]

The failure of the investigator to alert the witness to her right to refrain from testifying against her husband does not invalidate the investigations because this permission is granted to the wife, so if she wants to use it, she must express her desire to use this permission that the law has granted her. However, if she does not do so, her testimony is valid in law, and it is permissible to rely on it as evidence.[2913]

The exemption from testifying against a relative or spouse is also conditional upon the witness having learned of that testimony from the husband or relative. If they learned of it through

---

([2908] Articles Nos. 119 and 208 of the Code of Criminal Procedure.

([2909] Appeal No. 61170 of 74 Q issued in the session of July 21, 2005 (unpublished).

([2910] Article No. 67 of the Law of Evidence in Civil and Commercial Matters.

([2911]) Appeal No. 17203 of 83 Q issued in the session of May 12, 2014 and published in Technical Office Book No. 65, Page No. 369, Rule No. 41.

([2912]) Appeal No. 3506 of 78 Q issued in the session of December 17, 2008 and published in Technical Office Book No. 59, Page No. 557, Rule No. 99.

([2913]) Appeal No. 6281 of 53 Q issued in the session of March 27, 1984 and published in the first part of the Technical Office Book No. 35, page No. 353, rule No. 76, Appeal No. 826 of 48 Q issued in the session of February 6, 1978 and published in the first part of the Technical Office Book No. 29, page No. 136, rule No. 25.

another source, there is no room for applying for that exemption. The Court of Cassation ruled that: [The meaning of Article 286 of the Code of Criminal Procedure is that the witness is not prevented from testifying about the facts they saw or heard, even if the person testifying against them is a relative or spouse. Rather, they are exempted from testifying if they wishes. As for Article 209 of the Code of Civil Procedure, it prevents one of the spouses from disclosing, without the consent of the other, what they may have informed them of during the marriage, even after its expiration, except in the case of a lawsuit filed by one of them due to a felony or misdemeanor committed by them against the other. Since it is proven from what the judgment stated that what the appellant's wife testified to was not conveyed to her by her husband, but rather she testified to what she saw and heard, her testimony is beyond invalidity, and it is valid in law for the judgment to be based on her statement.[2914]

20-1-14 Preventing a witness from testifying or exempting them from giving testimony

The rules stipulated in the Code of Civil Procedure apply before criminal courts to prevent a witness from giving testimony or to exempt them from giving it.[2915]

The Evidence Law stipulates that: "Employees and those charged with public service shall not testify, even after they have left work, about information that came to their knowledge during their work that was not published legally and that the competent authority did not authorize its broadcast. However, this authority may authorize them to testify based on a request from the court or one of the parties. "[2916]

It also stipulated that: "Any lawyer, agent, doctor, or other person who learns of an incident or information through their profession or trade may not disclose it, even after the end of their service or the loss of their position, unless mentioning it to them was intended to commit a felony or misdemeanor."

However, the aforementioned persons must testify to that fact or information whenever requested to do so by the person who confided it to them, provided that this does not prejudice the provisions of the laws pertaining to them. "[2917]

The Law of Advocacy stipulates that: "The lawyer must refrain from testifying about facts or information that they have learned through their profession if they is asked to do so by the person who informed them of them, unless they mentioned them to them with the intent to commit a felony or misdemeanor. "[2918]

However, the Court of Cassation stipulated that the testimony of the defendant's lawyer against their client should be invalid if their statements were in the same case brought before the court or in a case related to it. However, if the lawyer was the appellant's representative in a case other than the case in which the defendant was being tried, then this restriction would be irrelevant. It ruled that: [It is established that although the court may not rely on any of the lawyer's statements in convicting the defendant, otherwise its ruling would be invalid because it was based on invalid evidence derived from the statements of their lawyer, the condition for ruling this invalidity is that what the ruling was based on was derived from the lawyer's statements in the same case brought before the court or in a case related to it, as stated in

---

([2914]) Appeal No. 1970 of 30 Q issued in the session of March 7, 1961 and published in the first part of the Technical Office Book No. 12, page No. 324, Rule No. 62, Appeal No. 1194 of 29 Q issued in the session of February 2, 1960 and published in the first part of the Technical Office Book No. 11, page No. 128, Rule No. 26.

([2915]) Articles Nos. 116 and 287 of the Code of Criminal Procedure.

([2916]) Article 65 of the Law of Evidence in Civil and Commercial Matters.

([2917] Article 66 of the Law of Evidence in Civil and Commercial Matters.

([2918] Article No. 65 of the Lawyers' Law.

Article 32 of the Penal Code. However, if the lawyer was the appellant's representative in a case other than the case in which the defendant was being tried, then this restriction would be irrelevant. It was evident from the minutes of the trial sessions that the aforementioned lawyer was not the appellant's defender in the present case, and therefore did not make statements in it that it can be said that the appealed ruling relied on them in its ruling of conviction. Therefore, what the appellant raises in this regard It is not correct.[2919]

It ruled that: [It is established that Article 65 of the Lawyers' Law stipulates that "the lawyer must refrain from testifying about facts or information that they learned through their profession if requested to do so by the person who informed them of them, unless they mentioned them to them with the intention of committing a felony or misdemeanor." This is consistent with what is stipulated in Article 66 of Law No. 25 of 1968 promulgating the Evidence Law, which states that the lawyer must testify about facts that they saw or heard when requested to do so by the person who confided in them to him. However, they is prohibited from disclosing without the consent of their client what they may have informed them of due to their profession, and whenever that was the case, and it was established from the minutes of the trial session and the records of the contested judgment that the lawyer who testified about what they learned and heard about a fact related to the case based on the request of the civil rights plaintiffs and without objection from the accused appellant to that, their testimony is immune from invalidity and the judgment may be based on it] ([2920]

The Court also ruled: [The principle of giving testimony before the judiciary when its conditions are met is that it is a duty required to reach the recognition of the truth in disputes and to prove or deny the accusation. The witness is not exempted from providing everything they knows and does not withhold except in the special cases specified by law, including the prohibition of testimony to disclose a professional secret stipulated in Article 207 of the Code of Civil Procedure, unless the person who confided it to them is asked to disclose it. The witness must then give testimony in accordance with Article 208 of that law, the text of which indicates that the prohibition of testimony in this case is not an absolute prohibition. Modern legislation tends to give priority to the public interest in reaching the truth, especially if it concerns the interest of the group. For example, the French legislator added a second paragraph to Article 378 of the French Penal Code by decree-law issued on July 29, 1939, in which they permitted doctors and other professionals, if called upon to testify, to disclose any secrets they have in abortion incidents without being subject to punishment. The article stated: 622 of the Italian Penal Code stipulates that the disclosure of professional secrets is punishable unless such disclosure is for a legitimate reason. The last paragraph of Article 321 of the Swiss law issued on December 21, 1937 stipulates that the prohibition of the disclosure of professional secrets does not prevent professionals from being obligated to give testimony before the courts. Since this was the case, and since the legislator, when they enacted Article 310 of the Penal Code, did not generalize its ruling, but rather specified the text to the category of doctors, surgeons, pharmacists, midwives, and others, and specified the circumstances in which they are prohibited from disclosing secrets that their owner is forced to entrust them with, considering that the nature of their work requires this disclosure, and they are in the process of providing their services to the public, it is not correct to expand this exception by extending its ruling to those other than those mentioned in the text, such as servants, clerks, private employees, and the like, since their employers are not forced to inform them of the acts they commit that violate the law] ([2921]

([2919] Appeal No. 6067 of 79 Q issued in the session of December 16, 2009 (unpublished).
([2920] Appeal No. 69622 of 74 Q issued in the session of October 22, 2012 and published in Technical Office Book No. 63, Page No. 558, Rule No. 97.
([2921] Appeal No. 884 of 22 Q issued in the session of July 2, 1953 and published in Part Three of Technical Office Book No. 4, Page No. 1064, Rule No. 370.

20-1-15 Hearing the testimony of the civil rights plaintiff

The investigator may hear the civil rights claimant as a witness and take an oath.[2922]

There is no legal impediment to preventing the victim, even if they did not file a civil suit, from being a witness and taking an oath. They are not an opponent of the accused and is not a party to the criminal case, and they may be the most important witness in it. There is no impediment to the court accepting their testimony and then assessing it as it deserves and relying on it in forming its conviction.[2923]

It is clear from the text of Article 288 of the Code of Criminal Procedure that hearing the statements of the civil rights claimant is not obligatory for the investigator. The Court of Cassation ruled that the civil rights claimant is heard as a witness and takes an oath. If the accused does not request hearing the testimony of the civil rights claimant in accordance with the provisions of this article, then they will not have the right - subsequently - to complain to the court for not taking this procedure that they did not request from it.[2924]

The civil plaintiff's oath was made a guarantee for the accused against whom the testimony was testified. Therefore, the civil plaintiff who did not take the oath and whose testimony was not accepted by the court against the accused cannot complain about the procedures because they did not take the oath.[2925]

20-1-16 Dispensing with hearing witnesses and reading their statements in the session

The court may decide to read the testimony given in the preliminary investigation, in the evidence collection report, or before the expert, if it is impossible to hear the witness for any reason.[2926]

The law guaranteed the defense the freedom to express whatever it deems useful in terms of statements, requests, and arguments before the court required to adjudicate the case, and at the same time to request the court to hear what it expresses to it and respond to it if it sees fit to accept it or reject it, with a statement of what justifies not responding to it. The Criminal Procedures Law guaranteed the inclusion of provisions related to the principle of oral pleading, the purpose of which was to present the elements of the case and make them subject to the consideration of the opponents in the session to examine and discuss them orally before the court according to what the opponents see as achieving their interest in this regard. The principle in criminal rulings was to be based on the pleading that takes place before the judge

---

([2922] Articles No. 116 and 288 of the Code of Criminal Procedure, and Article No. 528 of the Judicial Instructions of the Public Prosecution.

([2923]) Appeal No. 5587 of 80 Q issued in the session of January 17, 2011 (unpublished), Appeal No. 1350 of 42 Q issued in the session of January 22, 1973 and published in the first part of the Technical Office Book No. 24, page No. 90, Rule No. 22, Appeal No. 145 of 42 Q issued in the session of December 24, 1972 and published in the third part of the Technical Office Book No. 23, page No. 1431, Rule No. 322, Appeal No. 192 of 7 Q issued in the session of December 21, 1931 and published in the Legal Rules Collection, Book Four, Part One, page No. 24, Rule No. 24.

([2924]) Appeal No. 18327 of 62 Q issued in the session of May 27, 1997 and published in the first part of the Technical Office Book No. 48, page No. 663, rule No. 99, Appeal No. 589 of 59 Q issued in the session of December 27, 1990 and published in the first part of the Technical Office Book No. 41, page No. 1114, rule No. 201, Appeal No. 1627 of 50 Q issued in the session of January 8, 1981 and published in the first part of the Technical Office Book No. 32, page No. 32, rule No. 2, Appeal No. 826 of 48 Q issued in the session of February 6, 1978 and published in the first part of the Technical Office Book No. 29, page No. 136, rule No. 25, Appeal No. 149 of 37 Q issued in the session of March 27, 1967 And published in the first part of the Technical Office Book No. 18, page No. 449, rule No. 85.

([2925] Appeal No. 79 of 23 Q issued in the session of March 30, 1953 and published in the second part of the Technical Office Book No. 4, page No. 662, rule No. 240.

([2926] Article No. 289 of the Code of Criminal Procedure.

who issued the ruling and on the oral investigation that they conducted himself, as the basis of the criminal trial is the freedom of the judge to form their belief from the oral investigation that they conducts himself and in which they hears the witnesses as long as hearing them is possible, independently in obtaining this belief from the confidence that the witness's statements suggest or do not suggest, and the court may not encroach on this principle stipulated in Article 289 of the Criminal Procedures Law, which The law assumes it in the rules of trial for any reason whatsoever, unless it is impossible to hear the witness for any reason, or the accused or their defense accepts that explicitly or implicitly. If the defense insists on hearing and discussing the only prosecution witness in the case, and the court rejects this request without addressing it in its ruling and justifying the reason for rejecting it with valid reasons, and does not ask the accused and their attorney to complete their argument and present their request and other aspects of defense, then it will have violated the principle of oral pleading and the appellant's right to defense.[2927]

The principle in criminal judgments is that they are based on the pleadings that take place before the same judge who issued the judgment, and on the oral investigation that they conducted himself, since the basis of the trial is the freedom of the judge to form their belief from the oral investigation that they conducts and in which they hears the witnesses as long as hearing them is possible, obtaining this belief from the confidence that the witness's statements suggest or do not suggest, and from the effect that these statements have on their soul while they listens to them, which is based on the court that decided the case must hear the witness as long as hearing them is possible, and the accused or their defense lawyer did not waive that explicitly or implicitly, because examining the witness's psychological state at the time of giving testimony, their integrity, frankness, or evasiveness and confusion are among the matters that help the judge to assess their statements properly.[2928]

However, the law does not require, when changing the court panel, that the trial procedures be repeated or witnesses be heard before the new panel unless the accused or their defense attorney insists on that.[2929]

Although the principle is that a criminal trial must be based on the oral investigation conducted by the court in the session and in which it hears witnesses as long as this is possible, it is valid for it to decide to read the statements of witnesses if it is impossible to hear their testimony or if the accused or their defense accepts this, whether this acceptance is explicit or implicit by the behavior of the accused or their defense in a way that indicates it, the principle is that witnesses must be heard, but this rule has two restrictions: the first is that hearing the witness should not

---

([2927]) Appeal No. 4274 of 75 Q issued in the session of October 23, 2012 and published in Technical Office Book No. 63, page No. 565, Rule No. 98, Appeal No. 20676 of 61 Q issued in the session of October 14, 1993 and published in the first part of Technical Office Book No. 44, page No. 814, Rule No. 126.

([2928]) Appeal No. 1565 of 81 Q issued in the session of October 7, 2012 and published in the Technical Office Book No. 63, page No. 433, rule No. 75, Appeal No. 76701 of 75 Q issued in the session of November 26, 2006 and published in the Technical Office Book No. 57, page No. 913, rule No. 102, Appeal No. 10228 of 71 Q issued in the session of November 15, 2001 and published in the Technical Office Book No. 52, page No. 861, rule No. 165, Appeal No. 23107 of 67 Q issued in the session of December 14, 1999 and published in the first part of the Technical Office Book No. 50, page No. 680, rule No. 151, Appeal No. 17463 of 64 Q issued in the session of September 29, 1996 And published in the first part of the Technical Office Book No. 47, page No. 909, rule No. 129, appeal No. 154 for year 59 Q issued in the session of April 6, 1989 and published in the first part of the Technical Office Book No. 40, page No. 661, rule No. 112, appeal No. 4578 for year 57 Q issued in the session of January 4, 1988 and published in the first part of the Technical Office Book No. 39, page No. 70, rule No. 4, appeal No. 1605 for year 55 Q issued in the session of October 2, 1985 and published in the first part of the Technical Office Book No. 36, page No. 801, rule No. 141, appeal No. 735 for year 53 Q issued in the session of May 18, 1983 and published in the first part of the Technical Office Book No. 34, page No. 650, rule No. 131, appeal No. 1370 of 41 BC issued in the session of February 14, 1972 and published in the first part of the Technical Office Book No. 23, page No. 156, Rule No. 39.

([2929]) Appeal No. 3765 of 58 Q issued in the session of November 9, 1988 and published in the first part of the Technical Office Book No. 39, page No. 1026, rule No. 155, Appeal No. 270 of 44 Q issued in the session of April 7, 1974 and published in the first part of the Technical Office Book No. 25, page No. 390, rule No. 84.

be impossible; and the second is that the accused or their defense insists on hearing him, so that it is not assumed that they has accepted explicitly or implicitly that their statements in the investigation are sufficient.[2930]

([2930]) Appeal No. 5249 of Judicial Year 62, issued on April 19, 1994, and published in Volume 1 of the Technical Office Book No. 45, page 541, Case No. 88; Appeal No. 6854 of Judicial Year 62, issued on March 8, 1994, and published in Volume 1 of the Technical Office Book No. 45, page 381, Case No. 55; Appeal No. 7098 of Judicial Year 55, issued on March 18, 1986, and published in Volume 1 of the Technical Office Book No. 37, page 419, Case No. 86; Appeal No. 1089 of Judicial Year 45, issued on October 20, 1975, and published in Volume 1 of the Technical Office Book No. 26, page 615, Case No. 138; Appeal No. 12550 of Judicial Year 86, issued on April 8, 2018; Appeal No. 8268 of Judicial Year 87, issued on June 15, 2019; Appeal No. 42222 of Judicial Year 85, issued on February 25, 2018; Appeal No. 10284 of Judicial Year 85, issued on November 25, 2017; Appeal No. 29658 of Judicial Year 86, issued on June 7, 2017; Appeal No. 14963 of Judicial Year 86, issued on March 14, 2017; Appeal No. 12673 of Judicial Year 85, issued on September 3, 2016; Appeal No. 7205 of Judicial Year 85, issued on June 1, 2016; Appeal No. 10175 of Judicial Year 85, issued on January 14, 2016; Appeal No. 28620 of Judicial Year 84, issued on June 14, 2015; Appeal No. 13703 of Judicial Year 84, issued on May 6, 2015, and published in Volume 66 of the Technical Office Book, page 437, Case No. 61; Appeal No. 26166 of Judicial Year 84, issued on April 8, 2015; Appeal No. 1249 of Judicial Year 82, issued on April 7, 2014; Appeal No. 4898 of Judicial Year 82, issued on December 1, 2013, and published in Volume 64 of the Technical Office Book, page 967, Case No. 148; Appeal No. 1537 of Judicial Year 78, issued on November 4, 2013; Appeal No. 3233 of Judicial Year 81, issued on November 18, 2012; Appeal No. 5932 of Judicial Year 81, issued on October 20, 2012; Appeal No. 18292 of Judicial Year 75, issued on November 13, 2012, and published in Volume 63 of the Technical Office Book, page 678, Case No. 121; Appeal No. 4476 of Judicial Year 81, issued on July 4, 2012; Appeal No. 7956 of Judicial Year 81, issued on May 28, 2012; Appeal No. 8015 of Judicial Year 81, issued on March 20, 2012, and published in Volume 63 of the Technical Office Book, page 308, Case No. 48; Appeal No. 13368 of Judicial Year 80, issued on December 7, 2011, and published in Volume 62 of the Technical Office Book, page 435, Case No. 72; Appeal No. 2180 of Judicial Year 80, issued on July 27, 2010; Appeal No. 15289 of Judicial Year 73, issued on March 8, 2010; Appeal No. 31092 of Judicial Year 73, issued on March 8, 2010; Appeal No. 3386 of Judicial Year 79, issued on December 3, 2009, and published in Volume 60 of the Technical Office Book, page 530, Case No. 69; Appeal No. 18765 of Judicial Year 71, issued on January 26, 2009, and published in Volume 60 of the Technical Office Book, page 96, Case No. 12; Appeal No. 5813 of Judicial Year 73, issued on November 12, 2008, and published in Volume 59 of the Technical Office Book, page 497, Case No. 92; Appeal No. 55677 of Judicial Year 75, issued on November 5, 2008, and published in Volume 59 of the Technical Office Book, page 479, Case No. 88; Appeal No. 5187 of Judicial Year 71, issued on October 7, 2008; Appeal No. 37251 of Judicial Year 74, issued on September 7, 2008; Appeal No. 14617 of Judicial Year 71, issued on December 6, 2007; Appeal No. 13613 of Judicial Year 71, issued on December 28, 2006; Appeal No. 20763 of Judicial Year 70, issued on September 7, 2006; Appeal No. 10834 of Judicial Year 65, issued on February 20, 2006, and published in Volume 57 of the Technical Office Book, page 288, Case No. 30; Appeal No. 17668 of Judicial Year 66, issued on October 20, 2005; Appeal No. 13311 of Judicial Year 67, issued on September 22, 2005; Appeal No. 22505 of Judicial Year 69, issued on April 6, 2004; Appeal No. 13786 of Judicial Year 69, issued on April 1, 2004; Appeal No. 23969 of Judicial Year 65, issued on December 4, 2003; Appeal No. 21700 of Judicial Year 72, issued on October 2, 2003; Appeal No. 39618 of Judicial Year 72, issued on January 16, 2003, and published in Volume 54 of the Technical Office Book, page 112, Case No. 11; Appeal No. 26675 of Judicial Year 69, issued on April 18, 2002, and published in Volume 53 of the Technical Office Book, page 670, Case No. 111; Appeal No. 4917 of Judicial Year 69, issued on April 3, 2002, and published in Volume 53 of the Technical Office Book, page 577, Case No. 94. Appeal No. 20185 of Judicial Year 62, issued on March 21, 2002; Appeal No. 6651 of Judicial Year 63, issued on January 3, 2002; Appeal No. 20524 of Judicial Year 69, issued on December 20, 2001; Appeal No. 29802 of Judicial Year 68, issued on November 1, 2001; Appeal No. 7253 of Judicial Year 61, issued on July 2, 2001; Appeal No. 11341 of Judicial Year 68, issued on November 23, 2000; Appeal No. 4575 of Judicial Year 65, issued on February 12, 2000, and published in Volume 51 of the Technical Office Book, page 167, Case No. 31; Appeal No. 15144 of Judicial Year 64, issued on January 24, 2000, and published in Volume 51 of the Technical Office Book, page 73, Case No. 11; Appeal No. 23107 of Judicial Year 67, issued on December 14, 1999, and published in Volume 1 of the Technical Office Book No. 50, page 680, Case No. 151; Appeal No. 2526 of Judicial Year 69, issued on September 19, 1999; Appeal No. 11286 of Judicial Year 67, issued on May 10, 1999, and published in Volume 1 of the Technical Office Book No. 50, page 290, Case No. 68; Appeal No. 19120 of Judicial Year 66, issued on December 1, 1998, and published in Volume 1 of the Technical Office Book No. 49, page 1353, Case No. 194; Appeal No. 20107 of Judicial Year 66, issued on November 3, 1998, and published in Volume 1 of the Technical Office Book No. 49, page 1190, Case No. 164; Appeal No. 4291 of Judicial Year 66, issued on March 8, 1998, and published in Volume 1 of the Technical Office Book No. 49, page 368, Case No. 51; Appeal No. 7767 of Judicial Year 63, issued on January 8, 1998, and published in Volume 1 of the Technical Office Book No. 49, page 63, Case No. 7; Appeal No. 5858 of Judicial Year 65, issued on May 4, 1997, and published in Volume 1 of the Technical Office Book No. 48, page 493, Case No. 72; Appeal No. 17463 of Judicial Year 64, issued on September 29, 1996, and published in Volume 1 of the Technical Office Book No. 47, page 909, Case No. 129; Appeal No. 16287 of Judicial Year 64, issued on September 10, 1996, and published in Volume 1 of the Technical Office Book No. 47, page 857, Case No. 124; Appeal No. 19551 of Judicial Year 64, issued on April 6, 1995, and published in Volume 1 of the Technical Office Book No. 46, page 677, Case No. 102; Appeal No. 3048 of Judicial Year 63, issued on February 12, 1995, and published in Volume 1 of the Technical Office Book No. 46, page 353,

Case No. 52; Appeal No. 11173 of Judicial Year 62, issued on December 4, 1994, and published in Volume 1 of the Technical Office Book No. 45, page 1059, Case No. 167; Appeal No. 7618 of Judicial Year 62, issued on April 5, 1994, and published in Volume 1 of the Technical Office Book No. 45, page 473, Case No. 75; Appeal No. 23075 of Judicial Year 61, issued on November 15, 1993, and published in Volume 1 of the Technical Office Book No. 44, page 988, Case No. 154; Appeal No. 3279 of Judicial Year 62, issued on October 18, 1993, and published in Volume 1 of the Technical Office Book No. 44, page 838, Case No. 129; Appeal No. 6301 of Judicial Year 61, issued on June 9, 1993, and published in Volume 1 of the Technical Office Book No. 44, page 585, Case No. 87; Appeal No. 2510 of Judicial Year 61, issued on December 3, 1992, and published in Volume 1 of the Technical Office Book No. 43, page 1110, Case No. 173; Appeal No. 16256 of Judicial Year 60, issued on February 4, 1992, and published in Volume 1 of the Technical Office Book No. 43, page 191, Case No. 19; Appeal No. 54 of Judicial Year 60, issued on January 15, 1991, and published in Volume 1 of the Technical Office Book No. 42, page 67, Case No. 12; Appeal No. 29282 of Judicial Year 59, issued on January 1, 1991, and published in Volume 1 of the Technical Office Book No. 42, page 9, Case No. 2، Appeal No. 1563 of Judicial Year 58, issued on April 30, 1989, and published in Volume 1 of the Technical Office Book No. 40, page 553, Case No. 91; Appeal No. 4060 of Judicial Year 57, issued on February 10, 1988, and published in Volume 1 of the Technical Office Book No. 39, page 269, Case No. 35; Appeal No. 4578 of Judicial Year 57, issued on January 4, 1988, and published in Volume 1 of the Technical Office Book No. 39, page 70, Case No. 4; Appeal No. 3861 of Judicial Year 57, issued on December 27, 1987, and published in Volume 2 of the Technical Office Book No. 38, page 1156, Case No. 211; Appeal No. 5951 of Judicial Year 56, issued on March 1, 1987, and published in Volume 1 of the Technical Office Book No. 38, page 353, Case No. 54; Appeal No. 1011 of Judicial Year 54, issued on November 26, 1984, and published in Volume 1 of the Technical Office Book No. 35, page 829, Case No. 187; Appeal No. 258 of Judicial Year 54, issued on October 9, 1984, and published in Volume 1 of the Technical Office Book No. 35, page 651, Case No. 142; Appeal No. 6727 of Judicial Year 53, issued on February 28, 1984, and published in Volume 1 of the Technical Office Book No. 35, page 213, Case No. 44; Appeal No. 6062 of Judicial Year 53, issued on February 14, 1984, and published in Volume 1 of the Technical Office Book No. 35, page 149, Case No. 30; Appeal No. 577 of Judicial Year 53, issued on June 1, 1983, and published in Volume 1 of the Technical Office Book No. 34, page 714, Case No. 144; Appeal No. 6780 of Judicial Year 52, issued on May 12, 1983, and published in Volume 1 of the Technical Office Book No. 34, page 630, Case No. 127; Appeal No. 1656 of Judicial Year 52, issued on May 11, 1982, and published in Volume 1 of the Technical Office Book No. 33, page 591, Case No. 119; Appeal No. 1265 of Judicial Year 52, issued on May 5, 1982, and published in Volume 1 of the Technical Office Book No. 33, page 547, Case No. 112; Appeal No. 1242 of Judicial Year 52, issued on April 29, 1982, and published in Volume 1 of the Technical Office Book No. 33, page 540, Case No. 110; Appeal No. 1599 of Judicial Year 52, issued on April 20, 1982, and published in Volume 1 of the Technical Office Book No. 33, page 513, Case No. 104; Appeal No. 5533 of Judicial Year 51, issued on March 6, 1982, and published in Volume 1 of the Technical Office Book No. 33, page 295, Case No. 61; Appeal No. 2147 of Judicial Year 51, issued on December 17, 1981, and published in Volume 1 of the Technical Office Book No. 32, page 1131, Case No. 202; Appeal No. 597 of Judicial Year 50, issued on December 25, 1980, and published in Volume 1 of the Technical Office Book No. 31, page 1126, Case No. 217; Appeal No. 397 of Judicial Year 50, issued on June 8, 1980, and published in Volume 1 of the Technical Office Book No. 31, page 731, Case No. 141; Appeal No. 1158 of Judicial Year 49, issued on December 13, 1979, and published in Volume 1 of the Technical Office Book No. 30, page 932, Case No. 200; Appeal No. 294 of Judicial Year 49, issued on June 14, 1979, and published in Volume 1 of the Technical Office Book No. 30, page 685, Case No. 146; Appeal No. 2034 of Judicial Year 48, issued on May 21, 1979, and published in Volume 1 of the Technical Office Book No. 30, page 598, Case No. 127; Appeal No. 1692 of Judicial Year 48, issued on February 8, 1979, and published in Volume 1 of the Technical Office Book No. 30, page 226, Case No. 45; Appeal No. 1326 of Judicial Year 48, issued on December 10, 1978, and published in Volume 1 of the Technical Office Book No. 29, page 910, Case No. 189; Appeal No. 781 of Judicial Year 48, issued on December 7, 1978, and published in Volume 1 of the Technical Office Book No. 29, page 871, Case No. 181، Appeal No. 301 of 48 Q, issued on June 19, 1978, and published in Part 1 of the Technical Office Book No. 29, Page 625, Rule 121; Appeal No. 78 of 48 Q, issued on April 10, 1978, and published in Part 1 of the Technical Office Book No. 29, Page 393, Rule 75; Appeal No. 638 of 47 Q, issued on November 6, 1977, and published in Part 1 of the Technical Office Book No. 28, Page 909, Rule 189; Appeal No. 577 of 47 Q, issued on October 17, 1977, and published in Part 1 of the Technical Office Book No. 28, Page 865, Rule 179; Appeal No. 829 of 46 Q, issued on January 3, 1977, and published in Part 1 of the Technical Office Book No. 28, Page 25, Rule 4; Appeal No. 886 of 46 Q, issued on December 27, 1976, and published in Part 1 of the Technical Office Book No. 27, Page 1004, Rule 225; Appeal No. 896 of 46 Q, issued on December 27, 1976, and published in Part 1 of the Technical Office Book No. 27, Page 1021, Rule 230; Appeal No. 842 of 46 Q, issued on December 19, 1976, and published in Part 1 of the Technical Office Book No. 27, Page 948, Rule 215; Appeal No. 1481 of 45 Q, issued on January 5, 1976, and published in Part 1 of the Technical Office Book No. 27, Page 33, Rule 4; Appeal No. 1305 of 45 Q, issued on December 21, 1975, and published in Part 1 of the Technical Office Book No. 26, Page 839, Rule 185; Appeal No. 1285 of 45 Q, issued on December 7, 1975, and published in Part 1 of the Technical Office Book No. 26, Page 821, Rule 181; Appeal No. 1093 of 45 Q, issued on October 26, 1975, and published in Part 1 of the Technical Office Book No. 26, Page 622, Rule 139; Appeal No. 319 of 45 Q, issued on May 4, 1975, and published in Part 1 of the Technical Office Book No. 26, Page 375, Rule 86; Appeal No. 1766 of 44 Q, issued on January 12, 1975, and published in Part 1 of the Technical Office Book No. 26, Page 31, Rule 8; Appeal No. 867 of 44 Q, issued on November 18, 1974, and published in Part 1 of the Technical Office Book No. 25, Page 750, Rule 162; Appeal No. 486 of 44 Q, issued on May 26, 1974, and published in Part 1 of the Technical Office Book No. 25, Page 514, Rule 110; Appeal No. 378 of 44 Q, issued on April 28, 1974, and published in Part 1 of the Technical Office Book No. 25, Page 430, Rule 92; Appeal No. 1268 of 43 Q,

The accused’s failure to insist on hearing witnesses constitutes an implicit waiver of hearing them.[2931]

This means that if the witness cannot appear before him, their testimony is read out so that it can be the subject of discussion between the prosecution and the defense, and so that the accused is aware that it is being presented against them as evidence against him. If the

---

issued on February 3, 1974, and published in Part 1 of the Technical Office Book No. 25, Page 91, Rule 20; Appeal No. 1164 of 43 Q, issued on December 31, 1973, and published in Part 3 of the Technical Office Book No. 24, Page 1309, Rule 267; Appeal No. 1018 of 43 Q, issued on December 16, 1973, and published in Part 3 of the Technical Office Book No. 24, Page 1236, Rule 251; Appeal No. 996 of 43 Q, issued on December 10, 1973, and published in Part 3 of the Technical Office Book No. 24, Page 1191, Rule 242; Appeal No. 241 of 43 Q, issued on June 3, 1973, and published in Part 2 of the Technical Office Book No. 24, Page 696, Rule 144; Appeal No. 409 of 43 Q, issued on May 28, 1973, and published in Part 2 of the Technical Office Book No. 24, Page 684, Rule 142; Appeal No. 190 of 43 Q, issued on April 16, 1973, and published in Part 2 of the Technical Office Book No. 24, Page 525, Rule 109; Appeal No. 40 of 43 Q, issued on March 4, 1973, and published in Part 1 of the Technical Office Book No. 24, Page 293, Rule 64; Appeal No. 926 of 42 Q, issued on November 19, 1972, and published in Part 3 of the Technical Office Book No. 23, Page 1224, Rule 275; Appeal No. 929 of 42 Q, issued on November 19, 1972, and published in Part 3 of the Technical Office Book No. 23, Page 1240, Rule 277; Appeal No. 942 of 42 Q, issued on November 12, 1972, and published in Part 3 of the Technical Office Book No. 23, Page 1179, Rule 267; Appeal No. 303 of 42 Q, issued on May 8, 1972, and published in Part 2 of the Technical Office Book No. 23, Page 661, Rule 149; Appeal No. 259 of 42 Q, issued on April 30, 1972, and published in Part 2 of the Technical Office Book No. 23, Page 632, Rule 142; Appeal No. 66 of 42 Q, issued on March 5, 1972, and published in Part 1 of the Technical Office Book No. 23, Page 291, Rule 68; Appeal No. 666 of 41 Q, issued on December 6, 1971, and published in Part 3 of the Technical Office Book No. 22, Page 713, Rule 173; Appeal No. 583 of 41 Q, issued on November 15, 1971, and published in Part 3 of the Technical Office Book No. 22, Page 659, Rule 160; Appeal No. 1811 of 40 Q, issued on January 11, 1971, and published in Part 1 of the Technical Office Book No. 22, Page 45, Rule 12; Appeal No. 1342 of 40 Q, issued on December 14, 1970, and published in Part 3 of the Technical Office Book No. 21, Page 1221, Rule 295; Appeal No. 571 of 40 Q, issued on June 8, 1970, and published in Part 2 of the Technical Office Book No. 21, Page 848, Rule 200; Appeal No. 125 of 40 Q, issued on March 2, 1970, and published in Part 1 of the Technical Office Book No. 21, Page 344, Rule 86; Appeal No. 1594 of 39 Q, issued on December 1, 1969, and published in Part 3 of the Technical Office Book No. 20, Page 1367, Rule 278، Appeal No. 1584 of 39 Q, issued on November 24, 1969, and published in Part 3 of the Technical Office Book No. 20, Page 1321, Rule 269; Appeal No. 1238 of 39 Q, issued on November 3, 1969, and published in Part 3 of the Technical Office Book No. 20, Page 1212, Rule 242; Appeal No. 1392 of 39 Q, issued on October 20, 1969, and published in Part 3 of the Technical Office Book No. 20, Page 1129, Rule 222; Appeal No. 1391 of 39 Q, issued on October 13, 1969, and published in Part 3 of the Technical Office Book No. 20, Page 1069, Rule 210; Appeal No. 960 of 39 Q, issued on June 30, 1969, and published in Part 2 of the Technical Office Book No. 20, Page 976, Rule 193; Appeal No. 61 of 39 Q, issued on April 28, 1969, and published in Part 2 of the Technical Office Book No. 20, Page 587, Rule 121; Appeal No. 522 of 39 Q, issued on April 28, 1969, and published in Part 2 of the Technical Office Book No. 20, Page 616, Rule 126; Appeal No. 2202 of 38 Q, issued on April 7, 1969, and published in Part 2 of the Technical Office Book No. 20, Page 449, Rule 95; Appeal No. 1771 of 38 Q, issued on January 13, 1969, and published in Part 1 of the Technical Office Book No. 20, Page 100, Rule 22; Appeal No. 1915 of 38 Q, issued on January 6, 1969, and published in Part 1 of the Technical Office Book No. 20, Page 29, Rule 7; Appeal No. 1723 of 38 Q, issued on October 14, 1968, and published in Part 3 of the Technical Office Book No. 19, Page 835, Rule 165; Appeal No. 612 of 38 Q, issued on June 3, 1968, and published in Part 2 of the Technical Office Book No. 19, Page 622, Rule 124; Appeal No. 706 of 37 Q, issued on June 5, 1967, and published in Part 2 of the Technical Office Book No. 18, Page 753, Rule 150; Appeal No. 1879 of 36 Q, issued on May 16, 1967, and published in Part 2 of the Technical Office Book No. 18, Page 659, Rule 129; Appeal No. 424 of 37 Q, issued on April 10, 1967, and published in Part 2 of the Technical Office Book No. 18, Page 509, Rule 97; Appeal No. 182 of 37 Q, issued on April 4, 1967, and published in Part 2 of the Technical Office Book No. 18, Page 496, Rule 94; Appeal No. 2082 of 36 Q, issued on February 27, 1967, and published in Part 1 of the Technical Office Book No. 18, Page 287, Rule 56; Appeal No. 1436 of 36 Q, issued on October 24, 1966, and published in Part 3 of the Technical Office Book No. 17, Page 1011, Rule 189; Appeal No. 735 of 36 Q, issued on May 9, 1966, and published in Part 2 of the Technical Office Book No. 17, Page 582, Rule 104; Appeal No. 1019 of 33 Q, issued on January 20, 1964, and published in Part 1 of the Technical Office Book No. 15, Page 66, Rule 14; Appeal No. 2647 of 32 Q, issued on April 29, 1963, and published in Part 2 of the Technical Office Book No. 14, Page 359, Rule 72; Appeal No. 3 of 33 Q, issued on March 26, 1963, and published in Part 1 of the Technical Office Book No. 14, Page 254, Rule 52; Appeal No. 2599 of 32 Q, issued on February 5, 1963, and published in Part 1 of the Technical Office Book No. 14, Page 97, Rule 21; Appeal No. 2169 of 32 Q, issued on January 29, 1963, and published in Part 1 of the Technical Office Book No. 14, Page 58, Rule 13; Appeal No. 1473 of 30 Q, issued on December 26, 1960, and published in Part 3 of the Technical Office Book No. 11, Page 954, Rule 186; Appeal No. 1615 of 28 Q, issued on January 5, 1959, and published in Part 1 of the Technical Office Book No. 10, Page 1, Rule 1.

([2931]) Appeal No. 2030 of 38 Q issued in the session of January 6, 1969 and published in the first part of Technical Office Book No. 20, page No. 38, Rule No. 9, Appeal No. 612 of 38 Q issued in the session of June 3, 1968 and published in the second part of Technical Office Book No. 19, page No. 622, Rule No. 124.

purpose of reading out the testimony is to alert the accused to defend himself, then if the accused is aware of the testimony and discusses it in the session, they may not take the mere fact that it was not read out as a reason to challenge the judgment issued against them based on it.[2932]

If the court does not hear the witnesses, it must justify in its ruling the reason for not hearing them with valid reasons.[2933]

The court's disregard for the defendant's request in both stages of litigation to hear prosecution witnesses, stating that it was useless because the incident had become clear to it and was sufficient in its current state to form its belief in ruling on the subject matter, constitutes an error in the law and a violation of the right to defense.[2934]

The mere presence of the two prosecution witnesses outside the country does not constitute a reason for the court's decision to dispense with hearing their statements, as long as it has not been proven to the court that it was unable to do so after it had taken all possible legal means to achieve the defendant's defense by summoning the two prosecution witnesses and hearing their statements. The court's decision to dispense with hearing them and begin the pleadings has placed the defendant's attorney in a difficult position that would make them excused if they pleaded in the case and did not adhere to their request after the decision to reject it and insist on hearing the case, which made the defender compelled to accept what the court saw as hearing the case without hearing the two prosecution witnesses. The conduct of the trial procedures in this manner does not achieve the meaning intended by the legislator when they authorized the court to decide to read the testimony if it was impossible to hear the witness for any reason or the defendant or their defense accepted that.[2935]

The mere departure of the prosecution witness from the country to a known location is not sufficient in itself as a reason for the court's decision to dispense with hearing her testimony, as long as it has not been proven to the court that it was unable to do so after it had taken all possible legal means to achieve the defendant's defense by summoning the prosecution witness and hearing their testimony.[2936]

However, if the witness is proven dead, it becomes impossible to hear their testimony, and their statements must be read if requested by the accused or their defense attorney.[2937]

There is no blame on the court if it decides to postpone the case to hear the prosecution witness and to include the status register and then changes its mind, because this decision issued by the court in the field of preparing the case and collecting evidence is nothing more than a preparatory decision that does not generate rights for the parties that inevitably require working to implement it in order to protect these rights.[2938]

If the defense insists on the request to hear the prosecution witnesses, but the court orders them to plead, which puts the accused's lawyer in a difficult position that makes them excused if

---

([2932]) Appeal No. 380 of 10 Q issued in the session of February 26, 1940 and published in the first part of the collection of legal rules, fifth year, page No. 121, rule No. 70.

([2933]) Appeal No. 3386 of 79 Q issued in the session of December 3, 2009 and published in Technical Office Book No. 60, Page No. 530, Rule No. 69.

([2934]) Appeal No. 638 of 47 Q issued in the session of November 6, 1977 and published in the first part of Technical Office Book No. 28, page No. 909, rule No. 189.

([2935]) Appeal No. 3091 of 77 Q issued in the session of June 4, 2011 (unpublished).

([2936]) Appeal No. 15076 of 59 Q issued in the session of February 7, 1990 and published in the first part of Technical Office Book No. 41, page No. 326, rule No. 53.

([2937]) Appeal No. 1734 of 50 Q issued in the session of January 26, 1981 and published in the first part of Technical Office Book No. 32, page No. 79, rule No. 12.

([2938]) Appeal No. 14963 of 86 Q issued in the session of March 14, 2017 (unpublished), Appeal No. 1103 of 78 Q issued in the session of June 2, 2009 and published in Technical Office Book No. 60, Page No. 262, Rule No. 36.

they pleads in the case and does not re-adhere to their request after the decision to reject it and insist on hearing the case, which makes the defender forced to accept what the court decided to consider the case without hearing witnesses, then this does not achieve the course of the trial procedures in this manner, the meaning intended by the legislator in Article 289 of the Code of Criminal Procedure, and is considered a violation of the right to defense.[2939]

Since the right of defense - which the accused enjoys - entitles them to present their requests for investigation as long as the door to pleading is still open, the defendant's defense attorney's withdrawal - initially - upon hearing the witnesses and continuing the pleading does not prevent them from retracting this withdrawal nor does it deprive them of their right to return to adhering to the request to hear them, which in this manner is considered a decisive request that the court is obligated to answer when it turns to a ruling other than acquittal. This is not detracted from by the fact that the last thing the defender concluded their defense with was a request for acquittal, as long as the second defender concluded the pleading with a request to hear the first prosecution witness, then their request in the context in which it was stated - after they joined their colleague in their arguments - is to adhere to this request with which they concluded the pleading.[2940]

If the defendant's defense attorney or the Public Prosecution does not insist on hearing the prosecution witnesses and requests that their statements be read only, then the court is not to be blamed if it decides the case without hearing their testimony, and it has not made a procedural error or violated the right to defense.[2941]

The defendant's attorney's failure to re-adhere to the request to hear witnesses in the last pleading session indicates that they have abandoned this request.[2942]

It is stipulated that the request that the court of subject matter is obligated to answer or respond to is the decisive request that its submitter insists upon and does not cease to adhere to and insist upon in their final requests.[2943]

([2939]) Appeal No. 8322 of 75 Q issued in the session of May 16, 2006 and published in the Technical Office Book No. 57, page No. 628, rule No. 67, Appeal No. 17097 of 62 Q issued in the session of January 6, 1994 and published in the first part of the Technical Office Book No. 45, page No. 61, rule No. 6, Appeal No. 15076 of 59 Q issued in the session of February 7, 1990 and published in the first part of the Technical Office Book No. 41, page No. 326, rule No. 53, Appeal No. 3154 of 54 Q issued in the session of November 21, 1984 and published in the first part of the Technical Office Book No. 35, page No. 804, rule No. 181, Appeal No. 874 of 50 Q issued in the session of November 5, 1980 and published In the first part of the Technical Office Book No. 31, page No. 957, rule No. 185, appeal No. 259 for year 42 Q issued in the session of April 30, 1972 and published in the second part of the Technical Office Book No. 23, page No. 632, rule No. 142, appeal No. 424 for year 37 Q issued in the session of April 10, 1967 and published in the second part of the Technical Office Book No. 18, page No. 509, rule No. 97, appeal No. 2421 for year 30 Q issued in the session of March 6, 1961 and published in the first part of the Technical Office Book No. 12, page No. 304, rule No. 57.

([2940]) Appeal No. 4476 of 81 Q issued in the session of July 4, 2012 (unpublished), Appeal No. 31092 of 73 Q issued in the session of March 8, 2010 (unpublished), Appeal No. 4917 of 69 Q issued in the session of April 3, 2002 and published in Technical Office Book No. 53, page No. 577, Rule No. 94, Appeal No. 16256 of 60 Q issued in the session of February 4, 1992 and published in the first part of Technical Office Book No. 43, page No. 191, Rule No. 19, Appeal No. 1656 of 52 Q issued in the session of May 11, 1982 and published in the first part of Technical Office Book No. 33, page No. 591, Rule No. 119, Appeal No. 842 of 46 Q issued in the session of 19 From December 1976 and published in the first part of the Technical Office Book No. 27, page No. 948, rule No. 215.

([2941] Appeal No. 7205 of 85 Q issued in the session of June 1, 2016 (unpublished).

([2942]) Appeal No. 4773 of 66 Q issued in the session of February 17, 2004 (unpublished), Appeal No. 19840 of 65 Q issued in the session of October 19, 1997 and published in the first part of the Technical Office Book No. 48, page No. 1123, rule No. 169, Appeal No. 4407 of 59 Q issued in the session of November 20, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1006, rule No. 162, Appeal No. 1164 of 43 Q issued in the session of December 31, 1973 and published in the third part of the Technical Office Book No. 24, page No. 1309, rule No. 267, Appeal No. 1879 of 36 Q issued in the session of May 16, 1967 and published in the second part of the Technical Office Book No. 18 Page No. 659 Rule No. 129.

The request that the court of subject matter is obligated to respond to, or state the reason for its rejection, is the decisive request that is submitted to it in a decisive form, and that strikes the court's ear, and indicates the determination of its owner to it, and relies on it as a basis to prove what they claim regarding it.

If the accused is forced to waive hearing the prosecution witness, they must prove this before closing the pleadings and reserving the case for judgment, and they must record this violation in a written request before issuing the judgment, otherwise it will not be permissible to argue against it later before the Court of Cassation on the basis of its negligence in what it should have recorded.[2944]

The court's order to continue the defendant's detention until the session to which the case was adjourned in order to hear the witnesses, in exercise of the right granted to it, does not prevent the defense from its right to request that the case be adjourned in order to hear the witnesses, and does not constitute coercion to waive hearing the witnesses.[2945]

The principle is that the second-degree court rules based on the documents and does not conduct investigations except as it deems necessary to conduct, and is not obligated to hear witnesses except as the first-degree court should have heard, and is not obligated to hear witnesses who should have been heard before the first-degree court if it does not see a need to hear them on its part.[2946]

([2943]) Appeal No. 2402 of 78 Q issued in the session of March 8, 2009 (unpublished), Appeal No. 13613 of 71 Q issued in the session of December 28, 2006 (unpublished), Appeal No. 20524 of 69 Q issued in the session of December 20, 2001 (unpublished), Appeal No. 11341 of 68 Q issued in the session of November 23, 2000 (unpublished), Appeal No. 3048 of 63 Q issued in the session of February 12, 1995 and published in the first part of the Technical Office Book No. 46, page No. 353, rule No. 52, Appeal No. 7618 of 62 Q issued in the session of April 5, 1994 and published in the first part of the Technical Office Book No. 45, page No. 473, rule No. 75, Appeal No. 1265 of 52 Q issued in the session of May 5, 1982 and published in the first part of the Technical Office Book No. 33, page No. 547, rule No. 112, Appeal No. 597 of 50 Q issued in the session of December 25, 1980 and published in the first part of the Technical Office Book No. 31, page No. 1126, rule No. 217, Appeal No. 301 of 48 Q issued in the session of June 19, 1978 and published in the first part of the Technical Office Book No. 29, page No. 625, rule No. 121.

([2944]) Appeal No. 26823 of 83 Q issued in the session of October 8, 2015 (unpublished).

([2945]) Appeal No. 16771 of 65 Q issued in the session of May 16, 2004 and published in Technical Office Book No. 55, Page No. 510, Rule No. 71.

([2946]) Appeal No. 13703 of 84 Q issued in the session of May 6, 2015 and published in Technical Office Book No. 66, page No. 437, Rule No. 61, Appeal No. 9778 of 66 Q issued in the session of April 20, 2006, Appeal No. 1027 of 64 Q issued in the session of March 2, 2003 and published in Technical Office Book No. 54, page No. 325, Rule No. 34, Appeal No. 20185 of 62 Q issued in the session of March 21, 2002 (unpublished), Appeal No. 7253 of 61 Q issued in the session of July 2, 2001 (unpublished), Appeal No. 15144 of 64 Q issued in the session of January 24, 2000 and published in Technical Office Book No. 51, page No. 73, Rule No. 11, Appeal No. 1563 of 58 Q issued in the session of April 30, 1989 and published in the first part of the Technical Office Book No. 40, page No. 553, rule No. 91, Appeal No. 3861 of 57 Q issued in the session of December 27, 1987 and published in the second part of the Technical Office Book No. 38, page No. 1156, rule No. 211, Appeal No. 6727 of 53 Q issued in the session of February 28, 1984 and published in the first part of the Technical Office Book No. 35, page No. 213, rule No. 44, Appeal No. 5533 of 51 Q issued in the session of March 6, 1982 and published in the first part of the Technical Office Book No. 33, page No. 295, rule No. 61, Appeal No. 2147 of 51 Q issued in the session of December 17, 1984 1981 and published in the first part of the Technical Office Book No. 32, page No. 1131, rule No. 202, appeal No. 1158 for year 49 Q issued in the session of December 13, 1979 and published in the first part of the Technical Office Book No. 30, page No. 932, rule No. 200, appeal No. 1692 for year 48 Q issued in the session of February 8, 1979 and published in the first part of the Technical Office Book No. 30, page No. 226, rule No. 45, appeal No. 1326 for year 48 Q issued in the session of December 10, 1978 and published in the first part of the Technical Office Book No. 29, page No. 910, rule No. 189, appeal No. 781 for year 48 Q issued in the session of December 7, 1978 and published in the first part of the Technical Office Book No. 29, page No. 871, rule No. 181, Appeal No. 78 of 48 Q issued in the session of April 10, 1978 and published in the first part of the Technical Office Book No. 29, page No. 393, Rule No. 75, Appeal No. 638 of 47 Q issued in the session of November 6, 1977 and published in the first part of the Technical Office Book No. 28, page No. 909, Rule No. 189, Appeal No. 886 of 46 Q issued in the session of December 27, 1976 and published in the first part of the Technical Office Book No. 27, page No. 1004, Rule No. 225, Appeal No. 1093 of 45 Q issued in the session of October 26, 1975 and published in the first part of the Technical Office Book No. 26, page No. 622, Rule No. 139, Appeal No. 867 of 44 Q issued in the

However, the right of the court of second instance not to hear witnesses is restricted by the necessity of observing the right of defense. The law has obliged it, in accordance with Article 413 of the Code of Criminal Procedure, to hear, by itself or through one of the judges - whom it delegates for this purpose - the witnesses whose hearing the court of first instance did not respond to the request - and if it does not do so, its ruling will be tainted by a deficiency in reasoning, in addition to violating the right of defense.[2947]

If the witness appears and declares that they no longer remember a fact, the part of their testimony that they acknowledged during the investigation or their statements in the evidence collection report that relates to this fact may be read out. The same applies if the witness's testimony that they gave in the session conflicts with their previous testimony or statements.[2948]

Reciting the witness's statements about the facts that they no longer remember is one of the permissions, and it is not obligatory unless the accused or their defense lawyer requests it.[2949]

20-1-17 Appeal against judgments issued against witnesses

It is permissible to appeal the rulings issued against witnesses by the investigating judge for their refusal to attend, testify, or take an oath.[2950]

The rules and conditions stipulated in the law shall be observed in this regard. [2951]

The convicted person may appeal the ruling issued against them due to the invalidity of the excuse of illness that prevented them from attending, by way of opposition or appeal.[2952]

20-1-18 Witness Expenses

The investigator shall estimate, upon the request of the witnesses, the expenses and compensation they are entitled to due to their attendance to give testimony.[2953]

20-1-19 Taking the statements of one accused against another

It has been decided that it is permissible to accept the statements of one accused against another, as it is established that the statements of one accused against another are in fact testimony that the court may rely on in convicting when it trusts it and is comfortable with it, and the court of subject matter may accept the statements of an accused against himself and against other accused when it is satisfied with their truthfulness and conformity to reality.[2954]

---

session of November 18, 1976 1974 and published in the first part of the Technical Office Book No. 25, page No. 750, rule No. 162, Appeal No. 409 for the year 43 Q issued in the session of May 28, 1973 and published in the second part of the Technical Office Book No. 24, page No. 684, rule No. 142, Appeal No. 190 for the year 43 Q issued in the session of April 16, 1973 and published in the second part of the Technical Office Book No. 24, page No. 525, rule No. 109.

([2947]) See in this regard: Appeal No. 10834 of the 65th year of the Civil Procedure Code, issued in the session of February 20, 2006, and published in Technical Office Book No. 57, page No. 288, Rule No. 30.

([2948]) Article No. 290 of the Code of Criminal Procedure.

([2949]) Appeal No. 1487 of 33 Q issued in the session of December 9, 1963 and published in the third part of the Technical Office Book No. 14, page No. 910, rule No. 164, Appeal No. 876 of 22 Q issued in the session of January 26, 1953 and published in the second part of the Technical Office Book No. 4, page No. 418, rule No. 160, Appeal No. 406 of 22 Q issued in the session of June 10, 1952 and published in the third part of the Technical Office Book No. 3, page No. 1089, rule No. 407.

([2950]) Articles Nos. 117 and 119 of the Code of Criminal Procedure.

([2951] Article No. 120 of the Code of Criminal Procedure.

([2952]) Article 121 of the Code of Criminal Procedure.

([2953]) Articles Nos. 122 and 208 of the Code of Criminal Procedure.

([2954]) Appeal No. 48600 of 85 Q issued in the session of December 21, 2016 (unpublished), Appeal No. 37284 of 85 Q issued in the session of November 28, 2016 and published in Technical Office Book No. 67, Page No. 864, Rule No. 106, Appeal No. 16483 of 85 Q issued in the session of February 6, 2016 (unpublished), Appeal No. 2774 of 82 Q issued in the session of October 22, 2012 (unpublished), Appeal No. 9361 of 79 Q issued in the session of September 19, 2011 (unpublished), Appeal No. 1593 of 77 Q issued in the session of March 8, 2009 (unpublished), Appeal No. 76701 of 75 Q issued in the session of

The court of subject matter may accept the statements of one accused over another, even if they were included in the police report, as long as it is satisfied of their truthfulness and conformity to reality, even if they were changed in other stages of the investigation. [2955]

It is not true to say that the statements of one accused against another cannot be accepted unless they are supported by evidence or a presumption that strengthens them, since there is nothing in the law that prevents the court from accepting the statements of another accused against one accused if it is satisfied with them, even if there is no evidence to prove anything else. Saying otherwise would affect the judge's authority to assess the evidence and their freedom to be convinced and form their belief from any evidence presented before them.[2956]

20-2 Within the Framework of International Conventions

Everyone charged with a criminal offence has the right to call witnesses on their behalf and to examine, or have examined, the witnesses against him. In exceptional circumstances, restrictions may be imposed on the right of the defense to examine prosecution witnesses.

November 26, 2012 2006 and published in the Technical Office Book No. 57, page No. 913, Rule No. 102, Appeal No. 50614 for the year 74 Q issued in the session of December 7, 2005 and published in the Technical Office Book No. 56, page No. 691, Rule No. 105, Appeal No. 580 for the year 66 Q issued in the session of October 5, 2005 and published in the Technical Office Book No. 56, page No. 468, Rule No. 70, Appeal No. 37227 for the year 73 Q issued in the session of December 16, 2004 and published in the Technical Office Book No. 55, page No. 824, Rule No. 124, Appeal No. 29339 for the year 70 Q issued in the session of January 17, 2002 and published in the Technical Office Book No. 53, page No. 125, Rule No. 23, Appeal No. 26293 for the year 67 Q issued in the session of March 13, 2000 and published in the Technical Office Book No. 51, page No. 288, rule No. 53, Appeal No. 24806 for year 67 Q issued in the session of February 6, 2000 and published in the Technical Office Book No. 51, page No. 117, rule No. 21, Appeal No. 19120 for year 66 Q issued in the session of December 1, 1998 and published in the first part of the Technical Office Book No. 49, page No. 1353, rule No. 194, Appeal No. 17106 for year 64 Q issued in the session of September 25, 1996 and published in the first part of the Technical Office Book No. 47, page No. 878, rule No. 127, Appeal No. 25471 for year 62 Q issued in the session of December 12, 1994 and published in the first part of the Technical Office Book No. 45 Page No. 1129 Rule No. 178, Appeal No. 12752 for the year 62 Q issued in the session of June 2, 1994 and published in the first part of the Technical Office Book No. 45 Page No. 696 Rule No. 106, Appeal No. 4207 for the year 61 Q issued in the session of December 21, 1992 and published in the first part of the Technical Office Book No. 43 Page No. 1181 Rule No. 185, Appeal No. 6840 for the year 60 Q issued in the session of October 3, 1991 and published in the first part of the Technical Office Book No. 42 Page No. 958 Rule No. 133, Appeal No. 1425 for the year 57 Q issued in the session of October 21, 1987 and published in the second part of the Technical Office Book No. 38 Page No. 829 Rule No. 150, Appeal No. 543 for the year 57 Q issued in the session of May 12, 1987 and published in the first part of the Technical Office Book No. 38, page No. 677, rule No. 118, appeal No. 7098 for year 55 Q issued in the session of March 18, 1986 and published in the first part of the Technical Office Book No. 37, page No. 419, rule No. 86, appeal No. 1011 for year 54 Q issued in the session of November 26, 1984 and published in the first part of the Technical Office Book No. 35, page No. 829, rule No. 187, appeal No. 2612 for year 50 Q issued in the session of April 6, 1981 and published in the first part of the Technical Office Book No. 32, page No. 334, rule No. 59, appeal No. 356 for year 44 Q issued in the session of April 22, 1974 and published in the first part of the Technical Office Book No. 25 Page No. 425 Rule No. 91, Appeal No. 13 of Year 43 Q issued in the session of March 4, 1973 and published in the first part of the Technical Office Book No. 24 Page No. 284 Rule No. 62, Appeal No. 391 of Year 36 Q issued in the session of June 7, 1966 and published in the second part of the Technical Office Book No. 17 Page No. 771 Rule No. 144, Appeal No. 9 of Year 35 Q issued in the session of May 3, 1965 and published in the second part of the Technical Office Book No. 16 Page No. 415 Rule No. 85, Appeal No. 987 of Year 33 Q issued in the session of December 9, 1963 and published in the third part of the Technical Office Book No. 14 Page No. 894 Rule No. 163, Appeal No. 15 of Year 15 Q issued in the session of January 15, 1965 1945 and published in Technical Office Book No. 6, Part No. 1, Page No. 593, Rule No. 455.

([2955]) Appeal No. 25900 of 66 Q issued in the session of May 21, 2006 (unpublished), Appeal No. 28073 of 75 Q issued in the session of February 27, 2006 (unpublished), Appeal No. 7897 of 60 Q issued in the session of October 22, 1991 and published in the first part of the Technical Office Book No. 42, page No. 1017, rule No. 141, Appeal No. 176 of 47 Q issued in the session of June 13, 1977 and published in the first part of the Technical Office Book No. 28, page No. 759, rule No. 159, Appeal No. 1041 of 42 Q issued in the session of January 1, 1973 and published in the first part of the Technical Office Book No. 24, page No. 1, rule No. 1, Appeal No. 335 of 39 Q issued In the session of April 7, 1969, published in the second part of the Technical Office Book No. 20, page No. 476, rule No. 100.

([2956]) Appeal No. 83 of 24 Q issued in the session of March 11, 1954 and published in the second part of the Technical Office Book No. 5, page No. 415, Rule No. 139, Appeal No. 16 of 14 Q issued in the session of January 10, 1944 and published in the first part of the Legal Rules Collection No. 6, page No. 375, Rule No. 285.

These restrictions, measures taken to protect the rights and safety of witnesses, the requirements of justice and the principle of equal opportunity must be respected. Victims and witnesses have the right to access information and to enjoy appropriate protection.

20-2-1 The right to summon and question witnesses

One of the main pillars of the principle of equal opportunity between the defense and the prosecution, and the right to defense, is the right of the accused to summon and interrogate witnesses.[2957]

This right guarantee "the accused the same legal powers to summon witnesses and to examine or cross-examine any accused person presented by the prosecution" [2958]

The right to examine witnesses for the prosecution by the accused (or by a third party) ensures the defense has an opportunity to refute the evidence presented against the accused. Likewise, the right to call and examine witnesses on behalf of the accused is part of the right to defense. The examination of witnesses, by both the prosecution and the defense, which should as a rule take place in a public hearing attended by the accused, provides the court with the opportunity to hear the evidence and the statements that refute it, and to test the credibility of the witnesses. It also enhances the right to the presumption of innocence and strengthens the chances that a verdict will be based on all relevant evidence.

Some international standards allow witnesses to give evidence via electronic media, usually through video links, which allow them to be seen and heard in the courtroom.[2959]

However, preference remains, in general, for direct testimony. While it remains essential that all witnesses are examined in the same manner, consideration should be given to any distinctions that arise in the context of the trial, such as, for example, most prosecution witnesses testifying in the courtroom, while most defense witnesses testify via video link.[2960]

The drafters of international standards that use the phrase "examine witnesses himself or through others" have taken into account the differences in judicial systems, some of which permit litigants to examine witnesses (refute the statements of the opponent) and some of which give the judiciary the authority to examine witnesses (interrogate them).[2961]

The wording also covers questions asked by a court or an independent person other than the accused or their or her lawyer, for example when a judge or psychologist asks questions on behalf of the defense to a child victim. But the accused's right to question the prosecution witnesses and to summon and question defense witnesses in a public session is not absolute and unlimited.

([2957]) Article 14(3)(e) of the International Covenant, Article 40(2)(b)(iv) of the Convention on the Rights of the Child, Article 18(3)(e) of the Migrant Workers Convention, Article 16(5) of the Arab Charter, Article 6(3)(d) of the European Convention, Section N(6)(f) of the Principles on Fair Trial in Africa, Article 67(1)(e) of the Rome Statute, Article 20(4)(c) of the Statute of the International Criminal Court for Rwanda, Article 21(4)(e) of the Statute of the International Criminal Court for the Former Yugoslavia.

([2958]) General Comment 32 of the Human Rights Committee, §39.

([2959]) See Article 36(2)(b) of the European Convention on Child Sexual Abuse, Article 56(1)(i) of the Council of Europe Convention on Violence against Women, Article 68(2) of the Rome Statute, Rule 67 of the Rules of Procedure and Evidence of the International Criminal Court, Rule 75 of the Rules of the Rwanda Tribunal, and Rule 75 of the Rules of the Yugoslavia Tribunal.

([2960]) See, Prosecutor v. Hatigimana (ICTR-00-55B-R11bis, Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, Decision on the Prosecutor's Appeal against a Decision to Refer Under Rule 11bis, (4 December 2008) Section. IV. B. 26.

([2961]) See M. Nowak, The International Covenant on Civil and Political Rights: A Commentary on the Provisions of the Covenant, Second Revised Edition, Engel, 2005, p. 342. §68.

20-2-2 The right of the defense to question witnesses

Anyone accused of committing a criminal act has the right to examine, personally or through third parties, the witnesses for the prosecution in the course of the trial proceedings.[2962]

The right of the accused to have adequate time and facilities to prepare their defense includes the right to be prepared to examine the prosecution witnesses. There is therefore an implied obligation on the prosecution to give the defense sufficient advance notice of the names of witnesses it intends to call in court.[2963]

The right to such information may be subject to court orders to maintain the confidentiality of the witness's identity or other restrictions.[2964]

However, the defense should request an adjournment when the prosecution calls a new witness during the trial who has not been named before, to ensure that it has adequate time and facilities to prepare.[2965]

The refusal to disclose previous statements made by a key witness for the prosecution was considered a violation of the right to cross-examine witnesses.[2966]

All evidence must normally be presented in the presence of the accused at a public hearing, so that the reliability of the evidence itself and the credibility and integrity of the witnesses can be challenged.

Therefore, questioning by both the prosecution and the defense should normally take place during trial sessions in which the accused is present. However, this condition may be met if the questioning takes place when the witness is giving their statement, including during the pre-trial proceedings, or in the stages thereafter.)[2967]

Although there are exceptions to this principle, the exceptions must not affect the rights of defense.[2968]

In a case where the conviction was based decisively on pre-trial witness statements which the accused had no opportunity to cross-examine, and which the court had not cross-examined at any time, the European Court held that the accused's rights to cross-examination and to a fair trial had been violated.[2969]

([2962]) Article 14(3)(e) of the International Covenant, Article 40(2)(b)(iv) of the Convention on the Rights of the Child, Article 18(3)(e) of the Migrant Workers Convention, Article 8(2)(f) of the American Convention, Article 16(5) of the Arab Charter, Article 6(4)(d) of the European Convention, Section N(6)(f) of the Statute of the International Criminal Court for Rwanda, Article 21(4)(e) of the Statute of the International Criminal Court for Yugoslavia, General Comment 32 of the Human Rights Committee, §39.

([2963]) Section N(6)(f)(1) of the Principles on Fair Trial in Africa, and Rule 76 of the Rules of Procedure and Evidence of the International Criminal Court.

([2964]) Rules 76 and 81(4) of the Rules of Procedure and Evidence of the International Criminal Court, see Prosecutor v. Katanga and Ngudjolo, (ICC-01/04-01/07) OA5 ICC Appeals Chamber, Judgment on the Appeal of Mr. Mathieu Ngudjolo against the Decision of Pre-Trial Chamber I entitled “Decision on the Prosecution’s Request for Authorization to Redact Witnesses 4 and 27” (9 May 2008) §30-§38 (allowing victims of sexual crimes not to be identified prior to the confirmation of charges hearing).

([2965]) Adams v. Jamaica, Human Rights Committee, 1994 / UN CCPR/C/58/D/607. 3/ §8(1996).

([2966]) Burt v. Jamaica, Human Rights Committee, UN CCPR C/54/D/464/1991 and 1991/482 (5/11-4/§11 (1995).

([2967]) Al-Khawaja and Taheri v. the United Kingdom (26766/05 and 222228/06), Grand Chamber of the European Court (2011) §118 and §127.

([2968]) Section N(6)(f)(3) of the Principles on Expeditious Trial in Africa, Van Mechelen and Others v. The Netherlands (21363/93, 21364/93, 93/22056 and 93/21427), European Court § 51 (1997).

([2969]) Tal v. Estonia (13249)/02, European Court §31-§36 (2005); see, European Court: Balsan v. Czech Republic (1993)/02, (2006) §31-§35, Lucca v. Italy (33354)/06, §41-§45 (2001).

First: Limits of interrogating prosecution witnesses

The accused's right to cross-examine witnesses himself or through others may be restricted to ensure a fair trial and to avoid obstruction.[2970]

The right of the accused to examine witnesses may also be restricted if the witness is no longer available (due to death or missing), or when there are reasonable grounds for the witness to fear retaliation, or when the witness is particularly vulnerable. Examples of these children and victims of gender-based violence include :[2971]

Before allowing any restrictions to be imposed, the court must decide whether such restrictions are objectively necessary. Restrictions should only be allowed to the extent required by the situation. Restrictions must be proportionate and consistent with the rights of the accused and the requirements of a fair trial. The court must ensure that the difficulties this creates for the defense are balanced by procedures that allow for a fair and appropriate assessment of the reliability of the evidence.[2972]

Where the accused is excluded from the courtroom or absent from following the proceedings, their lawyer has the right to be present and to question witnesses. If the accused does not have a legal representative, the court must ensure that they have a lawyer to defend them (of their choice or appointed by it) and who is present to represent them and to examine witnesses.[2973]

The Human Rights Committee found that ordering the accused to leave the courtroom during the questioning of an undercover security agent wearing a mask, who was one of two key prosecution witnesses, while refusing to allow the accused to cross-examine the witness, violated the accused's right to cross-examine witnesses.[2974]

Second: Unknown witnesses

Relying on the testimony of anonymous witnesses (i.e. those whose identity is unknown to the defense) violates the accused's right to cross-examine witnesses, because it deprives them of information necessary for them to challenge the reliability of the witness and the credibility of their testimony. The greater the importance of evidence given by anonymous witnesses, the greater the risk of unfairness.

Amnesty International has opposed the use of anonymous witness statements on the grounds that it is inconsistent with the principle of presumption of innocence, the right of the accused to challenge evidence, and the ability of the court to reach its decision based on all relevant evidence that all parties to the dispute have had the opportunity to challenge.[2975]

([2970]) Prosecutor v. Prlic et al. (IT-04-74-AR73. 2) Appeals Chamber of the International Tribunal for the Former Yugoslavia, Decision on the Joint Interlocutory Appeal of the Defense against the Trial Chamber's Oral Decision of 8 May 2006 Concerning the Questioning by the Defense and its Linkage to the Defense Counsel's Request for Leave to Submit a Briefing as Amicus Curiae, (4 July 2006).

([2971]) Section N(6)(f)(3) of the Principles on Fair Trial in Africa.

([2972]) See, for example, the European Court: A. As. v. Finland (40156)/07), §55 (2010), Khawaja and Taheri v. United Kingdom (26766)/05 and 222228/06), Grand Chamber of the European Court §147 (2011).

([2973]) Section N(6)(f)(4) of the Principles on Fair Trial in Africa.

([2974]) Koriba v. Belarus, Human Rights Committee, / UN CCPR. 5/ §7 (2010) C/100/D/1390/2005.

([2975]) See, for example, Amnesty International: The International Criminal Court: The Right Choices – Part II – Organizing the Court and Ensuring Fair Trials, IOR 40/011/1997, pp. 59–61; Singapore: The Death Penalty – Concealed Number of Executed Persons, IOR 36 (2004), pp. 14; United States of America: Obstruction of Justice and Denial of Remedy – Trials under the Military Commissions Act, IOR 51/044/2007, pp. 42–43.

Some international standards and evidence from international jurisprudence allow witnesses to conceal their identity while giving their testimony, but only in exceptional cases and strictly defined circumstances, and according to special conditions.[2976]

These restrictions were imposed in view of the prejudice to the rights of the defense and the risk that the use of evidence from anonymous witnesses would render the trial unfair.

For example, the principles of fair trial in Africa allow anonymous witnesses to testify in trials only in exceptional circumstances, in the interests of justice, taking into account the nature and circumstances of the crime, and the needs to protect the security of witnesses.[2977]

The European Court and international criminal courts have exceptionally allowed the use of anonymous witnesses, including in criminal cases relating to terrorism, drug trafficking, organized crime and crimes under international law. However, these courts have also made it clear that the use of such witnesses must be exceptional and strictly limited, given the prejudice it poses to the rights of the defense.

The European Court said that the court hearing the case should reject a request to conceal the identity of witnesses unless there is objective evidence of the importance of the matter.[2978]

It requires the court to examine the request and review alternatives to concealing the identity of witnesses. The Court has repeatedly stressed that convictions should not be based exclusively or conclusively on anonymous statements.[2979]

Therefore, the question of whether the evidence of the anonymous witness is the sole or decisive basis against the accused should be kept under constant review by the court hearing the case, while it remains for the appellate court to decide the matter. If this evidence is the decisive factor, extreme caution should be exercised before accepting it. If it is accompanied by other evidence against the accused, then the weight of the supporting evidence must be evaluated. Ultimately, if the court decides to grant a witness's request not to show their identity while giving their testimony, sufficient compensatory measures must be taken to protect the rights of the accused and the integrity of the proceedings.[2980]

Among the factors considered by the European Court:

Whether the witness made their statement in a manner that allowed the judge, jury and lawyers to observe their actions as they spoke ;[2981]

The amount of information relevant to the credibility and reliability of the witness and their testimony that they disclosed to the defense while maintaining the confidentiality of their identity;

([2976]) Section N(6)(f)(4) of the Principles on Fair Trial in Africa, Guideline 9(3)(3)-(4) of the Council of Europe Guidelines on Human Rights and the Fight against Terrorism, Rule 75(b)(1)(d) of the Yugoslavia Tribunal Rules, and Rule 75(b)(1)(d) of the Rwanda Tribunal Rules.

([2977]) Section N(6)(f)(4) of the Principles on Fair Trial in Africa.

([2978]) European Court: Alice, Sims and Martin v. United Kingdom (46099/06 and 46699/06) (inadmissibility) Decision (76-§§§75 (2012, Krasniqi v. Czech Republic (51277)/99) (86-§§76 (2006, Van Mechelen and Others v. Netherlands (21363)/93, 21364/93, 21427/93 and 22056/93), European Court (61-§§60 (1997, Dorsen v. Netherlands §71 (1996), (92/20524).

([2979]) European Court: Van Mechelen and Others v. The Netherlands (21363)/93, 21364/93, 21427/93 and 22056/93), § § 55 (1997) and 60-61, Dorsen v. The Netherlands (20524)/92), § 76 (1996, cited with approval by the Grand Chamber in A and Others v. The United Kingdom (3455)/05), § 208 (2009, Visser v. The Netherlands (26668)/95), § 49-§ 47 (2002); but see Alice, Sims and Martin v. The United Kingdom (46099)/06 and 46699/06) decision (inadmissibility). 76- § §75 (2012).

([2980]) See Guideline 9(4) of the Council of Europe Guidelines on Human Rights and the Fight against Terrorism, European Court: Alice, Sims and Martin v. United Kingdom (46099/06 and 46699/06) (inadmissibility) decision (78-§§76 (2012), Krasniqi v. Czech Republic (51277)/99) (86-§§75 (2006).

([2981]) Vindic v. Austria (12489)/06, European Court §29 (1990); see Kostovsky v. Netherlands (11454)/85, European Court (1989). §43.

The extent to which the defense is able to question the witness and test their reliability and credibility;

The extent to which the court adheres to the necessity of subjecting its decision to grant confidentiality and its acceptance of the evidence presented to review. In addition, the European Court considered the measures used to ensure that evidence given by an anonymous witness was treated with particular caution and care, including through the directions given to the jury, if any.[2982]

The ICC follows the same procedure as the European Court in its handling of requests by witnesses (including victims) to conceal their identity when giving evidence. The ICC has stressed that "utmost caution must be exercised before allowing the participation of unidentified victims, particularly when the rights of the accused are involved." "The greater the scope and significance of the proposed participation, the more the Chamber should require the victim to disclose their or her identity, " the court said.[2983]

The Human Rights Committee expressed concerns about a law in the Netherlands that allows the identities of certain witnesses to be concealed from the defense for reasons of national security. While the defense was allowed to ask questions of these witnesses through the investigating judge, it was not always allowed to attend their interrogation.[2984]

Given the challenges facing the defense from using anonymous witnesses, alternative witness protection measures have been adopted, including witnesses giving evidence via video link.

Third: Absent witnesses

The use of evidence-based on the testimony of witnesses who are not present in court (absent witnesses) poses special challenges for the defense. Unlike anonymous witnesses, the identity of absent witnesses is known. So, the defense can investigate their credibility. However, it is not possible to put their testimony to the test before the judge (and jury, if any) by questioning them, because they are not in the courtroom.

Therefore, recourse to such evidence should be exceptional, and measures should be taken to allow for a fair assessment of the reliability of the evidence and to protect the rights of the defense.

The ICC Rules of Procedure and Evidence allow the pre-recorded statement of an absent witness to be admitted as evidence in a case, provided that the Prosecutor and the Defense are able to question the witness at the time the testimony is recorded.[2985]

The European Court has confirmed that the admission of evidence from an absent witness whom the defense has not had the opportunity to question should remain a last resort.[2986]

In its decision on the fairness of trials in which absentee witness statements were admitted as evidence, the European Court examined three matters:

Are there convincing reasons for the witness' absence and for accepting their statements?

Is this the only or decisive evidence against the accused?

([2982]) Alice, Sims and Martin v. United Kingdom (46099)/06 and 46699/06) European Court decision (inadmissibility) §82-§89 (2012).

([2983]) Prosecutor v. Lubanga (1119) - 06/01 - 04/ICC-01), Trial Chamber of the International Criminal Court, Decision on Victims' Participation (18 January 2008) §130-§131.

([2984]) Concluding observations of the Human Rights Committee: Netherlands, UN Doc. §13 (2009) CCPR/C/NLD/CO/4.

([2985]) Rule 68 of the Rules of Procedure and Evidence of the International Criminal Court.

([2986]) Al-Khawaja and Taheri v. United Kingdom (26766/05 and 222228/06), Grand Chamber of the European Court §125 (2011).

Did the court take sufficient measures to balance this to allow for a fair assessment of the reliability of the evidence and to ensure the rights of the defense (such as giving adequate warnings to the jury, for example)?

According to the European Court, fear of threats or reprisals by the accused or persons acting on their behalf (or with their knowledge and consent) is considered a "valid reason" for the absence of a witness. If there are sufficient factors to weigh the reliance on the testimony of such a witness, its admission as evidence, even if it is the only or decisive evidence in the case, does not constitute a violation of the right to a fair trial. She considered that excluding such evidence was inconsistent with the rights of the witness, and would allow the accused to undermine the fairness of the proceedings.[2987]

However, before accepting the testimony of a witness absent due to fear, the court must investigate whether their fear is objectively justified and supported by evidence. Even in such cases, the court must decide whether other alternative measures, including protective measures, would be more appropriate or practicable.[2988]

Applying these standard tests, the European Court held that:

The admission of the police testimony of a deceased woman, one of several alleged victims of a vicious assault by a doctor, as evidence of guilt did not violate their rights to a fair trial.

The supporting evidence (from friends the victim had spoken to and from other victims who testified at the trial) and the judge's warning to the jury were considered sufficient safeguards to counterbalance the absence of the witness.[2989]

The admission of testimony by a single alleged eyewitness to a stabbing with a sharp object, and their refusal to testify in court, even from behind a curtain, violated the defendant's right to a fair trial. The European Court concluded that the prejudice caused by the admission of this crucial evidence, which had not been tested by cross-examination, had not been adequately balanced by the court hearing the case, when it warned the jury of the risks of relying on untested evidence.[2990]

The European Court found that a violation of the accused's rights had occurred when a court based its decision on reports provided by an undercover police officer, written records of intercepted telephone calls, and statements made by the accused when shown the records. The accused was not given the opportunity to examine or challenge the records, or to put the undercover officer's statements to the test.[2991]

The European Court concluded that relying on the testimony of the accused's co-defendant during the investigation as the sole evidence against the accused constituted a violation of their right to a fair trial. Where the partner used their right to remain silent during the trial. The European Court noted that the authorities had not sought to provide evidence, and that the Court of Appeal had rejected the defendant's request to question their co-accused.[2992]

([2987]) Al-Khawaja and Taheri v. United Kingdom (26766/05 and 222228/06), Grand Chamber of the European Court §123 (2011).

([2988]) Al-Khawaja and Taheri v. United Kingdom (26766/05 and 222228/06), Grand Chamber of the European Court §125 (2011).

([2989]) Khawaja and Taheri v. United Kingdom (26766/05 and 222228/06), Grand Chamber of the European Court §§153-§158 (2011); see, European Court: Gosa v. Poland (47986/99), §57-§65 (2007), Artner v. Austria (13161/87), §20-§24 (1992).

([2990]) Khawaja and Taheri v. United Kingdom (26766)/05 and 222228/06), Grand Chamber of the European Court §§159-§165 (2011); see Mirilashvili v. Russia (6293)/04), European Court §§217-§229 (2008).

([2991]) European Court: Lodi v. Switzerland, (12433)/86, (1992) §40-§50, see Saidi v. France, (14647)/89, §44 (1993).

([2992]) Belchan v. Czech Republic (1993)/02, European Court (2006) §22-§35; see Lucca v. Italy (33354)/06), §39-§43 (2001); see also Lutsenko v. Ukraine (30663)/04, European Court §42-§53 (2009).

20-2-3 The right to summon and question witnesses on the defense

Anyone charged with a criminal offence has the right to obtain the attendance and examination of witnesses on their behalf "under the same conditions as witnesses for the prosecution" ([2993]

Granting criminal courts the right to summon witnesses for the defense "under the same conditions" as witnesses for the prosecution does not mean that this right is unlimited; rather, it is merely a discretionary power to determine which witnesses should be summoned. However, in exercising this discretion, judges must not violate the principles of justice and equality of opportunity between the prosecution and the defense.[2994]

Before refusing any request to call a defense witness, a court should assess the relevance of that witness to the defense's arguments.[2995]

If the court rejects such a request, it must provide its reasons.[2996]

The Human Rights Committee concluded that the court's refusal to order the testimony of a forensic expert in a rape case violated article 14(h) of the International Covenant, given that such testimony was of crucial importance to the defense.[2997]

It also found that a violation had occurred when the court refused the defense's request to summon public officials who could have provided information relevant to the defendant's claim that they had been tortured into "confessing" [2998]

The Human Rights Committee has particularly stressed the importance of respecting this right in cases where the death penalty may be imposed. In a murder case where the witness was willing to testify that the accused was absent from the scene of the crime at the time of the crime but was unable to reach the court due to lack of transportation, the Committee found that a violation had occurred; it attributed the witness's inability to appear in court to the misconduct of the authorities, who could have postponed the hearing or arranged transportation for her.[2999]

The American agreement is broader in this regard. It guarantees the right of the defense to cross-examine witnesses present in court, and to request that experts or other relevant persons give their testimony, if this sheds light on the facts.[3000]

20-2-4 Rights of victims and witnesses

International standards, human rights bodies and jurisprudence accumulated over the years have consistently affirmed the duty of States and courts to respect and protect the rights of victims of crime and other witnesses. This includes, as appropriate, family members, their dependents and individuals who suffered harm when they intervened to assist victims. The

---

([2993]) Article 14(3)(e) of the International Covenant, Article 18(3)(e) of the Migrant Workers Convention, Article 16(5) of the Arab Charter, Article 6(3)(d) of the European Convention, Section N(6)(f) of the Principles on Fair Trial in Africa, Article 67(1)(e) of the Rome Statute, Article 20(4)(e) of the Statute of the International Criminal Tribunal for Rwanda, Article 21(4)(e) of the Statute of the International Criminal Tribunal for the Former Yugoslavia; see Article 40(2)(b)(iv) of the Convention on the Rights of the Child.

([2994]) European Court: Vidal v. Belgium (12351)/86), §33 (1992), Popov v. Russia §177 (2006).

([2995]) Section N(6)(e)(ii) of the Principles on Fair Trial in Africa, General Comment 32 of the Human Rights Committee, §39; Popov v. Russia. §177 (2006).

([2996]) Vidal v. Belgium (12351)/86), §34 (1992).

([2997]) Fuenzalida v. Tajikistan, Human Rights Committee, / UN CCPR. 5/ §9 (1996) C/57/D/480/1991.

([2998]) Ediyev v. Tajikistan, Human Rights Committee, / UN CCPR. 6/ §9 (2009) C/95/D/1276/2004.

([2999] Grant v. Jamaica, Human Rights Committee, / UN CCPR. 5/ §8 (2009) C/50/D/353/1988.

([3000]) Article 8(2)(f) of the American Convention.

standards require that the authorities ensure that everyone, including victims, has equal access to the courts without discrimination.[3001]

International standards require that the authorities take the necessary measures and organize the criminal proceedings necessary to ensure the safety and well-being of victims and witnesses, and respect for their rights, including their right to privacy. [3002]

Measures taken to protect the rights of victims and witnesses must be consistent with the rights of the accused and the requirements of a fair trial. [3003]

Measures that should be taken by the authorities and courts include providing victims and witnesses with information regarding their rights and ways to access and exercise this information, as well as access to information related to investigations and findings, and the conduct of the trial, in a timely manner. [3004]

Authorities should also provide assistance, including interpretation, where appropriate.[3005]and advice, to ensure that the doors of the courts are effectively knocked on, as well as legal assistance, where appropriate.[3006]

([3001]) See General Comment 32 of the Human Rights Committee, §9; Concluding Observations of the CEDAW Committee, Rwanda, 6/§23-§24 (2009) UN Doc. CEDAW/C/RWA/C0.

([3002]) Among other standards, article 13 of the Convention against Torture, articles 12(1) and 12(4) of the Convention on Enforced Disappearance, articles 24-25 of the Convention against Transnational Organized Crime, articles 6-7 of the Palermo Protocol on Trafficking in Human Beings, sections 6-10 of the Basic Principles on Reparation, the Declaration on Justice for Victims of Crime, principles 15-16 of the Principles on the Investigation of Arbitrary Executions, articles 56-57 of the Council of Europe Convention on Violence against Women, and articles 54(1)(b) and 68 of the Rome Statute.

CEDAW General Recommendation 19, §24 (b), (k) and (r); CERD General Recommendation 31, §17 and §17; Special Rapporteur on the independence of judges and lawyers, UN Doc. 289/2011. A/66) §44-§46, 60-73, 77 and 100-101, Special Rapporteur on human rights and counter-terrorism: 14/§35-§45 (2012) UN Doc. A/HRC/20, 67 (c) and (e-i); Joint Study of the United Nations Mechanisms on Secret Detention, 42/§292 (2010) UN Doc. A/HRC/13 (k); Myrna Mac Chang v. Guatemala, Inter-American Court § 199 (2003); Concluding Observations of the Human Rights Committee: Kosovo, § 12 (2006) UN Doc. CCPR/C/UNK/CO/1; Concluding observations of the Committee against Torture: Bosnia, / UN Doc. CAT/C §17 (2010) BiH/CO/2-5, Indonesia, 2008) UN Doc. CAT/C/IND/CO/2) §31; Recommendation No. 8) Rec)2006 of the Committee of Ministers of the Council of Europe, §4- §6; Prosecutor v. Haradinaj et al. (IT-04-84-A), ICTY Appeals Chamber (19) July 2010) §35- §36 and 48 - 49.

Among [3003]others, article 24 (2) of the Convention against Transnational Organized Crime, article 27 of the Basic Principles of Reparation, principle 6(b) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, principles 4 and 5 and guideline 7 of the Principles of Legal Aid, article 30 (4) of the European Convention on Sexual Abuse of Children and section P(f) (2) of the Principles of Fair Trial in Africa; see article 7(3) of the Convention against Torture and article 11 (3) of the Convention on Enforced Disappearance.

European Court: §55 (2010) ,(07/40156) A. S. finland, Perez v. France (47287) / 99), Grand Chamber §70- §72 (2004); Recommendation No. R(97)13 of the Committee of Ministers of the Council of Europe, § §2 and 6; Special Rapporteur on Human Rights and Counter-Terrorism: 14 / §42 (2012) UN Doc. A/HRC/20 and 67 (g); see Prosecutor v. Milosevic (54) -IT-02), ICTY Trial Chamber, Decision on Prosecution Request for Interim Protection Measures Pursuant to Rule 69 (19) February §23 (2002).

([3004]) Among others, article 24 (2) of the Convention on Enforced Disappearances, guidelines 7 and 8 of the Principles of Legal Aid, principles 4 and 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, principle 11 (c) of the Basic Principles of Reparation, guideline 7 of the Guidelines on Child Victims and Witnesses, sections p(j), (f) (1) and (m) (2) of the Principles of Fair Trial in Africa, and article 56 (1) (c) of the Council of Europe Convention on Violence against Women.

General Comment 12 of the Committee on the Rights of the Child, §64; Recommendation No. Rec(2006)8 of the Committee of Ministers of the Council of Europe, 6- § §4; see, European Court: Vimukin v. United Kingdom (29178) / 95), §71 (2003) and§ 82 - § 83, Zontol v. Greece (12294/ 07), §110- §112 (2012), Gül v. Turkey (22676/ 93), §93 (2000), Uğur v. Turkey (21594) / 93), 92 § (1999); González et al. ("Cotton Field") v. Mexico, Inter-American Court 424 § (2009).

([3005]) Rosendo Canti et al. v. Mexico, Inter-American Court §184- §185 (2010); see Recommendation No. 8(Rec)2006 of the Committee of Ministers of the Council of Europe, 2/ §6.

See Articles 56 (1[3006]) (h) and 57 of the Council of Europe Convention on Violence against Women, Principles 4 and 5 and Guideline 49§ 8 (d) of the Principles of Legal Aid.

Human Rights Committee General Comment 32, §9- §10; UN General Assembly Resolution 65/228, §12; CEDAW Concluding Observations, India, §22 (2010) UN Doc. CEDAW/C/IND/C0/SP. 1 and 24 (c); Recommendation No. 13) R)97 of

The Principles of Legal Aid state that legal aid should be provided to victims and witnesses where appropriate, without derogating from the rights of the accused. Examples include where the witness faces the risk of self-incrimination, where there is a risk to the safety or well-being of the individual, and people with particular vulnerabilities. Child victims and witnesses should receive appropriate legal assistance as appropriate.[3007]

Under international law, witness protection is not an option but a duty of the state.[3008]

Forms of protection for victims and witnesses include witness protection programs that provide them with physical protection and psychological support before, during and after the trial. [3009]

Witnesses and victims participating in court hearings include, where necessary and where appropriate, giving testimony by electronic or other private means, or closing certain court hearings to the public.

In this context, the European Court stated that where the interests of witnesses may be endangered, in terms of preserving their life, liberty or security, the State must organize the hearing of the criminal case in such a way as to ensure that these interests are not unduly endangered. [3010]

In its ruling on the case of a woman extrajudicially executed during a military intelligence operation in Guatemala, the Inter-American Court ruled that to ensure due process, States must protect victims and witnesses and their immediate relatives, as well as others involved in the criminal justice process. The court found that reprisals hindered the investigations and subsequent criminal proceedings, in particular the killing of an investigating officer, and the receipt of death threats by witnesses and victims' families.[3011]

Criminal proceedings should allow victims to present their concerns before the court, and these concerns should be considered at the appropriate stages in a manner that does not harm their personal interests, and without prejudice to the rights of the accused.[3012]

International standards and international jurisprudence have recognized that there can increasingly be a need for special measures to be taken in the investigation, prosecution and adjudication of criminal offences, when the particular characteristics of the victim or the offence entail special risks for the victim or witnesses. Such crimes include crimes against children and gender-based violence crimes of the victim. Victims of factional violence and those who fear

---

the Committee of Ministers of the Council of Europe, §22; see also Yola v. Belgium (07/45413), European Court §28- §40 (2009).

([3007]) Principles 4, 5 and Guidelines §50- §51 8, 49 (c), 52) § 9(c) and 48) § 7(b) of the Principles of Legal Aid.

([3008]) Special Rapporteur on the independence of judges and lawyers, UN Doc. §62 (2011) A/66/289.

([3009]) Among others, Principles 10-12 of the Basic Principles of Reparation, Article 36 (2) of the European Convention on Sexual Abuse of Children, Section P of the Principles of Fair Trial in Africa, and Guiding Principles 6 and 7(6) of the Council of Europe Guidelines for the Eradication of Impunity.

CEDAW Committee: Concluding observations: India, / UN Doc. CEDAW/C/IND § §23 (2010) C0/SP. 1 and 24 (e); Recommendation No. 8) Rec)2006 of the Committee of Ministers of the Council of Europe, §4- §6 and 10 - 12; Recommendation No. 13) R)97 of the Committee of Ministers of the Council of Europe, §2; Special Rapporteur on the independence of judges and lawyers, §60- §73 (2011) UN Doc. A/66/289; see 2003/2). T. v Hungary) CEDAW Committee (4/ § §8 (2005) and 9/3.

([3010]) Dorsson v. The Netherlands (20524) / 92) European Court §70 (1996)..

([3011]) Myrna McChang v. Guatemala, Inter-American Court (2003) §199.

Among [3012]others, Article 6(b) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Guiding Principle 48 (§ 7) (e) of the Principles of Legal Assistance, Article 25 (3) of the Convention against Transnational Organized Crime, Article 6(2) (b) of the Palermo Protocol on Trafficking in Human Beings, Section P(f) (2) of the Principles of Fair Trial in Africa, and Article 68 (3) of the Rome Statute.

Prosecutor v. Lubanga (1432) - 06/01 - 04 / ICC-01), ICC Appeals Chamber, Decision on the Appeals of the Prosecutor and the Defense against the Trial Chamber I Decision on Victim Participation of 18 January 2008, (11) July 2008) §98- §100 and 104; see also Principle 19 of the Updated Principles on Impunity.

reprisals may be reluctant to testify. Those responsible for such investigations, as well as judges, prosecutors and lawyers, should be specialists in this field or trained for this purpose.[3013]

Witness protection

Article 32 of the United Nations Convention against Corruption provides for the protection of witnesses, experts and victims, stating that: “The protection of witnesses, experts and victims

Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, where appropriate, for their relatives and other persons close to them.

The measures contemplated in paragraph 1 of this article may include, without prejudice to the rights of the defendant, including the right to due process:

Establish procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning their identity and whereabouts;

Providing evidentiary rules that allow witnesses and experts to testify in a manner that ensures the safety of such persons, such as permitting testimony to be given using communications technology, such as video links or other appropriate means.

States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

The provisions of this article shall also apply to victims if they are witnesses.

Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense. ”

Article 33, entitled Protection of whistle-blowers, states: “Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified transaction for any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts relating to offences established in accordance with this Convention.”[3014]

The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the United Nations General Assembly at its fifty-fifth session under agenda item 105, states in item 27: " We decide to develop, where appropriate, national, regional and international action plans to support crime, such as mediation and restorative justice mechanisms, and decide that 2002 shall be the target date for States to review their practice in this regard, continue to develop victim support services, organize awareness campaigns on victims' rights, and consider the establishment of funds for victims, in addition to developing and implementing witness protection policies."

Among [3013]other criteria, article 4(1) of the Declaration on the Elimination of Violence against Women and articles 34, 35 (c) and 36 (1) of the European Convention on Sexual Abuse of Children; see article 8 of the Protocol to the African Charter on the Rights of Women in Africa and section P(m) (3) of the Principles of Fair Trial in Africa.

Concluding observations of the Human Rights Committee: Japan, / UN Doc. CCPR/C §14 (2008) JPN/CO/5, Madagascar, 2007) UN Doc. CCPR/C/MDG/CO/3) §11; CEDAW concluding observations: India, / UN Doc. CEDAW/C/IND §24 (2010) C0/SP. 1 (c) and(f); Principle 10 (c) of the Yogyakarta Principles; Recommendation CM/Rec(2010)5 of the Council of Europe, §a(3).

([3014]) Egypt joined it by virtue of Presidential Decree No. 307 of 2004 issued on September 11, 2004 and published in the Official Gazette on February 08, 2007.

Article 18 of the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, under the heading of mutual legal assistance, states: "... 27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of their or her personal liberty in that territory in respect of any act, omission or conviction that has previously left the territory of the requested State Party. This guarantee shall terminate if the witness, expert or other person remains voluntarily in the territory of the requesting State Party after having had the opportunity to leave within a period of fifteen consecutive days, or any period agreed upon by the States Parties, from the date on which they or she has been officially informed that their or her presence is no longer required by the judicial authorities, or if they or she returns voluntarily to the territory after having left it...".[3015]

The Declaration on the Protection of All Persons from Enforced Disappearance was adopted by the United Nations General Assembly under agenda item 97 (b) of the forty-seventh session on the basis of the report of the Third Committee (A / 47/678 / Add. 2) On February 12, 1993, in Article 13 thereof, provided that:

Each State shall ensure that anyone with knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to report the facts to a competent and independent authority within the State conducting a prompt, full and impartial investigation into their complaint. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall without delay refer the matter to that authority for such investigation, even if no formal complaint has been submitted. No measures shall be taken to shorten or obstruct such investigation.

Each State shall ensure that the competent authority has the necessary powers and resources to carry out the investigation effectively, including powers to compel witnesses to appear and produce relevant documents, and to proceed immediately to inspect the sites.

Measures shall be taken to ensure that all those involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected from ill-treatment, threat or retaliation.

All persons concerned shall be allowed, upon their request, to view the results of the investigation, unless this is detrimental to the progress of the ongoing investigation.

Special provisions shall be made to ensure that any ill-treatment, threat, reprisal or other form of interference, occurring at the time of the lodging of a complaint or during the course of an investigation, is appropriately sanctioned.

It should always be possible to conduct an investigation, in accordance with the aforementioned methods, for as long as the fate of the victim of enforced disappearance remains unclarified. ”

Article 7 (18) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances states: "... 18. No witness, expert or other person who consents to give evidence in a proceeding or to assist in investigations, prosecutions or judicial proceedings in the territory of the requesting Party shall be prosecuted, detained, punished or subjected to any other form of restriction of their or her personal liberty in the territory of that Party in respect of an act, omission or conviction prior to their or her departure from the territory of the requested

(3015) Approved by the Arab Republic of Egypt by Presidential Decree No. 294 of 2003 issued on 04 November 2004 and published in the Official Gazette on 09 September 2004.

Party. Traffic safety shall terminate if the witness, expert or other person remains of their own free will in the territory, after having had the opportunity to depart within a period of fifteen consecutive days or any period agreed upon by the parties as of the date on which they is informed that their presence is no longer required by the judicial authorities or if they returns to the territory of their own free will after having left it...". [3016]

Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: "Each State Party shall guarantee to any individual alleged to have been subjected to torture in any territory under its jurisdiction the right to complain to its competent authorities and to have their case promptly and impartially examined by those authorities. Steps should be taken to ensure that the complainant and witnesses are protected from all ill-treatment or intimidation as a result of their complaint or any evidence provided".[3017]

Article 32 of the Arab Guidance Law on International Judicial Cooperation in Criminal Matters stipulates that: " Every witness or expert, regardless of their nationality, shall be summoned by the competent judicial authority in the requested State, and shall appear voluntarily for this purpose before the judicial bodies of the applicant. They shall enjoy legal protection against taking criminal measures against him, arresting him, or imprisoning them for acts or executing judgments prior to their entry into the territory of the requesting party.

The requesting party shall notify the witness or expert in writing of this protection before they attend for the first time.

The protection of the witness or expert shall cease after the lapse of thirty days from the date of their notification to dispense with their presence in its territory without leaving it, if nothing prevents this for reasons beyond their control or if they return to it voluntarily after leaving[3018] it.

Article 12 of the Arab Guidance Law to Combat Trafficking in Persons Crimes stipulates that: "The competent authorities shall take measures to protect the victim, those who report the crimes stipulated in this law, those affected by them, witnesses, experts and members of their families."

Article 3 of the Arab Convention for the Suppression of Terrorism stipulates that: "The Contracting States undertake not to organize, finance, commit terrorist acts or participate in them in any way whatsoever. In order to prevent and combat terrorist crimes in accordance with their respective domestic laws and procedures, they shall work to:..

Second: Control Measures:

Arrest and prosecute perpetrators of terrorist crimes in accordance with national law or extradite them in accordance with the provisions of this agreement or bilateral agreements between the requesting and requested countries.

Ensuring effective protection for criminal justice personnel.

Ensuring effective protection of sources of information on terrorist crimes and witnesses to them.

Providing the necessary assistance to victims of terrorism.

([3016]) Approved by the Arab Republic of Egypt by Presidential Decree No. 568 of 1990 issued on 23 December 1991 and published in the Official Gazette on 27 June 1991.

([3017]) Approved by the Arab Republic of Egypt by Presidential Decree No. 154 of 1986 issued on 06 April 1986 and published in the Official Gazette on 07 January 1988.

([3018]) Adopted by the Council of Arab Ministers of Justice at its twenty-second session by Resolution No. 653-D 22 - 29/11/2006.

Establish effective cooperation between relevant agencies and citizens to counter terrorism, including appropriate safeguards and incentives to encourage the reporting of terrorist acts, provide information that helps to detect them, and cooperate in apprehending the perpetrators...". [3019]

Article 35 stipulates that:

No penalty or measure involving coercion may be imposed on a witness or expert who has not complied with the summons to appear, even if the summons to appear includes a statement of the penalty for failure.

If the witness or expert voluntarily attends the territory of the requesting State, they shall be assigned to attend in accordance with the provisions of the internal legislation of this State. "

Article 36 stipulates that:

A witness or expert shall not be subject to trial, imprisonment or restriction of their freedom in the territory of the requesting State for acts or judgments prior to their departure from the territory of the requested States, regardless of their nationality. As long as their appearance before the judicial authorities of that State is based on a summons to appear.

It is not permitted to try, imprison or subject to any restriction on their freedom in the territory of the requesting State any witness or expert, regardless of their nationality, who attends before the judicial authorities of that State on the basis of a summons to appear for other acts or judgments not referred to in the summons to attend and preceded their departure from the territory of the requested State.

The immunity provided for in this article shall lapse if the witness or expert sought remains in the territory of the requesting State for thirty consecutive days despite their ability to leave it after their presence has become no longer required by the judicial authorities or if they return to the territory of the requesting State after their departure. "

Article 37 also stipulates that:

The requesting State undertakes to take all necessary measures to ensure the protection of the witness or expert from any publicity that endangers him, their family or their property resulting from their testimony or experience, in particular:

Ensuring the confidentiality of the date and place of their arrival in the requesting State and the means thereof.

Guaranteeing the confidentiality of their place of residence, their movements, and their whereabouts.

Ensuring the confidentiality of their statements and information they makes before the competent judicial authorities.

The requesting State undertakes to provide the necessary security protection required by the situation of the witness or expert and their family, the circumstances of the case in which they is required, and the types of risks expected. "

Article 7 of the Arab Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances under the heading of mutual legal and judicial cooperation stipulated: "... 15. No witness, expert or other person who consents to testify in a proceeding or to assist in investigations, prosecutions or judicial proceedings in the territory of the Requested Party shall

---

([3019]) Approved by the Arab Republic of Egypt by Presidential Decree No. 279 of 1998 issued on 12 August 1998 and published in the Official Gazette on 06 May 1999.

be prosecuted, detained, punished or subjected to any other form of restriction of their or her personal liberty in the territory of that Party in connection with their or her commission of an offence or conviction prior to their or her departure from the territory of the Requested Party. Traffic safety shall terminate if the witness, expert or other person remains of their own free will in the territory after having had the opportunity to depart within a period of fifteen consecutive days or any period agreed upon by the parties as of the date on which they was informed that their presence is no longer required by the judicial authorities or in the event of their return to the territory of their own free will after they has left it...".

Article 22 of the Riyadh Arab Agreement for Judicial Cooperation, under the title of Immunity of Witnesses and Experts, stipulates that: "Every witness or expert, whatever their nationality, shall be declared to appear before the Contracting Parties and to attend voluntarily for this purpose before the judicial authorities of the requesting Contracting Party, shall enjoy immunity against taking penal measures against him, arresting him, or imprisoning them for acts or executing judgments prior to their entry into the territory of the requesting Contracting Party.

The body that declared the witness or expert must notify them in writing of this immunity before their first appearance

This immunity shall cease for the witness or expert after the lapse of 30 days from the date on which the judicial bodies of the requesting Contracting Party dispense with their presence in its territory without leaving it, provided that nothing prevents this for reasons beyond their control or if they return to it of their own free will after leaving it. " [3020]

In the field of bilateral agreements, the Agreement on Legal and Judicial Cooperation between the Government of the United Arab Emirates and the Arab Republic of Egypt, which was signed on February 5, 2000, devoted Chapter Four to the attendance of witnesses and experts in penal matters. Article 23 of it, under the title of immunity of witnesses and experts, stipulates that: "A witness or expert who has not attended despite being notified of the summons may not be subject to any penalty or restrictive measure, even if this assignment includes a penalty clause. If the witness or expert refuses to attend, the requested party shall inform the requesting party of this.

It is not permitted to prosecute, detain, or restrict the personal freedom of a witness or expert - whatever their nationality - who has appeared on a summons to appear before the judicial authorities of the requesting party in the territory of that party for criminal acts or convictions prior to their departure from the territory of the requested party, nor may they be prosecuted, detained, or punished because of their testimony or expert report submitted by them.

The immunity granted to the witness and the expert stipulated in the preceding two paragraphs shall terminate if a period of thirty consecutive days has elapsed from the date of their notification by the entity that assigned them to attend that their presence is no longer desirable and they had the opportunity to leave and nevertheless remained in the territory of the requesting party, or left it and then returned to it of their own free will. This period does not include the periods during which the witness or expert was unable to leave the territory of the requesting party for reasons beyond their control.[3021]

Article 21 of the Agreement on Legal and Judicial Cooperation concluded between the Arab Republic of Egypt and the State of Bahrain signed on 17 May 1989 stipulates that: "Every witness or expert - regardless of their nationality - shall be declared to be present in one of the

---

([3020]) It was joined by the Arab Republic of Egypt by Presidential Decree No. 278 of 2014 issued on 19 August 2014 and published in the Official Gazette on 04 December 2014.

([3021]) Approved by the Arab Republic of Egypt by Presidential Decree No. 464 of 2000 issued on 09 August 2000 and published in the Official Gazette on 03 May 2001.

Contracting States and shall attend voluntarily for this purpose before the judicial authorities of the requesting State. No criminal measures may be taken against him, or they shall be arrested or imprisoned for acts or in implementation of provisions prior to their entry into the country of the requesting State.

The notice of attendance shall not include any threat of coercive means in the event of non-compliance with the notice.

This immunity shall cease for the witness or expert after the lapse of thirty days from the date on which the judicial authorities in the requesting State dispense with their presence without leaving it, provided that there is nothing to prevent this for reasons beyond their control or if they return to it of their own free will after leaving it. The authorities that have declared the witness or expert shall notify them in writing of this immunity before their first appearance. "([3022]).

Article 32 of the Judicial Cooperation Agreement between the Hashemite Kingdom of Jordan and the Arab Republic of Egypt, signed on October 26, 1986, stipulates that: "Every witness or expert who is declared to appear before the judicial authority in one of the contracting countries has the right to appear voluntarily for this purpose and enjoys immunity against taking any penal measures against him, arresting him, imprisoning them for acts or executing previous judgments issued against them by the judicial authority of the requesting party. This immunity shall cease after the lapse of 30 days from the date on which the judicial bodies dispense with their presence in its territory" [3023].

Article No. 20 of the Agreement on Legal and Judicial Cooperation in Civil, Commercial, Criminal and Personal Status Matters between the Governments of the Arab Republic of Egypt and the State of Kuwait, signed on 6 April 1977, stipulates that: "Every witness or expert - regardless of their nationality - shall be declared to be present in one of the Contracting States and shall attend voluntarily for this purpose before the judicial authorities of the requesting State. No penal measures may be taken against him, or they shall be arrested or imprisoned for acts or in implementation of provisions preceding their entry into the country of the requesting State. The notice of attendance shall not include any threat of coercive means in the event of non-compliance with the notice.

This immunity shall cease for the witness or expert after the lapse of fifteen days from the date on which the judicial authorities in the requesting State dispense with their presence without leaving it, with nothing to prevent this for reasons beyond their control or if they return to it after leaving it.

The authority that declared the witness or expert shall notify them in writing of this immunity before they testify for the first time"[3024].

Article 20 of the Convention on Legal and Judicial Cooperation in Civil, Commercial and Penal Matters signed between the Arab Republic of Egypt and the Republic of Tunisia on January 9, 1976 stipulates that: "Every witness or expert, whatever their nationality, shall be declared to be present in any of the Contracting States and of their own free will for this purpose before the authorities of the requesting State. No penal measures may be taken against him, nor shall they be arrested or imprisoned for acts or in implementation of provisions prior to entering the country of the requesting State. The notice of attendance shall not include any threat of coercive means in the event of non-compliance with the notice.

([3022]) Approved by the Arab Republic of Egypt by Presidential Decree No. 260 of 1989 issued on 17 May 1989 and published in the Official Gazette on 14 December 1989.

([3023]) Approved by the Arab Republic of Egypt by Presidential Decree No. 103 of 1987 issued on 23 March 1987 and published in the Official Gazette on 20 August 1987.

([3024]) Approved by the Arab Republic of Egypt by Presidential Decree No. 293 of 1977 and published on January 19, 1978.

This immunity shall cease for the witness or expert after the lapse of thirty days from the date on which the judicial authorities in the requesting State dispense with their presence without leaving it, with nothing preventing them from doing so for reasons beyond their control or if they return to them after they leaves it. The authority that declared the witness or expert shall notify them in writing of this immunity before they testify for the first time" [3025].

Article 11 of the Agreement on Mutual Judicial Assistance in Criminal Matters between the Government of the Arab Republic of Egypt and the Government of the Republic of South Africa signed on 22 October 2001 under the title of the possibility for other persons to testify or assist in investigations in the requesting State provided that they agree that: "1- A request for assistance may be made to facilitate the possibility for a person to assist in an investigation or appear as a witness in proceedings relating to a crime committed in the requesting State, unless that person is the subject of the investigation or accused of committing the crime.

2. The requested State, if it ascertains that appropriate arrangements are in place for the safety of the person by the requesting State, shall request that person to consent to assist in the investigation or appear as a witness in the proceedings and shall take all necessary steps to facilitate the request.[3026]

Article 12 of the Agreement on Mutual Judicial Assistance in the Field of Civil, Commercial and Family Cases between the Governments of the Arab Republic of Egypt and the Russian Federation, signed on 23 September 1997, stipulates that:

If, during the judicial proceedings in the territory of a Contracting Party, the need arises for the presence of a witness in person or the assignment of an expert in the territory of the other Contracting Party, the notification request shall be addressed to a corresponding authority of that Party.

The notice shall not contain any penalties relating to the failure of the addressee to announce attendance.

A witness or expert, whatever their nationality, who voluntarily attends in person on the basis of a summons to appear before the counterpart of the other party, shall not be prosecuted for any crime committed in the territory of that party. they may not be detained or punished for a crime committed before they cross the borders of the State of that party. Such persons may not be prosecuted for any crime, detained or punished for testifying or expressing their point of view as experts or in connection with a crime that is the subject of proceedings.

This immunity shall be waived if the witness or expert fails to leave the territory of the requesting Contracting Party within fifteen days from the date of notification by the authority that notified them that their presence is no longer necessary. This period does not include any period during which the witness or expert is unable to leave the territory of the requesting Contracting Party for reasons beyond their control.

Witnesses and experts who come to the territory of the other Contracting Party at its request shall have the right to be reimbursed by the requesting authority for their travel expenses and costs related to their stay abroad, as well as for the lost earnings. Experts shall also have the right to remuneration for their examination work. The request for summons shall include information on the payments to which the requested persons are entitled. The requesting Contracting Party shall record before their data in the request the advance payment paid to them to cover their expenses.

([3025]) Approved by the Arab Republic of Egypt by Presidential Decree No. 407 of 1976 and published on 06 January 1977.

([3026]) Approved by the Arab Republic of Egypt by Presidential Decree No. 77 of 2003 issued on 22 March 2003 and published in the Official Gazette on 08 January 2004.

A witness or expert who, at the request of judicial assistance, is represented before a judicial authority of the requesting Contracting Party, may refrain from giving their testimony or performing work that they is required to perform if the law of one of the Contracting Parties so permits.

When necessary, the requesting contracting party may attach to the request for assistance a copy of the law that determines the rights and duties of the witness or expert[3027].

Article 9 of the Convention on Judicial Assistance in Criminal Matters and Extradition and Transfer of Sentenced Persons between the Arab Republic of Egypt and the Republic of Hungary, signed on 13 December 1987, stipulates that: "No penalty or measure involving its repetition may be imposed before the witness or expert who has not complied with the summons to appear, even if the summons to appear includes a statement of the penalty for default, unless they voluntarily goes to the territory of the claimant State, provided that they is then reassigned to attend again."

Article 11 also stipulates that:

A witness or expert shall not be subject to trial, imprisonment or restriction of their freedom in the territory of the requesting State for acts or judgments prior to their departure from the territory of the requested State, regardless of their nationality, as long as their appearance before the judicial authorities of that State is based on a summons to appear.

It is not permitted to try, imprison, or subject to any restriction on their freedom in the territory of the requesting State, any person, regardless of their nationality, who is brought to trial before the judicial authorities of that State on the basis of a summons to appear for other acts or judgments not referred to in the summons to appear paper and prior to their departure from the territory of the requested State.

3.The immunity stipulated in this article shall lapse if the witness, expert or person sought remains in the territory of the requesting State for 15 consecutive days despite their ability to leave after their presence has become not required by the judicial authorities, if they return to the territory of the requesting State after leaving it[3028].

Article 21 of the Convention on Judicial Declarations and Letters Rogatory in Civil and Commercial Matters, Personal Status and Judicial Cooperation in the Field of Legal Studies concluded between the Arab Republic of Egypt and the Italian Republic signed on April 20, 1974 stipulates that:

If a witness or expert attends to testify, whatever their nationality, based on a declaration by the court of the requested Contracting Party, before the bodies of the requesting Contracting Party, in civil and commercial matters or in personal status matters, criminal proceedings may not be taken against them or arrested for a punishable act committed before they crossed the borders of the requesting Contracting Party. A previous judgment of conviction may not be executed against him. It is also not permissible to initiate any proceedings against these persons for other legal violations committed before they crossed the borders of the State, nor to carry out previous procedures issued for these violations.

The witness or expert who gives their testimony shall lose the immunity provided for in the preceding paragraph if they does not leave the territory of the requesting Contracting Party within fifteen days from the date of their notification that there is no longer a need for their stay,

---

([3027]) Approved by the Arab Republic of Egypt by Presidential Decree No. 104 of 1998 issued on 14 April 1998 and published in the Official Gazette on 28 November 2002.

([3028]) Approved by the Arab Republic of Egypt by Presidential Decree No. 129 of 1988 issued on 26 March 1988 and published in the Egyptian Chronicle on 22 June 1988.

and the time during which they is unable to leave the territory of the Contracting Party for reasons beyond their control shall not be included in the calculation of this period.

If the person imprisoned in the territory of the Contracting Party declares by proxy by a court of the other Contracting Party to appear as a witness or expert to testify as if they were obliged to move for this purpose, they shall be entitled to the immunity guaranteed to them under the first and second paragraphs of this Article[3029] .

Witnesses, child victims and victims of gender-based violence

International standards and jurisprudence of human rights courts have established a broad spectrum of measures (complementary to those listed in 22/4 above, or more specifically) to protect the rights of child victims and victims of gender-based violence and human trafficking, both during investigations and in the context of criminal proceedings.

For example, many international standards aim to protect the privacy of child victims of crime, child witnesses and victims of gender-based violence and human trafficking [3030].

Treatment of child victims and witnesses in criminal proceedings must be consistent with the child's right to be heard and with the principle of the best interests of the child [3031].

Claims involving child victims and witnesses must respect the child's right to be heard, the best interests of the child, and the child's right to a private life [3032].

Contact between the accused and victims of gender-based violence, as well as child victims, should be avoided in police stations and courts, where possible. Interviews should be videotaped and conducted by specially trained persons [3033].

The rules of evidence should allow for the adoption of such recordings into evidence, without prejudice to the rights of the accused, and victims should be able to make their voices heard in the courtroom without necessarily being present in person, or without having to, at least, see the accused [3034].

Parents or relatives, if appropriate, as well as legal representatives or social workers, should be present when child victims or witnesses are questioned by the police, and the questioning of children should be considered through intermediaries [3035].

Trials involving children may be held behind closed doors.

Limitations may be placed on the scope and manner of investigation of victims of gender-based violence or child victims [3036].

([3029]) Approved by the Arab Republic of Egypt by Presidential Decree No. 1653 of 1974 and published on July 13, 1978.

([3030]) Among others, Article 8(1) (e) of the Optional Protocol to the Convention on the Rights of the Child, Article 36 (2) of the European Convention on Sexual Abuse of Children, Articles 11 and 30 of the Council of Europe Convention on Violence against Women, Guidelines 12-10 of the Guidelines on Child Victims and Witnesses, Section A(3) (f) (1) of the Principles of Fair Trial in Africa, and Article 68 (2) of the Rome Statute.

[3031]See Committee on the Rights of the Child: General Comment 12 §32- §34, General Comment 13 §63.

Guidelines [3032]on Child Victims and Witnesses, General Comment 12 of the Committee on the Rights of the Child, §63- §65 and 68.

([3033]) Among others, Guidelines 12 (34) (a), 11 (31) and 5(14,130) of the Guidelines on Child Victims and Witnesses, and Section O(p) of the Fair Trial Principles in Africa.

Among others, articles 36-35 (2[3034]) (b) of the European Convention on Sexual Abuse of Children, article 56 of the Council of Europe Convention on Violence against Women, guideline 11 (31) of the Guidelines on Child Victims and Witnesses, section O(p) of the Principles of Fair Trial in Africa, article 68 (2) of the Rome Statute, UN Security Council, Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General, UN Doc §25 ,S/2004/616.

([3035]) Among other criteria, Article 35 (1) (f) of the European Convention on Sexual Abuse of Children, and Section O(p) (1)and(5) of the Fair Trial Principles in Africa.

These restrictions must be adequately balanced by measures to protect the rights of the defense[3037].

For example, evidence relating to a victim's sexuality, disposition or behaviors should be allowed to be discussed only when it is relevant and necessary for what is being researched [3038].

In its consideration of cases involving child victims of sexual abuse, the European Court affirmed that justice requires that the accused be given the opportunity to observe the interview with the child witness, for example via a video link or from behind a one-way mirror, or later by watching a videotape of the interview. The accused has the right to direct their questions to the child, either directly or indirectly, or during the first interview or later [3039].

However, the court reiterated that courts should treat evidence obtained from a witness when they cannot guarantee the rights of the defense with caution [3040].

Applying these principles, the court ruled that the rights of the accused were violated when a pre-recorded testimony of the victim constituted the decisive evidence of guilt without the defense having the opportunity to hold the victim accountable, either directly or indirectly [3041].

The defendant's complaints that the fairness of the trial had been punched were ostensibly unfounded, when a videotape of the interrogation of child victims of sexual abuse constituted decisive evidence in their conviction. The accused, the defense lawyer and the investigating judge were present behind a porous mirror during the interrogation, while the accused could ask specific questions to witness through the investigating judge [3042].

Measures must be taken to prevent the publication of any personal information or data that could lead to the identification of the child victim or witness, including within the operative part of court rulings, or in the media [3043].

Chapter Twenty-One: The Right to an Interpreter and Translation

21-1 Within the Framework of Egyptian Law

The language of the courts is Arabic, and the court must hear the statements of litigants or witnesses who are ignorant of them by an interpreter after taking the oath.

Sections n (6[3036]) (f) (3-5) and o(p) of the Principles of Fair Trial in Africa; see Articles 26, 54 and 56 of the Council of Europe Convention on Violence against Women.

Guideline 31 (b[3037]) of the Guidelines on Child Victims and Witnesses, article 30 (4) of the European Convention on Sexual Abuse of Children, sections n(6) (f) (3-5) and o(p) of the Principles of Fair Trial in Africa, and article 68 (1) of the Rome Statute.

([3038]) Article 54 of the Council of Europe Convention on Violence against Women, and Section O(p) (12) of the Principles of Fair Trial in Africa.

([3039]) European Court: §56 (2010) ,(07/40156) A. S. v Finland, Akardi et al. v. Italy (30598/ 02), Inadmissibility Decision (2005), W. S. Poland (21508/ 02), (64- §61 (2007).

([3040]) S. N. v Sweden (96/34209), ECtHR §47- §53 (2002).

([3041]) European Court: §453- §68 (2010) ,(07/40156) A. S. v Finland, Damski v. Poland (22695/ 03), §38- §47 (2008), Bocos-Coestav. The Netherlands (54789/ 00), §64- §74 (2005).

([3042]) Akardi et al. v. Italy (30598 / 02), European Court: Inadmissibility Decision (2005).

([3043]) Among others, article 14 (1) of the International Covenant, Guideline 10 of the Guidelines on Child Victims and Witnesses, Guideline 54§ 10 of the Principles of Legal Aid, and Section O(p) (4) of the Principles of Fair Trial in Africa.

The necessary number of translators shall be attached to each court, and whoever appoints a translator shall be required to appoint a clerk and improve the answer in a written and oral exam in Arabic and one of the foreign languages. Those who hold specialized degrees in one of the foreign languages shall be exempted from the requirement of the exam. This exam shall be taken by the committee formed in the Ministry of Justice from the Undersecretary of the Ministry of the Director General of the Courts Department and the Director General of Administrative Affairs, joined by the Head of the Translation Registry in the Ministry. The appointment, transfer, promotion and granting of bonuses shall be by a decision of the Minister of Justice after reviewing the proposal of this committee[3044].

The original principle is that the trial shall be conducted in the official language of the state, which is Arabic, unless one of the investigation or trial authorities is unable to initiate the investigation procedures without the assistance of an intermediary who performs the translation or the accused requests it and their request is subject to its discretion - it is not defective for the investigation procedures that the authority in charge of it has hired a translator to undertake the translation work, as it is related to its circumstances and requirements, and it is always subject to the discretion of the one who performs it[3045].

The court's failure to use an interpreter does not invalidate the trial proceedings [3046].

If the court has relied on what it relied on in convicting the accused on a report written in English that has not been translated into Arabic, this has no effect on the integrity of its judgment as long as this report in its condition was among the case papers before the court, and the accused did not appear to it that they needed to translate it to know and discuss it [3047].

However, if the accused insists that it is not correct to hold them accountable based on reports in the lawsuit written in English, yet the court convicted them on the basis of these reports without translating them, this is a defect in the procedures that requires the reversal of its judgment [3048].

The investigation procedures are not flawed if the entity in charge of it has used a representative from the embassy who attended with the accused and agreed to be its translator without the translator assigned by the Public Prosecution from the Information Authority or the Foreign Correspondents Department to carry out the translation work [3049].

([3044]) Articles 19, 138 and 156, 157 of the Judicial Authority Law.

([3045]) Appeal No. 20640 of 67 S issued at the 25th session of March 2007 and published in the Technical Office letter No. 58, page No. 311, rule No. 59, Appeal No. 10015 of 63 S issued at the 19th session of January 1995 and published in the first part of the Technical Office letter No. 46, page No. 211, rule No. 30, Appeal No. 5822 of 61 S issued at the 24th session of December 1992 and published in the first part of the Technical Office letter No. 43, page No. 1222, rule No. 190, Appeal No. 5522 of 59 S issued at the 25th session of December 1989 and published in the first part of the Technical Office letter No. 40 page 1313 rule No. 213, Appeal No. 152 of 59 S issued at the 4th session of April 1989 and published in the first part of the Technical Office letter No. 40 page 491 rule No. 81, Appeal No. 3172 of 57 S issued at the 24th session of February 1988 and published in the first part of the Technical Office letter No. 39 page No. 5, Appeal No. 3053 of 54 S issued at the 14th session From March 1985 and published in the first part of the Technical Office's book No. 36 page No. 403 rule No. 69, Appeal No. 698 of 49 s issued in the session of 17 October 1979 and published in the first part of the Technical Office's book No. 30 page No. 762 rule No. 160, Appeal No. 175 of 43 s issued in the session of 9 April 1973 and published in the second part of the Technical Office's book No. 24 page No. 510 rule No. 106, Appeal No. 2821 of 32 s issued in the session of 13 May 1963 and published in the second part of the Technical Office's book No. 14 page No. 392 rule No. 77.

([3046]) Appeal No. 3053 of 54 S issued at the hearing of March 14, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 403 rule No. 69.

([3047]) Appeal No. 188 of 13 S issued on December 28, 1942 and published in the first part of the set of legal rules, sixth year, page No. 77, rule No. 56.

([3048]) Appeal No. 1204 of 18 S issued at the session of December 20, 1948 and published in the first part of the set of legal rules, seventh year, page No. 679, rule No. 725.

([3049]) Appeal No. 10015 of 63 S issued at the session of January 19, 1995 and published in the first part of the book of the Technical Office No. 46 page No. 211 rule No. 30.

It is also not a defect in the investigation procedures that the party conducting it has used two mediators, one of which translated the defendant's statements from Hindi into English and then the other transferred them from English to Arabic, as it is related to the circumstances and requirements of the investigation and is always subject to the discretion of the person who carries it out [3050].

They requested the assistance of an interpreter related to the interest of the accused, so they may waive their use [3051].

If it is not clear from the minutes of the trial hearings that the accused requested the assistance of an expert to translate the data that the accused mourns for the judgment not to seek the assistance of an expert to translate - they shall not be entitled to appeal to the court for its failure to conduct an investigation that was not requested of it or to respond to a defense that was not raised before it [3052].

It is not permissible to claim that the interpreter used by the prosecution witness and the Public Prosecution was not familiar with the language of the accused for the first time before the Court of Cassation [3053].

The accused has no interest in challenging the trial procedures if the papers submitted in the lawsuit are written in a foreign language and some of them have not been translated and the civil plaintiff waives adhering to the part that has not been translated and the court does not rely on any role of the court on any of these papers [3054].

The expert - the translator - is not obligated to take the oath before hearing their statements before the court as an expert and not a witness, as long as they have taken an oath when taking their job, which dispenses with their oath in every case in which they appears before the courts[3055].

21-2 Within the Framework of International Covenants

Whoever is accused of a criminal act has the right to the assistance of a specialized translator free of charge, if they do not understand or speak the language used in court, and whoever is accused of a criminal act has the right to have the documents translated.

21-2-1 Interpretation and Translation

If the accused does not speak, understand or read the language used by the court, or finds it difficult to do so, they has the right to obtain an accurate and clear interpretation, from the

---

([3050]) Appeal No. 3172 of 57 S issued in the session of February 24, 1988 and published in the first part of the book of the Technical Office No. 39 page No. 5.

([3051]) Appeal No. 5822 of 61 s issued at the session of 24 December 1992 and published in the first part of the Technical Office book No. 43 page No. 1222 rule No. 190, Appeal No. 3053 of 54 s issued at the session of 14 March 1985 and published in the first part of the Technical Office book No. 36 page No. 403 rule No. 69, Appeal No. 175 of 43 s issued at the session of 9 April 1973 and published in the second part of the Technical Office book No. 24 page No. 510 rule No. 106, Appeal No. 2821 of 32 s issued at the session of 13 May 1963 and published in the second part of the Technical Office book No. 14 page No. 392 rule No. 77.

([3052]) Appeal No. 5288 of 52 S issued at the session of November 14, 1982 and published in the first part of the book of the Technical Office No. 33 page No. 879 rule No. 181, Appeal No. 1923 of 8 S issued at the session of October 31, 1938 and published in the book of the Technical Office No. 4 p No. Part 1 page No. 317 rule No. 262.

([3053]) Appeal No. 15049 of 59 S issued at the session of February 20, 1990 and published in the first part of the book of the Technical Office No. 41 page No. 397 rule No. 64.

([3054]) Appeal No. 1057 of 47 S issued on May 1, 1930 and published in the first part of the set of legal rules, the second year, page No. 29, rule No. 36.

([3055]) Appeal No. 1096 of 29 S issued at the session of November 17, 1959 and published in the third part of the book of the Technical Office No. 10 page No. 896 rule No. 190.

language of the court to the language of the accused and vice versa, as well as to have a translator prepare edited copies of the documents in the relevant language, as they are of crucial importance in ensuring the fairness of the proceedings. These functions are fundamental to the realization of the right to legal aid, to the provision of adequate facilities for the accused, to prepare their defense, and to the principle of equality of opportunity between the prosecution and the defense before the law and the courts.

Without this kind of assistance, the accused may be unable to understand what is going on in court and cannot fully and effectively participate in the preparation of their defense and in the trial. Because documents can contain essential information for the preparation of a defense, and in the face of the possibility that the accused may be asked about the content of some documents, the right to translation remains a necessity for the right to a fair trial.

The right to such assistance extends to the provision of facilities to persons with disabilities whose disability may prevent them from communicating orally or in writing, or from reading the relevant documents in the language or format in which they were prepared [3056].

The enforcement of these rights requires the authorities to ensure the availability of sufficient numbers of qualified interpreters and document translators[3057].

21-2-2 The right to use a competent interpreter

Every person accused of a criminal act has the right to be assisted by an interpreter, free of charge, if they does not understand or speak the language used in court [3058].

Failure to provide interpretation to the accused who does not speak or understand the language used in court constitutes a violation of the accused's right to a fair trial [3059].

The right to an interpreter applies at all stages of criminal proceedings, including during police questioning of a suspect, preliminary examinations or inquiries, challenges to the legality of detention, as well as during detention or imprisonment [3060].

It also applies, where appropriate, to communication between the accused and their lawyer at all stages of the investigation and the pre-trial and trial period)[3061].

See [3056]Guidelines 42§ 2 (d) and 43§ 3 (f) of the Principles of Legal Aid, Articles 9 and 13 of the Convention on Persons with Disabilities, Article 2(3) of EU Directive 2010/64 (2010) on the right to interpretation and translation of documents in criminal proceedings.

([3057]) Concluding observations of the Human Rights Committee: The former Yugoslav Republic of Macedonia, §17 (2008) UN Doc. CCPR/C/MKD/CO/2; CERD Concluding Observations: Romania, UN Doc §19 (2010) CERD/C/ROU/CO/16-19, Cameroon, / UN Doc. CERD/C. §17 (2010) CMR/CO/15-18.

([3058]) Article 14 (3) (f) of the International Covenant, Article 40 (2) (b) (iv) of the Convention on the Rights of the Child, Articles 18 (3) (f) and 16 (8) of the Migrant Workers Convention, Article 8(2) (a) of the American Convention, Article 16 (4) of the Arab Charter, Article 6(3) (e) of the European Convention, Guideline 43§ 3 (f) of the Principles of Legal Aid, Section N(4) of the Principles of Fair Trial in Africa, Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas, Article 67 (1) (f) of the Rome Statute, Article 20 (4) (f) of the Statute of the Rwanda Tribunal, and Article 21 (4) (f) of the Statute of the Yugoslavia Tribunal.

Bozbeh [3059]v. Turkmenistan, Human Rights Committee, / UN CCPR 2/ §7 (2010) C/100/D/1530/2006; Kevin Mgwanga Goneme et al. v. Cameroon (266) / 03), African Commission (130- § §129 (2009); Report on Terrorism and Human Rights, Inter-American Commission, (2002) (III)H (3) , §235 III)D (1). 16)f(§ IV)H) , §400.

([3060]) Article 16 (8) of the Migrant Workers Convention, Principle 14 of the Body of Principles, Guideline 43§ 3 (f) of the Principles on Legal Aid, Section n(4) (c) of the Principles on Fair Trial in Africa, and Principle 5 of the Principles relating to Persons Deprived of their Liberty in the Americas.

European Court, Hermé v. Italy (18114) / 02), Grand Chamber §69 (2006), Diallo v. Sweden (13205) / 07), in the decision on inadmissibility, (25- §23 (2010); see Human Rights Committee, General Comment 32, §32, Singarasa v. Sri Lanka, 2001-2004 (UN CCPR/C/81/D/1033) 2/ §7; Special Rapporteur on human rights and counter-terrorism, Spain, §26- §27 (2008) UN Doc. A/HRC/10/3/Add. 2; Article 2 of EU Directive 2010/64 (2010) on the right to an interpreter and to the translation of documents in criminal proceedings.

The right to free assistance by an interpreter must be available to all persons who do not speak or understand the language of the court, both citizens and non-citizens [3062].

As the guardian of integrity in criminal cases, courts remain responsible for ensuring that competent interpretation is provided to those who need it [3063].

The accused should have the right to appeal any decision that deprives them of the assistance of an interpreter [3064].

In deciding whether or not to appoint an interpreter, the court shall not only consider the extent of the accused's knowledge of the language, but shall also take into account the complexity of the issues raised in the case and any correspondence or documents issued by the authorities. If the accused speaks and understands the language used to some extent, the complexity of the legal and factual issues should be taken into account in deciding whether or not to use an interpreter[3065].

The International Criminal Court has emphasized that, in case of doubt, the option of providing an interpreter should prevail [3066].

The Human Rights Committee concluded that in cases where it is ascertained that the accused speaks and understands adequately the language used by the court, there is no obligation for the authorities to provide the accused with an interpreter to assist them free of charge, even if the accused prefers to use another language [3067].

However, States are encouraged to allow criminal proceedings to be conducted in regional or minority languages, or for individuals to use such languages in court when requested to do so by one of the parties to the dispute. This can be facilitated by interpreters [3068].

For this right to be meaningful, the interpreter must be competent and accurate. The accused must be able to understand what is being done, and the court must be able to understand the statements made in another language [3069].

It should draw the attention of the authorities, and therefore the court, to the importance of issues such as the efficiency of the translator and the quality of the translation, which the court must ensure adequately [3070].

Interpreters should be provided to those who do not understand or speak the language used in court free of charge, regardless of the outcome of the trial [3071].

([3061]) General Comment 32 of the Human Rights Committee, §32.
([3062]) General Comment 32 of the Human Rights Committee, §40; General Recommendation 31 of the Committee on the Elimination of Racial Discrimination, §30; Hermé v. Italy (18114) / 02), Grand Chamber of the European Court §72 (2006); Kevin Mgwanga Goneme et al. v. Cameroon (266) / 03), African Commission, Annual Report 26. §130 (2009).
([3063]) Coscani v. United Kingdom (32771) / 96), European Court. §39 (2002).
See [3064]Article 2(5) of EU Directive 2010/64 (2010) on the right to an interpreter and to the translation of documents in criminal proceedings.
([3065]) Hermi v. Italy (18114) / 02), Grand Chamber of the European Court. §71 (2006).
Prosecutor [3066]v. Katanga (07) /01-04/ ICC-01), ICC Appeals Chamber 27 May §61 (2008).
([3067]) Section N(4) (b) of the Principles of Fair Trial in Africa.
Human Rights Committee, Goma v. Australia, / UN CCPR 3/ §7 (2003) C/78/D/984/2001, Goisdon v. France, . 3/10-2/ §10 (1990) UN CCPR/C/39/D/219/1986.
([3068]) Article 9(1) (a) of the European Charter for Regional or Minority Languages.
Concluding observations of the Committee on the Elimination of Racial Discrimination: Romania, §19 (2010) UN Doc. CERD/C/ROU/CO/16-19, Guatemala, UN Doc §8 (2010) CERD/C/GTM/CO/12-13, Australia, / UN Doc. CERD/C/AUS. §19 (2010) CO/15-17.
Section n (4[3069]) (1) (f) of the Principles of Fair Trial in Africa; see Article 67 (1) (f) of the ICC Statute.
European [3070]Court, Kamasinski v. Austria (9783) / 82), (1989) §74 and§ 83; Hasioglu v. Romania (2573) / 03), §89- § 99 (2011); Griffin v. Spain, Human Rights Committee, 1992/95 (UN CCPR/C/53/D/493) . 5/ §9.
([3071]) Section N(4) (f) of the Principles of Fair Trial in Africa.

21-2-3 Right to obtain translation of documents

Some standards explicitly provide for the accused to be provided with an interpreter to assist them and with the written translation of documents free of charge [3072].

Moreover, they understood that the right to be assisted by an interpreter, as stated in other treaties, includes the right of the accused to obtain translation of the relevant documents free of charge and within a reasonable period of time to enable them to prepare their defense and present it before the court [3073].

However, the right to free translation of documents is not unlimited. It covers the documents necessary for the accused to understand these documents or to place them in the language used by the court in a way that ensures the fairness of the trial [3074].

Documents that should be translated free of charge include, without limitation, the indictment and/or the operative counts, decisions regarding detention, and judgments [3075].

Noting that the International Covenant and the European Convention explicitly guarantee the right to an interpreter (and not to an interpreter of documents), both the Human Rights Committee and the European Court considered that the “translations” of some documents (including by the defense lawyer or through an interpreter) may be sufficient to guarantee the right, provided that this does not prejudice the rights of the defense.[3076]

If the accused needs translation of the relevant documents, he/she should request their translation. The defendant's ability to understand the language in which the document was written remains a matter of fact (and has nothing to do with what the defendant prefers).[3077]

The decision on the capabilities of the accused and the need for translation should remain within the jurisdiction of the Court itself. However, the decision to reject translation requests should also remain subject to appeal [3078].

Lidice and Balkassm and Koch v. Germany (6210/73; 6877/75; 75/7132), EC §42 (1978).

([3072]) Article 8(2) (a) of the American Convention, Guideline 43§ 3 (f) of the Principles on Legal Aid, Principle 5 of the Principles on Persons Deprived of their Liberty in the Americas, Section n(4) (d-f) of the Principles on Fair Trial in Africa, Article 67 (1) (f) of the Rome Statute, Rule 3 of the ICTR Rules, Rule 3 of the ICTY Rules, Article 3 of EU Directive 2010/64 (2010) on the right to an interpreter and to the translation of documents in criminal proceedings.

([3073]) European Court: Hermé v. Italy (18114) / 02), Grand Chamber §69- §70 (2006), Diallo v. Sweden (13205) / 07), in the decision on inadmissibility, §23 - §25(2010), Lidecke, Belkacem and Koch v. Germany (73/6210; 75/6877; 75/7132), European Court §42 (1978).

([3074]) Section n(4) (d) of the Principles of Fair Trial in Africa, and Article 67 (1) (f) of the Rome Statute.

European Court: Lideke, Belkacem and Koch v. Germany (6210/73; 75/6877; 75/7132), EC 48 § (1978), Kamasinsky v. Austria (9783) / 82), §74 (1989), Diallo v. Sweden (13205) / 07), in the decision on inadmissibility, §23 (2010).

([3075]) Rule 47 of the ICTR Rules, and rule 47 of the ICTY Rules.

Human [3076]Rights Committee: Harward v. Norway, / UN CCPR 5/9-2/ §9 (1994) C/51/D/451/1991, Haseoglu v. Romania (2573) / 03, European Court §88-§92 (2011); see Human Rights Committee General Comment 32, §33.

The [3077]Prosecutor v. Tolimir (IT-05-88/2-AR73. 1), ICTY Appeals Chamber, Decision on Interlocutory Appeal against Pre-Trial Judge's Decision of 11 December 2007, (28) March §14- §15 (2008).

([3078]) Article 3(5) of EU Directive 2010/64 (2010) on the right to an interpreter and to the translation of documents in criminal proceedings.

Chapter Twenty-Two: The Right to Announce Judgments

22-1 Within the Framework of Egyptian Law

The pronouncement of the judgment shall be in a public session.[3079]

The judgment shall be issued in the public hearing, even if the lawsuit is considered in a secret hearing, and it must be recorded in the minutes of the hearing and signed by the president of the court and the clerk.

The court may order the necessary means to prevent the accused from leaving the hearing room before the judgment is pronounced or to ensure his presence at the hearing for which the judgment is postponed, even if this is by issuing an order to detain him if the incident is one in which preventive detention is permitted.[3080]

The publicity of the pronouncement of the judgment is a fundamental rule that must be observed in order to achieve the goal envisaged by the street that it must be public in all trial proceedings, except for what has been explicitly excluded, which is to strengthen confidence in the judiciary and trust in it. Article 331 of the Code of Criminal Procedure entails nullity on the non-observance of the provisions of the law relating to any substantive procedure, and since the foregoing, the minutes of the hearing and the judgment paper were among the documents of the lawsuit that reveal the progress of the trial proceedings until the issuance of the judgment and it was not useful that the judgment was issued in a public hearing, which is defective in the judgment of nullity.[3081]

On the other hand, the law did not provide for nullity in the event of the verdict being pronounced in a session other than the session specified for that, when it was pronounced in a public session.[3082]

22-2 Within the Framework of International Covenants

Judgements in trials - by civil and criminal courts, and at the stages of trial and appeal - must be issued publicly.[3083]

The ICCPR allows one exception to this requirement in criminal cases in order to protect the interests of children under the age of 18. This is in line with the provisions of the Convention on the Rights of the Child, which guarantees the accused child full respect for his privacy at all stages of the trial.[3084]

([3079]) Article 187 of the Constitution.
([3080]) Article 303 of the Criminal Procedure Law.
([3081]) Appeal No. 43411 of 59 S issued at the session of 27 November 1996 and published in the first part of the book of the Technical Office No. 47 page No. 1260 rule No. 183, Appeal No. 988 of 31 S issued at the session of 27 February 1962 and published in the first part of the book of the Technical Office No. 13 page No. 195 rule No. 51.
([3082]) Appeal No. 1168 of 46 S issued at the session of February 28, 1977 and published in the first part of the Technical Office's book No. 28 page No. 310 rule No. 66, Appeal No. 853 of 46 S issued at the session of December 19, 1976 and published in the first part of the Technical Office's book No. 27 page No. 952 rule No. 216, Appeal No. 482 of 34 S issued at the session of November 17, 1964 and published in the third part of the Technical Office's book No. 15 page No. 687 rule No. 136.
([3083]) Article 14/1 of the International Covenant, Article 6(1) of the European Convention, Section A(3) (j) of the Principles of Fair Trial in Africa, Articles 74 (5) and 76 (4) of the Rome Statute, Article 22 (2) of the Statute of the Rwanda Tribunal and Article 23 (2) of the Statute of the Yugoslavia Tribunal; see Article 8(5) of the American Convention.
([3084]) Article 40 (2) (b) (vii) of the Convention on the Rights of the Child.

Article 8 of the American Convention requires trials to be public except as necessary to protect the interest of justice, which includes the best interests of the child. This condition extends to the judgments issued by the court.[3085]

The principle of the publicity of judgments aims to ensure that the application of justice is made public and subject to public scrutiny.

The verdict may be announced orally at a court hearing open to the general public or in written form.

The operative part of the written judgment should be presented to the parties to the dispute and made available to others, including through court records.[3086]

The requirement to make the reasons for judgments public applies (except in exceptional circumstances) to all judgments, even when the public has been excluded from the proceedings of the trial.[3087]

Some sentences are published in a coded form, when this is necessary to maintain the confidentiality of protected information relating to victims or witnesses, including children.[3088]

If the accused does not speak or understand the language used in the court, the verdict should be orally transmitted to them in the language he understands, and ideally by translating it in writing into a language he understands.[3089]

The right to a trial within a reasonable period of time includes the right to receive the merits of the judgment issued by the court of first instance and the various stages of the appeal within a reasonable period of time.[3090]

Chapter Twenty-Three: The Right to Know the Rationale of the Judgment

23.1 Under Egyptian Law

23-1-1 Reasoning of the Judgment

The judgment must include the reasons on which it was based, and every conviction must include a statement of the punishable fact and the circumstances in which it occurred and refer to the text of the law under which it was ruled.[3091]

First: The reasons on which the judgment was based

The judgment - whether issued by conviction or acquittal - must include the reasons on which it was based.[3092]

([3085]) See Palamara-Eribarniv. Chile, Inter-American Court (2005) §165- §168; Advisory Opinion 1002/OC-17 of the Inter-American Court §134.

([3086]) Sater v. Switzerland (8209) / 78), ECt §31- § 34(1984).

([3087]) General Comment 32 of the Human Rights Committee, §29.

([3088]) in the case against Vojislav Šešelj (IT-03-67-R77. 2-A), ICTY Appeals Chamber Decision (General Revised Version), Appeals Chamber, (19) May §32 (2010).

[3089]See Concluding Observations of the Committee on the Elimination of Racial Discrimination: Italy, §8 (2008) UN Doc. CERD/C/ITA/CO/15; Kamasinski v. Austria (82/9783), European Court § §74 (1989) and 84-85..

Opinion [3090]No. 21/2004 of the Working Group on Enforced or Involuntary Disappearances (concerning Morales Hernández v. Colombia), 7/2006 / UN Doc. E/CN. 4 2004) Add. 1) pp. 6 ,8, 11 and 14; Lenford Hamilton v. Jamaica, Human Rights Commission, 1988/3/ § §8 (1994) UN Doc. CCPR/C/50/D/333 and 9/1..

([3091]) Article 310 of the Criminal Procedure Code.

The importance of the reasoning of the judgment is highlighted in that it reveals the extent to which the court adheres to the guarantees of a fair trial. It is the mirror of the extent to which the rules and procedures stipulated by the law are followed, the extent to which the guarantees it imposed are respected, and the extent to which the court properly applies the law. Through the reasoning of the judgment, the parties to the lawsuit are protected from the judge's control because he is charged with revealing in the reasons for their judgment the reason for the judiciary and the procedures that ended with it to this judiciary. The reasons for the judgment show the court's logical process of judicial reasoning. All other defects that reveal the unavailability of a fair trial appear through this reasoning.

Judgments in criminal articles must foretell certainty and certainty on the reality that is proven by the considered evidence and is not based on suspicion, probability and abstract considerations.[3093]

Therefore, the street is obligated in Article 310 of the Code of Criminal Procedure to include the judgment - even if it was issued with acquittal - on the grounds on which it was based, otherwise it is invalid, and the reasoning considered to be to determine the grounds and arguments on which it is based and produced is for it, whether in terms of the incident or in terms of the law. In order to achieve its purpose, it must be in a clear detailed statement so that it is possible to determine the justifications for what it has ruled on. As for emptying the judgment in general terms or placing it in an anonymous form, it does not achieve the purpose that the street intended to respond to the reasoning of the judgments, and the Court of Cassation cannot monitor the validity of the application of the law to the incident as it has been proven in the judgment.[3094]

([3092]) Article 310 of the Criminal Procedure Code.

([3093]) Appeal No. 21819 of 85 S issued at the hearing of December 3, 2015 (unpublished)), Appeal No. 6505 of 4 S issued at the hearing of January 26, 2014 (unpublished)), Appeal No. 5266 of 83 S issued at the hearing of November 4, 2013 (unpublished)), Appeal No. 5973 of 82 S issued at the hearing of March 25, 2013 and published in the book of the Technical Office No. 64, page No. 422, rule No. 57, Appeal No. 4822 of 82 S issued at the 6th session of February 2013 and published in Technical Office Letter No. 64, page No. 200, rule No. 21, Appeal No. 24010 of 64 S issued at the 16th session of December 1996 and published in Part I of Technical Office Letter No. 47, page No. 1355, rule No. 195, Appeal No. 19054 of 63 S issued at the 21st session of November 1995 and published in Part I of Technical Office Letter No. 46, page No. 1232, rule No. 184, Appeal No. 6574 of 78 S issued at the 27th session of December 2012 and published in Technical Office Letter No. 63, page No. 900 Rule No. 162, Appeal No. 5941 of 78 S issued at the 8th session of March 2010, Appeal No. 4933 of 72 S issued at the 18th session of September 2003 and published in the Technical Office Letter No. 54 page 829 Rule No. 111, Appeal No. 22830 of 69 S issued at the 17th session of January 2002, Appeal No. 10055 of 62 S issued at the 7th session of November 2001 and published in the Technical Office Letter No. 52 page 828 Rule No. 158.

([3094]) Appeal No. 2322 of 87 Q, issued on April 5, 2018 (unpublished)); Appeal No. 111 of 86 Q, issued on March 24, 2018 (unpublished)); Appeal No. 33194 of 86 Q, issued on November 4, 2017 (unpublished)); Appeal No. 5402 of 86 Q, issued on April 20, 2017 (unpublished)); Appeal No. 21864 of 86 Q, issued on March 14, 2017 (unpublished)); Appeal No. 33163 of 85 Q, issued on December 7, 2016, and published in the Technical Office Book No. 67, Page 884, Rule No. 109; Appeal No. 50733 of 85 Q, issued on November 22, 2016, and published in the Technical Office Book No. 67, Page 812, Rule No. 101; Appeal No. 6343 of 85 Q, issued on October 15, 2016; Appeal No. 50979 of 85 Q, issued on June 1, 2016; Appeal No. 6829 of 85 Q, issued on April 2, 2016; Appeal No. 2526 of 85 Q, issued on March 5, 2016; Appeal No. 30180 of 84 Q, issued on February 28, 2016; Appeal No. 23038 of 4 Q, issued on February 27, 2016; Appeal No. 15321 of 85 Q, issued on February 3, 2016, and published in the Technical Office Book No. 67, Page 153, Rule No. 21; Appeal No. 11386 of 85 Q, issued on January 13, 2016; Appeal No. 2611 of 85 Q, issued on January 9, 2016, and published in the Technical Office Book No. 67, Page 58, Rule No. 7; Appeal No. 16992 of 85 Q, issued on December 9, 2015, and published in the Technical Office Book No. 66, Page 833, Rule No. 124; Appeal No. 21819 of 85 Q, issued on December 3, 2015; Appeal No. 22647 of 84 Q, issued on November 18, 2015, and published in the Technical Office Book No. 66, Page 802, Rule No. 120; Appeal No. 33425 of 84 Q, issued on July 25, 2015; Appeal No. 27017 of 84 Q, issued on February 11, 2015; Appeal No. 21598 of 84 Q, issued on January 13, 2015; Appeal No. 6505 of 4 Q, issued on January 26, 2014; Appeal No. 8090 of 4 Q, issued on November 9, 2013, and published in the Technical Office Book No. 64, Page 891, Rule No. 137; Appeal No. 5266 of 83 Q, issued on November 4, 2013; Appeal No. 9091 of 4 Q, issued on July 3, 2013; Appeal No. 10769 of 82 Q, issued on June 13, 2013, and published in the Technical Office Book No. 64, Page 675, Rule No. 97; Appeal No. 6614 of 82 Q, issued on June 1, 2013, Appeal No. 256 of 82 Q, issued on April 6, 2013; Appeal No. 5973 of 82 Q, issued on March 25, 2013, and published in the Technical Office

Book No. 64, Page 422, Rule No. 57; Appeal No. 8039 of 81 Q, issued on February 13, 2013, and published in the Technical Office Book No. 64, Page 267, Rule No. 27; Appeal No. 4822 of 82 Q, issued on February 6, 2013, and published in the Technical Office Book No. 64, Page 200, Rule No. 21; Appeal No. 5334 of 82 Q, issued on January 13, 2013, and published in the Technical Office Book No. 64, Page 90, Rule No. 12; Appeal No. 5334 of 82 Q (duplicated), issued on January 13, 2013, and published in the Technical Office Book No. 64, Page 90, Rule No. 12; Appeal No. 3618 of 82 Q, issued on January 13, 2013; Appeal No. 4488 of 82 Q, issued on January 5, 2013; Appeal No. 6574 of 78 Q, issued on December 27, 2012, and published in the Technical Office Book No. 63, Page 900, Rule No. 162; Appeal No. 53254 of 75 Q, issued on December 25, 2012; Appeal No. 2032 of 81 Q, issued on February 6, 2012, and published in the Technical Office Book No. 63, Page 170, Rule No. 22; Appeal No. 5941 of 78 Q, issued on March 8, 2010; Appeal No. 577 of 79 Q, issued on November 15, 2009; Appeal No. 498 of 79 Q, issued on September 29, 2009; Appeal No. 5216 of 78 Q, issued on November 6, 2008; Appeal No. 17567 of 68 Q, issued on February 5, 2008; Appeal No. 62351 of 76 Q, issued on February 26, 2007, and published in the Technical Office Book No. 58, Page 171, Rule No. 36; Appeal No. 5381 of 70 Q, issued on July 27, 2006; Appeal No. 5664 of 69 Q, issued on March 13, 2006; Appeal No. 20346 of 67 Q, issued on January 19, 2006; Appeal No. 13642 of 65 Q, issued on September 20, 2005; Appeal No. 930 of 68 Q, issued on May 26, 2005; Appeal No. 10390 of 66 Q, issued on May 5, 2005, and published in the Technical Office Book No. 56, Page 292, Rule No. 43; Appeal No. 23694 of 67 Q, issued on March 3, 2005 (unpublished)); Appeal No. 478 of 66 Q, issued on February 23, 2005; Appeal No. 7541 of 66 Q, issued on February 7, 2005, and published in the Technical Office Book No. 56, Page 126, Rule No. 15; Appeal No. 9521 of 66 Q, issued on February 3, 2005 (unpublished)); Appeal No. 21864 of 65 Q, issued on January 26, 2005 (unpublished)); Appeal No. 109 of 67 Q, issued on January 18, 2005; Appeal No. 23013 of 67 Q, issued on January 6, 2005 (unpublished)); Appeal No. 21138 of 68 Q, issued on November 10, 2004 (unpublished)); Appeal No. 5831 of 68 Q, issued on July 11, 2004 (unpublished)); Appeal No. 12161 of 66 Q, issued on May 20, 2004 (unpublished)); Appeal No. 6237 of 68 Q, issued on April 19, 2004 (unpublished)); Appeal No. 7154 of 67 Q, issued on March 3, 2004; Appeal No. 24433 of 67 Q, issued on February 19, 2004; Appeal No. 15586 of 67 Q, issued on December 22, 2003; Appeal No. 1588 of 65 Q, issued on December 18, 2003; Appeal No. 22810 of 65 Q, issued on November 20, 2003; Appeal No. 22918 of 65 Q, issued on November 20, 2003; Appeal No. 20936 of 65 Q, issued on November 6, 2003 (unpublished)); Appeal No. 13770 of 64 Q, issued on October 20, 2003; Appeal No. 6866 of 65 Q, issued on October 16, 2003 (unpublished)); Appeal No. 23842 of 63 Q, issued on September 23, 2003; Appeal No. 4933 of 72 Q, issued on September 18, 2003, and published in the Technical Office Book No. 54, Page 829, Rule No. 111; Appeal No. 10592 of 64 Q, issued on April 20, 2003, and published in the Technical Office Book No. 54, Page 577, Rule No. 72; Appeal No. 629 of 68 Q, issued on April 14, 2003; Appeal No. 16329 of 65 Q, issued on February 6, 2003; Appeal No. 579 of 64 Q, issued on January 16, 2003, and published in the Technical Office Book No. 54, Page 108, Rule No. 10; Appeal No. 21188 of 63 Q, issued on December 19, 2002; Appeal No. 13028 of 65 Q, issued on November 25, 2002, Appeal No. 5753 of 65 Q, issued on November 17, 2002, and published in the Technical Office Book No. 53, Page 1124, Rule No. 188; Appeal No. 13214 of 62 Q, issued on November 10, 2002, and published in the Technical Office Book No. 53, Page 1088, Rule No. 180; Appeal No. 18561 of 64 Q, issued on September 17, 2002; Appeal No. 10409 of 62 Q, issued on March 5, 2002, and published in the Technical Office Book No. 53, Page 362, Rule No. 64; Appeal No. 22830 of 69 Q, issued on January 17, 2002; Appeal No. 223 of 62 Q, issued on January 5, 2002, and published in the Technical Office Book No. 53, Page 32, Rule No. 5; Appeal No. 3692 of 62 Q, issued on November 12, 2001; Appeal No. 2332 of 62 Q, issued on November 12, 2001; Appeal No. 10055 of 62 Q, issued on November 7, 2001, and published in the Technical Office Book No. 52, Page 828, Rule No. 158; Appeal No. 4263 of 64 Q, issued on May 14, 2001; Appeal No. 16162 of 63 Q, issued on April 9, 2001; Appeal No. 3610 of 65 Q, issued on February 26, 2001, and published in the Technical Office Book No. 52, Page 305, Rule No. 47; Appeal No. 1927 of 64 Q, issued on February 15, 2001, and published in the Technical Office Book No. 52, Page 852, Rule No. 163; Appeal No. 17340 of 62 Q, issued on January 9, 2001, and published in the Technical Office Book No. 52, Page 108, Rule No. 14; Appeal No. 19702 of 60 Q, issued on October 12, 1999; Appeal No. 8218 of 63 Q, issued on March 11, 1999, and published in the Technical Office Book No. 50, Page 171, Rule No. 38; Appeal No. 9897 of 60 Q, issued on January 17, 1999, and published in the Technical Office Book No. 50, Page 53, Rule No. 9; Appeal No. 4544 of 60 Q, issued on January 14, 1999, and published in the Technical Office Book No. 50, Page 48, Rule No. 8; Appeal No. 24010 of 64 Q, issued on December 16, 1996, and published in the Technical Office Book No. 47, Page 1355, Rule No. 195; Appeal No. 9020 of 64 Q, issued on April 4, 1996, and published in the Technical Office Book No. 47, Page 461, Rule No. 65; Appeal No. 43605 of 59 Q, issued on February 28, 1996, and published in the Technical Office Book No. 47, Page 281, Rule No. 41; Appeal No. 63405 of 59 Q, issued on January 9, 1996, and published in the Technical Office Book No. 47, Page 40, Rule No. 4; Appeal No. 19054 of 63 Q, issued on November 21, 1995, and published in the Technical Office Book No. 46, Page 1232, Rule No. 184; Appeal No. 13315 of 59 Q, issued on November 3, 1991, and published in the Technical Office Book No. 42, Page 1088, Rule No. 152; Appeal No. 12243 of 59 Q, issued on January 22, 1991, and published in the Technical Office Book No. 42, Page 160, Rule No. 19; Appeal No. 22432 of 59 Q, issued on February 1, 1990, and published in the Technical Office Book No. 41, Page 259, Rule No. 45; Appeal No. 1912 of 58 Q, issued on December 20, 1989, and published in the Technical Office Book No. 40, Page 1255, Rule No. 202; Appeal No. 2812 of 59 Q, issued on November 2, 1989, and published in the Technical Office Book No. 40, Page 849, Rule No. 140; Appeal No. 3955 of 57 Q, issued on June 16, 1988, and published in the Technical Office Book No. 39, Page 816, Rule No. 122; Appeal No. 4902 of 55 Q, issued on November 25, 1987, and published in the Technical Office Book No. 38, Page 1030, Rule No. 186; Appeal No. 3449 of 55 Q, issued on December 19, 1985, and published in the Technical Office Book No. 36, Page 1138, Rule No. 211; Appeal No. 868 of 54 Q, issued on January 29, 1985, and published in the Technical Office Book No. 36, Page 5, Rule No. 1; Appeal No. 6578 of 53 Q, issued on

It is decided that the judgment should not be tainted in general or vague, which makes it impossible to determine the validity of the judgment from its corruption in the legal application to the fact of the lawsuit, and it is so whenever its reasons are summarized or vague in what it has proven or denied of the facts, whether they are related to the statement of the availability of the elements or circumstances of the crime or in response to important aspects of defense or are related to the elements of conviction in general, or its reasons are tainted by the turmoil that indicates the imbalance of its idea in terms of its focus on the subject of the lawsuit and the elements of the incident, which cannot be deduced, whether related to the fact of the lawsuit or its legal application, and therefore the Court of Cassation is unable to properly control it.[3095]

On the other hand, although the trial court has the right to deduce the fact of the case from its evidence and other elements, but this is conditional on a reasonable conclusion and that the evidence on which it relies is modest to the results it has arranged without arbitrariness in conclusion and does not contradict the judgment of reason and logic.[3096]

It is decided that the trial court may derive its conviction to prove the crime from any evidence it is satisfied with as long as this evidence has its correct take from the papers, and that it may extract from the statements of witnesses and all other elements on the table of research the correct form of the incident of the lawsuit according to its conviction and put forward other contrary forms as long as their extraction is reasonable based on evidence acceptable in reason and logic and has its origin in the papers.[3097]

It is decided that the judgments must be based on the evidence from which the judge is convinced of the guilt or innocence of the accused, issued in this regard by a belief obtained by them from the investigation he conducts independently in their collection of this belief himself, which is not shared by others and is not valid in the law to enter into the formation of their belief in the validity of the incident on which he established their signature or invalidity as a judgment for others.[3098]

It is decided that the judge may rule on the lawsuit according to the doctrine that he has formed in full freedom without external influence, regardless of its source.[3099]

March 13, 1984, and published in the Technical Office Book No. 35, Page 267, Rule No. 55; Appeal No. 2602 of 53 Q, issued on December 15, 1983, and published in the Technical Office Book No. 34, Page 1056, Rule No. 211; Appeal No. 6799 of 52 Q, issued on April 19, 1983, and published in the Technical Office Book No. 34, Page 572, Rule No. 112; Appeal No. 2625 of 51 Q, issued on January 19, 1982, and published in the Technical Office Book No. 33, Page 46, Rule No. 7; Appeal No. 2618 of 51 Q, issued on January 19, 1982, and published in the Technical Office Book No. 33, Page 46, Rule No. 7; Appeal No. 2559 of 51 Q, issued on January 12, 1982, and published in the Technical Office Book No. 33, Page 26, Rule No. 4; Appeal No. 537 of 51 Q, issued on December 3, 1981, and published in the Technical Office Book No. 32, Page 1045, Rule No. 184; Appeal No. 1487 of 50 Q, issued on December 24, 1980, and published in the Technical Office Book No. 31, Page 1113, Rule No. 215; Appeal No. 1956 of 48 Q, issued on March 26, 1979, and published in the Technical Office Book No. 30, Page 394, Rule No. 81; Appeal No. 805 of 45 Q, issued on June 22, 1975, and published in the Technical Office Book No. 26, Page 528, Rule No. 123; Appeal No. 624 of 45 Q, issued on April 27, 1975, and published in the Technical Office Book No. 26, Page 358, Rule No. 83; Appeal No. 981 of 43 Q, issued on December 3, 1973, and published in the Technical Office Book No. 24, Page 1131, Rule No. 232; Appeal No. 743 of 43 Q, issued on November 12, 1973, and published in the Technical Office Book No. 24, Page 964, Rule No. 201; Appeal No. 1429 of 42 Q, issued on January 29, 1973, and published in the Technical Office Book No. 24, Page 114, Rule No. 27; Appeal No. 1306 of 42 Q, issued on January 8, 1973, and published in the Technical Office Book No. 24, Page 72, Rule No. 17; Appeal No. 954 of 42 Q, issued on November 12, 1972, and published in the Technical Office Book No. 23, Page 1184, Rule No. 268; Appeal No. 1591 of 40 Q, issued on March 1, 1971, and published in the Technical Office Book No. 22, Page 175, Rule No. 42; Appeal No. 533 of 39 Q, issued on May 12, 1969, and published in the Technical Office Book No. 20, Page 706, Rule No. 142.

([3095]) Appeal No. 30094 of 86 S issued at the session of January 18, 2018 (unpublished)), Appeal No. 18543 of 85 S issued at the session of February 6, 2016 (unpublished)

([3096]) Appeal No. 2322 of 87 S issued on April 5, 2018 (unpublished)

([3097]) Appeal No. 16560 of 85 S issued at the 25th session of February 2018 (unpublished)

([3098]) Appeal No. 2322 of 87 S issued on April 5, 2018 (unpublished)

([3099]) Appeal No. 41192 of 85 S issued on February 7, 2018 (unpublished)

It is established that the judge in criminal matters relies in establishing the legal facts on the basis of evidence that he is convinced of alone, and he may not base their judgment on the opinion of others[3100].

It is decided that the evidence on which the court is based and a statement of its meaning in the judgment must be sufficiently stated and stated in a sufficient manner to show the extent of its support for the incident as convinced by the court and the amount of its consistency with the rest of the evidence until it is clear how to infer it.[3101]

The court is obligated to include the content of each piece of evidence on which it relied and stated its content in a clear and detailed statement. It is not enough to merely refer to it, but the content of each evidence and its content should be adequately listed, indicating the extent of its support for the incident as convinced by the court and the amount of its consistency with the rest of the evidence that it took, otherwise the judgment will be deficient.[3102]

It is decided that the guilty verdict must show the content of each piece of evidence and state its significance until the evidence is clear and the integrity of the evidence is taken to enable the Court of Cassation to monitor the correct application of the law to the incident as it has been proven in the verdict.[3103]

It is scheduled that the trial court is not obliged to rule on innocence, to respond to each piece of evidence of the accusation, because in its omission to talk about it, it inevitably indicates that it

---

([3100]) Appeal No. 25248 of 86 S issued on March 28, 2017 (unpublished)

([3101]) Appeal No. 18543 of 85 S issued on February 6, 2016 (unpublished)

([3102]) Appeal No. 5334 of 82 S issued at the session of January 13, 2013 and published in the letter of the Technical Office No. 64 page No. 90 rule No. 12, Appeal No. 1933 of 82 S issued at the session of January 6, 2013 (unpublished)

([3103]) Appeal No. 35728 of 85 S issued at the hearing of February 15, 2018 (unpublished)), Appeal No. 34073 of 77 S issued at the hearing of November 4, 2013 (unpublished)), Appeal No. 6499 of 82 S issued at the hearing of February 24, 2013 (unpublished)), Appeal No. 4371 of 79 S issued at the hearing of November 14, 2011 and published in the letter of the Technical Office No. 62, page No. 374, rule No. 63, Appeal No. 2413 of 80 S issued at the hearing of October 1, 2011 (unpublished)), Appeal No. 25318 of 77 S issued at the hearing of February 17, 2011 (unpublished)), Appeal No. 6584 of 79 S issued at the hearing of January 26, 2011 (unpublished)), Appeal No. 7486 of 78 S issued at the hearing of October 25, 2009 (unpublished)), Appeal No. 18783 of 71 S issued at the hearing of February 22, 2009 (unpublished)), Appeal No. 938 of 68 S issued at the hearing of May 26, 2005 (unpublished)), Appeal No. 18025 of 65 S issued at the hearing of December 2 For the year 2004 (unpublished)), Appeal No. 41142 of 74 S issued at the session of November 4, 2004 (unpublished)), Appeal No. 26226 of 72 S issued at the session of February 23, 2004 (unpublished)), Appeal No. 29204 of 70 S issued at the session of February 19, 2004 (unpublished)), Appeal No. 34465 of 69 S issued at the session of October 27, 2003 (unpublished)), Appeal No. 10228 of 71 S Issued at the hearing of November 15, 2001 and published in Technical Office Letter No. 52 Page No. 861 Rule No. 165, Appeal No. 6007 of 58 S issued at the hearing of December 8, 1988 and published in Part II of Technical Office Letter No. 39 Page No. 1261 Rule No. 195, Appeal No. 6360 of 56 S issued at the hearing of April 2, 1987 and published in Part I of Technical Office Letter No. 38 Page No. 545 Rule No. 90, Appeal No. 2365 of 51 S issued at the hearing of January 3, 1982 and published in Part I of Technical Office Letter No. 33 Page No. 11 Rule No. 1, Appeal No. 950 of 46 S issued at the 10th session of January 1977 and published in the first part of the Technical Office letter No. 28 page No. 57 rule No. 12, Appeal No. 103 of 46 S issued at the 25th session of January 1976 and published in the first part of the Technical Office letter No. 27 page No. 456 rule No. 99, Appeal No. 1147 of 43 S issued at the 30th session of December 1973 and published in the third part of the Technical Office letter No. 24 page No. 1288 rule No. 262, Appeal No. 880 of 42 s issued at the 23rd session of October 1972 and published in Part III of Technical Office Letter No. 23 page 1077 Rule No. 241, Appeal No. 675 of 42 s issued at the 1st session of October 1972 and published in Part III of Technical Office Letter No. 23 page 969 Rule No. 215, Appeal No. 670 of 41 s issued at the 12th session of December 1971 and published in Part III of Technical Office Letter No. 22 page 730 Rule No. 177, Appeal No. 1895 of 39 S issued at the session of January 26, 1970 and published in the first part of the Technical Office book No. 21 Page 184 Rule No. 45, Appeal No. 1291 of 37 S issued at the session of November 13, 1967 and published in the third part of the Technical Office book No. 18 Page 1099 Rule No. 228, Appeal No. 1300 of 34 S issued at the session of January 18, 1965 and published in the first part of the Technical Office book No. 16 Page 65 Rule No. 16, Appeal No. 2785 of 32 S issued at the session of April 22, 1963 and published in the second part of the Technical Office book No. 14 Page 342 Rule No. 68, Appeal No. 741 of 25 S issued at the session of November 28, 1955 and published in the fourth part of the Technical Office book No. 6 Page 1394 Rule No. 411.

put them away and did not see in them what the conviction reassures them when it has surrounded the case with sight and insight.[3104]

The legislator did not require that the acquittal include certain matters or data similar to the conviction, and it is sufficient that the judgment has reviewed the evidence of the case out of sight and foresight and found nothing in it that leads to the conviction of the accused, and that it is sufficient in criminal trials for the trial court to question the validity of attributing the charge to the accused in order to acquit them.[3105]

It is scheduled that the trial court, although it may rule acquittal when it doubts the validity of the charge against the accused or the lack of evidence, but this is conditional on the adherence of the facts established in the papers and that its judgment includes evidence that it examined the case and took into account its circumstances and the evidence of the evidence on which the accusation was based out of sight and insight and balanced it with the evidence of the denial, so that the defendant's defense prevailed or within it suspicion in the validity of the elements of proof.[3106]

It is established that the principle in criminal trials is the conviction of the judge based on the evidence presented. he may have their belief from any evidence or presumption to which he is comfortable unless the law restricts them to specific evidence stipulated in it, and it was not required that the evidence on which the judgment was based be such that each evidence foretells and cuts in each part of the case.[3107]

It is decided that according to the judgment, in order to be pampered and their judiciary to provide the produced evidence that he has corrected on what he deduced from the occurrence of the crime attributed to the accused and he does not have to track them in each part of their defense because the statement that he turned away from it that he threw it.[3108]

It is decided that the trial court may extract from the statements of witnesses and other elements before it the correct picture of the incident of the lawsuit as its conviction leads to and present sother contrary forms as long as their extraction is reasonable based on evidence acceptable in reason and logic and has its origin in the papers, and in this it is not required to take direct evidence, but rather it may extract the image of the lawsuit as it was characterized in its conscience by inference and extrapolation and all mental possibilities.[3109]

([3104]) Appeal No. 2582 of 86 S issued on April 3, 2018 (unpublished)

([3105]) Appeal No. 6548 of 4Q issued on July 3, 2013 (unpublished)

([3106]) Appeal No. 2611 of 85 S issued at the session of January 9, 2016 and published in the Technical Office's book No. 67, page No. 58, rule No. 7, Appeal No. 655 of 85 S issued at the session of June 4, 2015 and published in the Technical Office's book No. 66, page No. 511, rule No. 71, Appeal No. 35134 of 77 S issued at the session of December 10, 2013 and published in the Technical Office's book No. 64, page No. 1034, rule No. 154, Appeal No. 8090 of 4 S issued at the session of November 9, 2013 and published in the Technical Office's book No. 64, page No. 891, rule No. 137.

([3107]) Appeal No. 4042 of 87 S issued at the session of January 20, 2018 (unpublished)), Appeal No. 48600 of 85 S issued at the session of December 21, 2016 (unpublished)), Appeal No. 5657 of 84 S issued at the session of March 19, 2016 (unpublished)), Appeal No. 1140 of 84 S issued at the session of January 8, 2015 (unpublished)

([3108]) Appeal No. 324 of 83 S issued on June 1, 2013 (unpublished)

([3109]) Appeal No. 31078 of 85 S issued at the 2nd session of February 2016 (unpublished)), Appeal No. 10175 of 85 S issued at the 14th session of January 2016 (unpublished)), Appeal No. 5967 of 82 S issued at the 27th session of January 2013 (unpublished)), Appeal No. 5040 of 82 S issued at the 2nd session of January 2013 (unpublished)), Appeal No. 3283 of 81 S issued at the 4th session of November 2012 (unpublished)), Appeal No. 1169 of 82 S issued at the 17th session of October 2012 (unpublished)), Appeal No. 5346 of 81 S issued at the hearing of April 15, 2012 (unpublished)), Appeal No. 69966 of 76 S issued at the hearing of June 1, 2011 (unpublished)), Appeal No. 9060 of 80 S issued at the hearing of December 26, 2010 (unpublished)), Appeal No. 29277 of 72 S issued at the hearing of December 14, 2009 (unpublished)), Appeal No. 19305 of 75 S issued at the hearing of September 22, 2005 (unpublished)), Appeal No. 3850 of 65 S Issued at the session of October 4, 2003 (unpublished)), Appeal No. 29553 of 63 S issued at the session of May 27, 2003 (unpublished)), Appeal No. 8406 of 60 S issued at the session of October 1, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 948 rule No. 132.

In the principles of inference, it is necessary that the evidence on which the judgment is based leads to the results it has arranged without arbitrariness in conclusion or discordance in reason and logic.[3110]

It is scheduled for the trial court to derive its conviction to prove the crime from any evidence it is satisfied with as long as this evidence has its correct take from the papers, and the original is that crimes of all kinds - except those excluded by a special text - may be proven by all legal means, including evidence and circumstantial evidence.[3111]

The legislator did not restrict the criminal judge in criminal trials to a certain quorum in the testimony but left them the freedom to form their faith from any evidence that reassures them as long as he has their correct take in the papers.[3112]

The trial court is scheduled to include in its judgment sufficient evidence to justify its conviction of the fact, as long as it is satisfied with this evidence and relies on it in forming its belief.[3113]

After that, the court, while investigating the reality in the lawsuit, does not have to follow the defense in every suspicion it establishes or draws a conclusion from the circumstances of the incident and the statements of witnesses or respond to it.[3114]

It is decided that the court is not obliged to speak in its judgment except about the evidence that has an impact on the formation of its faith, and it was also decided that the evidence in the criminal materials persuaded him, and the court may turn away from the evidence of the exile, even if it bears official papers, as long as it is true in the mind that it is incompatible with the truth that it was satisfied with from the rest of the evidence in the case.[3115]

It is not legally necessary to include the full text of the statements of the witness on which the judgment relied, but it is sufficient to mention their content and the obituary is not accepted for the court to drop some of the witness's statements because what it reported from it and relied on means that it subtracted what it did not refer to it, because the court has the freedom to divide the evidence, take what it is comfortable with, and pay attention to what it does not see adopted, as long as it has surrounded the witness's statements and exercised its authority in their division without amputating their content or distorting them in a way that diverts them from their meaning or deviates them from their positions[3116]

([3110]) Appeal No. 6505 of 4S issued at the session of January 26, 2014 (unpublished)

([3111]) Appeal No. 1390 of 85 S issued at the session of 19 December 2017 (unpublished)), Appeal No. 37205 of 85 S issued at the session of 25 November 2017 (unpublished)), Appeal No. 11748 of 82 S issued at the session of 2 April 2013 (unpublished)

([3112]) Appeal No. 1248 of 82 S issued on November 4, 2013 (unpublished)

([3113]) Appeal No. 10072 of 85 S issued at the 25th session of November 2017 (unpublished)), Appeal No. 19721 of 86 S issued at the 28th session of December 2016 and published in the Technical Office Letter No. 67, page No. 961, rule No. 120, Appeal No. 15321 of 85 S issued at the 3rd session of February 2016 and published in the Technical Office Letter No. 67, page No. 153, rule No. 21, Appeal No. 1696 of 85 S issued at the 2nd session of December 2015 and published in the Technical Office Letter No. 66, page No. 817, rule No. 123.

([3114]) Appeal No. 20698 of 75 S issued at the 6th session of February 2013 and published in the book of the Technical Office No. 64 page No. 191 rule No. 20.

([3115]) Appeal No. 21722 of 85 S issued at the hearing of November 11, 2017 (unpublished)), Appeal No. 29658 of 86 S issued at the hearing of June 7, 2017 (unpublished)), Appeal No. 14249 of 83 S issued at the hearing of February 13, 2016 (unpublished)), Appeal No. 20325 of 84 S issued at the hearing of February 21, 2015 (unpublished)), Appeal No. 708 of 84 S issued at the hearing of November 23, 2014 (unpublished)), Appeal No. 126 of 83 S issued at the hearing of May 5, 2013 (unpublished)

([3116]) Appeal No. 23018 of 86 S issued at the 24th session of November 2016 and published in Technical Office Letter No. 67, page No. 832, rule No. 103, Appeal No. 21787 of 85 S issued at the 7th session of November 2016 and published in Technical Office Letter No. 67, page No. 791, rule No. 97, Appeal No. 22909 of 85 S issued at the 10th session of January 2016 and published in Technical Office Letter No. 67, page No. 78, rule No. 9, Appeal No. 5708 of 83 S issued at the 10th session of June 2014 and published in Technical Office Letter No. 65, page No. 520, rule No. 62.

There is nothing in the law that prevents the trial court from including in its judgment the evidential evidence as contained in the evidential list submitted by the Public Prosecution as long as it is convinced of its sufficiency to carry its conclusion.[3117]

It is decided that the judgment is not flawed to refer in the statement of the testimony of witnesses to the statements of another witness as long as their statements are consistent with what the judgment relied on, and that the trial court is not obligated to recount the accounts of all witnesses - that is, multiple - and to indicate the face of taking them with what it is convinced of, but rather to mention what it reassures and put forward other things. This consideration does not affect the difference of witnesses in some details that the judgment did not mention. This is that the trial court, in order to form its doctrine, fragment the witness's statements and takes from them what it reassures and throw away other things without this being considered a contradiction in its judgment)[3118]

There is nothing in the law that prevents the court from including in its judgment the statements of the prosecution witnesses as contained in the list of evidence submitted by the Public Prosecution, as long as it is fit in itself to establish its conviction.[3119]

The trial court may present the statement of the witnesses of the defense as long as it does not trust what they testified to, and it is not obligated to refer to their statements as long as they are not based on them, and in its judgment of conviction for the evidence of proof that it mentioned, an indication that it did not trust the statements of these witnesses, so I dismissed them.[3120]

The non-reporting of the full text of the expert's report does not affect the integrity of the conviction[3121].

It is decided that the evidence in the criminal articles is supportive and complementary to each other, and from them collectively the doctrine of the judge is formed. No specific evidence is considered for discussion separately without the rest of the evidence, but it is sufficient that the evidence in its entirety as a unit leads to what the judgment intended and is productive in convincing the court and reassuring it of what it has reached.[3122]

However, the evidence in the criminal articles are supportive attachments that strengthen each other, and from them collectively, the doctrine of the judge is formed so that if one of them falls or is excluded, it is not possible to identify the amount of impact that this invalid evidence had in the opinion that the court concluded, or what it would have ruled had it realized that this evidence does not exist.[3123]

([3117]) Appeal No. 32849 of 83 S issued at the session of June 5, 2014 (unpublished)
([3118]) Appeal No. 1665 of 83 S issued on June 10, 2014 (unpublished)
([3119]) Appeal No. 15382 of 85 S issued at the session of 19 March 2016 (unpublished)), Appeal No. 2909 of 84 S issued at the session of 8 February 2016 and published in the book of the Technical Office No. 67 page No. 210 rule No. 24.
([3120]) Appeal No. 13025 of 84 S issued on April 12, 2015 (unpublished)
([3121]) Appeal No. 2518 of 87 s issued at the hearing of November 9, 2017 (unpublished)), Appeal No. 28565 of 86 s issued at the hearing of May 6, 2017 (unpublished)), Appeal No. 10034 of 84 s issued at the hearing of March 28, 2017 (unpublished)), Appeal No. 44270 of 85 s issued at the hearing of October 22, 2016 and published in the letter of the Technical Office No. 67, page No. 735, rule No. 94, Appeal No. 2927 of 85 s issued at the hearing of January 14, 2016 (unpublished)), Appeal No. 126 of 83 s issued at the hearing of May 5, 2013 (unpublished)), Appeal No. 4734 of 82 s issued at the hearing of April 6, 2013 (unpublished)
([3122]) Appeal No. 5292 of 87 S issued at the session of November 1, 2017 (unpublished)), Appeal No. 29658 of 86 S issued at the session of June 7, 2017 (unpublished)), Appeal No. 50008 of 85 S issued at the session of January 24, 2017 (unpublished)), Appeal No. 48600 of 85 S issued at the session of December 21, 2016 (unpublished)), Appeal No. 31078 of 85 S issued at the session of February 2, 2016 (unpublished)
([3123]) Appeal No. 4042 of 87 S issued at the session of January 20, 2018 (unpublished)), Appeal No. 3642 of 84 S issued at the session of June 4, 2016 (unpublished)), Appeal No. 6007 of 58 S issued at the session of December 8, 1988 and published in the second part of the book of the Technical Office No. 39 page No. 1261 rule No. 195.

Estimating the evidence for each accused is the responsibility of the trial court alone, and it is free to form its belief according to its discretion and reassurance to it for the accused and its lack of reassurance to the same evidence for the other accused.[3124]

It is decided that the contradiction that is defective in the judgment is the one that falls between its reasons so that some of them deny what others prove and do not know which of the two things the court intended.[3125]

It is decided that the doctrine of the court is based on purposes and meanings and not on words and buildings.[3126]

And the sufficiency of the judgment in the statement of evidence by referring to the record of the seizure of the incident without stating its content and directing its inference to the proof of the crime with all its legal elements is flawed by the deficiencies.[3127]

Second: A statement of the punishable fact and its circumstances in the convictions

Each conviction must include a statement of the punishable fact and the circumstances in which it occurred.[3128]

It is decided that the law has required in each conviction to include a clear statement of the fact warranting the penalty, a clear statement of the elements of the crime, the circumstances in which it occurred and the evidence from which the court extracted its evidence from the accused, and that it is obligated to include the performance of the evidence from which the conviction was extracted until it is clear how it was inferred and the safety of its outlet, otherwise the judgment is a minor. It is also decided that the statement of the fact of the case required by Article 310 of the Code of Criminal Procedure in each conviction is intended for the trial judge to prove in their judgment all the acts and purposes that make up the elements of the crim.[3129]

([3124]) Appeal No. 9100 of 80 S issued at the session of July 31, 2018 (unpublished)), Appeal No. 4042 of 87 S issued at the session of January 20, 2018 (unpublished)), Appeal No. 37205 of 85 S issued at the session of November 25, 2017 (unpublished)), Appeal No. 1203 of 86 S issued at the session of March 14, 2017 (unpublished)

([3125]) Appeal No. 41192 of 85 S issued at the 7th session of February 2018 (unpublished)), Appeal No. 37205 of 85 S issued at the 25th session of November 2017 (unpublished)), Appeal No. 29658 of 86 S issued at the 7th session of June 2017 (unpublished)), Appeal No. 30213 of 84 S issued at the 3rd session of January 2016 (unpublished)

([3126]) Appeal No. 9100 of 80 BC issued at the session of July 31, 2018 (unpublished)

([3127]) Appeal No. 22570 of 4S issued at the session of January 15, 2015 and published in the letter of the Technical Office No. 66 page No. 157 rule No. 14, Appeal No. 4834 of 4S issued at the session of December 16, 2013 (unpublished)

([3128]) Article 310 of the Criminal Procedure Code.

([3129]) Appeal No. 33713 of 86 Q, issued on January 19, 2019 (unpublished); Appeal No. 9671 of 87 Q, issued on December 22, 2018 (unpublished); Appeal No. 5979 of 88 Q, issued on November 21, 2018 (unpublished); Appeal No. 4745 of 88 Q, issued on November 4, 2018 (unpublished); Appeal No. 20355 of 86 Q, issued on October 13, 2018 (unpublished); Appeal No. 23766 of 87 Q, issued on June 23, 2018 (unpublished); Appeal No. 17482 of 87 Q, issued on May 10, 2018 (unpublished); Appeal No. 10303 of 86 Q, issued on April 19, 2018 (unpublished); Appeal No. 17948 of 86 Q, issued on April 8, 2018 (unpublished); Appeal No. 111 of 86 Q, issued on March 24, 2018 (unpublished); Appeal No. 39725 of 85 Q, issued on February 24, 2018 (unpublished); Appeal No. 19430 of 85 Q, issued on February 13, 2018 (unpublished); Appeal No. 30094 of 86 Q, issued on January 18, 2018 (unpublished); Appeal No. 5939 of 87 Q, issued on January 4, 2018 (unpublished); Appeal No. 1390 of 85 Q, issued on December 19, 2017 (unpublished); Appeal No. 10072 of 85 Q, issued on November 25, 2017 (unpublished); Appeal No. 34016 of 86 Q, issued on November 11, 2017 (unpublished); Appeal No. 33194 of 86 Q, issued on November 4, 2017 (unpublished); Appeal No. 5292 of 87 Q, issued on November 1, 2017 (unpublished); Appeal No. 33693 of 86 Q, issued on October 8, 2017 (unpublished); Appeal No. 33268 of 86 Q, issued on July 31, 2017 (unpublished); Appeal No. 5402 of 86 Q, issued on April 20, 2017 (unpublished); Appeal No. 29551 of 85 Q, issued on March 28, 2017 (unpublished); Appeal No. 25248 of 86 Q, issued on March 28, 2017 (unpublished); Appeal No. 10034 of 84 Q, issued on March 28, 2017 (unpublished); Appeal No. 27216 of 86 Q, issued on March 14, 2017 (unpublished); Appeal No. 1203 of 86 Q, issued on March 14, 2017 (unpublished); Appeal No. 5352 of 86 Q, issued on December 26, 2016 (unpublished); Appeal No. 48600 of 85 Q, issued on December 21, 2016 (unpublished); Appeal No. 50733 of 85 Q, issued on November 22, 2016, published in Technical Office Book No. 67, Page 812, Rule No. 101; Appeal No. 6343 of 85 Q, issued on October 15, 2016 (unpublished); Appeal No. 50979 of 85 Q, issued on June 1, 2016 (unpublished); Appeal No. 48311 of 85 Q, issued on June 1, 2016 (unpublished); Appeal No. 45046 of 85 Q, issued on May 4, 2016 (unpublished); Appeal No. 17275 of 84 Q, issued on April 20, 2016,

published in Technical Office Book No. 67, Page 448, Rule No. 53; Appeal No. 8230 of 84 Q, issued on April 12, 2016 (unpublished); Appeal No. 39474 of 85 Q, issued on April 2, 2016 (unpublished); Appeal No. 6829 of 85 Q, issued on April 2, 2016 (unpublished); Appeal No. 17446 of 85 Q, issued on March 19, 2016 (unpublished); Appeal No. 21951 of 85 Q, issued on March 19, 2016 (unpublished); Appeal No. 33713 of 86 Q, issued on January 19, 2019 (unpublished); Appeal No. 23044 of 4 Q, issued on February 27, 2016 (unpublished); Appeal No. 10148 of 85 Q, issued on February 14, 2016, published in Technical Office Book No. 67, Page 228, Rule No. 27; Appeal No. 21399 of 84 Q, issued on February 13, 2016 (unpublished); Appeal No. 2564 of 84 Q, issued on February 13, 2016 (unpublished); Appeal No. 14249 of 83 Q, issued on February 13, 2016 (unpublished); Appeal No. 25776 of 84 Q, issued on February 7, 2016 (unpublished); Appeal No. 35309 of 84 Q, issued on February 7, 2016 (unpublished); Appeal No. 8665 of 85 Q, issued on February 6, 2016 (unpublished); Appeal No. 11130 of 85 Q, issued on February 6, 2016 (unpublished); Appeal No. 34835 of 85 Q, issued on February 6, 2016 (unpublished); Appeal No. 15321 of 85 Q, issued on February 3, 2016, published in Technical Office Book No. 67, Page 153, Rule No. 21; Appeal No. 22492 of 85 Q, issued on January 16, 2016 (unpublished); Appeal No. 2927 of 85 Q, issued on January 14, 2016 (unpublished); Appeal No. 10175 of 85 Q, issued on January 14, 2016 (unpublished); Appeal No. 11386 of 85 Q, issued on January 13, 2016 (unpublished); Appeal No. 17805 of 85 Q, issued on January 9, 2016 (unpublished); Appeal No. 32799 of 84 Q, issued on January 9, 2016 (unpublished); Appeal No. 25689 of 85 Q, issued on January 5, 2016 (unpublished); Appeal No. 3029 of 85 Q, issued on January 5, 2016, published in Technical Office Book No. 67, Page 39, Rule No. 4; Appeal No. 12589 of 83 Q, issued on January 2, 2016, published in Technical Office Book No. 67, Page 13, Rule No. 1; Appeal No. 11629 of 85 Q, issued on December 17, 2015, published in Technical Office Book No. 66, Page 914, Rule No. 130; Appeal No. 16992 of 85 Q, issued on December 9, 2015, published in Technical Office Book No. 66, Page 833, Rule No. 124; Appeal No. 21819 of 85 Q, issued on December 3, 2015 (unpublished); Appeal No. 33737 of 84 Q, issued on November 2, 2015 (unpublished); Appeal No. 7369 of 79 Q, issued on October 10, 2015, published in Technical Office Book No. 66, Page 668, Rule No. 98; Appeal No. 2964 of 5 Q, issued on September 28, 2015, published in Technical Office Book No. 66, Page 610, Rule No. 88; Appeal No. 27686 of 84 Q, issued on June 11, 2015 (unpublished); Appeal No. 26687 of 84 Q, issued on June 7, 2015 (unpublished); Appeal No. 27686 of 84 Q, issued on May 18, 2015, published in Technical Office Book No. 66, Page 480, Rule No. 66; Appeal No. 26006 of 84 Q, issued on May 17, 2015, published in Technical Office Book No. 66, Page 468, Rule No. 65; Appeal No. 22781 of 84 Q, issued on May 9, 2015, published in Technical Office Book No. 66, Page 447, Rule No. 63; Appeal No. 29649 of 4 Q, issued on April 23, 2015, published in Technical Office Book No. 66, Page 417, Rule No. 57; Appeal No. 20242 of 84 Q, issued on April 2, 2015 (unpublished); Appeal No. 26061 of 4 Q, issued on March 26, 2015, published in Technical Office Book No. 66, Page 345, Rule No. 48; Appeal No. 32224 of 83 Q, issued on February 12, 2015 (unpublished); Appeal No. 22570 of 4 Q, issued on January 15, 2015, published in Technical Office Book No. 66, Page 157, Rule No. 14، c، Appeal No. 30575 of 3 Q, issued on April 16, 2013 (unpublished), Appeal No. 256 of 82 Q, issued on April 6, 2013 (unpublished), Appeal No. 20179 of 2 Q, issued on March 23, 2013, published in Technical Office Book No. 64, Page 400, Rule No. 51, Appeal No. 9225 of 82 Q, issued on March 20, 2013 (unpublished), Appeal No. 3330 of 82 Q, issued on March 3, 2013 (unpublished), Appeal No. 6530 of 82 Q, issued on February 24, 2013 (unpublished), Appeal No. 986 of 82 Q, issued on February 9, 2013, published in Technical Office Book No. 64, Page 237, Rule No. 24, Appeal No. 5532 of 82 Q, issued on February 7, 2013 (unpublished), Appeal No. 20698 of 75 Q, issued on February 6, 2013, published in Technical Office Book No. 64, Page 191, Rule No. 20, Appeal No. 1278 of 82 Q, issued on January 28, 2013, published in Technical Office Book No. 64, Page 171, Rule No. 18, Appeal No. 5334 of 82 Q, issued on January 13, 2013, published in Technical Office Book No. 64, Page 90, Rule No. 12, Appeal No. 6643 of 82 Q, issued on January 6, 2013 (unpublished), Appeal No. 20346 of 67 Q, issued on January 19, 2006 (unpublished), Appeal No. 20936 of 65 Q, issued on November 6, 2003 (unpublished), Appeal No. 6578 of 53 Q, issued on March 13, 1984, published in Volume 1 of Technical Office Book No. 35, Page 267, Rule No. 55, Appeal No. 3736 of 82 Q, issued on January 1, 2013 (unpublished), Appeal No. 4061 of 82 Q, issued on January 1, 2013 (unpublished), Appeal No. 4280 of 82 Q, issued on January 1, 2013 (unpublished), Appeal No. 3561 of 82 Q, issued on December 27, 2012 (unpublished), Appeal No. 6461 of 82 Q, issued on December 24, 2012 (unpublished), Appeal No. 3638 of 82 Q, issued on December 16, 2012 (unpublished), Appeal No. 122 of 81 Q, issued on November 18, 2012, published in Technical Office Book No. 63, Page 724, Rule No. 129, Appeal No. 23236 of 75 Q, issued on November 17, 2012, published in Technical Office Book No. 63, Page 706, Rule No. 126, Appeal No. 18292 of 75 Q, issued on November 13, 2012, published in Technical Office Book No. 63, Page 678, Rule No. 121, Appeal No. 1382 of 82 Q, issued on November 5, 2012 (unpublished), Appeal No. 2773 of 82 Q, issued on October 22, 2012 (unpublished), Appeal No. 2774 of 82 Q, issued on October 22, 2012 (unpublished), Appeal No. 2637 of 82 Q, issued on October 8, 2012 (unpublished), Appeal No. 33 of 81 Q, issued on October 8, 2012, published in Technical Office Book No. 63, Page 445, Rule No. 76, Appeal No. 1896 of 81 Q, issued on May 28, 2012 (unpublished), Appeal No. 268 of 82 Q, issued on May 19, 2012 (unpublished), Appeal No. 6515 of 81 Q, issued on April 23, 2012 (unpublished), Appeal No. 516 of 79 Q, issued on March 6, 2012, published in Technical Office Book No. 63, Page 268, Rule No. 41, Appeal No. 6071 of 80 Q, issued on February 21, 2012 (unpublished), Appeal No. 918 of 80 Q, issued on December 24, 2011 (unpublished), Appeal No. 1938 of 81 Q, issued on November 19, 2011 (unpublished), Appeal No. 9785 of 80 Q, issued on June 5, 2011 (unpublished), Appeal No. 4819 of 79 Q, issued on April 14, 2011 (unpublished), Appeal No. 2929 of 78 Q, issued on March 9, 2011 (unpublished), Appeal No. 11248 of 79 Q, issued on February 17, 2011 (unpublished), Appeal No. 28189 of 73 Q, issued on September 22, 2010 (unpublished), Appeal No. 57101 of 73 Q, issued on April 22, 2010, published in Technical Office Book No. 61, Page 328, Rule No. 44, Appeal No. 28252 of 72 Q, issued on November 19, 2009 (unpublished),Appeal No. 2402 of 78 Q, issued on March 8, 2009 (unpublished), Appeal No. 28680 of 77 Q, issued on April 3, 2008 (unpublished), Appeal No. 54681 of 74 Q, issued on October 16, 2007 (unpublished),

It is established that the law did not prescribe a special form or pattern in which the judgment formulates the statement of the incident warranting the penalty and the circumstances in which it occurred. Whenever the total of what the judgment stated was sufficient to understand the incident with its elements, circumstances and evidence - as concluded by the court - this was in accordance with the rule of law as stipulated in Article 310 of the Code of Criminal Procedure.[3130]

Appeal No. 34868 of 75 Q, issued on February 17, 2007 (unpublished), Appeal No. 4911 of 67 Q, issued on October 9, 2006 (unpublished), Appeal No. 53603 of 75 Q, issued on June 11, 2006, published in Technical Office Book No. 57, Page 726, Rule No. 74, Appeal No. 11545 of 75 Q, issued on March 1, 2006, published in Technical Office Book No. 57, Page 373, Rule No. 40, Appeal No. 13954 of 70 Q, issued on February 2, 2006 (unpublished), Appeal No. 757 of 66 Q, issued on May 17, 2005 (unpublished), Appeal No. 18791 of 65 Q, issued on March 6, 2005, published in Technical Office Book No. 56, Page 176, Rule No. 25, Appeal No. 15011 of 69 Q, issued on April 8, 2002 (unpublished), Appeal No. 11906 of 63 Q, issued on February 18, 2002, published in Technical Office Book No. 53, Page 292, Rule No. 53, Appeal No. 7981 of 70 Q, issued on February 8, 2002, published in Technical Office Book No. 52, Page 243, Rule No. 39, Appeal No. 5040 of 82 Q, issued on January 2, 2013 (unpublished).

([3130]) Appeal No. 9835 of 87 Q, issued on November 27, 2019 (unpublished), Appeal No. 12197 of 87 Q, issued on October 27, 2019 (unpublished), Appeal No. 12700 of 87 Q, issued on October 27, 2019 (unpublished), Appeal No. 5655 of 88 Q, issued on March 20, 2019 (unpublished), Appeal No. 32627 of 86 Q, issued on December 26, 2018 (unpublished), Appeal No. 5979 of 88 Q, issued on November 21, 2018 (unpublished), Appeal No. 25067 of 86 Q, issued on November 12, 2018 (unpublished), Appeal No. 13565 of 87 Q, issued on July 4, 2018 (unpublished), Appeal No. 17105 of 86 Q, issued on June 23, 2018 (unpublished), Appeal No. 16811 of 86 Q, issued on May 10, 2018 (unpublished), Appeal No. 37214 of 85 Q, issued on December 28, 2017 (unpublished), Appeal No. 41799 of 85 Q, issued on November 25, 2017 (unpublished), Appeal No. 48539 of 85 Q, issued on November 21, 2017 (unpublished), Appeal No. 25558 of 86 Q, issued on November 11, 2017 (unpublished), Appeal No. 21722 of 85 Q, issued on November 11, 2017 (unpublished), Appeal No. 34016 of 86 Q, issued on November 11, 2017 (unpublished), Appeal No. 6416 of 87 Q, issued on October 21, 2017 (unpublished), Appeal No. 21877 of 85 Q, issued on October 21, 2017 (unpublished), Appeal No. 33693 of 86 Q, issued on October 8, 2017 (unpublished), Appeal No. 1895 of 87 Q, issued on October 3, 2017 (unpublished), Appeal No. 21508 of 86 Q, issued on June 8, 2017 (unpublished), Appeal No. 2 of 2016 Q, issued on April 2, 2017 (unpublished), Appeal No. 10034 of 84 Q, issued on March 28, 2017 (unpublished), Appeal No. 23613 of 86 Q, issued on March 18, 2017 (unpublished), Appeal No. 15910 of 85 Q, issued on March 14, 2017 (unpublished), Appeal No. 1203 of 86 Q, issued on March 14, 2017 (unpublished), Appeal No. 44115 of 85 Q, issued on January 22, 2017 (unpublished), Appeal No. 23147 of 85 Q, issued on December 26, 2016, and published in the Technical Office Book No. 67, page 945, ruling No. 118; Appeal No. 48600 of 85 Q, issued on December 21, 2016 (unpublished); Appeal No. 20454 of 84 Q, issued on December 3, 2016 (unpublished); Appeal No. 13489 of 85 Q, issued on November 27, 2016, and published in the Technical Office Book No. 67, page 846, ruling No. 105; Appeal No. 345 of 86 Q, issued on October 8, 2016, and published in the Technical Office Book No. 67, page 673, ruling No. 85; Appeal No. 44160 of 85 Q, issued on May 9, 2016, and published in the Technical Office Book No. 67, page 511, ruling No. 58; Appeal No. 33295 of 4 Q, issued on February 18, 2016, and published in the Technical Office Book No. 67, page 248, ruling No. 29; Appeal No. 14249 of 83 Q, issued on February 13, 2016 (unpublished); Appeal No. 23540 of 85 Q, issued on January 28, 2016 (unpublished); Appeal No. 10175 of 85 Q, issued on January 14, 2016 (unpublished); Appeal No. 30213 of 84 Q, issued on January 3, 2016 (unpublished); Appeal No. 24983 of 4 Q, issued on December 5, 2015 (unpublished); Appeal No. 2788 of 5 Q, issued on September 5, 2015 (unpublished); Appeal No. 29381 of 84 Q, issued on June 14, 2015 (unpublished); Appeal No. 27808 of 84 Q, issued on June 2, 2015 (unpublished); Appeal No. 27686 of 84 Q, issued on May 18, 2015, and published in the Technical Office Book No. 66, page 480, ruling No. 66; Appeal No. 26692 of 4 Q, issued on April 19, 2015 (unpublished); Appeal No. 26692 of 4 Q, issued on April 19, 2015, and published in the Technical Office Book No. 66, page 394, ruling No. 52; Appeal No. 21117 of 84 Q, issued on March 8, 2015 (unpublished); Appeal No. 18867 of 84 Q, issued on March 2, 2015 (unpublished); Appeal No. 24027 of 4 Q, issued on February 21, 2015 (unpublished); Appeal No. 11182 of 84 Q, issued on December 22, 2014, and published in the Technical Office Book No. 65, page 994, ruling No. 134; Appeal No. 16583 of 4 Q, issued on October 23, 2014, and published in the Technical Office Book No. 65, page 739, ruling No. 93; Appeal No. 28470 of 83 Q, issued on June 5, 2014 (unpublished); Appeal No. 12314 of 83 Q, issued on May 13, 2014 (unpublished); Appeal No. 24701 of 83 Q, issued on May 13, 2014 (unpublished); Appeal No. 24488 of 83 Q, issued on May 13, 2014 (unpublished); Appeal No. 18824 of 83 Q, issued on April 7, 2014 (unpublished); Appeal No. 20905 of 83 Q, issued on April 7, 2014 (unpublished); Appeal No. 3314 of 82 Q, issued on March 3, 2014 (unpublished); Appeal No. 4099 of 82 Q, issued on February 9, 2014 (unpublished); Appeal No. 10055 of 83 Q, issued on January 12, 2014 (unpublished); Appeal No. 20627 of 5 Q, issued on November 28, 2013, and published in the Technical Office Book No. 64, page 949, ruling No. 146; Appeal No. 3388 of 4 Q, issued on October 27, 2013, and published in the Technical Office Book No. 64, page 866, ruling No. 132; Appeal No. 324 of 83 Q, issued on June 1, 2013 (unpublished); Appeal No. 7455 of 81 Q, issued on May 5, 2013 (unpublished); Appeal No. 2452 of 4 Q, issued on April 21, 2013 (unpublished); Appeal No. 10890 of 82 Q, issued on April 7, 2013 (unpublished); Appeal No. 28875 of 3 Q, issued on March 25, 2013, and published in the Technical Office Book No. 64, page 417, ruling No. 56; Appeal No. 2287 of 4 Q, issued on March 17, 2013 (unpublished); Appeal No. 6961 of 82 Q, issued

on March 10, 2013 (unpublished); Appeal No. 1278 of 82 Q, issued on January 28, 2013, and published in the Technical Office Book No. 64, page 171, ruling No. 18; Appeal No. 5172 of 82 Q, issued on January 6, 2013, and published in the Technical Office Book No. 64, page 45, ruling No. 5; Appeal No. 3736 of 82 Q, issued on January 1, 2013 (unpublished); Appeal No. 4061 of 82 Q, issued on January 1, 2013 (unpublished), Appeal No. 4280 of 82 Q issued on January 1, 2013 (unpublished), Appeal No. 3561 of 82 Q issued on December 27, 2012, Appeal No. 6461 of 82 Q issued on December 24, 2012 (unpublished), Appeal No. 3324 of 82 Q issued on December 23, 2012 (unpublished), Appeal No. 3638 of 82 Q issued on December 16, 2012 (unpublished), Appeal No. 4228 of 82 Q issued on December 9, 2012 (unpublished), Appeal No. 122 of 81 Q issued on November 18, 2012, and published in Technical Office Book No. 63, page 724, ruling No. 129, Appeal No. 23236 of 75 Q issued on November 17, 2012, and published in Technical Office Book No. 63, page 706, ruling No. 126, Appeal No. 18292 of 75 Q issued on November 13, 2012, and published in Technical Office Book No. 63, page 678, ruling No. 121, Appeal No. 53085 of 74 Q issued on November 7, 2012, and published in Technical Office Book No. 63, page 611, ruling No. 110, Appeal No. 1382 of 82 Q issued on November 5, 2012 (unpublished), Appeal No. 73369 of 74 Q issued on November 1, 2012, and published in Technical Office Book No. 63, page 580, ruling No. 102, Appeal No. 2773 of 82 Q issued on October 22, 2012 (unpublished), Appeal No. 2774 of 82 Q issued on October 22, 2012 (unpublished), Appeal No. 1592 of 82 Q issued on October 15, 2012 (unpublished), Appeal No. 2637 of 82 Q issued on October 8, 2012 (unpublished), Appeal No. 33 of 81 Q issued on October 8, 2012, and published in Technical Office Book No. 63, page 445, ruling No. 76, Appeal No. 1653 of 78 Q issued on July 5, 2012, and published in Technical Office Book No. 63, page 351, ruling No. 57, Appeal No. 8050 of 81 Q issued on July 1, 2012 (unpublished), Appeal No. 1896 of 81 Q issued on May 28, 2012 (unpublished), Appeal No. 462 of 80 Q issued on May 28, 2012 (unpublished), Appeal No. 268 of 82 Q issued on May 19, 2012 (unpublished), Appeal No. 8660 of 81 Q issued on April 26, 2012 (unpublished), Appeal No. 6515 of 81 Q issued on April 23, 2012 (unpublished), Appeal No. 7743 of 81 Q issued on April 2, 2012 (unpublished), Appeal No. 5260 of 81 Q issued on March 5, 2012, and published in Technical Office Book No. 63, page 257, ruling No. 39, Appeal No. 3830 of 80 Q issued on February 21, 2012 (unpublished), Appeal No. 4033 of 81 Q issued on January 1, 2012, and published in Technical Office Book No. 63, page 33, ruling No. 3, Appeal No. 4767 of 80 Q issued on October 26, 2011 (unpublished), Appeal No. 9098 of 79 Q issued on October 19, 2011 (unpublished), Appeal No. 13429 of 80 Q issued on October 3, 2011 (unpublished), Appeal No. 428 of 80 Q issued on March 13, 2011, and published in Technical Office Book No. 62, page 165, ruling No. 26, Appeal No. 8249 of 78 Q issued on March 9, 2011 (unpublished), Appeal No. 3523 of 78 Q issued on March 9, 2011 (unpublished), Appeal No. 322 of 79 Q issued on March 1, 2011 (unpublished), Appeal No. 5406 of 79 Q issued on February 10, 2011 (unpublished), Appeal No. 10118 of 78 Q issued on November 21, 2009, and published in Technical Office Book No. 60, page 477, ruling No. 64, Appeal No. 1137 of 78 Q issued on July 29, 2009 (unpublished), Appeal No. 1646 of 79 Q issued on July 2, 2009 (unpublished), Appeal No. 1103 of 78 Q issued on June 2, 2009, and published in Technical Office Book No. 60, page 262, ruling No. 36, Appeal No. 43799 of 77 Q issued on January 17, 2009, and published in Technical Office Book No. 60, page 52, ruling No. 7, Appeal No. 86065 of 76 Q issued on November 24, 2008 (unpublished), Appeal No. 44566 of 74 Q issued on September 7, 2008 (unpublished), Appeal No. 37224 of 73 Q issued on January 3, 2008 (unpublished), Appeal No. 14617 of 71 Q issued on December 6, 2007 (unpublished), Appeal No. 17930 of 77 Q issued on October 22, 2007 (unpublished), Appeal No. 19241 of 67 Q issued on July 30, 2007, and published in Technical Office Book No. 58, page 485, ruling No. 98, Appeal No. 18740 of 68 Q issued on April 19, 2007 (unpublished), Appeal No. 48891 of 76 Q issued on March 1, 2007, and published in Technical Office Book No. 58, page 195, ruling No. 40, Appeal No. 30230 of 67 Q issued on November 23, 2006, and published in the Technical Office Book No. 57, page 901, rule No. 101; Appeal No. 49438 of 72 Q issued on November 19, 2006, and published in the Technical Office Book No. 57, page 875, rule No. 97; Appeal No. 13754 of 67 Q issued on November 16, 2006 (unpublished); Appeal No. 1057 of 67 Q issued on July 27, 2006 (unpublished); Appeal No. 24092 of 67 Q issued on July 25, 2006 (unpublished); Appeal No. 18982 of 66 Q issued on July 2, 2006 (unpublished); Appeal No. 31671 of 70 Q issued on June 6, 2006 (unpublished); Appeal No. 6074 of 67 Q issued on May 18, 2006 (unpublished); Appeal No. 3453 of 67 Q issued on April 6, 2006 (unpublished); Appeal No. 21109 of 66 Q issued on April 6, 2006 (unpublished); Appeal No. 25761 of 66 Q issued on March 2, 2006 (unpublished); Appeal No. 892 of 74 Q issued on February 26, 2006, and published in the Technical Office Book No. 57, page 320, rule No. 36; Appeal No. 26089 of 66 Q issued on February 2, 2006 (unpublished); Appeal No. 63909 of 74 Q issued on January 26, 2006, and published in the Technical Office Book No. 57, page 157, rule No. 19; Appeal No. 1709 of 66 Q issued on December 16, 2005 (unpublished); Appeal No. 22740 of 66 Q issued on December 15, 2005 (unpublished); Appeal No. 18984 of 65 Q issued on December 1, 2005 (unpublished); Appeal No. 44025 of 74 Q issued on February 21, 2005 (unpublished); Appeal No. 942 of 66 Q issued on February 17, 2005 (unpublished); Appeal No. 17773 of 70 Q issued on December 7, 2004 (unpublished); Appeal No. 10361 of 65 Q issued on September 30, 2004, and published in the Technical Office Book No. 55, page 660, rule No. 98; Appeal No. 24306 of 65 Q issued on June 1, 2004 (unpublished); Appeal No. 14697 of 65 Q issued on April 5, 2004 (unpublished); Appeal No. 17435 of 70 Q issued on March 22, 2004 (unpublished); Appeal No. 12976 of 65 Q issued on March 11, 2004 (unpublished); Appeal No. 12216 of 65 Q issued on January 22, 2004 (unpublished); Appeal No. 27661 of 72 Q issued on December 22, 2003 (unpublished); Appeal No. 8862 of 65 Q issued on December 2, 2003 (unpublished); Appeal No. 8862 of 65 Q issued on December 2, 2003, and published in the Technical Office Book No. 54, page 1149, rule No. 158; Appeal No. 8215 of 65 Q issued on November 10, 2003 (unpublished); Appeal No. 3568 of 64 Q issued on July 24, 2003 (unpublished); Appeal No. 10917 of 72 Q issued on March 24, 2003 (unpublished); Appeal No. 2403 of 64 Q issued on March 24, 2003, and published in the Technical Office Book No. 54, page 486, rule No. 54; Appeal No. 17552 of 64 Q issued on March 20, 2003 (unpublished); Appeal No. 13960 of 69 Q issued on March 10, 2003 (unpublished); Appeal No. 42490 of 72 Q issued on March 5, 2003, and

However, if the judgment is limited to a description of the indictment assigned by the Public Prosecution to the defendants and lists the evidence it has presented to prove the incident before them without indicating the fact of the case and directing its citation of such evidence to indicate how they committed the incident and their role in it, it shall be revealing its deficiency in the statement of the incident warranting the penalty, a statement that verifies the elements of

---

published in the Technical Office Book No. 54, page 333, rule No. 35; Appeal No. 19142 of 68 Q issued on January 5, 2003, and published in the Technical Office Book No. 54, page 67, rule No. 3; Appeal No. 21359 of 63 Q issued on December 19, 2002 (unpublished); Appeal No. 10890 of 63 Q issued on October 3, 2002 (unpublished); Appeal No. 15546 of 69 Q issued on May 16, 2002 (unpublished); Appeal No. 29890 of 63 Q issued on May 7, 2002, and published in the Technical Office Book No. 53, page 721, rule No. 121; Appeal No. 3783 of 63 Q issued on April 4, 2002 (unpublished); Appeal No. 8074 of 62 Q issued on March 6, 2002, and published in the Technical Office Book No. 53, page 379, rule No. 68; Appeal No. 29339 of 70 Q issued on January 17, 2002, and published in the Technical Office Book No. 53, page 125, rule No. 23, Appeal No. 17364 of 69 Q issued on January 17, 2002 (unpublished), Appeal No. 2593 of 71 Q issued on October 16, 2001, published in Technical Office Book No. 52, page 724, Rule No. 137, Appeal No. 39674 of 73 Q issued on October 11, 2001 (unpublished), Appeal No. 20387 of 68 Q issued on July 2, 2001 (unpublished), Appeal No. 13108 of 61 Q issued on June 12, 2001, published in Technical Office Book No. 52, page 582, Rule No. 105, Appeal No. 21022 of 62 Q issued on January 9, 2001, published in Technical Office Book No. 52, page 112, Rule No. 15, Appeal No. 18833 of 68 Q issued on December 13, 1999, published in the first part of Technical Office Book No. 50, page 661, Rule No. 148, Appeal No. 6338 of 69 Q issued on December 7, 1999, published in the first part of Technical Office Book No. 50, page 636, Rule No. 143, Appeal No. 10405 of 60 Q issued on May 10, 1999, published in the first part of Technical Office Book No. 50, page 285, Rule No. 67, Appeal No. 14723 of 63 Q issued on February 22, 1999, published in the first part of Technical Office Book No. 50, page 140, Rule No. 30, Appeal No. 20107 of 66 Q issued on November 3, 1998, published in the first part of Technical Office Book No. 49, page 1190, Rule No. 164, Appeal No. 29342 of 59 Q issued on November 3, 1998, published in the first part of Technical Office Book No. 49, page 1174, Rule No. 162, Appeal No. 2370 of 62 Q issued on October 18, 1998, published in the first part of Technical Office Book No. 49, page 1117, Rule No. 151, Appeal No. 20999 of 66 Q issued on October 8, 1998, published in the first part of Technical Office Book No. 49, page 1039, Rule No. 140, Appeal No. 26214 of 63 Q issued on September 30, 1998, published in the first part of Technical Office Book No. 49, page 968, Rule No. 130, Appeal No. 17255 of 66 Q issued on September 24, 1998, published in the first part of Technical Office Book No. 49, page 944, Rule No. 124, Appeal No. 14606 of 66 Q issued on July 20, 1998, published in the first part of Technical Office Book No. 49, page 895, Rule No. 116, Appeal No. 9941 of 66 Q issued on May 7, 1998, published in the first part of Technical Office Book No. 49, page 655, Rule No. 84, Appeal No. 256 of 66 Q issued on February 3, 1998, published in the first part of Technical Office Book No. 49, page 170, Rule No. 25, Appeal No. 9886 of 65 Q issued on December 2, 1997, published in the first part of Technical Office Book No. 48, page 1324, Rule No. 202, Appeal No. 171 of 63 Q issued on December 20, 1994, published in the first part of Technical Office Book No. 45, page 1201, Rule No. 188, Appeal No. 23523 of 62 Q issued on November 8, 1994, published in the first part of Technical Office Book No. 45, page 976, Rule No. 151, Appeal No. 19565 of 59 Q issued on November 23, 1993, published in the first part of Technical Office Book No. 44, page 1060, Rule No. 162, Appeal No. 21264 of 60 Q issued on September 16, 1993, published in the first part of Technical Office Book No. 44, page 721, Rule No. 112, Appeal No. 6860 of 59 Q issued on February 16, 1993, published in the first part of Technical Office Book No. 44, page 187, Rule No. 22, Appeal No. 3303 of 61 Q issued on December 13, 1992, published in the first part of Technical Office Book No. 43, page 1147, Rule No. 179, Appeal No. 171 of 60 Q issued on February 17, 1991, published in the first part of Technical Office Book No. 42, page 342, Rule No. 46, Appeal No. 28486 of 59 Q issued on November 19, 1990, published in the first part of Technical Office Book No. 41, page 1037, Rule No. 187, Appeal No. 3508 of 57 Q issued on February 21, 1989, published in the first part of Technical Office Book No. 40, page 291, Rule No. 45, Appeal No. 209 of 58 Q issued on December 6, 1988, published in the second part of Technical Office Book No. 39, page 1227, Rule No. 190, Appeal No. 3197 of 55 Q issued on November 26, 1987, published in the second part of Technical Office Book No. 38, page 1041, Rule No. 188, Appeal No. 3116 of 55 Q issued on October 28, 1987, published in the second part of Technical Office Book No. 38, page 878, Rule No. 159, Appeal No. 65 of 55 Q issued on February 18, 1985, published in the first part of Technical Office Book No. 36, page 267, Rule No. 45, Appeal No. 851 of 54 Q issued on January 28, 1985, published in the first part of Technical Office Book No. 36, page 170, Rule No. 24, Appeal No. 1325 of 53 Q issued on October 4, 1983, published in the first part of Technical Office Book No. 34, page 799, Rule No. 157, Appeal No. 564 of 53 Q issued on June 13, 1983, published in the first part of Technical Office Book No. 34, page 759, Rule No. 151, Appeal No. 6450 of 52 Q issued on February 23, 1983, published in the first part of Technical Office Book No. 34, page 265, Rule No. 51, Appeal No. 2454 of 52 Q issued on November 10, 1982, published in the first part of Technical Office Book No. 33, page 859, Rule No. 177, Appeal No. 1319 of 49 Q issued on January 3, 1980, published in the first part of Technical Office Book No. 31, page 25, Rule No. 4, Appeal No. 1320 of 49 Q issued on January 3, 1980, published in the first part of Technical Office Book No. 31, page 25, Rule No. 4, Appeal No. 574 of 47 Q issued on October 31, 1977, published in the first part of Technical Office Book No. 28, page 897, Rule No. 186, Appeal No. 180 of 41 Q issued on May 3, 1971, published in the second part of Technical Office Book No. 22, page 390, Rule No. 95, Appeal No. 1094 of 26 Q issued on December 3, 1956, published in the third part of Technical Office Book No. 7, page 1231, Rule No. 341, Appeal No. 1171 of 24 Q issued on December 6, 1954, published in the first part of Technical Office Book No. 6, page 255, Rule No. 87..

the crime and the circumstances in which it occurred, and in a statement of the performance of the evidence of proof, a sufficient statement that shows the extent of its support for the incident as the court was convinced of it, so it remained flawed)[3131]

The integrity of the judgment is not affected by the failure to include the text of the technical and medical reports in all their parts as long as it contains enough of them to justify the court's conviction and achieves the street goal that it required in Article 310 of the Code of Criminal Procedure from the claim to indicate the evidence on which the conviction is based.[3132]

The form of accusation set out in the judgment is considered part of it, so it is sufficient in the statement of the incident to refer to it, and there is nothing in the law that prevents the Criminal Court from including in its judgment the evidence as included in the list of evidence submitted by the Public Prosecution as long as it is fit in itself to establish its conviction.[3133]

Third: Statement of the text of the law under which the convictions were sentenced

Each guilty verdict must refer to the text of the law under which it was ruled.[3134]

Every conviction must refer to the text of the law under which it was ruled, which is a fundamental statement required by the rule of legality of crimes and punishment.[3135]

Whereas the Code of Criminal Procedure requires the judgment to state the text of the law under which it was ruled, but the law did not prescribe a form in which the judgment formulates this statement.[3136]

It is scheduled that the law did not include a provision requiring the statement of the articles of accusation, and the texts of punishment in the minutes of the sessions.[3137]

It is decided that the articles of indictment that the prosecution requested to be applied are not among the statements that must be included in the preamble of the judgment.[3138]

([3131]) Appeal No. 27216 of 86 S issued on March 14, 2017 (unpublished)

([3132]) Appeal No. 13018 of 87 S issued at the session of 13 November 2019 (unpublished)

([3133]) Appeal No. 12197 of 87 S issued at the 27th session of October 2019 (unpublished)), Appeal No. 24331 of 86 S issued at the 14th session of November 2018 (unpublished)), Appeal No. 24101 of 86 S issued at the 13th session of November 2018 (unpublished)

([3134]) Article 310 of the Criminal Procedure Code.

([3135]) Appeal No. 35728 of 85 S issued at the hearing of February 15, 2018 (unpublished)), Appeal No. 27365 of 86 S issued at the hearing of March 14, 2017 (unpublished)), Appeal No. 23532 of 84 S issued at the hearing of February 2, 2017 (unpublished)), Appeal No. 195 of 83 S issued at the hearing of July 9, 2013 (unpublished)), Appeal No. 52510 of 76 S issued at the hearing of February 19, 2013 and published in the book of the Technical Office No. 64, page 299, rule No. 31.

([3136]) Appeal No. 8236 of 88 S issued at the session of April 11, 2019 (unpublished)), Appeal No. 61 of 88 S issued at the session of November 25, 2018 (unpublished)), Appeal No. 2353 of 87 S issued at the session of May 14, 2017 (unpublished)), Appeal No. 45337 of 85 S issued at the session of January 18, 2017 (unpublished)), Appeal No. 2291 of 85 S issued at the session of October 4, 2015 (unpublished)), Appeal No. 18867 of 84 S issued at the 2 nd session of March 2015 (unpublished)), Appeal No. 19466 of 4 S issued at the 21 st session of December 2014 and published in Technical Office Letter No. 65 Page 988 Rule No. 133, Appeal No. 22124 of 83 S issued at the 11th session of May 2014 and published in Technical Office Letter No. 65 Page 363 Rule No. 40, Appeal No. 1859 of 78 S issued at the 2 nd session of October 2013 and published in Technical Office Letter No. 64 Page 790 Rule No. 118, Appeal No. 2287 of 4 S Issued at the hearing of March 17, 2013 (unpublished)), Appeal No. 4046 of 82 s issued at the hearing of March 12, 2013 (unpublished)), Appeal No. 5172 of 82 s issued at the hearing of January 6, 2013 and published in Technical Office Letter No. 64, page 45, rule No. 5, Appeal No. 36522 of 72 s issued at the hearing of October 21, 2009 (unpublished)), Appeal No. 50587 of 72 s issued at the hearing of April 16, 2003 and published in Technical Office Letter No. 54, page 554, rule No. 68, Appeal No. 23910 of 65 s issued at the hearing of January 8, 1998 and published in the first part of Technical Office Letter No. 49, page 71, rule No. 8, Appeal No. 23129 of 59 s issued at the hearing of March 5, 1990 and published in the first part of Technical Office Letter No. 41, page 473, rule No. 79.

([3137]) Appeal No. 29658 of 86 S issued on 7 June 2017 (unpublished)

([3138]) Appeal No. 13018 of 87 S issued at the session of November 13, 2019 (unpublished)), Appeal No. 13018 of 87 S issued at the session of November 13, 2019 (unpublished)), Appeal No. 35309 of 84 S issued at the session of February 7, 2016 (unpublished)), Appeal No. 3373 of 82 S issued at the session of March 4, 2013 (unpublished)

The nullity of the conviction for omitting to refer to the text of the law under which it was ruled is limited to not referring to the texts of the substantive law as it is one of the essential statements required by the rule of legality of crimes and penalties. As for omitting to refer to the texts of the Code of Criminal Procedure, it does not invalidate the judgment.[3139]

Fourth: Adjudication of requests submitted by litigants

The court must decide on the requests submitted to it by the litigants and indicate the reasons on which they are based.[3140]

The principle is that the court is not obligated to follow up the accused in their various aspects of defense, but it must include in its judgment evidence that it faced the elements of the lawsuit and familiarized with them in a way that reveals that it understood them and balanced them.[3141]

The court is not obligated to track the accused in the aspects of their objective defense, so reassure her of the evidence relied upon to the effect that she put forward all the considerations raised by the defense to induce her not to take them into account.[3142]

The court is not obligated to respond explicitly to the substantive defenses because the response to them is derived from the conviction based on the evidence it has adopted.[3143]

It is decided that the request that the court is obligated to answer or respond to is the firm request that knocks the hearing of the court and includes a statement of what it aims at, and the applicant insists on it and continues to adhere to it and insists on it in its final requests.[3144]

([3139]) Appeal No. 7954 of 86 S issued at the 10th session of December 2016 (unpublished)

([3140]) Article 311 of the Criminal Procedure Code.

([3141]) Appeal No. 4683 of 54 s issued at the session of June 6, 1985 and published in the first part of the Technical Office letter No. 36 page No. 762 rule No. 134, Appeal No. 1931 of 48 s issued at the session of April 12, 1979 and published in the first part of the Technical Office letter No. 30 page No. 474 rule No. 99.

([3142]) Appeal No. 399 of 54 S issued at the session of January 16, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 82 rule No. 9.

([3143]) Appeal No. 977 of 47 s issued at the session of January 29, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 108 rule No. 19, Appeal No. 47 of 35 s issued at the session of October 26, 1965 and published in the third part of the book of the Technical Office No. 16 page No. 756 rule No. 142.

([3144]) Appeal No. 42222 of 85 S issued at the session of February 25, 2018 (unpublished)), Appeal No. 5219 of 54 S issued at the session of June 5, 1985 and published in the first part of the Technical Office's letter No. 36, page No. 752, rule No. 132, Appeal No. 157 of 25 S issued at the session of May 2, 1955 and published in the third part of the Technical Office's letter No. 6, page No. 935, rule No. 279

The Court of Cassation ruled that: When the lawyers of the appellants had adhered to the lie of the victim in their decision that the first appellant fired a shot and that after being hit by the gunshot, he was behind them and was able to catch up with him, and the defense shown by the appellants about the ability of the victim to run after being hit by the gunshot that hit the abdomen and back was a fundamental defense in the form of the lawsuit and affected its fate as its investigation may result in a change of opinion in it, which is one of the purely technical issues that the court cannot make its way to it itself To express its opinion on it, it had to take the means it saw fit to achieve it until the end of the matter in it, through the technician, which is the forensic doctor, but it did not do so, it has replaced itself with the technical expert in a technical issue, and since the contested judgment was based, among other things, in the conviction of the appellants on the statements of the victim, which they oppose, without being concerned with responding to the appellants' substantive defense or working to achieve it through the technician, which is the forensic doctor, the judgment turns This procedure violates the right of the appellants, and it is not possible in this regard to silence the defense of the request to invite the people of art explicitly, as raising this defense in relation to the incident in question includes in itself the firm demand to achieve it or respond to it.], Appeal No. 1999 for the year 48 S issued in the session of April 2, 1979 and published in the first part of the Technical Office's letter No. 30 page No. 422 rule No. 89

It also ruled that: [Whereas the defense of the appellants had denied the occurrence of the incident in the place where the victim's body was found and evidenced by evidence, including what the inspection proved that there were no traces of blood in its place, although the victim had been injured by many bullets that did not settle in their body, and the contested judgment had omitted the significance of this, which is in the form of the lawsuit, a substantial defense of what would be based on it if the statements of the witnesses of evidence were true, which required the court to perceive them and care about their investigation or respond to them in what he denies, but having omitted it altogether, its judgment is flawed by the deficiencies

It is decided that the defense must respond to the request to hear the witnesses of the incident, even if they are not mentioned in the list of prosecution witnesses or the accused declares them, and that the right of the defense enjoyed by the accused entitles them to submit whatever requests he may have from the investigation - as long as the door of the pleading is open - and does not deprive them of their right to withdraw initially from a specific request from it, their right to withdraw from that request and return to upholding this request as long as the pleading is still in progress.[3145]

However, it is not obligatory for the court after that, while investigating the reality in the lawsuit, to follow the defense in every suspicion it assesses or a conclusion it deduces from the circumstances of the incident and the statements of witnesses or respond to it.[3146]

However, it is decided that when the court is faced with a purely technical issue, it must take whatever means it deems necessary to achieve it until the end of the matter.[3147]

---

that require their cassation.], Appeal No. 1650 of 48 Q issued at the session of January 29, 1979 and published in the first part of the book of the Technical Office No. 30, page No. 186, rule No. 36

It also ruled that: [Since it was clear from reviewing the minutes of the trial session that the defense of the appellants had raised the inability of the victim to speak after their injury, as evidenced by the preliminary medical report of the victim's poor condition due to cutting the arteries of their neck, which cannot be asked and that he remained in this condition until their death, which refutes the decision of the victim's brother and the detective officer that the victim told them the names of the perpetrators. Whereas the judgment responded to the part of the defense by saying: "As for the decision of the defense of the defendants that the victim cannot speak after the incident and therefore cannot give the names of the defendants in order to cut the blood veins in their neck, which loses the ability to speak, the court considers taking the statements of the victim's brother........ ... That the victim decided, after the incident, the names of the accused, as well as taking the statements of the captain .... In investigations that the victim .... It has been decided for them the names of the defendants who assaulted them and excludes the statements of the ambulance driver............ That the victim was speechless and unable to speak because the court was not satisfied with their statements, especially as he decided that he did not know the name of the victim who transferred him, which the court considers that the victim, despite their injuries, has spoken and decided the names of the accused for each of their brother .... And the captain .... This is supported by the court that the names of the defendants decided by the victim before their death are the names that the witness of the visitation at the time of the accident decided their names and then the court puts the defendants' defense in this regard aside and sees with certainty that the victim spoke despite the cutting of some of the arteries of the neck before their death because this cutting did not affect their ability to speak according to what the court considers the statements of the witnesses .... ". The judgment was based, among other things, on the conviction of the appellants on the basis that the victim had spoken after their injury and revealed the names of the perpetrators to the two witnesses who quoted them and relied, among other things, on the formation of their faith on the statements of these two witnesses without being concerned with achieving this essential defense through the technician, who is the forensic doctor. The judgment's attention to this procedure violates the defense of the appellants. This does not mean that the defense of the request to invite the people of art is silent explicitly, as raising this defense in relation to the incident at hand includes in itself the firm demand to achieve it or to respond to what refutes it. This defect does not raise the reasoning behind the judgment from the response of a minor, that is, if the principle is that the court has full authority to assess the evidential power of the elements of the lawsuit before the court, which is the supreme expert in all that it can decide by itself or with the assistance of an expert whose opinion is subject to its assessment. However, this is conditional on the fact that the matter at hand is not a purely technical matter on which the court itself cannot make its way to render an opinion, as is the case in this case.], Appeal No. 277 of 48 S issued at the session of April 9, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 388 rule No. 74.

([3145]) Appeal No. 289 of 47 S issued on June 12, 1977 and published in the first part of the Technical Office's letter No. 28 page No. 753 rule No. 158

The Court of Cassation ruled that: [If it is established that the lawsuit was reserved for judgment for a specific hearing with the permission of the accused to submit a memorandum of their defense, and this seizure was not preceded by the completion of the defendant's defense verbally. In the specified period, he submitted a memorandum of defense in which he ended up requesting the assignment of an expert to know the work of the workers referred to in the subject of the charge and to determine the type of protective clothing that can be disbursed to them, and whether the clothes actually disbursed by the company are sufficient to prevent or not. However, the Court of Appeal ruled to convict without responding to this request, although it is one of the essential requests that the court is obligated to answer or respond to it in a way that justifies its rejection. The omission of this response makes the judgment tainted with deficiencies that require cassation], Appeal No. 2338 of 30 BC issued at the session of March 28, 1961 and published in the first part of the Technical Office's letter No. 12, page No. 382, rule No. 73.

([3146]) Appeal No. 20698 of 75 S issued at the 6th session of February 2013 and published in the book of the Technical Office No. 64 page No. 191 rule No. 20.

However, the delay in presenting the defense inevitably does not indicate its lack of seriousness as long as it is a product that would rush the charge or change the point of view in the lawsuit, and the accused's use of their legitimate right to defend himself in the Judicial Council can never be characterized as lack of seriousness nor to be described as late because the trial is the appropriate time in which the law guarantees every accused person's right to make the investigation requests and aspects of the defense and obliges the court to consider and investigate it as long as it is a manifestation of the truth and a guide to the right.[3148]

The court is not obligated to draw the defendant the way he takes in their defense, and as long as the defense does not argue that the court has prevented them from presenting evidence, he is not entitled afterwards to complain to it about violating their right to defense.[3149]

The request to hear witnesses on behalf of the defendant is a substantive defense that must be, like all other substantive defenses, manifestly related to the subject matter of the lawsuit, that is, that the adjudication of it is necessary to adjudicate on the same subject, otherwise the court is free from non-response to it, and it is not obligated to respond to it explicitly in its judgment.[3150]

([3147]) Appeal No. 449 of 44 S issued at the session of May 19, 1974 and published in the first part of the Technical Office's letter No. 25, page No. 474, rule No. 101

The Court of Cassation ruled that: [It is decided that the plea of the inability of the victim to speak following their injury is a fundamental defense in the case because it is related to the investigation of the evidence presented therein. Since the defender of the appellant has raised the inability of the victim to speak after their injury, as shown by reference to the included vocabulary that the report of the anatomical characteristic has been devoid of reference to the ability of the victim or their inability to speak after their injury, the court, as it did not perceive the appellant's defense and did not pay them their right and concerned with achieving an achievement to the end of the matter, but was silent about them in return for them and in response to him, its judgment is flawed], Appeal No. 181 of 43 s issued at the session of March 4, 1974 and published in the first part of the Technical Office's book No. 25 page No. 214 rule No. 48.

([3148]) Appeal No. 79 of 48 s issued at the session of April 24, 1978 and published in the first part of the Technical Office letter No. 29 page No. 442 rule No. 84, Appeal No. 125 of 43 s issued at the session of April 1, 1973 and published in the second part of the Technical Office letter No. 24 page No. 456 rule No. 93

The Court of Cassation ruled that: [Whereas the defense presented by the appellant in the lawsuit in question contradicted the time specified by the two witnesses to the accident with what was stated in the anatomical report on the state of stiffness is a fundamental defense because of its attachment to the evidence presented therein, which is derived from the statements of the witnesses of evidence, which is a defense that may be based on it if the face of the opinion in the lawsuit changes, which required the court to face the issue of determining the time of death, which is a purely technical issue to take the means it deems necessary to achieve it until the end of the order to achieve this essential defense through the technician, which is the forensic doctor, but it did not, its ruling is defective in addition to the violation of the right of defense], Appeal No. 123 of 43 Q issued at the session of April 1, 1973 and published in Part II of the Technical Office's book No. 24, page No. 451, rule No. 92

It also ruled that: [When the defense of the first appellant was based on the denial of the occurrence of the incident in the place where the victim's body was found and evidenced by evidence, including what the inspection proved that there were no traces of blood in its place, despite the fact that the victim suffered several cuts on the head and face, and the contested judgment had overlooked the significance of this, and it is in the form of the lawsuit a substantive defense, for what would be based on it if the statements of the witnesses of the proof were true, what required the court to discern them and care about their investigation or respond to them in what he denies. Having omitted to respond to it altogether, its judgment is flawed by the deficiencies], Appeal No. 1345 of 42 S issued at the session of January 22, 1973 and published in the first part of the Technical Office's letter No. 24, page No. 87, rule No. 21

It ruled that: [If the defense of the appellants has adhered to the minutes of the session that the victim and the two witnesses agreed that the weapon used is of the stubborn type and that the shooting took place with the victim sitting in any direction from top to bottom, in which they were opposed by the forensic medical report that proved that one of the injuries was from an ordinary unstubbed weapon and that the direction of the injuries was from bottom to top, then this statement by the appellants' lawyers is considered a substantive defense that requires the court to respond in a special way that lifts the alleged contradiction between the verbal evidence and the technical evidence. If it does not do so, its ruling is deficient in the statement and violates the right of defense, which is defective and requires its cassation.], Appeal No. 470 of 25 Q issued at the hearing of 14 June 1955 and published in Part III of Technical Office Book No. 6, page 1140, rule No. 332.

([3149]) Appeal No. 1341 of 45 S issued on December 28, 1975 and published in the first part of the Technical Office's letter No. 26 page No. 877 rule No. 193.

([3150]) Appeal No. 706 of 43 BC issued at the session of December 16, 1973 and published in the third part of the Technical Office's letter No. 24 page No. 1223 rule No. 248.

In addition, although the law has obligated the defendant to hear and investigate the aspects of the defense, the court, if the lawsuit has been clarified or if the matter to be investigated is not productive, may present it, provided that the reason for its rejection of this request is shown.[3151]

It is decided that if the defender of the opponent submits what shows their excuse for not attending, the court must mean to respond to him, whether by acceptance or rejection, then the omission of the judgment to refer to this affects the right of the appellant to defend, which disadvantages them and requires their cassation.[3152]

It is also decided that when the court orders the closure of the pleading in the case and detains it for judgment, it is not yet obligated to respond to the investigation request made by the accused in their memorandum submitted during the period of detention of the case for judgment or to respond to it, whether it is submitted with its permission or without a permit, as long as it is not requested at the trial session and before the closure of the pleading in the case.[3153]

Fifth: Statement of the penalty imposed in the event of a conviction

The judgment shall be self-aware of the amount of the sentenced penalty and shall not be supplemented by any statement outside it.[3154]

Sixth: Notes on the judgment issued by the Second Instance Court

The ruling on the inadmissibility of the appeal in its result meets with the judiciary to reject the appeal, which means that the objection to the wrong judgment in the application of the law is futile due to its ruling on the inadmissibility of the appeal.[3155]

The ruling that the appeal is not accepted in a form to be decided after the deadline is not flawed by the omission of the statement of the fact of the case, its circumstances, the evidence of conviction and the punishment materials because this statement is only necessary for the convictions issued in the subject matter of the case.[3156]

The mere postponement of the case by the court to investigate the defendant's defense by assigning an expert in it without having decided on the appeal order in terms of form is not considered an implicit decision by the law to accept the appeal as a form and does not legally

---

([3151]) Appeal No. 1616 of 42 S issued in the session of February 25, 1973 and published in the first part of the Technical Office's book No. 24 page No. 243 rule No. 54.

([3152]) Appeal No. 6931 of 54 S issued on November 6, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 984 rule No. 178.

([3153]) Appeal No. 5724 of 55 S issued at the session of December 19, 1985 and published in the first part of the technical office book No. 36 page No. 1151 rule No. 213, Appeal No. 826 of 48 S issued at the session of February 6, 1978 and published in the first part of the technical office book No. 29 page No. 136 rule No. 25

However, when the defendant of the appellants concludes their pleading of their original request for the judiciary to acquit them and in the alternative to summon the detective officer to discuss it, this is a firm request that the court is obligated to answer when going to the judiciary without innocence, the judgment, as it ruled to convict the appellants, is only based on the statements of the officer in the investigations and what he proved in their record without responding to the request to hear it, is tainted by a violation of the right of defense. he is not interceded for because he has relied in their judgment in addition to the above on other evidence, Appeal No. 1452 of 48 BC issued at the session of December 28, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 980 rule No. 203.

([3154]) Appeal No. 10769 for the year 82 S issued in the session of June 13, 2013 and published in the book of the Technical Office No. 64 page No. 675 rule No. 97.

([3155]) Appeal No. 4556 of 60 S issued at the session of May 12, 1996 and published in the first part of the book of the Technical Office No. 47 page No. 619 rule No. 86.

([3156]) Appeal No. 1680 of 55 S issued on October 8, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 824 rule No. 146.

prevent it, when issuing its judgment, from reconsidering the form of the appeal and ruling that it is not accepted in form if it is proven that the report was after the legal deadline)[3157]

Also, if the court, when considering the appeal, heard and discussed the defendant's defense, and then postponed the case to hear the witnesses without having decided on the appeal order in terms of form, this is not considered an implicit chapter in the form of the appeal and does not legally prevent it, when issuing its judgment, from considering the form of the appeal and ruling that it is inadmissible because it was found that the date of the report exceeded the legal deadline)[3158]

23-1-2 Editing and signing the judgment

It is decided that the original in the judgments shall be fully edited with their reasons before pronouncing them, so that the court does not pronounce the judgment unless it is fully convinced of what it wants to decide and is also convinced of the reasons on which it is based.[3159]

The law permits the writing of the judgment with its reasons in full within eight days from the date of its issuance as far as possible, and it is signed by the president and the clerk of the court, and if there is an objection to the president, it is signed by one of the judges who participated with them in its issuance.

If the judgment is issued by the individual consultant or the magistrate court and the judge who issued it has put their reasons in their handwriting, the president of the Court of Appeal or the president of the Court of First Instance, as the case may be, may personally sign the original copy of the judgment or assign one of the judges to sign it based on those reasons.

If the judge has not written the reasons in their handwriting, the judgment shall be invalidated for lack of reasons.

The signature of the judgment may not be delayed from the prescribed eight days except for strong reasons.

In any case, the judgment shall be null and void if thirty days have elapsed without a signature unless it is issued with an acquittal; and the clerk's office shall give the person concerned, at their request, a certificate not to sign the judgment within the aforementioned date.[3160]

This means that Article 312 of the Code of Criminal Procedure stipulates that criminal judgments must be drawn up and signed within thirty days of their pronouncement, otherwise, they are invalid, and acquittals are excluded from that invalidity.[3161]

([3157]) Appeal No. 1680 of 55 S issued on October 8, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 824 rule No. 146.

([3158]) Appeal No. 1397 of 29 S issued at the session of January 25, 1960 and published in the first part of the book of the Technical Office No. 11 page No. 100 rule No. 18.

([3159]) Appeal No. 10803 of 68 S issued at the session of April 5, 2004 and published in the letter of the Technical Office No. 55, page No. 351, rule No. 45.

([3160]) Article 312 of the Criminal Procedure Law.

([3161]) Appeal No. 28584 of 70 S issued at the session of 5 May 2008 and published in the letter of the Technical Office No. 59 page No. 273 rule No. 47, Appeal No. 22875 of 67 S issued at the session of 18 December 2006 and published in the letter of the Technical Office No. 57 page No. 980 rule No. 116, Appeal No. 19012 of 66 S issued at the session of 20 March 2005 and published in the letter of the Technical Office No. 56 page No. 211 rule No. 32, Appeal No. 8134 of 68 S issued at the hearing of April 15, 2004 and published in Technical Office Letter No. 55 Page 407 Rule No. 54, Appeal No. 12206 of 60 S issued at the hearing of June 6, 1999 and published in Part I of Technical Office Letter No. 50 Page 372 Rule No. 87, Appeal No. 9141 of 60 S issued at the hearing of January 19, 1997 and published in Part I of Technical Office Letter No. 48 Page 118 Rule No. 17, Appeal No. 42339 of 59 S issued at the hearing of April 18, 1995 and published in Part First of Technical Office Letter No. 46 Page No. 749 Rule No. 110, Appeal No. 10139 of 59 S issued at the session of February 15, 1990 and published in the first part of Technical Office Letter No. 41 Page No. 379 Rule No. 61, Appeal No. 2623 of 57 S issued at the session of June 16,

The judgment shall also be null and void if it is devoid of its reasons.[3162]

The absence of the signature of the judge who issued the judgment renders it null and void, and their paper is considered in relation to the data and reasons it contained, which do not exist legally.[3163]

This invalidity extends to all parts of the judgment, including its operative part.[3164]

The effect of this invalidity extends to the appeal judgment in favor of the primary judgment for its reasons. It is considered as if it is devoid of reasons and does not change the matter that the contested judgment has established for itself special reasons as long as it has referred to the operative part of the invalid appeal judgment, which leads to the extension of the invalidity to it as well)[3165]

The provisions of the law stipulate that the judgment may be edited on its grounds in the eight days following its issuance. This is such as to facilitate the judge and the clerk of the hearing in recording and signing the judgment. It is not acceptable for the accused to say that the court prepared the judgment in advance before issuing it, as long as this was done after the court issued its decision to close the pleading, and at a stage in which the lawsuit was in the hands of the court for examination and deliberation.[3166]

1988 and published in the first part of Technical Office Letter No. 39 Page No. 812 Rule No. 121, Appeal No. 3408 of 57 S issued at the hearing of November 15, 1987 and published in the second part of the Technical Office letter No. 38 page No. 968 rule No. 176, Appeal No. 5966 of 56 S issued at the hearing of February 18, 1987 and published in the first part of the Technical Office letter No. 38 page No. 298 rule No. 42, Appeal No. 2380 of 49 S issued at the hearing of April 21, 1980 and published in the first part of the Technical Office letter No. 31 page No. 527 rule No. 100, Appeal No. 135 of 50 S issued at the hearing of March 10, 1980 and published in the first part of the letter Technical Office No. 31 Page 361 Rule No. 66, Appeal No. 761 of 49 S issued at the 22nd session of October 1979 and published in the first part of the Technical Office's letter No. 30 Page No. 773 Rule No. 163, Appeal No. 1314 of 47 S issued at the 27th session of February 1978 and published in the first part of the Technical Office's letter No. 29 Page No. 196 Rule No. 35, Appeal No. 442 of 47 S issued at the 5th session of June For the year 1977 and published in the first part of the Technical Office letter No. 28 page No. 702 rule No. 147, Appeal No. 93 of 47 s issued at the session of 9 May 1977 and published in the first part of the Technical Office letter No. 28 page No. 578 rule No. 121, Appeal No. 2 of 47 s issued at the session of 17 April 1977 and published in the first part of the Technical Office letter No. 28 page No. 491 rule No. 103, Appeal No. 1030 of 46 s issued at the session of 16 January 1977 and published in the first part of the Technical Office letter No. 28 Page No. 80 Rule No. 17, Appeal No. 509 of 46 S issued at the session of October 17, 1976 and published in the first part of the Technical Office's letter No. 27 Page No. 754 Rule No. 171, Appeal No. 1148 of 45 S issued at the session of November 3, 1975 and published in the first part of the Technical Office's letter No. 26 Page No. 683 Rule No. 149, Appeal No. 1024 of 43 S issued at the session of December 16, 1973 and published in the third part of Technical Office Letter No. 24 Page No. 1246 Rule No. 253, Appeal No. 11 of 43 S issued at the session of March 4, 1973 and published in Part I of Technical Office Letter No. 24 Page No. 279 Rule No. 61, Appeal No. 336 of 39 S issued at the session of April 7, 1969 and published in Part II of Technical Office Letter No. 20 Page No. 484 Rule No. 101, Appeal No. 2007 of 38 S issued at the session of February 10, 1969 and published in Part I of Technical Office Letter No. 20 Page No. 237 Rule No. 51, Appeal No. 1982 of 38 s issued at the session of February 3, 1969 and published in the first part of the technical office book No. 20 page No. 198 Rule No. 43, Appeal No. 2540 of 32 s issued at the session of March 4, 1963 and published in the first part of the technical office book No. 14 page No. 142 Rule No. 31.

([3162]) Appeal No. 1411 of 38 S issued at the session of December 30, 1968 and published in Part III of the Technical Office's book No. 19 page No. 1121 rule No. 229, Appeal No. 1400 of 37 S issued at the session of November 6, 1967 and published in Part III of the Technical Office's book No. 18 page No. 1077 rule No. 221, Appeal No. 1525 of 45 S issued at the session of January 12, 1976 and published in Part I of the Technical Office's book No. 27 page No. 63 rule No. 12.

([3163]) Appeal No. 551 of 48 BC issued at the session of October 29, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 744 rule No. 149.

([3164]) Appeal No. 10139 of 59 S issued in the session of February 15, 1990 and published in the first part of the book of the Technical Office No. 41 page No. 379 rule No. 61.

([3165]) Appeal No. 10139 of 59 S issued at the session of February 15, 1990 and published in the first part of the technical office book No. 41 page No. 379 rule No. 61, Appeal No. 551 of 48 S issued at the session of October 29, 1978 and published in the first part of the technical office book No. 29 page No. 744 rule No. 149.

([3166]) Appeal No. 10803 of 68 S issued at the session of April 5, 2004 and published in the letter of the Technical Office No. 55, page No. 351, rule No. 45.

The signing of the judgment paper by the president of the court is a testimony of what happened so that it does not remain after its pronouncement except to formulate the reasons on the basis of what was decided in the deliberation.[3167]

The purpose of signing the judgment is to fulfill the legal form in which it acquires its evidential power, and that it is sufficient to achieve this purpose that the signature is from any judge who participated in issuing it, either to stipulate the competence of the head of the body that issued the judgment to sign, it was intended to organize and unify the work. If he is presented with a coercive impediment - after the issuance of the judgment and before the signing of the reasons that were the subject of the deliberation of all members - the judgment was signed on their behalf by the oldest of the other two members, it is not valid to mourn that procedure for nullity because it is based on a rule established in the law, which does not require a special proxy or permission to conduct it)[3168]

It is decided that the law requires the signature of the head of the body that issued the judgment on their paper and the clerk of the session.[3169]

The omission to sign the minutes of the sessions has no effect on the validity of the judgment.[3170]

The law required that the president of the court and the clerk of the hearing sign only the judgment itself, not its draft, and therefore there is no need to rely on the request for the nullity of the criminal judgment by not signing the draft by the head of the authority that issued it.[3171]

The text of Article 312 of the Code of Criminal Procedure is intended to sign the judgment itself and not its draft. There is no need to rely on it in requesting the nullity of the criminal judgment because the head of the authority that issued it did not sign its draft. As for what is approved by Article 170 of the Code of Civil and Commercial Procedure, which requires the signature of the head of the authority and the judges on the draft judgment, there is no need to rely on it in the criminal articles to which the provisions of the Code of Criminal Procedure apply.[3172]

The law did not require the signature of all members of the body that issued the judgment on their paper, and the signature of its chairman and the clerk of the session is sufficient.[3173]

([3167]) Appeal No. 17149 of 60 S issued at the session of 23 April 1992 and published in the first part of the book of the Technical Office No. 43 page No. 442 rule No. 67.

([3168]) Appeal No. 32060 of 85 S issued at the 2nd session of December 2017 (unpublished)), Appeal No. 1847 of 36 S issued at the 30th session of January 1967 and published in the first part of the Technical Office's letter No. 18, page No. 108, rule No. 19.

([3169]) Appeal No. 52510 of 76 S issued at the session of February 19, 2013 and published in the letter of the Technical Office No. 64 page No. 299 rule No. 31, Appeal No. 33146 of 73 S issued at the session of March 4, 2010 and published in the letter of the Technical Office No. 61 page No. 197 rule No. 26, Appeal No. 12806 of 64 S issued at the session of January 28, 2001 and published in the letter of the Technical Office No. 52 page No. 174 rule No. 27.

([3170]) Appeal No. 8264 of 54 S issued at the session of February 13, 1985 and published in the first part of the technical office book No. 36 page No. 250 rule No. 41, Appeal No. 7274 of 53 S issued at the session of May 29, 1984 and published in the first part of the technical office book No. 35 page No. 538 rule No. 121.

([3171]) Appeal No. 33218 of 73 S issued at the 4th session of March 2010 (unpublished)), Appeal No. 37970 of 74 S issued at the 24th session of February 2010 (unpublished)), Appeal No. 1184 of 74 S issued at the 15th session of March 2009 (unpublished)), Appeal No. 8264 of 54 S issued at the 13th session of February 1985 and published in the first part of the Technical Office's book No. 36 page No. 250 rule No. 41, Appeal No. 1618 of 37 S issued at the 27th session of November 1967 and published in the third part of the Technical Office's book No. 18 page No. 1163 rule No. 244.

([3172]) Appeal No. 23979 for the year 73 S issued at the session of March 16, 2010 (unpublished)), Appeal No. 65114 for the year 73 S issued at the session of March 8, 2010 (unpublished)), Appeal No. 62352 for the year 76 S issued at the session of March 20, 2007 and published in the letter of the Technical Office No. 58 Page No. 265 Rule No. 54, Appeal No. 8250 for the year 58 S issued at the session of January 14, 1990 and published in the first part of the book of the Technical Office No. 41 Page No. 129 Rule No. 17.

([3173]) Appeal No. 41799 of 85 S issued at the 25th session of November 2017 (unpublished)), Appeal No. 29658 of 86 S issued at the 7th session of June 2017 (unpublished)), Appeal No. 18824 of 83 S issued at the 7th session of April 2014

It is also scheduled that the law did not arrange for the nullity to not only be signed by the clerk of the session on its minutes and judgment, but have their legal basis by the signature of the president of the session on them.[3174]

It is sufficient for the judgment to be signed by the president of the court, so it is not required that all the judges of the court sign it, and the signature of the president of the court on the judgment is an acknowledgment of what happened.[3175]

The signing of the judgment was intended to fulfill the legal form of the judgment, which acquires its evidential power, and it is sufficient for this purpose that the signature be from any judge who participated in issuing it. As for stipulating the competence of the head of the body that issued the judgment to sign, it was intended to organize and unify the work. If he was presented with a coercive impediment - after the issuance of the judgment and before the signing of the reasons that were the subject of the deliberation of all members - the judgment was signed on their behalf by the oldest of the other two members, it is not valid to mourn that procedure for nullity because it is based on a rule established in the law, which does not require a special proxy or permission in its conduct.[3176]

If the appealed judgment has upheld the primary judgment for the reasons for which it was disclosed, without creating for itself reasons, it may have referred to the reasons for the appealed judgment, which was devoid of its reasons, it may have referred to the reasons for a judgment that does not exist.[3177]

The lesson in the judgment is in its original copy, which is written by the writer and signed by the judge and kept in the case file and be the reference in taking the executive picture and in the appeal against it from the concerned parties, and it is not supported in this that the draft reasons for that judgment have been deposited in the case file signed by the judge, the draft judgment is only a project of the court full freedom to change it and to do what it deems necessary regarding the facts and reasons, so that the rights of the litigants are not determined at the will of the appeal.[3178]

(unpublished)), Appeal No. 29658 of 86 S issued at the 7th session of June 2017 (unpublished)), Appeal No. 26964 of 4 S issued at the 9th session of May 2015 and published in the Technical Office Book No. 66 pages No. 443 Rule No. 62, Appeal No. 18824 of 83 S issued at the session of April 7, 2014 (unpublished)), Appeal No. 5967 of 78 S issued at the session of October 13, 2011 (unpublished)), Appeal No. 12206 of 60 S issued at the session of June 6, 1999 and published in the first part of the Technical Office's book No. 50, page No. 372 Rule No. 87, Appeal No. 50912 of 59 S issued at the session of March 21, 1996 and published in the first part of the Technical Office's book No. 47, page No. 383 Rule No. 55, Appeal No. 23580 of 59 S issued at the 27th session of February 1994 and published in the first part of the Technical Office's letter No. 45, page No. 320, rule No. 46, Appeal No. 514 of 51 S issued at the 16th session of December 1981 and published in the first part of the Technical Office's letter No. 32, page No. 1111, rule No. 198.

([3174]) Appeal No. 52510 of 76 S issued at the session of February 19, 2013 and published in the Technical Office letter No. 64 page No. 299 rule No. 31, Appeal No. 48101 of 59 S issued at the session of July 21, 1999 and published in the first part of the Technical Office letter No. 50 page No. 411 rule No. 97, Appeal No. 12336 of 60 S issued at the session of January 25, 1995 and published in the first part of the Technical Office letter No. 46 page No. 272 rule No. 36.

([3175]) Appeal No. 6470 of 82 S issued on October 3, 2015 and published in the Technical Office's letter No. 66, page No. 622, rule No. 92.

([3176]) Appeal No. 12619 of 65 s issued at the session of 29 September 1997 and published in the first part of the technical office book No. 48 page No. 958 rule No. 145, Appeal No. 12547 of 63 s issued at the session of 6 April 1995 and published in the first part of the technical office book No. 46 page No. 670 rule No. 101.

([3177]) Appeal No. 10890 of 59 S issued at the session of March 11, 1991 and published in the first part of the technical office book No. 42 page No. 486 rule No. 68, Appeal No. 17846 of 59 S issued at the session of December 17, 1990 and published in the first part of the technical office book No. 41 page No. 1109 rule No. 200.

([3178]) Appeal No. 10890 of 59 S issued at the session of March 11, 1991 and published in the first part of the Technical Office book No. 42 page No. 486 rule No. 68, Appeal No. 17846 of 59 S issued at the session of December 17, 1990 and published in the first part of the Technical Office book No. 41 page No. 1109 rule No. 200, Appeal No. 1158 of 49 S issued at the session of December 13, 1979 and published in the first part of the Technical Office book No. 30 page No. 932 rule No. 200, Appeal No.

The Court of Cassation ruled that it is not necessary to draft the judgment unless there is an objection on the part of the partial judge to sign the judgment after it is issued.[3179]

The principle is that the law does not require editing the draft judgment in the judge's handwriting.[3180]

However, it excludes a unique case, which is the case where there is an impediment for the partial judge to sign the judgment after it is issued. In this case, the president of the court or the judge he assigns may not sign the judgment unless the judge who issued it puts their reasons in their handwriting.[3181]

In criminal judgments, it is not necessary for the judges who issued the judgment to sign its draft, but it is sufficient for the judgment to be written and signed by the president and the clerk of the court, and if there is an objection to the president, it is signed by one of the judges who participated with them in issuing it.[3182]

Codes of judgment must be written in legible writing. Codes of judgment must be written in illegible writing that does not achieve the purpose intended by the street to respond to the reasoning of judgments. The Court of Cassation cannot monitor the validity of the application of the law to the incident as it has been proven by the judgment.[3183]

Editing the judgment on a printed form does not require its nullity and as long as it is established that the judgment has fulfilled its formal conditions, and the essential data stipulated by the law.[3184]

In order for the appellant to adhere to the nullity of the judgment for not signing it within the thirty days following its issuance, he must obtain from the clerk's office an indicative certificate that

---

146 of 35 S issued at the session of May 17, 1965 and published in the second part of the Technical Office book No. 16 page No. 479 rule No. 97.

([3179]) Appeal No. 1889 of 40 S issued at the session of 31 January 1971 and published in the first part of the book of the Technical Office No. 22 page No. 122 rule No. 31.

([3180]) Appeal No. 26964 of 4S issued at the 9th session of May 2015 and published in the Technical Office letter No. 66, page No. 443, rule No. 62, Appeal No. 33146 of 73S issued at the 4th session of March 2010 and published in the Technical Office letter No. 61, page No. 197, rule No. 26, Appeal No. 12806 of 64S issued at the 28th session of January 2001 and published in the Technical Office letter No. 52, page No. 174, rule No. 27.

([3181]) Appeal No. 12007 of 79 S issued at the session of 16 February 2011 (unpublished)), Appeal No. 514 of 51 S issued at the session of 16 December 1981 and published in the first part of the book of the Technical Office No. 32 page No. 1111 rule No. 198.

([3182]) Appeal No. 951 of 49 s issued at the session of 3 December 1979 and published in the first part of the technical office book No. 30 page No. 882 rule No. 188, Appeal No. 111 of 49 s issued at the session of 7 June 1979 and published in the first part of the technical office book No. 30 page No. 640 rule No. 137.

([3183]) Appeal No. 9091 of 4Q issued at the hearing of 3 July 2013 (unpublished)), Appeal No. 930 of 68Q issued at the hearing of 26 May 2005 (unpublished)), Appeal No. 109 of 67Q issued at the hearing of 18 January 2005 (unpublished)), Appeal No. 6866 of 65Q issued at the hearing of 16 October 2003 (unpublished)), Appeal No. 629 of 68Q issued at the hearing of 14 April 2003 (unpublished)), Appeal No. 21188 of 63Q Issued at the session of 19 December 2002 (unpublished)), Appeal No. 13028 of 65 S issued at the session of 25 November 2002 (unpublished)), Appeal No. 21435 of 63 S issued at the session of 2 May 2002 (unpublished)), Appeal No. 3692 of 62 S issued at the session of 12 November 2001 (unpublished)), Appeal No. 2332 of 62 S issued at the session of 12 November 2001 (unpublished)), Appeal No. 43605 of 59 S issued at the session of 28 February 1996 and published in the first part of the Technical Office's letter No. 47 Page No. 281 Rule No. 41, Appeal No. 13315 of 59 S issued at the session of November 3, 1991 and published in the first part of the book of the Technical Office No. 42 Page No. 1088 Rule No. 152, Appeal No. 1487 of 50 S issued at the session of December 24, 1980 and published in the first part of the book of the Technical Office No. 31 Page No. 1113 Rule No. 215, Appeal No. 743 of 43 S issued at the session of November 12, 1973 and published in the third part of the book of the Technical Office No. 24 Page No. 964 Rule No. 201, Appeal No. 1591 of 40 S issued at the session of March 1, 1971 and published in the first part of the book of the Technical Office No. 22 Page 175 Rule No. 42.

([3184]) Appeal No. 7274 of 53 S issued at the session of 29 May 1984 and published in the first part of the technical office book No. 35 page No. 538 rule No. 121, Appeal No. 514 of 51 S issued at the session of 16 December 1981 and published in the first part of the technical office book No. 32 page No. 1111 rule No. 198, Appeal No. 11 of 43 S issued at the session of 4 March 1973 and published in the first part of the technical office book No. 24 page No. 279 rule No. 61.

the judgment was not, at the time of its writing, deposited the lawsuit file signed by them despite the lapse of that deadline. If he does not submit it, he shall not accept the objection to the nullity judgment.[3185]

The negative certificate proving the delay in signing the judgment within the period of thirty days is the certificate issued by the Registry at the request of the concerned party, which states that the judgment is not deposited within that period.[3186]

The Court of Cassation ruled that the testimony that it is correct to infer that the judgment was not concluded on the legal date should be negative, that is, an indication that the judgment was not signed by the pen of the book at the time of its issuance.[3187]

The court may take the photocopy of the negative certificate as evidence of the non-filing of the judgment, the case file signed by the head of the body that issued it, whenever it is satisfied with it.[3188]

This negative certificate does not dispense with any other evidence except that the judgment remains free of signature until the time of appeal. This certificate is only evidence of the failure to carry out this procedure, which is required by law and considered a condition for the existence of the judgment. If the judgment has not deposited the case file during the consideration of the appeal, it is null and void, and this nullity inevitably results whether the appellant submits a negative certificate or not. This evidence eliminates the need for the judgment to remain free of signature until the appeal is considered or what was stated in the letter of the Criminal Cassation Prosecution that the reasons for the judgment were not issued until the date of the appeal.[3189]

([3185]) Appeal No. 7678 of 87 S issued at the hearing of June 26, 2019 (unpublished)), Appeal No. 4404 of 63 S issued at the hearing of March 19, 1995 and published in Part I of Technical Office Letter No. 46 Page 580 Rule No. 86, Appeal No. 4207 of 61 S issued at the hearing of December 21, 1992 and published in Part I of Technical Office Letter No. 43 Page 1181 Rule No. 185, Appeal No. 17149 of 60 S issued at the session of April 23, 1992 and published in the first part of the technical office book No. 43 page No. 442 rule No. 67, Appeal No. 2384 of 49 S issued at the session of April 21, 1980 and published in the first part of the technical office book No. 31 page No. 534 rule No. 102, Appeal No. 1158 of 49 S issued at the session of December 13, 1979 and published in the first part of the technical office book No. 30 page No. 932 rule No. 200, Appeal No. 761 of 49 S issued at the session of October 22, 1979 and published in the first part From the Technical Office Letter No. 30 Page No. 773 Rule No. 163, Appeal No. 102 of 48 s issued at the session of April 24, 1978 and published in the first part of the Technical Office Letter No. 29 Page No. 451 Rule No. 86, Appeal No. 146 of 35 s issued at the session of May 17, 1965 and published in the second part of the Technical Office Letter No. 16 Page No. 479 Rule No. 97.

([3186]) Appeal No. 1020 of 41 s issued at the session of December 12, 1971 and published in the third part of the book of the Technical Office No. 22 page No. 752 rule No. 181.

([3187]) Appeal No. 716 of 40 BC issued at the session of June 22, 1970 and published in the second part of the book of the Technical Office No. 21 page No. 911 rule No. 215.

([3188]) Appeal No. 1621 of 53 S issued at the session of November 9, 1983 and published in the first part of the book of the Technical Office No. 34 page No. 931 rule No. 185.

([3189]) Appeal No. 4404 of 63 S issued at the session of 19 March 1995 and published in the first part of the Technical Office book No. 46 page No. 580 rule No. 86, Appeal No. 30641 of 59 S issued at the session of 16 March 1995 and published in the first part of the Technical Office book No. 46 page No. 560 rule No. 81, Appeal No. 9732 of 63 S issued at the session of 18 December 1994 and published in the first part of the Technical Office book No. 45 page No. 1185 rule No. 186, Appeal No. 10139 of 59 S issued at the session of February 15, 1990 and published in the first part of the Technical Office letter No. 41 page 379 rule No. 61, Appeal No. 843 of 59 S issued at the session of November 29, 1990 and published in the first part of the Technical Office letter No. 41 page 1062 rule No. 192, Appeal No. 10139 of 59 S issued at the session of February 15, 1990 and published in the first part of the Technical Office letter No. 41 page 379 rule No. 61, Appeal No. 3268 For the year 55 S issued at the session of October 9, 1985 and published in the first part of the technical office book No. 36 page No. 831 rule No. 148, Appeal No. 2198 of the year 52 S issued at the session of March 2, 1983 and published in the first part of the technical office book No. 34 page No. 307 rule No. 59, Appeal No. 1487 of the year 50 S issued at the session of December 24, 1980 and published in the first part of the technical office book No. 31 page No. 1113 rule No. 215, Appeal No. 135 of 50 S issued at the session of March 10, 1980 and published in the first part of the Technical Office letter No. 31 page No. 361 rule No. 66, Appeal No. 761 of 49 S issued at the session of October 22, 1979 and published in the first part of the Technical Office letter No. 30 page No. 773 rule No. 163, Appeal No. 93 of 47 S issued at the session of May 9, 1977 and published in the first

The certificate in which it is established that the judgment was deposited within a certain period is not considered a negative certificate because the Code of Criminal Procedure in Article 312 of it did not make the Registry competent to indicate the date of the judgment in the place of the request to annul it, but rather limited its competence to merely proving the existence of the judgment or its absence in the aforementioned pen, editing its reasons signed by those who issued it at the time of writing the certificate.[3190]

The negative certificate also does not change the existence of the draft judgment in the case file and that the original copy of the judgment was signed by the president of the hearing on the legal date, but the clerk of the hearing had not deposited the case file until the request for the certificate, as the law required that the signature and deposit be together within the thirty-day period.[3191]

It is decided that marking the judgment as depositing the case file at a date subsequent to the date of thirty days following its issuance does not help in denying that this deposit took place on the legal date - that is, it is not considered a negative certificate.[3192]

The nullity does not change the deposition of the draft reasons for the judgment signed by the head of the department that issued it, as the lesson in the judgment is in its original copy, which is written by the writer and signed by the judge and kept in the case file and be the reference in taking the executive copies and in the appeal against it by the concerned parties. As for the draft judgment, it is only a project of the court full freedom to change it and to do what it deems necessary regarding the facts and reasons, which does not determine the rights of the litigants at the will of the appeal.[3193]

Also, the certificate that includes depositing the reasons in the case file and referring to it by the Chief Prosecutor and then sending it to the Attorney General is not considered a negative certificate, and it does not serve to deny that the judgment was signed and deposited within the legal time limit.[3194]

---

part of the Technical Office letter No. 28 page No. 578 rule No. 121, Appeal No. 2 of 47 S Issued at the session of April 17, 1977 and published in the first part of the book of the Technical Office No. 28 page No. 491 rule No. 103.

([3190]) Appeal No. 3268 of 55 S issued at the session of October 9, 1985 and published in the first part of the Technical Office letter No. 36 page No. 831 rule No. 148, Appeal No. 716 of 40 S issued at the session of June 22, 1970 and published in the second part of the Technical Office letter No. 21 page No. 911 rule No. 215

The Court of Cassation ruled that: [When the appellant had submitted a certificate from the Registry of the Zagazig Prosecution Office, it was inferred that the judgment was not concluded on the legal date of March 16, 1975, to the effect that the judgment issued by the Zagazig Criminal Court on February 6, 1975 was received by the Registry on March 9, 1975. The judgment of this court was that the certificate that can be inferred that the judgment was not concluded on the legal date should be negative, any indication that the judgment was not in the pen of the book signed at the time of its issuance, the certificate in which it is established that the judgment was received by the court on March 9, 1975 does not benefit, because the Code of Criminal Procedure in Article 312 of it did not make the Registry competent to indicate the date of receipt of the judgment in the place of the request to invalidate it, but limited its jurisdiction to merely proving the existence of the judgment or its absence in the said pen, editing its reasons signed by who issued it at the time of writing the certificate] Appeal No. 852 of 46 s issued at the session of January 16, 1977 and published in the first part of the Technical Office's book No. 28 page No. 72 rule No. 15.

([3191]) Appeal No. 1030 of 46 S issued at the session of January 16, 1977 and published in the first part of the book of the Technical Office No. 28 page No. 80 rule No. 17.

([3192]) Appeal No. 1179 of 42 S issued on January 1, 1973 and published in the first part of the Technical Office's letter No. 24 page No. 19 rule No. 5.

([3193]) Appeal No. 1314 of 47 S issued at the session of February 27, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 196 rule No. 35.

([3194]) Appeal No. 1020 of 41 s issued at the session of December 12, 1971 and published in the third part of the book of the Technical Office No. 22 page No. 752 rule No. 181.

The law did not invalidate the delay of the signature unless thirty days elapsed without the signature. As for the date of the eight days referred to in it, the street recommended signing the judgment during it without the invalidity being disregarded.[3195]

The Court of Cassation ruled at the expense of the thirty-day period - scheduled for the filing of the judgment - in full from the day following the date on which the judgment was issued. Its ruling also established that the certificate on which the invalidity of the judgment is based is issued after the expiry of the thirty days prescribed by law, as the issuance of the certificate on the thirtieth day does not negate the filing of the judgment on that day, even if the certificate was issued at the end of working hours, because determining the date of work in the pens of the book does not mean that these pens are prohibited from performing work after the expiry of the deadline.[3196]

The exception to the provisions issued for acquittal from nullity because it was not signed within the period of thirty days following the date of its pronouncement does not go to the judgments issued in the civil lawsuit filed by association with the criminal lawsuit. The reason for this is that the accused whose innocence is ruled not to be harmed for a reason in which he has nothing to do with it - is that the street has tended to deprive the Public Prosecution, which is the only opponent of the accused in the criminal lawsuit, of challenging the acquittal judgment if its reasons are not signed within the time specified by law. As for the parties to the civil lawsuit, this exception is excluded from them, and the judgment for them remains subject to the general principle prescribed in Article 312 of the Criminal Procedure Law, and it is null and void if thirty days pass without obtaining its signature.[3197]

([3195]) Appeal No. 70653 of 76 s issued at the session of March 23, 2008 and published in the book of the Technical Office No. 59 Page 234 Rule No. 38, Appeal No. 1508 of 58 s issued at the session of April 30, 1989 and published in the first part of the book of the Technical Office No. 40 Page 547 Rule No. 90, Appeal No. 240 of 44 s issued at the session of April 1, 1974 and published in the first part of the book of the Technical Office No. 25 Page 361 Rule No. 78, Appeal No. 1542 of 41 s issued at the session of April 3, 1972 and published in the second part of the book of the Technical Office No. 23 Page 518 Rule No. 114, Appeal No. 1484 of 41 s issued at the session of February 27, 1972 and published in the first part of the book of the Technical Office No. 23 Page 219 Rule No. 54.

([3196]) Appeal No. 1024 of 43 s issued at the session of December 16, 1973 and published in the third part of the Technical Office book No. 24 page No. 1246 rule No. 253, Appeal No. 100 of 43 s issued at the session of March 19, 1973 and published in the first part of the Technical Office book No. 24 page No. 362 rule No. 77, Appeal No. 1179 of 42 s issued at the session of January 1, 1973 and published in the first part of the Technical Office book No. 24 page No. 19 rule No. 5.

([3197]) Appeal No. 8134 of 68 S issued at the session of April 15, 2004 and published in the Technical Office letter No. 55 page No. 407 rule No. 54, Appeal No. 12206 of 60 S issued at the session of June 6, 1999 and published in the first part of the Technical Office letter No. 50 page No. 372 rule No. 87, Appeal No. 63415 of 59 S issued at the session of January 21, 1996 and published in the first part of the Technical Office letter No. 47 page No. 104 rule No. 14, Appeal No. 4332 of 62 s issued at the session of 13 December 1994 and published in the first part of the Technical Office letter No. 45 page No. 1141 rule No. 180, Appeal No. 49022 of 59 s issued at the session of 17 April 1994 and published in the first part of the Technical Office letter No. 45 page No. 527 rule No. 85, Appeal No. 49022 of 59 s issued at the session of 17 April 1994 and published in the first part of the Technical Office letter No. 45 page No. 527 rule No. 85, Appeal No. 62409 of 59 s Issued at the session of March 21, 1994 and published in the first part of the Technical Office letter No. 45 page No. 421 rule No. 62, Appeal No. 62720 of 59 S issued at the session of October 13, 1993 and published in the first part of the Technical Office letter No. 44 page No. 797 rule No. 123, Appeal No. 11403 of 59 S issued at the session of April 12, 1990 and published in the first part of the Technical Office letter No. 41 page No. 617 rule No. 105, Appeal No. 96 of 51 S issued at the 25th session of May 1981 and published in the first part of the Technical Office letter No. 32 page No. 555 rule No. 97, Appeal No. 2380 of 49 S issued at the 21st session of April 1980 and published in the first part of the Technical Office letter No. 31 page No. 527 rule No. 100, Appeal No. 1114 of 49 S issued at the 27th session of December 1979 and published in the first part of the Technical Office letter No. 30 page No. 985 rule No. 212, Appeal No. 442 of 47 S issued at the 5th session From June 1977 and published in the first part of the Technical Office book No. 28 page No. 702 rule No. 147, Appeal No. 509 of 46 s issued in the session of October 17, 1976 and published in the first part of the Technical Office book No. 27 page No. 754 rule No. 171, Appeal No. 227 of 45 s issued in the session of May 11, 1975 and published in the first part of the Technical Office book No. 26 page No. 401 rule No. 92, Appeal No. 1024 of 43 s issued in the session of December 16, 1973 and published in the third part of the Technical Office book No. 24 page No. 1246 rule No. 253, Appeal No. 1932 of 38 s issued in the session of December 9, 1968 and published in the third part of the Technical Office book No. 19 page No. 1073 rule No. 219, Appeal No. 1728 of 34 s

Failure to file the judgment - even if it was issued with acquittal - within thirty days from the date of its issuance is not considered for the civil rights plaintiff an excuse that results in an extension of the time limit specified by the law to appeal in cassation and provide reasons, as he could have adhered to this reason alone as a face to invalidate the judgment provided that he submits it within the time limit set by the law, which is sixty days - and this is not the case with the Public Prosecution in relation to acquittal provisions that do not invalidate this cause in relation to the criminal case.[3198]

Article 123 of the Code of Criminal Procedure also excluded the judgments issued in the crime of defamation against a public official or a person of public prosecutorial capacity or assigned to a public service, so it required that the pronouncement of the judgment be accompanied by its reasons, which means that the legislator has arranged for the invalidity of the violation of the obligatory that the pronouncement of the judgment be accompanied by its reasons, in the crime of defamation by publication against a public official or a person of public prosecutorial capacity or assigned to a public service as a fundamental procedure that results in invalidity if the provisions of the law relating to it are not observed in accordance with the text of Article 331 of the Code of Criminal Procedure.[3199]

The absence of the preamble of the judgment from the statement of the name of the court from which the judgment was issued, as well as the absence of the minutes of the session from this statement, leads to ignorance and makes it as if it does not exist.[3200]

The judgment paper must also include a statement of the date of its issuance, and the purpose for which the law required that the judgment paper include a statement of the date of its issuance, which is that the judgment as a declaration of the judicial will of the judge has many important effects that run from the date of its pronouncement, which is reliable in calculating the periods of execution or lapse of the sentence, the statute of limitations of the criminal case or the civil lawsuit related to it, or the statute of limitations of the civil rights in which the judgment was decided - whichever is considered - and the date of the judgment authorizes the opening of the appropriate appeal in the judgment and the entry into force of its deadline - if there is a place - as well as its importance in determining the time when the authority of the res judicata applies. Therefore, the date statement was an important element of the existence of the judgment paper itself. There is no doubt that the appeal against the nullity of the judgment to overturn in this statement is open to anyone who has an interest of the litigants.[3201]

However, with regard to the acquittals and with regard to the Public Prosecution, which is the only opponent of the accused in the criminal case, its obligatory appearance in all trial procedures indicates its certain knowledge of the judgment issued in the criminal case, whether in terms of what the judgment ruled or in terms of the date of its issuance, and in this knowledge it sings at the will to appeal the judgment and in calculating the date of the appeal and in other effects that the law has on it. Therefore, the omission to indicate the date of the judgment in its paper does not affect the Public Prosecution's right and does not harm it, so it adheres to it and

---

issued in the session of April 19, 1965 and published in the second part of the Technical Office book No. 16 page No. 363 rule No. 74.

([3198]) Appeal No. 11184 of 62 S issued at the session of January 15, 2001 and published in the Technical Office letter No. 52, page No. 129, rule No. 19, Appeal No. 6016 of 59 S issued at the session of April 2, 1991 and published in the first part of the Technical Office letter No. 42, page No. 575, rule No. 83, Appeal No. 7003 of 53 S issued at the session of April 17, 1984 and published in the first part of the Technical Office letter No. 35, page No. 434, rule No. 96.

([3199]) Appeal No. 12771 of 69 S issued at the 22nd session of October 2003 and published in the letter of the Technical Office No. 54 page No. 1016 rule No. 138.

([3200]) Appeal No. 16984 of 61 S issued on 21 October 1998 and published in the first part of the book of the Technical Office No. 49 page No. 1137 rule No. 155.

([3201]) Appeal No. 2074 of 48 S issued in the session of February 4, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 172 rule No. 35.

the case is - towards the person who is acquitted of the nullity of the judgment despite the fact that the purpose envisaged by the law is not lost on the affirmation of the inclusion of the judgment in this statement is not based on a real and significant interest, but rather based on a purely theoretical interest that is not acceptable for lack of interest in it.

In addition, the Code of Criminal Procedure has excluded the provisions of acquittal from the invalidity prescribed as a penalty for not signing the criminal judgments within the legally prescribed period, and the reason for this is that the acquitted person is not harmed because their will is not involved in it, which means that the Public Prosecution, which is the only opponent of the accused in the criminal case, has tended to deprive them of appealing the invalidity of the acquittal judgment if it is not signed within the legally prescribed time limit.

Whereas, the aforementioned reason was available in the Public Prosecution's challenge to the nullity of the acquittal judgment if their paper does not bear the date of its issuance - as in the case at hand - because the acquitted has nothing to do with the lack of this statement in the judgment paper and he was not able to prevent it, the same result must result from that reason for the similarity between the nullity in both cases. Because it is established that things are measured according to their likenesses and analogues, and that similarity in attributes requires - in the absence of text - similarity in judgments.

In view of the foregoing, there is no dispute about the decline in the right of the Public Prosecution to challenge the contested judgment for nullity for supporting the appealed judgment of acquittal for its reasons, despite the lack of a statement of the date of its issuance.[3202]

23-2 Within the Framework of International Covenants

The right to publicity of the judgment requires the courts to clarify the reasons for their judgments.[3203]

The right to the merits of the judgment is fundamental to the rule of law, especially in order to ensure protection against arbitrariness.[3204]

In criminal cases, the reasoning of the verdicts allows the accused and the public to know the reason on which the conviction or acquittal of the accused was based. Moreover, the convict must exercise their right to appeal.[3205]

The merits of the judgment usually include the basic data of the case, evidence, legal reasons and conclusions.[3206]

When considering a case in which a military court sentenced a number of individuals to death for participating in acts of sabotage, without giving the reasons behind its rulings, and without granting them the right to appeal the verdict, the African Commission confirmed that it has always expressed its condemnation of the lack of mention of the reasons behind the legal

---

([3202]) Appeal No. 2074 of 48 S issued in the session of February 4, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 172 rule No. 35.

Section A (2[3203]) (1) of the Principles of Fair Trial in Africa, Article 74 (5) of the Rome Statute; see Article 22 (2) of the ICTR Statute, and Article 23 (2) of the ICTY Statute.

Human Rights Committee General Comment 32, §29.

([3204]) Abetz Barbera et al. v. Venezuela, Inter-American Court (2008 §78.

Section N (3[3205]) (e) (7) of the Principles of Fair Trial in Africa.

Greece (12945/ 87), European Court (1992) 33 §; see Special Rapporteur on human rights and counter-terrorism, §15 (2008) UN Doc. A/63/223;García-Asto andRamírez-Rojas v. Peru, Inter-American Court §155 (2005

([3206]) Sections a(2) (1) and n(3) (e) (vii) of the Principles of Fair Trial in Africa, and Article 74 (5) of the Rome Statute.

Human Rights Committee General Comment 32, §29; see Abitz-Barbera et al. v. Venezuela, Inter-American Court §90 (2008

decisions, or the inadequacy of what is mentioned of them, as a violation of the right to a fair[3207] trial.

The way the reasons are stated and the extent to which they are published, in each of the judgments, varies depending on the nature of the decision and on whether the case has been considered by a judge or decided by a jury.[3208]

The test in assessing whether the merits of the sentence are sufficiently reasoned is the extent to which it provides information to exclude the risk of arbitrariness, and to ensure that the accused is able to understand the justification for the sentence.

For example, the decision not to accept the appeal on the grounds contained in the judgment of the lower court may be sufficient if the decision of this court states the basic facts and the legal basis on which the judgment was based.[3209]

In cases considered and decided by "professional" judges instead of ordinary juries, the judgment must address the facts and basic issues on the basis of which it was decided to decide on each aspect of the case, although there is no need to provide a detailed answer to each argument raised.[3210]

Particular care must be taken to evaluate witness testimonies that identify the alleged perpetrator.[3211]

In cases decided by panels of jurors who are not required or allowed to give the reasons behind their verdicts, the fairness of the trial requires safeguards that exclude the risk of arbitrariness and allow the accused to understand the basis of the decision. These may include the judge giving impartial guidance or guidance on legal aspects or evidence and asking the jury precise and unambiguous questions that collectively form the general framework of the verdict.[3212]

The Human Rights Committee has stressed the need to provide such guidance and guidance to ensure impartiality, so as to present fairly the arguments presented by the prosecution and the defense on an equal footing.[3213]

The European Court emphasized that the directions or questions to be put to the jury must be sufficiently precise and oriented to the aspects of the case at hand. Moreover, it should be clear from the indictment, from the questions to the jury and their answers, to which aspects of the evidence and circumstantial facts the jury based their verdict. In a case in which a jury convicted a defendant of murder and attempted murder, the European Court ruled that the verdict did not provide sufficient grounds for their conviction or explain why the court considered the convicted man's responsibility for the crime to be greater than that of some of the other seven defendants. The questions put to the jury did not enable the accused to know what evidence and circumstances the basis for their conviction were, even when reviewed in conjunction with the indictment in the case.[3214]

([3207]) Wich Okunda Kusu et al. v. Democratic Republic of the Congo (2003/281), African Commission §89 (2008

([3208]) Taxquet v. Belgium (926) / 05), Grand Chamber of the European Court §91- §92 (2010

([3209]) García Ruiz v. Spain (30544 / 96), ECt §26 and§ 29- § 30 (1999

Taxquet [3210]v. Belgium (926) / 05), Grand Chamber of the European Court §91 (2010); Appeals Chamber of the International Tribunal for Yugoslavia: Prosecutor v. Kvočka et al. (28) , IT-98-30/1-A February 2005) §23, Prosecutor v. Hadžihasanović and Kubura (22) , IT-01-47-A April §13 (2008

Prosecutor [3211]v. Kvočka et al. (28) , IT-98-30/1-A Feb. §24 (2005

([3212]) Taxquet v. Belgium (926) / 05), Grand Chamber of the European Court. §92 (2010

[3213]Pinto v. Trinidad and Tobago, Human Rights Committee, / UN CCPR 3/12-3/ §12 (1990) C/39/D/232/1987; see Clifton Wright v. Jamaica, Human Rights Committee, 1989/3/8-2/ §8 (1992) UN CCPR/C/45/D/349.

([3214]) Taxquet v. Belgium (926) / 05), Grand Chamber of the European Court §85- §100 (2010); see Goktepe v. Belgium (50372) / 99), European Court §23- § 31(2005

Conversely, one of the defendants was convicted of crimes against humanity in the context of the Second World War following a trial in which the court asked the jury to answer 768 questions to reach its verdict. The European Court considered these questions, which were jointly formulated by the defense and the prosecution, accurate enough and formed the framework for the verdict of the jury and ruled out the suspicion that the jury had omitted to mention the reasons behind their decision.[3215]

Challenges to the content of the reasons contained in the operative part of the judgment, and the scope of these reasons, should identify the material aspects or data derived from the issues considered, as well as clarify the importance of these aspects and data.[3216]

Chapter Twenty-Four: Penalties

24-1 Within the Framework of Egyptian Law

If the criminal law is consistent with other laws in its attempt to regulate the relations of individuals, whether among themselves or through their ties with their society, but the criminal law is different in its use of punishment as a tool to evaluate their actions that prevent them from committing them. It thus seeks to determine - from a social perspective - the manifestations of their behavior that are not tolerated, and to control them by socially acceptable means, to the effect that the punishment for their actions is justified only if it is useful from a social point of view. If it exceeds those limits that are not necessary with it, it will be contrary to the Constitution.[3217]

24-1-1 Punishment Objectives

The punishment aims to affect human behavior within society so that it is consistent with the social orders and prohibitions contained in the rules of criminalization. It aims to affect the behavior of all individuals addressed to the provisions of the law, by threatening them with a certain seriousness, which is called public deterrence. It also aims, when applied by the judiciary, to affect the behavior of the convict so that it conforms to the rules of the law in the future, which is called private deterrence, reform, or social rehabilitation. This goal requires that the convict has a certain criminal danger, that is, a willingness to commit a future crime. If this danger is reduced or absent, this goal is less relevant.

Private deterrence does not mean dropping public deterrence from consideration, but rather retreats with it to the second place. Choosing punishment in order to reform the criminal means relying on the absolute personality of the criminal, who alone is subject to reform. As for public deterrence, it is implicitly achieved through the pain benefited from the punishment imposed on the criminal, whatever his fate or how.

In some cases, public deterrence may take priority over private deterrence. One manifestation of this is denying the judge the application of mitigating circumstances or preventing him from ruling punitive alternatives, such as suspending execution or increasing punishment, for example, crimes against state security from the inside or outside.

([3215]) Baboun v. France (54210/ 00), Decision of the European Court (15) November 2011) Law §6 (f.

[3216]See Prosecutor v. Kvočka et al. (IT-98-30/1-A), ICTY Appeals Chamber (28) Feb. §25 (2005

([3217]) Supreme Constitutional Court, Case No. 48 of 18 S. Issued at the session of September 15, 1997, the date of publication is September 25, 1997, and published in the first part of the book of the Technical Office No. 8, page No. 854, rule No. 57.

It is also noted that the death penalty depends mainly on the idea of general deterrence, because the effect of that punishment is to control the behavior of others and therefore it is usually imposed only as a counterbalance to very serious crimes.

The purpose of criminal punishment is to punish the criminal for what he has committed and to deter others to make those who may have committed the crime refrain from committing it. [3218]

Each criminal sanction has a direct effect that returns to its nature, which is to deprive a person of his right to life, freedom or property, and it was logical, therefore, for civilized countries to evaluate their penal legislation on fixed bases, ensuring the adoption of sound legal means, whether in its substantive or procedural aspects, to ensure that the sanction is not a stormy tool of freedom, suppressing or restricting it in violation of the values that democratic countries believe in in their association with contemporary standards of the concept of sanction, and through the manifestations of their various behavior, and it was necessary in the light of this trend, for progressive constitutions to determine the restrictions they deem on the authority of the legislator in the field of criminalization, as an expression of their belief that human rights and freedoms may not be sacrificed in a manner that is dictated by a social interest they consider, and recognizing that freedom in its full dimensions is inseparable from the sanctity of life, and that the bitter facts that humanity has experienced throughout its development impose an integrated system that guarantees the vital interests of the group, and protects within its objectives the fundamental rights and freedoms of the individual, in a way that prevents the misuse of punishment for its purposes. The penalty imposed by the legislator regarding a crime, the elements of which he identified, crystallizes a concept of justice that is determined in the light of the social purposes that it targets, under which the group's desire or eagerness to quench its thirst for revenge and revenge does not fall, or its endeavor to be oppressive to the accused in order to atone for what he has done, and if it can be said in general that what is considered a criminal penalty, it may not be less in scope than what is necessary to get the individual to follow a normal path, the crime is not an entrance to it, and its commission in his estimation - if he resolves to it - is more useful than avoiding it.[3219]

If the goal of criminalization in the past was just to punish the perpetrator for the crime he committed, this goal has evolved in modern legislation to become the prevention of crime, whether it is to prevent or deter others from committing similar crimes. The contemporary trends of criminal policy in various countries - as indicated by the successive United Nations conferences on the prevention of crime and the treatment of offenders - tend to the importance of taking preventive measures for the occurrence of crime, enacting texts that ensure the punishment of society, criminalizing participation in criminal associations and developing international cooperation to combat organized crime. However, the legitimacy of texts taken as a means to achieve these goals is based on their compatibility with the provisions of the Constitution and its agreement, principles and requirements. Therefore, the legislator - in this regard - must strike a careful balance between the interest of society and concern for its security and stability on the one hand and the freedoms and rights of individuals on the other hand.[3220]

Many jurists compare two types of deterrence, The Penal Goal of Deterrence, one of which is a general deterrence, which is represented in the punishment imposed by the legislator regarding the acts he has committed, specifying their punishment, and graduating with their impact in light of their seriousness, to carry through their burden potential offenders to refrain from doing so.

([3218]) Supreme Constitutional Court, Case No. 114 of 21 S issued in the session of June 2, 2001, the date of publication is June 14, 2001, and published in the first part of the book of the Technical Office No. 9, page No. 986, rule No. 119.

([3219]) Supreme Constitutional Court, Case No. 37 of 15 S issued at the session of August 3, 1996, the date of publication of August 15, 1996, published in the first part of the book of the Technical Office No. 8, page No. 67, rule No. 3.

([3220]) Supreme Constitutional Court, Case No. 114 of 21 S issued in the session of June 2, 2001, the date of publication is June 14, 2001, and published in the first part of the book of the Technical Office No. 9, page No. 986, rule No. 119.

The second is a special deterrence that is achieved with regard to a crime that has been committed and attributed to a specific person, so that a judge determines the scope of his responsibility for it Offender level Of blameworthiness, and estimates its punishment uniquely when judging it The individualized consideration of sendingencing to ensure that it is proportional to the crime he has committed, and as a reaction to it A proportionate response to the crime. Hence, this type of deterrence is not related to the possibility of criminal seriousness, but to acts committed by actual seriousness.[3221]

Private deterrence is nothing more than an expression of the concept of punishment - from a social perspective - as a fair punishment estimated by a judge for a specific person for a crime he has committed. It does not specify its punishment arbitrarily, but rather through a logical relationship that directly links it to the perpetrator, to meet the limits of his criminal responsibility for it, and to its extent, which confirms its reasonableness. The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender[3222].

24-1-2 Legality of Punishment

The principle of legitimacy depends on the legislative authority in determining crimes and penalties, as the legislative authority represents society as a whole, and the Constitution has recognized that principle in Article 95 of it by stipulating that: "Punishment is personal, no crime and no punishment except on the basis of a law, and no punishment shall be imposed except by a judicial decision, and no punishment except for acts subsequent to the date of entry into force of the law."[3223]

Within the framework of the principle of the rule of law, the role of the legislative authority must be determined in comparison with the role of the executive authority. Each of them has the authority to approve legal rules in the form of legislation for the legislative authority, and in the form of regulations for the executive authority. However, the distribution of competence between them takes place only within the framework of the principle of legality, that is, the rule of law. According to this principle, all authorities are subject to the Constitution. The executive authority is also subject in the regulations it enacts to the legislation approved by the legislative authority. This means that the hierarchy between legal rules is a feature of legality, that is, the rule of law. The legislative authority is obligated to respect constitutional rules, and the required guarantee of the rights and freedoms guaranteed by the Constitution. The executive branch is committed to enabling individuals to exercise and ensure respect for their public rights and freedoms.

The Constitution did not confer on the executive authority any competence to regulate anything that affects the rights guaranteed by the Constitution in the foregoing, and that this regulation must be assumed by the legislative authority with the laws it issues whenever this is the case. The judiciary of this court has ruled that if the Constitution assigns the regulation of a right to the legislative authority, it may not take away from its jurisdiction and refer the entire matter to the executive authority without restricting it to general controls and main bases within which it is obligated to work. If the legislator deviates from this, and the executive authority assigns the regulation of the right in its foundation, it shall be relinquished from its original jurisdiction established in the Constitution.[3224]

([3221]) Supreme Constitutional Court, Case No. 37 of 15 S issued at the session of August 3, 1996, the date of publication of August 15, 1996, published in the first part of the book of the Technical Office No. 8, page No. 67, rule No. 3.

([3222]) Supreme Constitutional Court, Case No. 37 of 15 S issued at the session of August 3, 1996, the date of publication of August 15, 1996, published in the first part of the book of the Technical Office No. 8, page No. 67, rule No. 3.

([3223]) Article 95 of the Constitution of the Arab Republic of Egypt.

([3224]) Supreme Constitutional Court, Case No. 243 of 21 S, issued at the session of November 4, 2000, date of publication, November 16, 2000, published in the first part of the Technical Office's book No. 9, page No. 777, rule No. 93

However, this does not preclude that the law itself includes a mandate to the authority charged with enacting implementing regulations in determining crimes and determining penalties. The Constitution permits the law to entrust the executive authority with issuing regulatory decisions specifying some aspects of criminalization or punishment, for considerations determined by the legislative authority and within the limits and under the conditions specified by the law issued by it. Decisions issued by the body appointed by the legislator to exercise this jurisdiction are not considered delegated regulations, nor are they included under the executive regulations.[3225]

Criminal punishment is not assumed, nor is punishment without a text imposed by it.[3226]

The Constitution, by stipulating that there is no crime or punishment except on the basis of a law, has indicated that the principle is that the legislative authority itself - through a law in the strict sense approved in accordance with the Constitution - shall determine the crimes and indicate their penalties. It is therefore not permissible for it to completely abandon this mandate, by entrusting it in its entirety to the executive authority, and if it is sufficient for it to set a general framework for the conditions of criminalization and the corresponding penalty, for the executive authority to separate some of its aspects, then its intervention in the penal field is considered only in accordance with the terms and conditions regulated by the law, to the effect that the legal texts alone - in their generality and the absence of their personality - are the ones with which criminalization revolves, and it is not imagined to arise away from them. This does not mean that the executive authority has a reserved area in which it is unique in regulating the conditions of criminalization, as its role is still subordinate to the legislative authority, and determined in the light of its laws, so it does not assume it on its own initiative, which is not supported by an existing law.[3227]

Criminalization of acts per se is carried out only through a criminal penalty that represents the penalty of the legislator's ability when they are committed. This penalty - and that is its nature - is not considered a financial compensation for the crime designated by the legislator, but rather a part of it that is inseparable from it. No crime is without punishment or punishment except for an act or omission that violates the values of the group or its reversal and has become a sin to ensure its preservation. Crimes - of any kind - are not compensated with compensation that is equivalent to the damage resulting from them, but their punishment is determined by the extent of their seriousness and impact. It is not exceeded to the extent of the social necessity that it requires nor a reality without its requirements. As for the tax, it does not correspond to an offence and the resulting revenue is not supposed to be derived from it from an illegal source. It is also not intended to be a pain for those entrusted with it, but its burden falls on their money as citizens who contribute justly to bear their share of development and the development of their society in a way that confirms their solidarity. Neither the contested fine imposed by the

---

In that ruling, the court said that: [Delegating the Minister of Interior to determine the conditions for granting the passport and authorizing him to refuse to grant or renew the passport, as well as withdrawing it after giving it, results in the legislator's disavowal of laying the general foundations that regulate the subject of passports in its entirety, despite the fact that they are the only means to enable citizens to leave their country and return to it, and this is closely linked to the rights guaranteed by the Constitution].

([3225]) Supreme Constitutional Court, Case No. 17 of 11 S issued at the session of April 6, 1991, date of publication April 27, 1991, published in the first part of the Technical Office book No. 4, page No. 311, rule No. 38, Case No. 43 of 7 S issued at the session of March 7, 1992, date of publication April 2, 1992, published in the first part of the Technical Office book No. 5, page No. 214, rule No. 25, Case No. 5 of 15 S issued at the session of May 20, 1995, date of publication June 8, 1995, published in the first part of the Technical Office book No. 6, page No. 686, rule No. 43.

([3226]) Supreme Constitutional Court, Case No. 24 of 18 S issued at the session of July 5, 1997, the date of publication July 19, 1997, published in the first part of the book of the Technical Office No. 8 page No. 709 rule No. 47.

([3227]) Supreme Constitutional Court, Case No. 24 of 18 S issued at the session of July 5, 1997, the date of publication July 19, 1997, published in the first part of the book of the Technical Office No. 8 page No. 709 rule No. 47.

legislator is not to be a penalty without the crime that prevents it from being committed and eliminated through its criminal punishment.[3228]

First: The Death Penalty

It is established that the penalty is for the rights and freedoms guaranteed by the Constitution. The Constitution permits the violation of the essence of the right or freedom under certain conditions. The legislator may set the conditions and guarantees of the penalty in accordance with the Constitution. The Penal Code permits the death penalty, which is considered a violation of the essence of the right to life. However, this violation derives its origins from the Constitution itself, which stipulates in its article 2 that the principles of Islamic Sharia are the main source of legislation. According to the Islamic Sharia, the death penalty may be imposed for each of the crimes of hudud, qisas (retribution) and tazi.[3229]

The legislator has approved several guarantees when imposing the death penalty, as the text of Article 381 of the Code of Criminal Procedure does not allow the Criminal Court to issue its death sentence unless it sends the papers to the Mufti of the Republic. If his opinion does not reach the court within the ten days following the sending of the papers to him, it shall rule on the case, and the opinion of the Mufti of the Egyptian Diyar in this case must be taken to express his opinion within the scope of the provisions of the Islamic Sharia, whose principles are a main source of legislation, according to the Constitution.[3230]

The law intended when it required the court to take the opinion of the mufti on the death penalty before it was imposed; that the judge be aware of whether the provisions of Sharia allow the death sentence in the criminal incident in which the fatwa is requested before sentencing this penalty without being obligated to take it according to the fatwa. The referendum is not intended to define the opinion of the mufti in adapting the act attributed to the perpetrator and giving him the legal description. However, the court decided that the opinion of the Mufti of the Republic must be consulted before sentencing to death as a prerequisite for the validity of the sentence required by law. No It dispenses with the precedent taken in the first trial, because the cassation of the judgment returns the case to the Court of Repeat in its condition before the issuance of the overturned judgment. If the Court of Repeat decides to rule on the death penalty, it must send the case papers to the Mufti of the Republic to seek his opinion so that it can be reassured that its ruling conforms to the provisions of the Islamic Sharia, as it is a new ruling body that has not previously considered the case, and the opinion then went to the judgment of executing the accused, and it has not previously sought his opinion to reassure its conscience that its ruling conforms to the provisions of the Islamic Sharia, in addition to the fact that this procedure reassures the accused that the court Al-Jadida has consulted the opinion of the Mufti of the Republic before the ruling, as required by law, and so that the public opinion is aware of this, which are necessary purposes worthy of respect, in addition to the fact that there is something new in the second trial, in addition to the fact that the composition of the court has become different, it is how to determine the new that requires taking the opinion of the Mufti of the Republic and the old that does not.[3231]

If the judgment is issued in presence to punish the accused with the death penalty without the court taking the opinion of the Mufti, the judgment is null and void, and it is not inconceivable

---

([3228]) Supreme Constitutional Court, Case No. 42 of 19 S. Issued at the session of February 7, 1998, the date of publication of February 19, 1998, published in the first part of the book of the Technical Office No. 9, page No. 1087, rule No. 131.

([3229]) Article 2 of the Constitution.

([3230]) Article 381 of the Criminal Procedure Code.

([3231]) Appeal No. 56449 of 76 S issued at the 4th session of February 2007 and published in the Technical Office letter No. 58, page No. 113, rule No. 20, Appeal No. 49390 of 75 S issued at the 12th session of November 2006 and published in the Technical Office letter No. 51, page No. 4, rule No. 1.

that the Criminal Court in the first trial has consulted the opinion of the Mufti before issuing its death sentence, which was overturned, because the requirement to overturn this judgment is that the case be returned to the Repatriation Court in its condition before the issuance of the overturned judgment to decide it again, which requires the return of the procedures before it, and therefore entails consulting the opinion of the Mufti before issuing its death sentence, considering this procedure a prerequisite for the validity of the sentence to be imposed by the law itself, as it did not restrict the court to a result that is indispensable in the first trial.[3232]

The law required the Criminal Court to take the opinion of the Mufti of the Republic before sentencing to death, but the opinion poll of the Mufti is only a measure necessary for the validity of the death sentence, to the effect that it is a procedure prior to the issuance of the judgment, but it is not a judgment that ends the lawsuit, and therefore it is not permissible to appeal it by way of cassation.[3233]

Also, if the judgment proves that the opinion of the Mufti was consulted before it was issued, it is not important to prove that the ten-day deadline for expressing his opinion was met.[3234]

Moreover, although the law requires the Criminal Court to take the opinion of the Mufti before issuing its death sentence, there is nothing in the law that requires the court to state the opinion of the Mufti or to refute it. There is no harm to the court if it does not state this opinion in its judgment, as there is nothing in the law that requires the court, when sentencing to death after taking the opinion of the Mufti, to state this opinion in its judgment.[3235]

The legislator also established several guarantees for the authority of the court in imposing the death penalty, requiring unanimity of the views of the members of the court when imposing that penalty.[3236]

The provision of unanimity of opinions in relation to the pronouncement of the death sentence is a prerequisite for the validity of the issuance of that sentence. The street, if the unanimity is required for the issuance of the death sentence, indicates the direction of its desire that the unanimity be contemporary to the issuance of the sentence and not subsequent to it because this is what achieves the wisdom of its legislation. Therefore, the provision of unanimity of opinions in relation to the pronouncement of the death sentence is a prerequisite for the validity of the sentence. If the lesson in the judgments is what the judge pronounces in the public session after hearing the case, it is not enough that the reasons for the judgment include what indicates the convening of the unanimity as long as it is not proven in the judgment paper that these reasons were read publicly in the pronouncement session with the operative part.[3237]

([3232]) Appeal No. 12044 of 64 s issued at the session of January 10, 1995 and published in the first part of the technical office book No. 46 page No. 112 rule No. 12, Appeal No. 24526 of 59 s issued at the session of May 28, 1990 and published in the first part of the technical office book No. 41 page No. 780 rule No. 135.

([3233]) Appeal No. 14725 of 62 S issued at the session of January 17, 1994 and published in the first part of the book of the Technical Office No. 45 page No. 115 rule No. 17.

([3234]) Appeal No. 6174 of 58 S issued at the session of January 9, 1989 and published in the first part of the book of the Technical Office No. 40 page No. 21 rule No. 3.

([3235]) Appeal No. 2269 of 55 S issued at the session of January 23, 1986 and published in the first part of the Technical Office's book No. 37 Page 137 Rule No. 29, Appeal No. 1587 of 55 S issued at the session of June 12, 1985 and published in the first part of the Technical Office's book No. 36 Page 772 Rule No. 137, Appeal No. 263 of 51 S issued at the session of October 28, 1981 and published in the first part of the Technical Office's book No. 32 Page 775 Rule No. 134, Appeal No. 1003 of 29 S issued at the session of March 15, 1960 and published in the first part of the Technical Office's book No. 11 Page 242 Rule No. 51.

([3236]) Article 381 of the Criminal Procedure Code.

([3237]) Appeal No. 7463 of 61 s issued at the session of 13 December 1992 and published in the first part of the technical office book No. 43 page No. 1154 rule No. 180, Appeal No. 265 of 38 s issued at the session of 25 March 1968 and published in the first part of the technical office book No. 19 page No. 368 rule No. 70.

The legislator has linked the principle of unanimity with taking the opinion of the Mufti. The death sentence is conditional on the completion of these two procedures, so that if one or both of them fails to abrogate the judgment, if the operative part of the judgment is devoid of any evidence that it was issued unanimously, it is invalid, and the reasons for the judgment that the court unanimously decided to seek the opinion of the Mufti are not invalid, due to the fact that it is decided that the provision of consensus on the death sentence is a necessary condition for the validity of the sentence.[3238]

However, the Mufti's opinion poll does not require the provision of unanimity, as the street necessitated the convening of the consensus when issuing the death sentence as an organized procedure for its issuance and a necessary condition for its validity - in deviation from the general rule in the judgments issued by the majority of opinions - but this was in appreciation of the seriousness of the penalty in the death penalty, and in order to ensure that it is surrounded by a procedural guarantee that ensures that its pronouncement is limited in cases where it is due - to near certainty - to be in accordance with the law. The street was interrogated to precede the issuance of the judgment in conjunction with the unanimity condition. Another measure is to take the opinion of the Mufti of the Republic, so he cut off the independence of each of the two procedures from the other, as this was, and it was decided that it is not permissible to deviate from the text when the meaning of the statement intended, and the aforementioned text did not require unanimity except when issuing the death sentence, so it is not necessary to be available in the procedure preceding the judgment, which is taking the opinion of the Mufti.[3239]

However, it is not defective for the judgment not to stipulate the method of execution because this is an act of the execution authority and has nothing to do with its authority to rule.[3240]

The legislator stipulates that there must be unanimity when issuing the death sentence, but this is only one of the procedures regulating the issuance of the death sentence, which is a condition of its validity, but it does not affect the basis of the right to impose the death penalty itself and does not affect the crimes that are punishable by this penalty by abolition or amendment and does not create for their perpetrators circumstances that change the nature of those crimes and the punishment prescribed for them, but rather is limited to regulating the sentence of this penalty. If the sentence is sentenced to life imprisonment after its implementation of Article 17 of the Penal Code instead of the death penalty prescribed for this crime without providing for unanimity in the judgment, it is correct in what it was ruled.[3241]

The legislator obligated the Public Prosecution, when sentencing the death penalty in presence, to submit the case to the Court of Cassation, accompanied by a memorandum of its opinion on the judgment, to verify the validity of the application of the law, within forty days from the date of issuance of the judgment.[3242]

However, exceeding the aforementioned deadline does not result in the non-acceptance of the prosecution's offer, because the street merely wanted to establish a regulatory rule, not to leave the door open indefinitely, and to expedite the presentation of the death sentences to the Court

---

([3238]) Appeal No. 6777 of 62 S issued at the session of November 3, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 919 rule No. 144.

([3239]) Appeal No. 63 of 60 S issued at the session of April 1, 1991 and published in the first part of the technical office book No. 42 page No. 557 rule No. 81, Appeal No. 6174 of 58 S issued at the session of January 9, 1989 and published in the first part of the technical office book No. 40 page No. 21 rule No. 3.

([3240]) Appeal No. 22443 of 59 S issued in the session of February 7, 1990 and published in the first part of the book of the Technical Office No. 41 page No. 330 rule No. 54.

([3241]) Appeal No. 2040 of 49 S issued at the session of March 9, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 343 rule No. 64.

([3242]) Article 46 of Law No. 57 of 1959 on the cases and procedures of appeal before the Court of Cassation.

of Cassation in all cases when the judgment is issued in presence. In any case, the Court of Cassation communicates the lawsuit as soon as it is presented to it and decides on it to see - on its own - what errors or defects may have been tainted by the judgment, whether the Public Prosecution submitted a memorandum of its opinion or not, and whether this memorandum was submitted before or after the deadline for appeal.[3243]

The accused who is under 18 years of age at the time of the commission of the crime shall not be sentenced to death, life imprisonment, or aggravated imprisonment. If a child over 15 years of age commits a crime punishable by death, life imprisonment, or aggravated imprisonment, he shall be sentenced to imprisonment. If the crime is punishable by imprisonment, he shall be sentenced to imprisonment for a period no less than three months.

In lieu of a custodial sentence, the court may sentence him to placement in a social welfare institution.

However, if a child over the age of fifteen years commits a misdemeanor punishable by imprisonment, the court may, instead of ruling the punishment prescribed for it, rule one of the following measures:

Judicial probation;

Work for the public benefit in a manner that does not harm the health or psychology of the child. The executive regulations of this law shall specify the types of such work and its controls.

Placement in a social welfare institution.[3244]

Second: Penalties Depriving of Liberty

These penalties include a violation of personal freedom. Therefore, the constitutional legislator stipulates several guarantees that must be enjoyed by anyone who is imprisoned or whose freedom is restricted in a manner that preserves human dignity, while not physically or morally harming him. Article 55 of the Constitution stipulates that: "Whoever is arrested, imprisoned, or whose freedom is restricted must be treated in a manner that preserves his dignity, and it is not permissible to torture, intimidate, coerce, or physically or morally harm him, and his detention or imprisonment shall only be in places designated for that appropriate human and health. The state is obligated to provide means of access to persons with disabilities.

Violation of any of this is a crime that shall be punished in accordance with the law... ".[3245]

In fact, the pain of a person sentenced to a custodial sentence may not exceed the minimum level of human rights. The pain of a convicted person must not turn into an affront to his dignity or torture of his humanity, but rather is merely a means of reforming the criminal and returning him to society. If the prisoner is deprived of his human rights, he will be completely deprived of the means he needs in order to develop his personality, which loses the potential of an honorable life within society. To this end, democratic countries adopt a system of judicial supervision over the implementation of the punishment, as the judge is the natural guardian of freedoms. In Egypt, the Public Prosecution, as a division of the judicial authority, supervises the implementation. The Child Court supervises the implementation of the judgments issued against child defendants in the court circuit in application of the Child Law.

([3243]) Appeal No. 150 of 56 S issued in the session of April 3, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 453 rule No. 93.

([3244]) Articles 101 and 111 of the Child Law.

([3245]) Article 55 of the Constitution.

Third: Penalty of Confiscation

The Constitution explicitly prohibits certain penalties, as it prohibits the general confiscation of funds because of its harmful effects on the person and his family, which affects the right to property and executes him. The Constitution stipulates that: “The general confiscation of funds is prohibited.

Private confiscation is not permissible, except by a judicial ruling[3246].

The Constitution, in order to further protect private property and protect it from unjust attack, prohibits public confiscation absolutely, and requires that private confiscation be a judicial ruling and not an administrative decision, so that the right holder has access to litigation procedures and guarantees that negate the suspicion of abuse and scandals, and therefore the Constitution prohibits private confiscation of funds except by a judicial ruling - absolutely from each restriction until he generalizes his judgment to include private confiscation in all its forms.[3247]

This is supported by the fact that confiscation is either a public confiscation that deals with the positive elements of the entire financial liability of a specific person or a common share in it, and these may not be signed at all or that they are subject to a specific thing or things in themselves. This is a private confiscation that may not be signed except by a judicial ruling, even if it is a civil penalty, as this confiscation deals with individual rights that have a financial value that the Constitution guarantees to preserve and therefore may not be affected except through the right of litigation so that its essential guarantees, topped by the right of defense, do not recede from them so that these rights can be adjudicated - whether by proving or denying them in the light of a neutral view surrounding them, and according to the standards and controls specified by the legislator in advance.

Also, the general text of Article 40 of the Constitution stipulates that the suspension of the private confiscation is not limited to cases in which such confiscation is a punishment decided by a criminal text, but the judicial ruling is necessary in all its forms and therefore required, even if it is a civil penalty.[3248]

The legislator therefore strictly forbade public confiscation, and specified the tool by which private confiscation is carried out and required that it be a judicial ruling and not an administrative decision, in order to preserve private property from being confiscated except by a judicial ruling in order to provide - within its framework - the right holder with litigation procedures and guarantees that negate the suspicion of arbitrariness and infringements on this right, and to emphasize the principle of separation between the judicial authority and the legislative and executive authorities, as the judicial authority is the original authority established by the Constitution on the affairs of justice and specializes in its disposal so that it is unique to what falls within its jurisdiction, including the signature of confiscation.[3249]

([3246]) Article 40 of the Constitution.

([3247]) Supreme Constitutional Court, Case No. 105 of 24 S issued at the session of March 7, 2004, the date of publication of March 18, 2004, published in the first part of the book of the Technical Office No. 11, page No. 485, rule No. 79.

([3248]) Supreme Constitutional Court, Case No. 6 of 17 S issued at the session of May 4, 1996, the date of publication of May 16, 1996, published in the first part of the book of the Technical Office No. 7, page No. 574, rule No. 34.

([3249]) Supreme Constitutional Court, Case No. 17 of 11 S issued at the session of April 6, 1991, the date of publication April 27, 1991, published in the first part of the book of the Technical Office No. 4, page No. 311, rule No. 38, Case No. 23 of 3 S issued at the session of May 15, 1982, the date of publication May 27, 1982, published in the first part of the book of the Technical Office No. 2, page No. 40, rule No. 8, Case No. 28 of 1 S issued at the session of January 3, 1981, the date of publication January 22, 1981, published in the first part of the book of the Technical Office No. 1, page No. 156, rule No. 2.

24-1-3 Personality of the penalty and its proportionality to the crime

First: The Personality of the Punishment

The principle of the personality of punishment is linked to two important principles. First: the personality of criminal responsibility. The punishment is the penalty of responsibility, and therefore it is imposed only on those who are legally responsible for its disobedience, in light of their role in the crime, their criminal intentions, and the resulting harm. The punishment of the perpetrators for their crime is only in accordance with their choice.

It is decided that the character of the punishment and its proportionality to the crime in question are linked to who is legally responsible for committing it in the light of a course in it and its intentions that compared it and the harm caused by it so that the penalty for it is in accordance with his options in regard to it.[3250]

It is established that the judiciary is governed by a basic principle to which there is no exception, which is the principle of the personality of the punishment, and this requires that the principle of the inadmissibility of punishment is only for those for whom the elements of the crime have been achieved, so it is not permissible to sentence a penalty except for those who committed the crime or participated in it in accordance with the principle of the personality of the punishment, as the crimes are not taken into account for their crimes other than their paradises, and the penalties are purely personal and are not implemented except in the same of those imposed by the judiciary.[3251]

The origin of the crime is that its punishment is borne only by those who were convicted of it as responsible for it, and it is after a punishment whose impact must be balanced with the nature of the crime in question. This means that the person only visits his bad work. Hence, the personality of the punishment - crystallized by the Islamic Sharia in its supreme value or confirmed by the Constitution in its articles - assumes the personality of criminal responsibility in a way that confirms their correlation. The person is not responsible for the crime and its punishment is imposed on him only as a perpetrator or partner in it.[3252]

([3250]) Supreme Constitutional Court, Case No. 49 of 22 S issued at the session of February 3, 2001, date of publication October 18, 2001, published in the first part of the Technical Office book No. 9, page No. 857, rule No. 103, Case No. 64 of 19 S issued at the session of May 9, 1998, date of publication May 21, 1998, published in the second part of the Technical Office book No. 8, page No. 1315, rule No. 99, Case No. 130 of 18 S issued at the session of September 1, 1997, date of publication September 11, 1997, published in the first part of the Technical Office book No. 8, page No. 839, rule No. 54.

([3251]) Court of Cassation, Appeal No. 24480 of 64 S issued at the session of May 28, 2003 and published in the book of the Technical Office No. 54 page No. 698 rule No. 89, Appeal No. 559 of 55 S issued at the session of March 6, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 334 rule No. 57, Appeal No. 1074 of 49 S issued at the session of January 6, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 39 rule No. 7, Appeal No. 48 of 42 S issued at the session of May 14, 1972 and published in the second part of the book of the Technical Office No. 23 page No. 696 rule No. 156, Appeal No. 583 of 47 S issued at the session of November 20, 1930 and published in the book of the Technical Office No. 2 p No. 1 page No. 106 rule No. 104.

([3252]) Supreme Constitutional Court, Case No. 124 of 25 S, issued at the session of January 14, 2007, the date of publication, January 28, 2007, published in the first part of the book of the Technical Office No. 12, page No. 194, rule No. 21

In that ruling, the court ruled that it was unconstitutional to stipulate the responsibility of the owner of the shop for rationing crimes and punish him with a fine, although it was proven that due to his absence or the impossibility of monitoring, he was unable to prevent the violation, assuming that he was aware of the occurrence of the violation and his responsibility for it simply because he is the owner of the shop and the license was issued in his name, and therefore the legislator established an arbitrary presumption that is not based on objective grounds, as the alternative fact that he chose does not nominate in most cases to consider the fact of knowledge of the violation as established by law and therefore has no logical relationship to it, but that what is established – according to the text – is impossibility, and therefore this act of the legislator is a criminal penalty that is determined as an abuse of a violation of an impossible assignment, that does not achieve any social interest, exceeds the scales of moderation, and does not have a logical relationship to its purpose, which takes it out of the constitutional legitimacy, and is contrary to the principle of the personality of punishment that undermines the presumption of innocence, and violates

This principle expresses criminal justice in its true concept, and reflects some of its most advanced forms, but this is not strange from the Islamic faith, but rather confirmed by its supreme values, as the Almighty says - in the arbitrator of his verses - " Say: Do not be asked about what we have committed, and we are not asked about what you are doing." Man has nothing but what he has sought, and the fullest reward is only his work, and he was the child of his free will, connected to its purposes.[3253]

In essence, criminal justice is the one that must be guaranteed through precisely and fairly defined rules in the light of which it is decided whether the accused is convicted or innocent. This presupposes a balance between the interest of the group in the stability of its security and the interest of the accused in the absence of imposing on him a penalty that has nothing to do with an act committed by him or lacks evidence of this link. Thus, criminal justice may not be separated from its elements that guarantee each accused a minimum of rights that may not be waived or compromised, nor shall it prejudice the need for criminalization to remain linked to the final purposes of penal laws.[3254]

Second: The principle of individualization of punishment - proportionality of punishment to crime and equality before the judiciary

The character of the punishment is related to the act to which the offender has been brought under the control of necessity and proportionality, and is called legislative uniqueness.

On the other hand, the personality of the punishment has an additional dimension through judicial application, which is the personality of the criminal, and it is linked to the final goals to be achieved from the imposition of the punishment, not just stipulating it. Through application, the legal status of the accused is determined in a way that enables the judge to exercise his discretion, and it is called judicial uniqueness, which is determined in the light of the legal status of the accused and in the light of his criminal personality that the judge extracts.

The Supreme Constitutional Court has distinguished between legislative uniqueness and judicial uniqueness. Legislative uniqueness is in the place of criminalization and punishment and is necessitated by social necessity, and the punishment must be commensurate with the harmful act committed by the perpetrator. As for judicial uniqueness, it is in the place of the judge's enforcement of the provisions of punishment against the perpetrator, and this is in the exercise of the discretionary power of the judge and includes another factor, which is the personality of the perpetrator, which makes judicial uniqueness of the punishment a guarantee in the face of criminalization and punishment.

The person does not visit except his bad work, and that the character of the punishment and its proportionality to the crime in question requires that its characteristics be balanced with the impact of its punishment. This meant that the legislator would assign each crime the punishment that suits it, but what penalty would be appropriate for the crime itself should be determined in the light of its degree of seriousness and the type of interests it is linked to, taking into account

---

the right to the jurisdiction of the judiciary and its right to assess the evidence and the notation of the crime attributed to the accused.

See: Supreme Constitutional Court, Case No. 296 of 25 S issued at the session of April 9, 2006, date of publication May 6, 2006, published in the second part of the book of the Technical Office No. 11, page No. 2432, rule No. 388, Case No. 59 of 18 S issued at the session of February 1, 1997, date of publication February 13, 1997, published in the first part of the book of the Technical Office No. 8, page No. 286, rule No. 19, Case No. 49 of 17 S issued at the session of June 15, 1996, date of publication June 27, 1996, published in the first part of the book of the Technical Office No. 7, page No. 739, rule No. 48.

([3253]) Supreme Constitutional Court, Case No. 59 of 18 S. Issued at the session of February 1, 1997, the date of publication of February 13, 1997, published in the first part of the book of the Technical Office No. 8, page No. 286, rule No. 19.

([3254]) Supreme Constitutional Court, Case No. 49 of 17 S. Issued at the hearing of June 15, 1996, the date of publication is June 27, 1996, and published in the first part of the book of the Technical Office No. 7, page No. 739, rule No. 48.

that the criminal penalty is not contrary to the Constitution unless the parity is manifestly disproportionate between its extent and the nature of the crime to which it relates.[3255]

When criminal punishment is a punishment that necessarily falls within a social framework and is often implied - through the power of deterrence - to restrict personal freedom and is prescribed for a specific purpose in order to fulfill values and social interests that have weight; the origin of the punishment is its reasonableness, so interference with it is only insofar as it is far from being an unjustified pain that confirms its cruelty without necessity ([3256]unnecessary cruelty and pain

The origin of punishment is its individualization, not its generalization, and the establishment of an exception to this principle - whatever its purposes - to the effect that all sinners are homogenous and that their punishment must be one in which there is no variation, which means inflicting a penalty unnecessarily - and in an abstract manner - to drag out painfully unjustified colors of suffering. Having lost the penalty commensurate with the weight of the crime and its circumstances, which unduly restricts personal freedom.[3257]

The legality of the penalty - criminal, civil or disciplinary - is mandated to be commensurate with the acts completed by the legislator, their prohibition or restriction of their exercise. The origin of the penalty is its reasonableness. Whenever the criminal penalty is abhorrent, offensive or related to acts that do not justify criminalization or manifestly deviate from the limits with which it is commensurate with the seriousness of the acts completed by the legislator, it loses its raison d 'être and its restriction of personal freedom becomes arbitrary.[3258]

The estimation of the elements of proportionality falls within the framework of the essential characteristics of the judicial function, which means that depriving the judge of his authority in the field of individualization of punishment in a way that harmonizes the formula in which it was emptied with the requirements of its application in a particular case, which necessarily means that penal texts lose their connection to their reality so that they do not vibrate with life and their enforcement is only an abstract act that isolates them from their environment, indicating their cruelty or exceeding the limit of moderation.

Defendants may not be treated as a fixed pattern or viewed as a single image that unites them to pour them into its mold, which means that the origin of the punishment is its uniqueness, not its generalization, and the establishment of a legislative exception from this origin - whatever its purposes - to the effect that all offenders conform to their circumstances and that their punishment must be one that does not vary, which means inflicting an unnecessary penalty that loses the punishment commensurate with the weight of the crime, its circumstances and the personal circumstances of the perpetrator, and in a way that restricts personal freedom without the requirement that the legitimacy of the punishment - from a constitutional point of view - mandates that each judge exercise his authority in the field of gradation and divide it in appreciation of it within the limits prescribed by law. This alone is the way to its reasonableness

---

([3255]) Supreme Constitutional Court, Case No. 48 of 18 S. Issued at the session of September 15, 1997, the date of publication is September 25, 1997, and published in the first part of the book of the Technical Office No. 8, page No. 854, rule No. 57.

([3256]) Supreme Constitutional Court, Case No. 28 of 17 S, issued at the session of December 2, 1995, the date of publication, December 21, 1995, published in the first part of the book of the Technical Office No. 7, page No. 262, rule No. 15.

([3257]) Supreme Constitutional Court, Case No. 120 of 27 S issued at the session of 12 March 2006, the date of publication 5 April 2006, published in the second part of the Technical Office book No. 11, page No. 2369, rule No. 378, Case No. 64 of 19 S issued at the session of 9 May 1998, the date of publication 21 May 1998, published in the second part of the Technical Office book No. 8, page No. 1315, rule No. 99, Case No. 37 of 15 S issued at the session of 3 August 1996, the date of publication 15 August 1996, published in the first part of the Technical Office book No. 8, page No. 67, rule No. 3.

([3258]) Supreme Constitutional Court, Case No. 114 of 21 S issued at the session of 2 June 2001, the date of publication 14 June 2001, published in the first part of the book of the Technical Office No. 9, page No. 986, rule No. 119, Case No. 33 of 16 S issued at the session of 3 February 1996, the date of publication 17 February 1996, published in the first part of the book of the Technical Office No. 7, page No. 393, rule No. 22.

and humanity by force to provoke the crime from a fair perspective related to it and its perpetrator.[3259]

The legality of the penalty from a constitutional point of view is vested in each judge to exercise his authority in the field of its hierarchy and division, in appreciation of it, within the limits prescribed by law. That alone is the way to its reasonableness and humanity, to force the effects of the crime from an objective perspective, so that it is attached to it and its perpetrator.[3260]

Criminal punishment may not be applied indiscriminately or automatically, as its uniqueness is inseparable from contemporary concepts of criminal policy that refuse to impose a penalty imposed by the legislator in an abstract manner - like all legal rules - on the crime in question and the uniqueness of the punishment - and under which the order to stop it - is the one that takes it out of its deaf molds and returns it to a penalty that coexists with the crime and its perpetrator and is connected to it by a decision.[3261]

Whereas, the decision in the jurisprudence of this court is that the principle of punishment is its uniqueness, not its generalization, and therefore the decision to make an exception to this principle - whatever the purposes it is intended for - is to recognize that the circumstances of the perpetrators have been similar to what requires the unification of the penalty imposed on them, which violates the proportionality of the punishment to the amount of the crime, its circumstances, and the personal characteristics of the perpetrator. If the most important elements of the legality of punishment - from a constitutional point of view - are that each judge exercises his authority in the field of graduation and division within the limits prescribed by law, there is no room for the judge to withhold from exercising this discretion and deprive him of exercising his right to rule on the punitive alternatives that he deems appropriate for each case separately.[3262]

Whether the penalty imposed by the legislator - and in view of its social objectives - aims to achieve a special deterrence, or whether it is an expression of an evolving concept of punishment as a fair punishment for persons who have committed acts that the legislator has criminalized, its estimation through its individualization relates to objective factors related to the crime itself, and to personal elements that belong to the perpetrator, which means that there is an inevitable relationship between the judge's authority to individualize the punishment and its proportionality to the crime, and their association with the exercise of the judicial function in connection with the essence of its characteristics. Therefore, it is not permissible for the legislator to restrict the scope of this function by interfering with its components, in recognition

---

([3259]) Supreme Constitutional Court, Case No. 49 of 22 S issued at the session of February 3, 2001, date of publication October 18, 2001, published in the first part of the book of the Technical Office No. 9, page No. 857, rule No. 103, Case No. 42 of 19 S issued at the session of February 7, 1998, date of publication February 19, 1998, published in the first part of the book of the Technical Office No. 9, page No. 1087, rule No. 131, Case No. 133 of 18 s issued in the session of 15 November 1997 and published in the first part of the book of the Technical Office No. 8 page No. 921 rule No. 63, Case No. 130 of 18 s issued in the session of 1 September 1997 date of publication 11 September 1997 and published in the first part of the book of the Technical Office No. 8 page No. 839 rule No. 54, Case No. 24 of 18 s issued in the session of 5 July 1997 date of publication 19 July 1997 and published in the first part of the book of the Technical Office No. 8 page No. 709 rule No. 47.

([3260]) Supreme Constitutional Court, Case No. 120 of 27 S issued at the hearing of March 12, 2006, the date of publication of April 5, 2006, published in Part II of Technical Office Book No. 11, Page No. 2369, Rule No. 378, Case No. 64 of 19 S issued at the hearing of May 9, 1998, Date of publication May 21, 1998, published in Part II of Technical Office Book No. 8, Page No. 1315, Rule No. 99, Case No. 133 of 18 S issued at the hearing of November 15, 1997, published in Part I of Technical Office Book No. 8, Page No. 921, Rule No. 63, Case No. 37 of 15 S issued at the hearing of August 3, 1996, Date of publication August 15, 1996, published in Part I of Technical Office Book No. 8, Page No. 67, Rule No. 3.

([3261]) Supreme Constitutional Court, Case No. 42 of 19 S. Issued at the session of February 7, 1998, the date of publication of February 19, 1998, published in the first part of the book of the Technical Office No. 9, page No. 1087, rule No. 131.

([3262]) Supreme Constitutional Court, Case No. 326 of 23 S. Issued at the session of May 12, 2002, the date of publication is May 25, 2002, and published in the first part of the book of the Technical Office No. 10, page No. 375, rule No. 59.

that the crimes do not unite in their seriousness, and because the defendants do not have the characteristics of their heterogenous composition and their environment is not determined, but rather they are distinguished in particular in terms of their education and culture, their intelligence and independence, and their criminal tendency is graduated between softness, moderation, fetishism or penetration.[3263]

The authority exercised by the judge in the field of suspending the execution of the sentence, is a branch of its uniqueness, in recognition that the uniqueness is inseparable from contemporary concepts of criminal policy, and relates to the direct application of a penalty imposed by the legislator in an abstract manner, as are all legal rules, and that its "provision" on the criminal incident in question is contrary to its suitability for all its circumstances and circumstances, and what the judge deems justified for his belief that the convicted person will not return in the future to the violation of the law - whether in view of his age, creation, past, or the nature of the crime he committed, and its circumstances - is based on realistic elements that he examines for their truth, It does not take them away, but observes and evaluates them on pillars of clues and the eyes of the papers, in order to be able to determine, in the light of all of them, their punishment - whether in type or value - and without prejudice to the limits prescribed by law for them, and the implementation of the sentenced punishment, or the order to stop it, which enters into determining its "amount", but that its implementation - not just its type or duration - is the one that achieves the intended pain, to prepare for its application the risk of contacting other offenders who may have been more abusive and more severe criminality, including the fact that the authority to individualize the punishment - and the order to stop it - is the one that It takes it out of its deaf molds, and returns it to a punishment that coexists with the crime and its perpetrator, is inseparable from its reality, and is connected to it by a decision.[3264]

Whereas, the discretionary authority exercised by the judge in the field of individualization of the penalty is included in the order to suspend it as one of its axes based on taking into account the personality of the offender, as the burden of the penalty on the convicted person does not depend only on its type or duration, but also depends on whether the deterrent is achieved by its implementation or by suspending its implementation, when this is the case, and the order to suspend the execution of the fine penalty avoids its defects as it is more insistent on those who are overcome by the delicacy of the situation, and therefore its proportionality regarding a crime in itself to its reality and the condition of the perpetrator must be entrusted to the discretionary authority of the judge who can choose - according to objective grounds - between ordering the implementation of this penalty or suspending its implementation.[3265]

([3263]) Supreme Constitutional Court, Case No. 37 of 15 S issued at the session of August 3, 1996, the date of publication of August 15, 1996, published in the first part of the book of the Technical Office No. 8, page No. 67, rule No. 3.

([3264]) Supreme Constitutional Court, Case No. 120 of 27 S issued at the hearing of March 12, 2006, the publication date of April 5, 2006, published in the second part of the book of the Technical Office No. 11, page No. 2369, rule No. 378, Case No. 49 of 22 S issued at the hearing of February 3, 2001, the publication date of October 18, 2001, published in the first part of the book of the Technical Office No. 9, page No. 857, rule No. 103, Case No. 64 of 19 S, issued at the session of 9 May 1998, the date of publication 21 May 1998, published in the second part of the book of the Technical Office No. 8, page No. 1315, rule No. 99, case No. 133 of 18 S, issued at the session of 15 November 1997, published in the first part of the book of the Technical Office No. 8, page No. 921, rule No. 63, case No. 130 of 18 S, issued at the session of 1 September 1997, the date of publication 11 September 1997, published in the first part of the book of the Technical Office No. 8, page No. 839, rule No. 54, Case No. 24 of 18 s issued at the session of July 5, 1997, the date of publication July 19, 1997, published in the first part of the book of the Technical Office No. 8, page No. 709, rule No. 47, Case No. 37 of 15 s issued at the session of August 3, 1996, the date of publication August 15, 1996, published in the first part of the book of the Technical Office No. 8, page No. 67, rule No. 3.

([3265]) Supreme Constitutional Court, Case No. 326 of 23 S. Issued at the session of May 12, 2002, the date of publication is May 25, 2002, and published in the first part of the book of the Technical Office No. 10, page No. 375, rule No. 59.

Defendants are considered each other's counterparts, whether in their type of crime, motives or background. It is only a violation of the condition of sound legal means, in whose absence it is inconceivable that the right to life, or freedom, has a value that they have to consider.[3266]

The uniqueness of the penalty of the fine - which is more flexible than the uniqueness of the penalty of deprivation of liberty - avoids its disadvantages as it is heavier on the poor than on the rich. The imposition of its proportionality in respect of a crime itself was fair to its reality and the condition of its perpetrator is achieved by multiple means, under which the judge must make a differentiation - according to objective grounds - between ordering its implementation or suspension. Although the contested text permitted this with regard to the prison sentence, it robbed the judge of this same authority with regard to the fine penalty, which is not commensurate with the freedom-restricting punishment in its underestimation of man's destiny and its violation of his humanity, but it is a criminal offence, which means - within the scope of the present dispute - violating the characteristics of the judicial function, and its strength with regard to the crime subject of the criminal lawsuit, estimating the punishment that suits it, as this is a preliminary assumption, a constitutional requirement to preserve the objectivity of its application. A constitutional prerequisite to the proportionate imposition of penalty.

It is not permissible for the state - in the exercise of the power to impose punishment in order to preserve its social system - to undermine the minimum level of those rights in the absence of which the accused is not assured of a fair trial aimed at the effective administration of criminal justice in accordance with its requirements set out in the Constitution.[3267]

The punishment is commensurate with the crime and its perpetrator, in fairness to its reality and the situation of the perpetrator, achieved by multiple means, including those conducted by the judge - in each individual incident - between the order to implement or stop it.[3268]

Whereas it is not permissible for the state - in the field of exercising its authority to impose punishment in order to preserve its social system - to prejudice the minimum right of the accused to a legal trial during which he is assured of the availability of the guarantees stipulated in the Constitution, including the personality of the punishment and its proportionality to the crime and its association with the person of the perpetrator, his intention and the harm resulting from it, until the penalty is received in accordance with what he has done, and the assessment of all these elements was assumed by the judge by virtue of his authority in the field of singling out the punishment, then depriving him of this violates the aforementioned guarantees and leads to the purpose of the penal texts.[3269]

([3266]) Supreme Constitutional Court, Case No. 37 of 15 S issued at the session of August 3, 1996, the date of publication of August 15, 1996, published in the first part of the book of the Technical Office No. 8, page No. 67, rule No. 3.

([3267]) Supreme Constitutional Court, Case No. 49 of 22 S issued at the session of February 3, 2001, date of publication October 18, 2001, published in the first part of the book of the Technical Office No. 9, page No. 857, rule No. 103, Case No. 42 of 19 S issued at the session of February 7, 1998, date of publication February 19, 1998, published in the first part of the book of the Technical Office No. 9, page No. 1087, rule No. 131, Case No. 133 of 18 s issued in the session of 15 November 1997 and published in the first part of the book of the Technical Office No. 8 page No. 921 rule No. 63, Case No. 130 of 18 s issued in the session of 1 September 1997 date of publication 11 September 1997 and published in the first part of the book of the Technical Office No. 8 page No. 839 rule No. 54, Case No. 37 of 15 s issued in the session of 3 August 1996 date of publication 15 August 1996 and published in the first part of the book of the Technical Office No. 8 page No. 67 rule No. 3.

([3268]) Supreme Constitutional Court, Case No. 120 of 27 S issued at the session of 12 March 2006, the date of publication 5 April 2006, published in the second part of the book of the Technical Office No. 11, page No. 2369, rule No. 378, Case No. 64 of 19 S issued at the session of 9 May 1998, the date of publication 21 May 1998, published in the second part of the book of the Technical Office No. 8, page No. 1315, rule No. 99.

([3269]) Supreme Constitutional Court, Case No. 120 of 27 S issued at the session of March 12, 2006, date of publication April 5, 2006, published in the second part of the Technical Office's book No. 11, page No. 2369, rule No. 378, Case No. 326 of 23 S issued at the session of May 12, 2002, date of publication May 25, 2002, published in the first part of the Technical Office's book No. 10, page No. 375, rule No. 59, Case No. 133 of 18 S issued at the session of November 15, 1997, published in the first part of the Technical Office's book No. 8, page No. 921, rule No. 63.

It is decided that the character of the punishment and its proportionality to the crime in question are linked to those who are legally responsible for committing it in the light of a cycle in it and its intentions that I compared and the resulting harm so that the penalty for it is in accordance with his choices in regard to it whenever this is the case and the appreciation of all these elements is within the framework of the essential characteristics of the judicial function. Depriving those who exercise that function of their authority in the field of individualization of punishment in a way that harmonizes the formula in which it was emptied with the requirements of its application in each particular case necessarily means that the penal texts lose their connection with their reality, so that they do not vibrate with life, and their enforcement is only an abstract act that isolates them from their environment as an indication of their cruelty or exceeding the limit of moderation, rigid and crude contrary to the values of truth and justice.[3270]

It was never permissible for penal texts to lose contact with their surroundings in order to ensure the objectivity of their application. Their enforcement is not indicative of their rigid cruelty, contradictory to the values of truth and justice, confirming their anomalies or exceeding the limits of moderation, with which the judge should have the last word on their suspension. His deprivation of this jurisdiction is only an aggression against the judicial function in a way that violates its components.[3271]

24.2 Within the Framework of International Covenants

Punishments may not be imposed on an accused unless he is convicted after a fair trial. Sanctions must conform to international standards, and may not violate their provisions. Prison conditions must respect the inherent dignity of the human person.

24-2-1 Fair Trial Rights - Penalties

The right to a fair trial includes, inter alia, the ways in which sanctions (also called “sanctions” in international law) are determined and which sanctions may be imposed.[3272]

A measure that is not considered a sanction in the national law of a country can be considered a sanction under international law. Associated factors include the way in which this measure is described in national law, its nature and purpose, the procedures related to it and the extent of its severity.[3273]

The penalties provided for by law may be imposed only on defendants who are convicted after fair trials that meet the requirements of international standards of justice.

([3270]) Supreme Constitutional Court, Case No. 120 of 27 S issued at the hearing of March 12, 2006, the publication date of April 5, 2006, published in the second part of the book of the Technical Office No. 11, page No. 2369, rule No. 378, Case No. 49 of 22 S issued at the hearing of February 3, 2001, the publication date of October 18, 2001, published in the first part of the book of the Technical Office No. 9, page No. 857, rule No. 103, Case No. 64 of 19 S, issued at the session of 9 May 1998, the date of publication 21 May 1998, published in the second part of the book of the Technical Office No. 8, page No. 1315, rule No. 99, Case No. 42 of 19 S, issued at the session of 7 February 1998, the date of publication 19 February 1998, published in the first part of the book of the Technical Office No. 9, page No. 1087, rule No. 131, Case No. 24 of 18 S, issued at the session of 5 July 1997, the date of publication 19 July 1997, published in the first part of the book of the Technical Office No. 8 Page No. 709 Rule No. 47, Case No. 37 of 15 S. Issued at the session of August 3, 1996, the date of publication is August 15, 1996, and published in the first part of the book of the Technical Office No. 8 Page No. 67 Rule No. 3.

([3271]) Supreme Constitutional Court, Case No. 42 of 19 S. Issued at the session of February 7, 1998, the date of publication of February 19, 1998, published in the first part of the book of the Technical Office No. 9, page No. 1087, rule No. 131.

([3272]) T. United Kingdom (24724/ 94), Grand Chamber of the European Court §108 (1999).

([3273]) European Court: Welch v. United Kingdom (17440) / 90), §28 and§32 (1995), Kavkaris v. Cyprus (21906) / 04, Grand Chamber §10 (2008).

For example, detention without a legal basis following the final acquittal of criminal charges, or the completion of the prison term for which he was sentenced, amounts to arbitrary detention.[3274]

Sanctions should be pronounced publicly, unless otherwise permitted by international standards, such as when the accused is a child.[3275]

24-2-2 Penalties that may be imposed

The penalties imposed by the court on the accused, after his conviction, shall be specified by law.

Where the principle of legality - that is, the requirement that the content of the decision be precisely specified in the law and that the law be available to all - applies to penalties.[3276]

Punishment for the offence may only be imposed on the person who has been convicted of it; international standards prohibit the imposition of collective punishments, even in states of emergency.[3277]

This extends to the prohibition of punishing parents for crimes committed by their children.[3278]

The penalties imposed by the court on the accused, following his conviction, must be commensurate with the gravity of the crime and the circumstances of the offender.[3279]

The punishment itself, or the manner in which it is inflicted, shall not violate international standards. Penalties that are disproportionate in severity as well as penalties for acts that should not originally be criminalized are in violation of international standards. Examples include prison sentences for libel and defamation, which human rights bodies and mechanisms and Amnesty International have called for not to be criminalized.[3280]

At the other end of the spectrum, punishments such as those imposed on police officers convicted of torture or other ill-treatment violate international standards equally, since they do

---

([3274]) Working Group on Enforced Disappearances, 47 / UN Doc. A/HRC/16 2011 pp. 8-23 (a); see UN Security Council Resolution 1949, Guinea-Bissau,. §10.

([3275]) Article 40 (2) (vii) of the Convention on the Rights of the Child, Article 76 (4) of the Rome Statute; see Article 14 (1) of the International Covenant, Article 8(5) of the American Convention, Article 6(1) of the European Convention, Sections A(3) (j), O(h) and(n) of the Principles of Fair Trial in Africa, Article 22 (2) of the Statute of the Rwanda Tribunal, and Article 23 (2) of the Statute of the Yugoslavia Tribunal.

([3276]) Kavkaris v. Cyprus (21906/ 04), Grand Chamber of the European Court §140 (2008).

([3277]) Article 7(2) of the African Charter, and Article 5(3) of the American Convention.

Human Rights Committee General Comment 29, §11; Human Rights Committee Concluding Observations: Libya, §20 (2007) UN Doc. CCPR/C/LBY/CO/4; UN Security Council Resolution 65/225, North Korea, §1 (a) (i).

([3278]) General Comment 10 of the Committee on the Rights of the Child, §55.

([3279]) See: Rules 3/2, 3/2 and 8/1 of the Tokyo Rules, Article 40 (4) of the Convention on the Rights of the Child, Article 7 of the Convention on Enforced Disappearances, Articles 23-26 of the European Convention on Trafficking in Human Beings, and Articles 45-48 of the Council of Europe Convention on Violence against Women.

([3280]) Human Rights Committee: General Comment §47 ,34, Concluding Observations, Italy, §19 (2005) UN Doc. CCPR/C/ITA/CO/5; see, e.g., Working Group on Enforced Disappearances, Nicaragua, UN Doc. A/HRC/4/40/Add. 3 §102(2006) (c) (penalties for drug offences).

Special Rapporteur on freedom of expression: 23/2010) UN Doc. A/HRC/14) §81 (2007) UN Doc. A/HRC/4/27, §83; Resolution 169 (2010) of the African Commission; Concluding observations of the Commission on Human Rights: The former Yugoslav Republic of Macedonia, §6 (2008) UN Doc. CCPR/C/MKD/CO/2; Office of the OAS Special Rapporteur on Freedom of Expression, press release 32/11.

Among other documents, see Amnesty International, Turkey: Decriminalize Dissenting Opinion, Document No.: 2013/001 / EUR 44, p. 14.

not reflect the gravity of the crime committed and may lead to impunity for perpetrators of human rights violations.[3281]

Decisions on gender-sensitive judgments should also be made for the convicted person, taking into account, for example, the stress of exposure to violence on survivors of gender-based violence, the responsibilities of pregnant or breastfeeding women, and the special needs of transgender people.[3282]

Considerations related to the status of migrant workers, including their right to reside and work, should also be taken into account when sanctioning them for crimes committed by themselves or their family members.[3283]

Discrimination in sentencing laws or practices can be reflected in the unfair imbalance in representation rates against certain ethnic minorities or social groups in prisons, in relation to the total number of prisoners, or through lenient penalties in a manner prejudicial to crimes of violence against women, including rape, domestic violence, "honor crimes" and human trafficking.[3284]

Sanctions involving deprivation of liberty should be imposed only to serve an urgent social need, and should be proportionate to that need.[3285]

The time spent by the accused in pre-trial detention should also be taken into account in the issuance of any sentence, whether imprisonment or otherwise, and this period should be calculated and deducted from any prison term imposed on the accused.[3286]

The Inter-American Court concluded that the criminal law that bases its penalties on the “future danger” of the guilty person is inconsistent with the principle of legality.[3287]

Concluding [3281]observations of the Human Rights Committee: Austria, UN Doc §11 (2007) CCPR/C/aut/CO/4, Grenada, / UN Doc. CCPR/C/GRD §15 (2009) CO/1; Concluding observations of the Committee against Torture: United States of America, 26 § (2006) UN Doc. CAT/C/USA/CO/2; European Court: Duran v. Turkey (42942) / 02), §66 - § 69(2008, Gavgin v. Germany (22978) / 05), Grand Chamber §121 - § 124(2010, Kopylov v. Russia (3933) / 04), §140 - § 142(2010, Inukidze and Guergliani v. Georgia §268- §278 (2011) ,(07/2509); see observations of the Arab Human Rights Committee: Jordan § §10 (2012) and 33; Working Group on Enforced or Involuntary Disappearances: Colombia, §63- §69 (2006) UN Doc E/CN. 4/2006. Add/1..

([3282]) Rules 57, 58, 61 and 64 of the Bangkok Rules.

Special Rapporteur on the independence of judges and lawyers, UN Doc §102 (2001) A/66/289; Special Rapporteur on torture, UN Doc. §41 (2008) A/HRC/7/3.

([3283]) Article 19 (2) of the Migrant Workers Convention.

Working [3284]Group on Enforced Disappearances, South Africa, §87 (2005) UN Doc. E/CN. 4/2006/7/Add. 3; Concluding observations of the Human Rights Committee: New Zealand, 2010) UN Doc. CCPR/C/NZL/CO/5) §12; Concluding observations of the Committee against Torture: Hungary, UN Doc 81 § (1998) A/54/44; Concluding observations of the CEDAW Committee: Canada, UN Doc §33- §34 (2008) CEDAW/C/54/D/473/1991; Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia, UN Doc. CERD/C/304/Add. 101 §16 (2000), USA, 18 / §395 (2001) UN Doc. A/56; CERD General Recommendation 31,§34- §37

Concluding observations of the Human Rights Committee: Bosnia and Herzegovina, §12 (2006) UN Doc. CCPR/C/BiH/CO/1, Japan, / UN Doc. CCPR/C/JPN §15 (2008) CO/5; Opuz v. Turkey (33401) / 02), European Court (2009) §169- §170 and 199 - 200; see 98/39272) M. C. v Bulgaria), European Court 153 § (2003).

See Article 42 of the Council of Europe Convention on Violence against Women.

Concluding observations of the Human Rights Committee: Yemen, / UN Doc. CCPR/C/§12 (2005) CO/84/YEM; see CEDAW Concluding Observations: Lebanon, §27 (2008) UN Doc. CEDAW/C/LBN/CO/3, Jordan, UN Doc . 24- §§23 (2007) CEDAW/C/JOR/CO/4.

([3285]) Working Group on Enforced Disappearances, / UN Doc. E §63 (2005) ‹CN. 4/2006/7..

([3286]) Rule 33 of the European Rules for Pre-Trial Detention, article 78 (2) of the Rome Statute.

Concluding observations of the Committee against Torture: South Africa, 22 § (2006) UN Doc. CAT/C/ZAF/CO/1; Working Group on Enforced Disappearances, §72- §74 (2005) ,UN Doc. E/CN. 4/2006/7/Add. 3 and 87, §96 (2000) ,UN Doc. E/CN. 4/2001/14.

([3287]) Fermín Ramírez v. Guatemala, Inter-American Court 96 § (2005).

There is a growing consensus on the importance of alternatives to imprisonment. The Tokyo Principles, adopted by the UN General Assembly in 1990, reinforce the trend towards the use of non-custodial punitive measures. Recommendations for appropriately and proportionately adjudicating non-custodial measures focused in particular on non-criminal misdemeanors, for pregnant women, indigenous people, and in order to alleviate prison overcrowding.[3288]

It should also be considered for people who support minor children.[3289]

24-2-3 Retroactive application of lighter penalties

The penalty imposed by the courts may not be more severe than the penalty stipulated by law at the time of the commission of the crime.[3290]

However, if the penalty is commuted in a legislative amendment subsequent to the time of its commission, the state must retroactively commute the sentences issued under the old penalty.[3291]

The right to apply the lighter penalty retroactively is implicitly guaranteed in Article 7 of the European Convention.[3292]

The lighter penalty should be applied to any offence:

If the law changes before the final judgment is pronounced, or before the expiry of the sentence, according to the standards of the African Commission; or.[3293]

If the accused has been sentenced to a penalty that cannot be reversed, such as the death penalty, the maximum penalty, or life imprisonment.[3294]

The right to benefit from the lighter penalty applies where the criminal laws that punish an act or omission are repealed.[3295]

24.2.4 Prohibition of Sanctions Violation of International Standards

The sanction shall not violate itself or the manner in which it signifies international standards.

Torture and other cruel, inhuman or degrading treatment or punishment is absolutely prohibited.[3296]

([3288]) See Resolution 65/230 of the United Nations General Assembly, §51.
Concluding observations of the Human Rights Committee: Tajikistan, UN Doc. §14 (2004) CCPR/C/CO/84/TJK
Concluding observations of the Human Rights Committee: Poland, / UN Doc. CCPR/C §17 (2010) Pol/CO/6, Croatia, 2009) UN Doc. CCPR/C/HRV/CO/2) §13; CERD General Recommendation 31, §36; Orchowski v. Poland (17885) / 04), EC 153 § (2009).

([3289]) The Tokyo Rules, Rules 64, 57-58 and 60-63 of the Bangkok Rules, Article 10 (2) of ILO Convention 169, Guideline 37 of the Robben Island Guidelines, and Section (9) (e) (1-2) of the Fair Trial Principles in Africa.
Resolution 65/229 of the United Nations General Assembly, §9, Resolution 65/213, §11; Resolution 10/2 of the Human Rights Council, §13; General Report 11 of the Committee for the Prevention of Torture:. CPT/Inf2001(16، §28.
Eser [3290]Wazirik v. Turkey (29295/ 95 and 29363/ 95), European Court §31- §37 (2001).

([3291]) Article 11 of the Universal Declaration, Article 15 (1) of the International Covenant, Article 19 (1) of the Migrant Workers Convention, Article 9 of the American Convention, Article 15 of the Arab Charter, Article 7(1) of the European Convention, Section n(7) (a) - (b) of the Principles of Fair Trial in Africa, and Article 24 (2) of the Rome Statute; see Article 7(2) of the African Charter.

([3292]) Scopola v. Italy (No. 2) (10249) / 03), Grand Chamber of the European Court §109 (2009).

([3293]) Section N(7) (b) of the Principles of Fair Trial in Africa.

([3294]) M. Nowak, The United Nations International Covenant on Civil and Political Rights: A Commentary on the International Covenant, 2nd Revised Edition, Engel 2005 20 § - §19 pp. 366 - p. 367.
Cochet [3295]v. France, Commission on Human Rights, / UN Doc. CCPR . 4/7-3/ §7 (2010) 2008/C/100/D/1760.

([3296]) Article 5 of the Universal Declaration, Article 7 of the International Covenant, the Convention against Torture, Article 5 of the African Charter, Article 5(2) of the American Convention, Article 8 of the Arab Charter, Article 3 of the European

However, the definition of torture in Article 1 of the Convention against Torture explicitly excludes pain and suffering caused by legal penalties or necessarily accompanying them - those punishments that are legitimate under national law and are also consistent with the provisions of international law.[3297]

Although a sanction may be lawful under national law, it becomes a prohibited sanction if it violates international standards, including the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Any other interpretation would nullify the purpose of the prohibition imposed by international standards.[3298]

Sanctions deemed to violate international standards include all forms of corporal punishment, exile, and imprisonment for inability to repay a debt.[3299]

The re-education through labor system, used in China, has been classified among the sanctions that violate international standards.[3300]

Additional penalties such as expelling foreign nationals from the country following their conviction or depriving prisoners of voting rights must be consistent with international standards.[3301]

The Special Rapporteur on human rights and counter-terrorism has raised concerns about subjecting persons to probation following the completion of their sentence, since this additional punishment can mean that a convicted person is punished for the same offence twice.[3302]

24.2.5 Corporal Punishment

Corporal punishments, which include whipping, beating with bamboo sticks or with a whip, amputation of limbs and marking, are prohibited under international law, as they violate the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment.[3303]

Convention, Articles 2-3 of the Declaration against Torture, Principle 6 of the Set of Principles, and Article 26 of the American Declaration.

([3297]) Special Rapporteur on Torture, 7/1997 / 1997) UN Doc. E/CN. 4) §26- §28 (2005) UN Doc. A/60/316، §8..

[3298]See Special Rapporteur on Torture, 17/1988 / UN Doc. E/CN. 4 Rodley and (1992) 593§ ؛ UN Doc. E/CN. 4/1993/26 ,44- § §42 (1988) Pollard, Treatment of Prisoners under International Law, 3rd Edition, Oxford 2009 ,University Press.

([3299]) Human Rights Committee, General Comment 20, Osborne v. Jamaica, 1/ § §9 (2000) UN Doc. CCPR/C/68/D/759/1997 and 11; Special Rapporteur on Torture, Nigeria, §56- §60 (2007) UN Doc. A/HRC/7/3/Add. 4.

Concluding observations of the Human Rights Committee: Monaco, UN Doc. §12 (2008) CCPR/C/MCO/CO/2, Greece, / UN Doc. CCPR. §13 (2005) CO/83/GRC.

Special [3300]Rapporteur on Torture, UN Doc. A/HRC/13. 39/Add. 5. §71 (2010).

Concluding [3301]observations of the Human Rights Committee: Italy, / UN Doc. CCPR/C/§18 (2005) ITA/CO/5; Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, 2008) UN Doc. CERD/C/USA/CO/6) §27; Human Rights Committee General Comment 25, §14; Hurst v. United Kingdom (74025) / 01), Grand Chamber of the European Court §72- § 85(2005); see Concluding Observations of the Human Rights Committee: United States of America, §35 (2006) UN Doc. CCPR/C/USA/CO/3/Rev. 1; Scopola v. Italy (No. 3) (126) / 05), Grand Chamber of the European Court §103- §110 (2012).

([3302]) Special Rapporteur on Human Rights and Counter-Terrorism, Australia,. §40 (2006) UN Doc. A/HRC/4/26/Add. 3.

([3303]) See: Article 1 of the Principles Relating to Persons Deprived of their Liberty in the Americas; see Rule 31 of the Standard Minimum Rules, and Rule 3/60 of the European Prison Rules

Concluding observations of the Human Rights Committee: Sudan, UN Doc §9 (1997) CCPR/C/79/Add. 85; Special Rapporteur on Torture, Nigeria, §56 (2007) UN Doc. A/HRC/7/3/Add. 4; Iraq, / UN Doc. CCPR/C/79 Add. 84, HRC 12 § (1997); Concluding observations of the Committee against Torture: Saudi Arabia, 5/ UN Doc. CAT/C/CR/28 §4 (2002) (b).

Human Rights Committee: General Comment § 5,20; Concluding Observations of the Human Rights Committee: Sudan, 1997) UN Doc. CCPR/C/79/Add. 85) §9; Iraq, §12 (1997) UN Doc. CCPR/C/79/Add. 84; Libya, UN Doc §16 (2007) CCPR/C/LBY/CO/4, Tanzania, UN Doc. CCPR/C/TZA/CO/4 §16 (2009), Botswana, §19 (2008) UN Doc. CCPR/C/BWA/CO/1, Osborne v. Jamaica, 1997/1/ § §9 (2000) UN Doc. CCPR/C/68/D/759 and 11, Suklal v. Trinidad, 2000/2001) UN Doc. CCPR/C/73/D/928) 6/ §4; Special Rapporteur on Torture, 316/2005) UN Doc. A/60) UN Doc. ،60- §§56 (2007) UN Doc. A/HRC/7/3/Add. 4 ،28- §§18 §6 (1997) E/CN. 4/1997/7; African Commission: Doppler v. Sudan §42 (2003)

24-2-6 Life imprisonment without opportunity for parole

The European Court emphasized that any sentence of life imprisonment should, in order to be consistent with the European Convention, leave open the possibility of its review by the authorities, and the chance that the prisoner will one day be released. Reviews should take place periodically and consider the appropriateness of commutation of sentence, discharge, suspension of sentence or conditional release of the prisoner, in the light of his progress towards rehabilitation. This is because the continued imprisonment of a person without the possibility of release, when his continued imprisonment is no longer justified for punitive reasons, is incompatible with article 3 of the European Convention.[3304]

While the Rome Statute provides for life imprisonment, on the other hand, it stipulates that such provisions must be reviewed by the Court after 25 years to decide whether the period should be reduced.[3305]

The imposition of a sentence of life imprisonment without the opportunity of a conditional pardon on individuals under the age of 18 at the time of the commission of the offence is prohibited.

Amnesty International opposes the imposition of life sentences without the possibility of a conditional pardon because it is inconsistent with the prohibition on cruel, inhuman or degrading punishments and with the principle that incarceration should include, among its purposes, the social rehabilitation of the prisoner.

Mandatory life sentences without conditional pardon means depriving the person sentenced to them of having their particular case and circumstances taken into account.

24-2-7 Sentences of Indefinite Imprisonment

Sentences to indefinite imprisonment include a punitive component (a fixed prison term, sometimes called a "tariff") and a preventive component aimed at ensuring the safety of the public. In some countries, such provisions are referred to as preventive detention and protective provisions.

While indefinite imprisonment, as such, was not considered a violation of the International Covenant or the European Convention, the Human Rights Committee and the European Court have emphasized that:

The tariff must be determined by an independent court (an independent body from all parties and from the executive authority);[3306].

The preventive component should be justified for unavoidable reasons and should remain subject to regular review by a judicial body with the power to order release upon expiry of the tariff period;[3307].

,(2000/236), Concluding Observations: Botswana 31 § (2010); César v. Trinidad and Tobago, Inter-American Court 70 § (2005); Tarer v. United Kingdom (5856) / 72), European Court §37 - § 39(1978); see, UN General Assembly Resolution 65/226: Iran 4 § (2010) (a) and(d).

([3304]) Venter et al. v. United Kingdom (66069) / 09 , 130/10, 3896/10) Grand Chamber of the European Court §103- §122 (2013); see, Council of Europe Recommendation 22 (2003)REC, §4(a); CPT: Malta, 5(2011)CPT/Inf §121; CPT: Actual/Real Life Sentences (2007) CPT (2007) 55.

([3305]) Articles 77 (1) (b) and 110 (3) of the Rome Statute.

([3306]) T. v. United Kingdom (24724/ 94), Grand Chamber of the European Court §109- §113 (1999).

Human [3307]Rights Committee: Rameka et al. v. New Zealand, UN Doc 4/7-3/ §7 (2003) CCPR/C/79/D/1090/2002; Dean v. New Zealand, UN Doc 4/7-3/ §7 (2009) CCPR/C/95/D/1512/2006; Grand Chamber of the European Court: T. United Kingdom (24724/ 94), Grand Chamber of the European Court §118 (1999), Stafford v. United Kingdom (46295/ 99), §87- §90 (2002).

It has been found that orders for the continuous detention of persons based on their risk (especially in psychiatric institutions after the detainee has completed the prescribed period, for example for persons convicted of sexual violence) constitute a violation of the right to liberty.[3308]

24-2-8 Conditions in prisons

International standards require that prisoners be guaranteed their human rights, except for the proportionate restrictions imposed by law and necessitated by the necessity of depriving them of their liberty.[3309]

The treatment of prisoners and prison conditions and systems shall respect and protect the rights of individuals in custody.

International standards have set out guiding principles for the treatment of prisoners. It requires prison systems to respect the human rights of prisoners, to impose restrictions only those necessitated by the necessities of imprisonment, and not to aggravate the suffering implied by deprivation of liberty per se.[3310]

It also requires that the prison system reduce to a minimum the differences between prison life and life in freedom.[3311]

The treatment of prisoners shall be aimed at their rehabilitation and reintegration into the wider society.[3312]

It is not permissible to prejudice the duty of the state even if it contracts with the private sector to assume responsibility for the management of penal institutions.[3313]

At a minimum, the conditions in which convicts are imprisoned must be consistent with international human rights standards.[3314]

It is the duty of States to treat imprisoned persons humanely and to respect the inherent dignity of the human person without discrimination, regardless of the extent of available material resources.[3315]

It also prohibits torture and other cruel, inhuman or degrading treatment or punishment.[3316]

Vardon [3308]v. Australia, Human Rights Commission, / UN Doc. CCPR 4/7-3/ §7 (2010) C/98/D/1629/2007; M. Germany (19359/ 04), European Court §92- § 105(2009); see Concluding Observations of the Human Rights Committee: France, §16 (2008) UN Doc. CCPR/C/FRA/CO/4.

([3309]) Rule 5 of the Basic Principles for the Treatment of Prisoners, Principle 8 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 2 of the European Prison Rules.

([3310]) Rule 57 of the Standard Minimum Rules, and rule 102 (2) of the European Prison Rules.

Human Rights Committee General Comment 21,§2- § 3.

([3311]) Rule 60 of the Standard Minimum Rules; see article 106 of the Rome Statute.

([3312]) Article 10 (3) of the International Covenant, Article 17 (4) of the Migrant Workers Convention, Article 5(6) of the American Convention, Article 20 (3) of the Arab Charter, Rules 58 and 65 of the Standard Minimum Rules, Sections n(9) (a) and(e) (5) of the Principles of Fair Trial in Africa, and Rule 6 of the European Prison Rules.

Working Group on Enforced Disappearances, Nicaragua, UN Doc §102 (2006) A/HRC/4/40/Add. 3 (c)..

Concluding [3313]observations of the Human Rights Committee: New Zealand, UN Doc §11 (2010) CCPR/C/NZL/CO/5; General Comment 2 of the Committee against Torture, §17; see Cabal and Pasini Bertrand v. Australia, Human Rights Committee, . 2/ §7 (2003) UN Doc. CCPR/C/78/D/1020/2001.

([3314]) Guideline 33 of the Robben Island Guidelines..

([3315]) General Comment 21 of the Committee against Torture, §4; European Court: Diabiko v. Albania (41153) / 06), 50 § (2007), Mamedova v. Russia §63 (2006) ,(05/7064).

([3316]) Article 5 of the Universal Declaration, Articles 7 and 10 of the International Covenant, Article 17 (1) of the Migrant Workers Convention, Articles 2 and 16 of the Convention against Torture, Article 5 of the African Charter, Article 5(2) of the American Convention, Articles 8 and 20 (1) of the Arab Charter, Article 3 of the European Convention, Section M(7) (a) of the Principles of Fair Trial in Africa, Principle 1 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rules 1/5 and 102 of the European Prison Rules.

Based on the fact that imprisoned persons are in the custody of the State, the State is responsible for their physical and psychological integrity. They shall be provided with adequate food, water, medical care and attention (including necessary treatment), as well as conditions of hygiene, health, shelter and appropriate accommodation.[3317]

Prisoners should be allowed to spend sufficient hours outside open-air cells and given the opportunity to participate in meaningful activities.[3318]

The prison system should also take into account and respect the cultural norms and religious rites of prisoners.[3319]

The Human Rights Committee has concluded that preventing a Muslim prisoner from growing a beard and practicing his religion has been elevated to the level of violating his right to freedom of thought, conscience and religious belief.[3320]

International standards require the authorities to detain convicted prisoners in a separate place from those arrested pending judicial proceedings, and to detain convicted children in separate places from adults, unless this is against the best interest of the child.[3321]

Residence should be separated between men and women who are imprisoned.[3322]

Male guards should not be assigned to supervise places adjacent to women's prisons;)[3323]

Prisoners should in no way be assigned to guard other prisoners.[3324]

States should also take appropriate measures to protect the rights of LGBTI women, men, transgender and intersex persons sentenced to[3325] imprisonment.

International standards restrict the use of force and handcuffs such as handcuffs, handcuffs and chains.

Instruments should not, in any way, be used as a form of punishment.[3326]

International standards further restrict the use of solitary confinement, which can amount to torture or other cruel, inhuman or degrading treatment or punishment.[3327]

([3317]Malawi African Society et al. v. Mauritania (54) / 91, 61/91, 98/93, 167/97 to 196/97 and 210/98), African Commission, Annual Report 13 122 § (2000); Kurbanov v. Tajikistan, Commission on Human Rights, 8/ §7 (2003) UN Doc. CCPR/C/79/D/1096/2002; European Court: Dybeku v. Albania (41153/ 06), 41 § (2007), Hamatov v. Azerbaijan (03/9852 and 13413/ 04), § 104- §122 (2007) (..

[3318]See also Concluding Observations of the Human Rights Committee: United States of America, §32 (2006) UN Doc. CCPR/C/USA/CO/3/Rev. 1; see, CPT Report 10,CPT/Inf2000 (13, §25.

([3319]) General recommendation 31 of the Committee on the Elimination of Racial Discrimination, §5 and§38 (a).

Bodo [3320]v. Trinidad and Tobago, Human Rights Commission, UN Doc . 6/ §6 (2002) CCPR/C/74/D/721/1996.

([3321]) Among others, article 10 (2) of the International Covenant, article 37 (c) of the Convention on the Rights of the Child, article 17 (2) of the Migrant Workers Convention, articles 5(4) and 5 (5) of the American Convention, articles 20 (2) and 17 of the Arab Charter, principle 19 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and rule 8/18 of the European Prison Rules.

([3322]) Among others, Section M(7) (c) of the Principles for a Fair Trial in Africa, Principle 19 of the Principles Relating to Persons Deprived of their Liberty in the Americas, and Rule 8/18 of the European Prison Rules.

Concluding observations (of the Human Rights Committee) of the Committee against Torture: Cameroon, §21 (2010) UN Doc. CCPR/C/CMR/CO/4.

([3323]) See Principle 20 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

Concluding observations of the CEDAW Committee: Canada, / UN Doc. CEDAW/C/CAN . 34- §§33 (2008) CO/7.

([3324]) Concluding observations of the African Commission: Benin, 30 § (2009).

Special [3325]Rapporteur on the independence of judges and lawyers, UN Doc §81- §82 (2001) A/6/289 and 102; see Supplement to Recommendation 5 (CM/Rec, 2010) of the Council of Europe, I (A) (4) §; Principle 9 of the Yogyakarta Principles.

Rule [3326]33 of the Standard Minimum Rules, Second General Report of the Committee for the Prevention of Torture, (3) §53 ,CPT/Inf 92.

The Special Rapporteur on torture has called for the prohibition of solitary confinement as a judicial punishment following conviction.[3328]

Concerns have been raised about tight security systems in prisons and conditions in prisons with high security measures that include isolation and denial of human contact, which can amount to cruel, inhuman or degrading treatment or punishment.[3329]

Prisoners should be allowed to receive visits and communicate with their families, in line with respect for the right to private and family life and should be provided with a window to the outside world.[3330]

The only basis for restrictions should be the maintenance of security and the control of resources.[3331]

Decisions made in the location where a person is imprisoned should take into account their rights to private and family life, and to contact their lawyer.[3332]

Foreign nationals who are imprisoned also have the right to be provided with facilities allowing them to communicate with and receive visits from representatives of the governments of their countries, and this must be arranged for them. If they are refugees or are under the protection of an intergovernmental organization, they have the right to contact and receive visits from representatives of that organization or of the State in which they reside. The authorities must inform them of this right. If a national of a foreign state requests the authorities to contact such personnel, the authorities should respond to his or her request without delay. However, it should only do so at his request.[3333]

Given the protection that such communications can add to prisoners' protection, Amnesty International is of the view that such forms of communication should be ensured to individuals who are nationals of both the custodial state and the foreign state. If the person has the nationality of two or more foreign countries, he should have the right to communicate and communicate with the representatives of each of these countries, and to receive visits from them, if he so chooses, and should be provided with facilities for this purpose.

Overcrowded prisons can cause conditions that violate international standards and the rights of prisoners.[3334]

Concluding [3327]observations of the Human Rights Committee: Japan, / UN Doc. CCPR/C §21 (2008) JPN/CO/5; see also Polay Campos v. Peru, Human Rights Committee, 1994/7/8-6/ §8 (1997) UN Doc. CCPR/C/61/D/577; Castillo Petruzzi et al. v. Peru (52) / 1999), Inter-American Court (1999) . 199- §§189.

Special [3328]Rapporteur on Torture, 268 / §84 (2001) UN Doc. A/66; see Report 21 of the Committee for the Prevention of Torture, 28) §56 ,CPT/Inf2001 (a).

([3329]) Concluding observations of the Committee against Torture: United States of America, §36 (2006) ,UN Doc. CAT/C/USA/CO/2, Hungary. UN Doc §18 (2006) ‹CAT/C/HUN/CO/4..

([3330]) Recommendation 12 (2010) Rec of the Council of Europe, Annex §22.

Second [3331]General Report of the Committee for the Prevention of Torture, 3) §51 ,CPT/Inf92; Concluding Observations of the Human Rights Committee: Israel, / UN Doc. CCPR/C/ISR. §21 (2010) CO/3.

([3332]) Article 17/5 of the Migrant Workers Convention, Rules 4 and 43 of the Bangkok Rules, Rules 37 and 79 of the Standard Minimum Rules, and Rules 17 and 24 of the European Prison Rules.

See Special Rapporteur on human rights and counter-terrorism: Spain, §20 (2008) UN Doc. A/HRC/10/3/Add. 2..

([3333]) Article 36 of the Vienna Convention on Consular Relations, rule 38 of the Standard Minimum Rules, rule 2(1) of the Bangkok Rules, article 10 of the Declaration on Non-Citizens, principle 5 of the Principles on Persons Deprived of their Liberty in the Americas, and rule 37 of the European Prison Rules; see article 17 (2) of the Convention on Enforced Disappearances.

Recommendation 12) Rec)2010 of the Council of Europe, Annex 4/1 §24 - §25.

[3334]See Concluding Observations of the Human Rights Committee: Argentina, §17 (2010) UN Doc. CCPR/C/ARG/CO/4; see Kalashnikov v. Russia (99/47095), ECtHR §92- § 103(2002); CPT General Report 7, 10) §12- §13 ,CPT/Inf97.

Prisoners should be informed of their rights under the law and of the rules of the institution in which they are placed immediately upon admission, as well as of the mechanisms for lodging complaints, including about their situation and the treatment they receive. They should have access to legal assistance to make complaints; requests regarding their treatment and conditions; when facing a serious disciplinary charge; as well as to help them apply for pardon and parole, and during court hearings.[3335]

24-2-9 Capital Punishment

Amnesty International opposes the death penalty in all circumstances, as it represents the height of cruel, inhuman or degrading punishments, and a violation of the right to life. International human rights standards guarantee persons accused of capital offences the right to the highest degree of strict adherence to all fair trial guarantees and certain additional guarantees. However, these additional safeguards are no justification for retaining the death penalty.

First: Abolition of the Death Penalty

Amnesty International opposes the death penalty in all circumstances, as the height of cruel, inhuman or degrading punishments, and represents a violation of the right to life. International standards, jurisprudence and decisions of the international community increasingly reflect this view. Arbitrary deprivation of life is absolutely prohibited, at all times and under all circumstances.[3336]

as well as torture and other cruel, inhuman or degrading treatment or punishment.[3337]

States are prohibited from limiting or derogating from their treaty obligations to respect these rights.[3338]

These prohibitions are the embodiment of the rules of customary international law and may not be derogated from in any way.[3339]

The imposition of the death penalty following an unfair trial constitutes a violation of the right to life and of the prohibition of inhuman or degrading treatment or punishment.[3340]

Some international human rights treaties require the abolition of the death penalty, in peacetime, or at all times.[3341]

Other international standards encourage the progressive restriction of punishment and its eventual abolition.[3342]

([3335]) Guideline 47§6 (c) of the Principles of Legal Aid.

([3336]) Article 6 of the International Covenant, article 4 of the African Charter, and article 4 of the American Convention; see article 3 of the American Declaration, and article 6 of the Convention on the Rights of the Child.

Special Rapporteur on extrajudicial executions: §14 ,2012 ,UN Doc. A/67/275.

([3337]) Among other criteria, Article 5 of the Universal Declaration, Article 7 of the International Covenant, Article 5 of the African Charter, Article 5 of the American Convention, Article 8 of the Arab Charter, and Article 3 of the European Convention.

([3338]) Article 4(2) of the International Covenant, Article 27 (2) of the American Convention, Article 4(2) of the Arab Charter, and Article 15 (2) of the European Convention.

([3339]) General comment 24 of the Human Rights Committee, §8; see, Special Rapporteur on extrajudicial executions, 275/2012 ,UN Doc. A/67, §11; General Comment 2 of the Committee against Torture, §1.

([3340]) Öcalan v. Turkey (46221) / 99), Grand Chamber of the European Court. 169- §§166 (2005).

([3341]) The Second Optional Protocol to the International Covenant, the Protocol to the Inter-American Convention on Human Rights to Abolish the Death Penalty, Protocol 6 and Protocol 13 to the European Convention.

([3342]) Article 6(2) and(6) of the International Covenant; see Article 4(2) and(3) of the American Convention.

See Resolution 65/206 of the United Nations General Assembly, §3 (c); Concluding Observations of the Human Rights Committee: United States of America,. §29 (2006) UN Doc. CCPR/C/USA/CO/3/Rev. 1.

States parties to treaties aiming at the abolition of the death penalty are prohibited from extraditing, deporting or forcibly transferring a person to the jurisdiction of a State for the purpose of prosecution, if there are substantial grounds for believing that there is a real risk that he or she will face the death penalty.

This includes States parties to the protocols listed in section A in the footnote, all States parties to the European Convention, and parties to the International Covenant that have abolished the death penalty.[3343]

All States should refuse requests for the extradition of anyone at risk of the death penalty, in the absence of credible, effective and binding assurances that the death penalty will not be sought or applied against them.[3344]

The international community, regional non-governmental organizations, courts, experts and United Nations bodies, including the African Commission, encourage the abolition of the death penalty.[3345]

States that have not yet abolished the death penalty have called for a moratorium on executions as a first step towards this end.[3346]

International criminal tribunals established by the international community may not impose the death penalty, although the jurisdiction of these tribunals includes the most heinous crimes, including genocide, crimes against humanity and war crimes.[3347]

The Council of Europe has made the abolition of the death penalty a condition of its membership and organizes campaigns worldwide for the abolition of the death penalty.[3348]

In 2010, the European Court noted that the death penalty could be considered inhuman and degrading treatment and concluded that Article 2 of the European Convention (Right to life) had been amended with a view to outlawing the death penalty.[3349]

The American Convention expressly prohibits the reintroduction of the death penalty after its[3350] abolition.

([3343]) Al-Qadi v. Canada, Human Rights Commission, / UN Doc. CCPR 6/ §10 (2002) C/78/D/829/1998; Al-Saadoun and Mufdhi v. United Kingdom (61498) / 08), European Court §115- § 145(2010) and 160-166; Special Rapporteur on Extrajudicial Executions, UN Doc . 75- §§74 (2010) A/67/275.

([3344]) Article 9 of the Inter-American Convention on Extradition; see Article 11 of the European Convention on Extradition, Article 4(3) of the Protocol amending the European Convention on the Suppression of Terrorism, Article 21 of the European Convention on the Prevention of Terrorism, and Article 16 of the Council of Europe Convention on Illicit Traffic by Sea.
OHCHR Resolution 2005/59, §10.

United [3345]Nations General Assembly: Resolution 32 / §1 ,61, Resolution 67/176, § §1, 3 and 4-6; Resolution 2005/59 of the Office of the High Commissioner for Human Rights, §5 (a); Concluding observations of the Human Rights Committee: Chad, 2009 (UN Doc. CCPR/C/TCD/CO/1) §19, Cameroon, §14 (2010) UN Doc. CCPR/C/CAM/CO/4, Russian Federation, §12 (2009) UN Doc. CCPR/C/RUS/CO/6; see Inter-American Court: Advisory Opinion §57 (1983) 83/OC-3, Da Costa Cadogan v. Barbados, 49 § (2009); African Commission: Resolution 136, 3 § (2008), International Rights and Others v. Botswana (240) / 2001), 52 § (2003); Council of Europe Fact Sheet on the Death Penalty (2007).

([3346]) Section N(9) (d) of the Principles of Fair Trial in Africa.
United Nations General Assembly: Resolution 67 / §4 ,176 (e), Resolution §3 , 206/65 (d), Resolution 62 / §2 149 (d); Office of the High Commissioner for Human Rights: Resolution §5 ,59/2005 (a), Resolution 1997 / §5 ,12; African Commission: Resolution §2 ,136, International Rights Organization et al. v. Botswana (240) / 2001), 52 § (2003); Concluding Observations: Uganda, Third Periodic Report (. §V)h(،(2009.

UN [3347]Security Council: Resolution 827 (1993), Resolution 955 (1994); see UN Secretary-General, 616 / §64 (2004) UN Doc. S/2004d.

Council [3348]of Europe Fact Sheet on the Death Penalty (2007).

([3349]) Al-Saadoun and Mufdhi v. United Kingdom (61498) / 08), European Court § §115 (2010) and 120; see Special Rapporteur on Torture, . 6- §§5 (2012) UN Doc. A/67/279.

([3350]) Article 4(3) of the American Convention.

The Special Rapporteurs on extrajudicial executions and on torture consider them to be in violation of the provisions of the International Covenant.[3351]

The United Nations General Assembly also called on States that have abolished the penalty not to re-impose it.[3352]

The American Convention also explicitly prohibits the expansion of the scope of the death[3353] penalty.

The Special Rapporteur on extrajudicial executions considers this contrary to the purposes of article 6 of the International Covenant.[3354]

The Office of the High Commissioner for Human Rights, the Human Rights Committee and the Special Rapporteur on extrajudicial executions have called on States that apply the death penalty not to expand its application.[3355]

The circumstances in which the death penalty can be applied in States that still apply it remain extremely restrictive. The Special Rapporteur on extrajudicial executions has stressed that "extrajudicial executions carried out outside these borders are unlawful killings".[3356]

Second: Prohibition of the mandatory death penalty

Mandatory imposition of the death penalty is prohibited, even for the most serious crimes.[3357]

Mandatory death sentences negate the ability of courts to consider relevant evidence and circumstances that could mitigate punishment when sentencing a person convicted of a criminal offence. It prevents the court from taking into account the different degrees of moral responsibility. The human rights treaty monitoring bodies, experts and the Inter-American Court have noted that such sentences also make it inevitable to sentence people to death even though the punishment is disproportionate to the circumstances of the crime; this is inconsistent with the right to life. What is required is that sentencing be built on an individual basis to prevent arbitrary deprivation of life.[3358]

There is nothing to alleviate the illegality of the mandatory death penalty: there is no possibility that the charge will be reduced from a mandatory death penalty to a lighter penalty (from murder

---

Special [3351]Rapporteur on Torture, 279 / §76 (2012) UN Doc. A/67, USA, 1998) ,UN Doc. E/CN4. /1998/68/Add. 3) §19; Special Rapporteur on Torture, 44/2009) UN Doc. A/HRC/10). §30.

([3352]) Resolution 67/176 of the United Nations General Assembly, §5.

([3353]) Article 4(2) of the American Convention.

See Advisory Opinion 83 / OC-3, Inter-American Court,. §67- §76.

([3354]) Special Rapporteur on extrajudicial executions, United States of America, 1998) UN Doc. E/CN. 4/1998/68/Add. 3) §19; see Preliminary Observations of the Commission on Human Rights: Peru, UN Doc. §15 (1996) CCPR/C/79/Add. 67.

Resolution [3355]2005/59 of the Commission on Human Rights, §5 (b); Concluding observations of the Human Rights Committee: Central African Republic, UN Doc §13 (2006) CCPR/C/CAF/CO/2; Special Rapporteur on extrajudicial executions, United States of America, UN Doc §156 (1998) E/CN. 4/1998/68/Add. 3 (d).

([3356]) Special Rapporteur on Extrajudicial Executions,. §50 (2010) UN Doc. A/HRC/14/24.

Special [3357]Rapporteur on extrajudicial executions: §51 (2010) UN Doc. A/HRC/14/24 (d), 20/2007) UN Doc. A/HRC/4) 56- § §55; Concluding observations of the Human Rights Committee: Botswana, UN Doc §13 (2008) CCPR/C/BWA/CO/1; Special Rapporteur on Torture,. §59 (2012) UN Doc. A/67/279.

Special [3358]Rapporteur on Extrajudicial Executions, UN Doc. A/HRC/4/20 ،64- §§63 (2004) UN Doc. E/CN. 4/2005/7 §55- §66 (2007); Commission on Human Rights: Thompson v. Saint Vincent, 2/ §8 (2000) UN Doc. CCPR/C/70/D/806/1998, Kennedy v. Trinidad and Tobago, 1998/3/ §7 (2002) UN Doc. CCPR/C/74/D/845, Carpo et al. v. Philippines, 2002/3/ §8 (2003) UN Doc. CCPR/C/77/D/1077, Larrañaga v. Philippines, 2005/2 / §7 (2006) UN Doc. CCPR/C/87/D/1421, Mwamba v. Zambia, 2006/3 / §6 (2010) UN Doc. CCPR/C/98/D/1520; Inter-American Court: Hilaire, Constantin, Benjamin et al. v. Trinidad and Tobago, §84- § 109(2002); Boyce et al. v. Barbados, (- §47 (2007) 63; Raxcaco-Reyes v. Guatemala, §73- § 82(2005); Jacob v. Grenada (12). 158), U.S. Commission §70- §71(2002).

to manslaughter, for example), and there is no procedure for seeking and granting mercy, which can correct the illegality of this penalty.[3359]

Third: The penalty may not be applied retroactively with the right to benefit from legislative reforms

The death penalty may only be imposed for the most serious crimes, per the legislation in force at the time of the commission of the crime.[3360]

This is consistent with the prohibition of imposing a heavier penalty than the penalty applicable in law at the time of the commission of the crime.[3361]

Moreover, a person accused or convicted of a major crime must benefit from amendments to laws that impose a lighter penalty for that crime following his indictment or conviction.[3362]

When the death penalty is abolished, all death sentences shall be commuted. The new provisions must respect international standards and should take into account the period of time spent on death row by the convicted person.[3363]

Fourth: Scope of Crimes Punished by Death

The death penalty may only be imposed for the most serious crimes.[3364]

The Human Rights Committee considers that “the phrase 'most serious crimes' should be understood in the strict sense that the death penalty should be a very exceptional measure”.[3365]

Under the death penalty safeguards, crimes punishable by death should not exceed “intentional crimes with lethal or other extremely grave consequences”.[3366]

Based on an extensive study of the jurisprudence of United Nations bodies, the Special Rapporteur on extrajudicial executions clarified, in 2007, that the phrase "the most serious crimes" should be understood to mean limiting the crimes punishable by death to those that have the intent to kill, and lead to loss of life.[3367]

In 2012, the Special Rapporteur on extrajudicial executions reiterated that "the death penalty may only be imposed for murder...".[3368]

Concerns continue to be raised about laws leading to the imposition of the death penalty for crimes not covered by the description of the "most serious".[3369]

([3359]) Inter-American Court: Boyce et al. v. Barbados, (2007) 60- § §59, DaCosta Cadogan v. Barbados, 57 § (2009); Thompson v. St. Vincent, Commission on Human Rights, 1998 / UN Doc. CCPR/C/70/D/806 . 2/ §8 (2000).

([3360]) Article 6(2) of the International Covenant, Article 7(2) of the African Charter, Article 4(2) of the American Convention, Article 6 of the Arab Charter, Article 2(1) of the American Convention, Paragraph 2 of the Death Penalty Safeguards, and Section N(9) (b) of the Principles of Fair Trial in Africa.

([3361]) Article 11 (2) of the Universal Declaration, Article 15 (1) of the International Covenant, Article 9 of the American Convention, Article 15 of the Arab Charter, Article 7 of the European Convention, and Section N(7) (a) of the Principles of Fair Trial in Africa; see Article 7 of the African Charter.

Paragraph [3362]2 of the death penalty safeguards; see article 15 (1) of the International Covenant, article 9 of the American Convention, article 15 of the Arab Charter, and section n(7) (b) of the Principles of Fair Trial in Africa.

Scopola v. Italy (No. 2) (10249) / 03), Grand Chamber of the European Court §109 (2009).

Concluding [3363]observations of the Human Rights Committee: Rwanda, UN Doc §14 (2009) CCPR/C/RWA/CO/3, Tunisia, UN Doc. CCPR/C/TUN/CO/5. §14 (2008).

([3364]) Article 6(2) of the International Covenant, Article 4(2) of the American Convention, Article 6 of the Arab Charter, Paragraph 1 of the Death Penalty Safeguards, and Section N(9) (b) of the Principles of Fair Trial in Africa.

([3365]) General Comment 6 of the Human Rights Committee, §7.

([3366]) Paragraph 1 of the death penalty safeguards.

Special [3367]Rapporteur on extrajudicial executions, § §53 (2007) UN Doc. A/HRC/4/20 and 65.

([3368]) Special Rapporteur on Extrajudicial Executions,. §67 (2012) UN Doc. A/67/275.

Such as burglary with the use of violence.[3370]

kidnapping and abduction;[3371]

and economic crimes such as bribery;[3372]

and drug-related offenses;[3373]

Crimes related to consensual sexual activities;[3374]

and another related to religion;[3375]

and political crimes such as treason and membership of political groups.[3376]

The American Convention explicitly prohibits the imposition of the death penalty for political crimes or related crimes of public affairs.[3377]

Fifth: Categories of persons who may not be executed

International standards restrict the imposition of the death penalty on persons belonging to particular groups.

The American Committee clarified that the American Convention requires a procedure that allows the accused to make interventions on the prohibition of the death penalty in his case, and on any extenuating circumstances in it. The sentencing court must have the discretion to consider these factors when deciding whether to impose the death penalty or another more appropriate penalty.[3378]

1. Juveniles under the age of 18

The death penalty may not be imposed on persons who were not yet eighteen years of age at the time of their commission of the crime, not to mention that they may not be executed, regardless of their age at the time of their trial or sentence.[3379]

If there is doubt about whether a person is under the age of 18, they should be presumed to be a child, unless the allegation proves otherwise.[3380]

([3369]) United Nations Secretary-General, 29/2012) UN Doc. A/HRC/21) 30- § §24; Special Rapporteur on extrajudicial executions,. §51 (2007) UN Doc. A/HRC/4/20.

([3370]) Concluding observations of the Human Rights Committee: Kenya,. §10 (2012) UN Doc. CCPR/C/KEN/CO/3)AV.

([3371]) Raxcaco-Reyes v. Guatemala, Inter-American Court, (2005) §71- §72.

Special [3372]Rapporteur on extrajudicial executions, §556 UN Doc. E/CN. 4/1996/4; Special Rapporteur on Torture, China, §82 (2006) UN Doc. A/CN. 4/2006/6/Add. 6 (r); Concluding observations of the Human Rights Committee: Madagascar, 2007) ,UN Doc. CCPR/C/MDG/CO/3). §15.

Concluding [3373]observations of the Human Rights Committee: Thailand, / UN Doc. CCPR §13 (2005) ,CO/84/tha; Special Rapporteur on Torture, UN Doc. §66 (2009) A/HRC/10/44.

Concluding [3374]observations of the Human Rights Committee: Sudan, UN Doc §8 (1997) ,CCPR/C/79/Add. 85, Islamic Republic of Iran, §8 (1993) ,UN Doc. CCPR/C/79/Add. 25; Special Rapporteur on extrajudicial executions, Nigeria, UN Doc. A/HRC/8/3/Add. 3 §76 - §77 (2008).

([3375]) The Secretary-General of the United Nations, §19, §28- §29 and§30 (2012) UN Doc. A/HRC/21.

([3376]) Concluding observations of the Human Rights Committee: United Kingdom (Turks and Caicos Islands), §37 (2001) ,UN Doc. CCPR/CO/73/UKOT, Libya,. §24 (2007) UN Doc. CCPR/C/LIB/CO/4.

([3377]) Article 4(4) of the American Convention.

([3378]) Jacob v. Grenada (12). 158), U.S. Commission §70- § 71(2002).

([3379]) Article 6(5) of the International Covenant, Article 37 (a) of the Convention on the Rights of the Child, Article 5(3) of the African Charter on the Rights of the Child, Article 4(5) of the American Convention, Rule 2/17 of the Beijing Rules, Paragraph 3 of the Death Penalty Safeguards, Article 68 of the Fourth Geneva Convention, Article 77 (5) of Protocol I and Article 6(4) of Protocol II to the Geneva Conventions.

Resolution 63/241 of the United Nations General Assembly, §43 (a); Resolution 10/2 of the Human Rights Council, §11; Johnson v. Jamaica, Commission on Human Rights, . 4/10-3/ §10 (1998) UN Doc. CCPR/C/64/D/592/1994.

([3380]) Resolution 19/37 of the Human Rights Council, §55.

However, the wording of Article 7 of the Arab Charter seems to allow for an exception to this prohibition if the law in force at the time of the commission of the offence so permits. However, all States parties to the Arab Charter are prohibited from applying the death penalty to any person under the age of 18 at the time of the commission of the crime, as they are also parties to the Convention on the Rights of the Child, which is more stringent in protecting juveniles.[3381]

The Human Rights Committee and the Inter-American Commission consider the prohibition on the execution of children to be a peremptory norm of customary international law, binding on all States, and are not permitted to derogate from its provisions.[3382]

2. The Elderly

The American Convention prohibits the execution of persons over the age of seventy.[3383]

The United Nations Economic and Social Council has recommended that States should set "an age limit beyond which a person may not be sentenced to death or executed".[3384]

The Human Rights Committee has raised concerns about the execution of older persons.[3385]

3. Persons with mental or intellectual disabilities or disorders

States shall not impose the death penalty on or execute persons suffering from mental disabilities, disorders or low IQs. This includes people who have developed mental disorders after being sentenced to death.[3386]

The Inter-American Court held that the failure to conduct a psychological assessment of the accused or to inform him of his right to make such an assessment, when the accused's mental abilities were in question in a case in which he could be sentenced to death, violated his right to a fair trial.[3387]

4. Pregnant and lactating women

The death penalty may not be imposed on a pregnant woman.[3388]

This prohibition is considered a categorical rule of customary international law.[3389]

Similarly, the death penalty may not be carried out on a mother of young children.[3390]

([3381]) Article 43 of the Arab Charter.

([3382]) General Comment 24 of the Human Rights Committee, §8; Michael Dominguez v. United States (12). 285), U.S. Commission § §84 (2002) and 85; see Amnesty International, Exemption of Child Offenders from the Death Penalty under Public International Law, Document No.: 2003/004 /. ACT 50.

([3383]) Article 4(5) of the American Convention.

[3384]Resolution 1989/64 of the Economic and Social Council, §1 (c).

([3385]) Concluding observations of the Human Rights Committee: Japan, UN Doc. §16 (2008) CCPR/C/JPN/CO/5.

([3386]) Paragraph 3 of the death penalty safeguards.

Resolution 2005/59 of the Office of the High Commissioner for Human Rights, §7 (c); Human Rights Committee: Concluding Observations: United States of America, UN Doc §7 (2006) CCPR/C/USA/CO/3/Rev. 1, Japan, / UN Doc. CCPR/C §16 (2008) JPN/CO/5, Sahadath v. Trinidad and Tobago, UN Doc 2/ §7 (2000) CCPR/C/78/D/684/1986; Special Rapporteur on Extrajudicial Executions, 457 / §115- §116 (1996) UN Doc. A/51.

([3387]) Da Costa Cadogan v. Barbados, Inter-American Court (2009) §87- §90.

([3388]) Article 6(5) of the International Covenant, Article 4(2) of the Protocol on the Rights of Women in Africa, Article 4(5) of the American Convention, Article 7(2) of the Arab Charter, Paragraph 3 of the Death Penalty Safeguards, Section n(9) (c) of the Principles of Fair Trial in Africa, Article 76 (3) of Protocol I, and Article 6(4) of Protocol II.

([3389]) General Comment 24 of the Human Rights Committee, §8.

([3390]) Article 4(2) of the Protocol on the Rights of Women in Africa, Article 7(2) of the Arab Charter, Paragraph 3 of the Death Penalty Safeguards, Section N(9) (c) of the Principles of Fair Trial in Africa, Article 76 (3) of Protocol I, and Article 6(4) of Protocol II.

Special Rapporteur on extrajudicial executions, § §115 (1996) UN Doc. A/51/457; resolution 2005/59 of the Office of the High Commissioner for Human Rights, §7 (b).

The Arab Charter sets a minimum period of two years for the time period of child custody and breastfeeding and specifically stipulates that the best interest of the child shall be a primary consideration.

Sixth: Strict adherence to all fair trial rights

Since the death penalty is irreversible, proceedings in cases involving the death penalty must strictly adhere to all relevant international standards protecting the right to a fair trial, no matter how heinous the crime.[3391]

The proceedings shall conform to the highest standards of independence, competence, objectivity and impartiality that judges and juries should possess. All individuals at risk of the death penalty must benefit from the services of a competent lawyer to defend them at all stages of the proceedings.[3392]

They must be presumed innocent until proven guilty on the basis of clear and convincing evidence that leaves no room for an alternative interpretation of the facts, and on the strict application of the highest standards of evidence-gathering and evaluation of probative evidence. Furthermore, all mitigating factors must be taken into account. The proceedings shall also ensure the right to a review by a higher tribunal of the facts and legal aspects of the case, so as to include judges who have not participated in the hearing of the case at first instance. Those facing the death penalty must be guaranteed the right to seek pardon and commutation (commutation of the sentence with a lighter penalty) and to seek clemency.[3393]

Since it is never possible to restrict the right to life, this applies equally to emergency situations, including armed conflict.[3394]

Amnesty International adopts the position that all executions constitute a violation of the right to life.

Although this view has not yet prevailed worldwide, international bodies and United Nations human rights experts, along with regional human rights courts, all agree that the execution of a person after an unfair trial is a clear violation of the right to life.[3395]

Imposition of the death penalty based on criminal proceedings contrary to the provisions of the International Covenant on Civil and Political Rights is a violation of the right to life.[3396]

The Human Rights Committee, the African Commission, the Inter-American Court and the Inter-American Commission have all found that violations of the right to life have been committed in a number of cases, including major crimes in which fair trial provisions were violated.[3397]

[3391]See paragraph 5 of the Death Penalty Safeguards.
Human Rights Committee: General Comment 6 §7, General Comment 32 §59.

[3392]See Human Rights Committee: Pinto v. Trinidad and Tobago, UN Doc 5/ §12 (1990) CCPR/C/39/D/232/1987, Kelly v. Jamaica, UN Doc . 10/ §5 (1991) CCPR/C/41/D/253/1987.

([3393]) Special Rapporteur on Extrajudicial Executions,. §111 (1996) UN Doc. A/51/457.

([3394]) General Comment 29 of the Human Rights Commission, §11 and§15; Inter-American Commission, Report on Terrorism and Human Rights (2002), section 3(a) (1) (b) §94.

([3395]) General Comment 32 of the Human Rights Committee, §59, Domukovsky et al. v. Georgia, 1995 / UN Doc. CCPR/C/62/D/623,624,626,627 10/ §18 (1998), Kelly v. Jamaica, 1987 / UN Doc. CCPR/C/41/D/253 14/ §5 (1991); Inter-American Court: Dacosta Cadogan v. Barbados, Inter-American Court 47 § § (2009) and 85, Advisory Opinion 99 / OC-16 §137- §135 (1999), Advisory Opinion 83 / §55 (1983) OC-3; Inter-American Commission: Report on Terrorism and Human Rights, (2002), section 3(a) (1) (b) §94.

([3396]) Article 6(2) of the International Covenant; see Article 4 of the African Charter, Article 4(2) of the American Convention, and Article 5 of the Arab Charter.
See, for example, the Special Rapporteur on the independence of judges and lawyers. §62 (2007) UN Doc. A/62/207.

[3397]See, e.g., Commission on Human Rights: Mbengi v. Zaire (16) / 1977), 2/14-1/ §14 § (1983) UN Doc. A/38/40 Supp. No 40 and 17, Ideva v. Tajikistan, 2004/7/9-2/ §9 (2009) UN Doc. CCPR/C/95/D/1276, Aliyev v. Ukraine, 1997/4/7-2 / §7 (2003)

The Special Rapporteur on extrajudicial executions stressed that military courts, and other special courts, should not have the power to impose the death penalty.[3398]

While the Working Group on Arbitrary Detention adopted the same view towards military courts.[3399]

The Inter-American Court and the Inter-American Commission found that violations of fair trial rights occurred at the sentencing stage.[3400]

The Special Rapporteur on extrajudicial executions warned against systems that rely excessively on heavily biased texts for victims in cases of major crimes, raising concerns that due process and the independence and impartiality of justice may be[3401] undermined.

The imposition of the death penalty on discriminatory grounds constitutes a form of arbitrary deprivation of the right to life.[3402]

Concerns have been repeatedly expressed about the imposition of the death penalty on discriminatory grounds, including the disproportionate imposition of the death penalty on members of particular ethnic groups and groups. Women were disproportionately convicted of adultery, which in some countries amounts to stoning to death, with its cruel, inhuman and degrading punishment.[3403]

Furthermore, the Human Rights Committee has concluded that a death sentence imposed after an unfair trial violates the prohibition on inhuman treatment.[3404]

The European Court ruled that the deportation of two persons to Syria, where they faced a real risk of being sentenced to death after an unfair trial, constituted a violation of both the right to life and the prohibition on cruel, inhuman and degrading treatment or punishment.[3405]

The Special Rapporteur on extrajudicial executions stressed that: «.. When the state judicial system fails to ensure respect for fair trials, the government should impose a moratorium on[3406] executions.

Subsections 28/6/1 and 28/6/4 do not repeat all fair trial guarantees that apply to every person accused of a criminal offense. They only cover provisions whose interpretation in relation to

---

UN Doc. CCPR/C/78/D/781; African Commission: Malawi African Society et al. v. Mauritania (54) / 91, 61/91, 98/93, 164/97 to 196/97 and 210/98), African Commission, Annual Report 13 9 § § (2000) and 120; pen International, the Constitutional Rights Project, International Rights Organization acting for Ken Saro-Wiwa Jr., and Civil Liberties Organization v. Nigeria (137) / 94, 139/94, 154/96 and 161/97), Annual Report 12 103 §,(1998); Medellín et al. v. United States (12). 644), 90/09 Report of the Inter-American Commission §148- §124 (2009), 154 - 155; DaCosta Cadogan v. Barbados, Inter-American Court (2009) §90- §86, 128 (b).

([3398]) Special Rapporteur on extrajudicial executions, 2012) UN Doc. A/67/275), United States of America, UN Doc . §41- §38 (2009) A/HRC/11/2/Add. 5.

([3399]) Working Group on Enforced Disappearances, UN Doc. §80 (1998) E/CN4. /1999/63.

([3400]) American Commission: Jacob v. Grenada (12). 158), §70- §71 (2002), Medellín et al. v. United States (12). 644), Report 90/09 of the American Commission § 146- §148(2009).

Special [3401]Rapporteur on Extrajudicial Executions, §64 ,(2006) UN Doc. A/61/311.

([3402]) William Andrews v. United States (11). 139), Inter-American Commission, Report 57/96 § 177 (1996); see Special Rapporteur on Extrajudicial Executions, 275 / §14 ,(2012) UN Doc. A/67..

([3403]) Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, §23 (2008) UN Doc. CERD/C/USA/CO/6; Special Rapporteur on Torture, 3/ §40 (2008) UN Doc. A/HRC/7; UN Secretary-General, 280 / §72 (2010) UN Doc. A/65..

Commission [3404]on Human Rights, Larrañaga v. Philippines, / UN Doc. CCPR 11/ §7 (2006) C/87/D/1421/2005, Mwamba v. Zambia, UN Doc . 8/ §6 (2010) CCPR/C/98/D/1520/2006.

([3405]) Bader and Qanbar v. Sweden (13284/ 04), European Court (2005) §42- §48.

Special [3406]Rapporteur on extrajudicial executions, §51 (2010) UN Doc. A/HRC/14/24a, Afghanistan, UN Doc §65 §A/HRC/11/2/Add. 4 and 89..

death penalty cases provides additional protection, or where additional safeguards apply in this regard.

1-The right to a competent lawyer

Every person detained or accused of a criminal offense has the right to a lawyer during his detention, at the initial stages of the proceedings, during his trial and the various stages of appeal.[3407]

In addition, the right to a lawyer extends to clemency proceedings and individuals seeking a review of their verdicts by the constitutional courts competent in major crimes cases.[3408]

A person accused of a major crime has the right to be represented by a lawyer of his choice, even if this requires the postponement of the hearing.[3409]

If a person accused of a criminal offence punishable by death does not have a lawyer of his choice, the interest of justice always requires that he be assisted by a designated lawyer free of charge, when necessary.[3410]

Therefore, the state must provide sufficient resources to appoint competent lawyers to provide legal assistance and defend defendants in cases that can be punished by the death penalty.[3411]

If a lawyer is appointed to represent the accused free of charge, the accused does not have an absolute right to choose whomever he wishes. However, in death penalty cases, the State should take into account the preferences of the accused, including at the appeal stage.[3412]

Death penalty cases may not proceed unless the accused has effective legal assistance from a competent lawyer.[3413]

Principle 3 of the Principles of Legal Aid, paragraph 5 of the Death Penalty Safeguards, article 14 (3[3407]) (d) of the International Covenant, article 7(1) (c) of the African Charter, article 8(2) (d) - (e) of the American Convention, articles 16 (3) and(4) of the Arab Charter, article 6(3) (c) of the European Convention, principle 1 of the Basic Principles on the Role of Lawyers, and section n(2) (c) of the Principles of Fair Trial in Africa.

Human Rights Committee, Clive Johnson v. Jamaica, UN Doc 2/ §10 (1998) CCPR/C/64/D/592/1994, Brown v. Jamaica, UN Doc 6/ §6 (1999) CCPR/C/65/D/7751997, Idieva v. Tajikistan, UN Doc 5/ §9 (2009) CCPR/C/95/D/1276/2004, Kelly v. Jamaica, UN Doc . 10/ §5 (1991) CCPR/C/41/D/253/1987.

([3408]) Guideline 6 §47 (c) of the Principles of Legal Aid; see section H(c) of the Principles of Fair Trial in Europe.

Commission on Human Rights, Currie v. Jamaica, / UN Doc. CCPR 4/13-3/ §13 (1994) C/50/D/337/1989, Henry v. Trinidad and Tobago, 6/ §7 (1999) UN Doc. CCPR/C/64/D/752/1997; Hilaire, Konstantin, Benjamin et al. v. Trinidad and Tobago (94) / 2002), Inter-American Court §152 (2002) (b)..

Pinto [3409]v. Trinidad and Tobago, 1987 / UN Doc. CCPR/C/39/D/232 5/ §12 (1990). See African Commission: Lawyers without Borders (acting on behalf of Bwambamyi) v. Burundi (231)/ 990) Annual Report 5 §14 (2000) and § 27 - §30, Amnesty International et al. v. Sudan (48) / 90 , 50/91, 52/91 and 89/93) Annual Report 13 §64- §66 (1999), Pen International et al. acting on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organization v. Nigeria (137) / 94 , 139/94, 154/96 and 161/97) Annual Report 12 (1998) §97 - §103.

Principle [3410]3 of the Principles of Legal Aid, and Section H(a) and(c) of the Principles of Fair Trial in Africa.

Robinson v. Jamaica, Human Rights Committee, UN Doc 3/10-2/ §10 § (1989) CCPR/C/35/D/223/1987; see ECOSOC Safeguards Relating to the Death Penalty, §5.

([3411]) Principle 3 of the Basic Principles on the Role of Lawyers; see Principles 2 15§and 37§13 of the Principles of Legal Aid.

Special Rapporteur on extrajudicial executions, §547 UN Doc. A/CN. 4/1996/4; see Special Rapporteur on extrajudicial executions, United States of America, UN Doc §16- §13 A/HRC/11/2/Add. 5, 21-22, and 74; see Medellín et al. v. United States (12). 644), Report 90/09 of the American Commission 139 § (2009).

[3412]See Pinto v. Trinidad and Tobago, Commission on Human Rights, UN Doc 5/ §12 (1990) CCPR/C/39/D/232/1987; Civil Liberties Organization, Centre for Legal Defence and Legal Aid Project v. Nigeria (218) / 98, African Commission, Annual Report 14 § § §31-28,(2001).

[3413]Robinson v. Jamaica, Human Rights Commission, / UN Doc. CCPR 3/10-2/ §10 (1989) C/35/D/223/1987; see Abdul Salim Yassin and Noel Thomas v. Guyana, Commission on Human Rights, 1996 / UN Doc. CCPR/C/62/D/676 . 8/ §7 (1989).

It is the duty of the state, and the court in particular, in death penalty cases, to ensure that the assigned lawyer is competent, has the required skills and experience to face the gravity of the charge against his client, and to defend him effectively.[3414]

If the authorities or the court are notified that the lawyer is ineffective, or his lack of effectiveness is apparent, the court must ensure that the lawyer performs the duties assigned to him, or replace him.[3415]

2. The right to adequate time and facilities for the preparation of the defense

All persons accused of a criminal offence punishable by death shall be entitled to adequate time and facilities for the preparation of their defense.[3416]

The defense should seek to gain additional time to prepare its defense if the need arises; the court should give it sufficient time to prepare such a defense in response to its request.[3417]

The Inter-American Court ruled that the defendant's rights to adequate time and facilities to prepare his defense and to be informed in advance of the charges were violated when, at the end of a trial of a person accused of aggravated rape, the prosecution asked the court to find the defendant guilty of murder, under which he could be sentenced to death. The court responded to his request without giving the defense the opportunity to respond to the murder charge, and without informing the accused of his right to request an adjournment or to present additional evidence.[3418]

3-The right to complete the procedures without undue delay

Proceedings in capital cases, including investigation, trial and appeal proceedings, must be completed without undue delay.[3419]

While the reasonableness of delays is determined on a case-by-case basis, the Human Rights Committee has confirmed that the following delays have been unduly prolonged in cases involving major crimes: a one-week delay between the arrest of the accused and his or her being brought before a judge (in violation of article 9 of the International Covenant); detention of the accused for 16 months prior to the commencement of his or her trial; and a 31-month delay between trial and the decision to dismiss an appeal.[3420]

([3414]) Principle 13 of the Principles of Legal Aid.

See [3415]Pinto v. Trinidad and Tobago, Human Rights Committee, UN Doc 5/ §12 (1990) CCPR/C/39/D/232/1987, Kelly v. Jamaica, UN Doc 10/ §5 (1991) CCPR/C/41/D/253/1987, Chan v. Guyana, UN Doc 3/6-2/ §6 § (2005) CCPR/C/85/D/913/2000, Brown v. Jamaica, 8/ §6 (1999) UN Doc. CCPR/C/65/D/775/1997, Parle v. Jamaica, . 3/ §9 (1996) UN Doc. CCPR/C/57/D/546/1993.

([3416]) Article 14 (3) (b) of the International Covenant, Article 8(2) (c) of the American Convention, Article 16 (2) of the Arab Charter, Article 6(3) (b) of the European Convention, and Section N(3) of the Principles of Fair Trial in Africa.

ECOSOC Resolution 1989/64, §1 (a); Kelly v. Jamaica, 1987/10 / §5 (1991) UN Doc. CCPR/C/41/D/253.

Commission [3417]on Human Rights: Kelly v. Jamaica, / UN Doc. CCPR 9/ §5 (1991) C/41/D/253/1987, Larrañaga v. Philippines, UN Doc 5/ §7 (2006) CCPR/C/87/D/1421/2005, Chan v. Guyana, UN Doc 3/6-2/ §6 (2005) CCPR/C/85/D/913/2000; see Barry v. Jamaica, Human Rights Committee, 1988/4/ §11 (1994) UN Doc. CCPR/C/50/D/330.

Fermín [3418]Ramírez v. Guatemala, American Commission §58-§80 (2005).

([3419]) Articles 9(3) and 14 (3) (c) of the International Covenant, article 7(1) (d) of the African Charter, articles 7(5) and 8(1) of the American Convention, articles 5(3) and 6(1) of the European Convention, and article 14 (5) of the Arab Charter (on pre-trial detention).

Kelly v. Jamaica, 1987/1991) UN Doc. CCPR/C/41/D/253) . 12/ §5.

McLawrence [3420]v. Jamaica, Human Rights Commission, / UN Doc. CCPR 6/ §5 (1997) C/60/D/702/1996 and 5/11..

4. Right to appeal

Every person convicted of a crime for which he may be sentenced to death shall have the right to have his conviction and sentence reviewed by an independent, impartial and competent[3421] court.

The death penalty may not be carried out except after a final judgment has been issued by a competent court.[3422]

The Human Rights Committee has made it clear that depriving a person sentenced to death who was unable to pay for a lawyer's expenses of legal aid violated not only the right to a lawyer, but also the right to appeal.[3423]

The period of time during which the appeal should be filed must be long enough to enable the accused to view and review the court records and prepare his documents for appeal and application.[3424]

Once appeals are submitted in death penalty cases, the appellate body is obliged to consider and decide on them without undue delay.[3425]

5. Rights of Foreign Nationals

Foreign nationals (regardless of their immigration status) who have been arrested, detained or imprisoned shall be notified of their right to communicate with officials of the embassy of the country of their nationality, the consular body of their country, or any consular body concerned. If a person is a refugee or stateless, or is under the protection of an intergovernmental organization, he or she shall be notified of his or her right to contact the appropriate international organization or a representative of the State in which he or she permanently resides.[3426]

This right is also enshrined in treaties that impose duties to investigate and prosecute crimes under international law.[3427]

Consular officers (or representatives of the appropriate agencies concerned with the care of refugees and stateless persons) can provide a wide range of assistance, including arranging for the appointment of a lawyer, obtaining evidence from the home country and monitoring the treatment of detainees, including respect for the rights of the detained person.[3428]

Article 14 (5[3421]) of the International Covenant, article 8(2) (h) of the American Convention, article 16 (7) of the Arab Charter, article 2 of Protocol 7 to the European Convention, paragraph 6 of the death penalty safeguards, and section n(10) (b) of the Principles of Fair Trial in Africa; see article 7(a) of the African Charter.

([3422]) Article 6(2) of the International Covenant, Article 4(2) of the American Convention, Article 6 of the Arab Charter, and paragraph 5 of the death penalty safeguards.

([3423]) Human Rights Committee: General Comment §51 ,32, Mansaraj et al. v. Sierra Leone, 1998/6/ §5 (2001) UN Doc. CCPR/C/72/D/839, Aliboev v. Tajikistan, 2001/5/ §6 (2005) UN Doc. CCPR/C/85/D/985; see Civil Liberties Organization et al. v. Nigeria (218) / 98), African Commission, Annual Report 14 §32- §34 (2001).

[3424]See Special Rapporteur on extrajudicial executions, UN Doc. E/CN. 4/2006/Add. 2 (Sudan) §151 (2006).

Human [3425]Rights Committee: Thomas v. Jamaica, UN Doc 9/ §5 (1999) CCPR/C/65/D/614/1995, Mwamba v. Zambia, UN Doc . 6/ §6 (2010) CCPR/C/98/D/1520/2006.

United [3426]Nations General Assembly resolution 65/212, §4 (g); Human Rights Council resolution 12/6, §4 (b).

Article 36 of the Vienna Convention on Consular Relations, Article 17 (2) (d) of the Convention on Enforced Disappearances, Article 16 (7) of the Migrant Workers Convention, Principle 16 (2) of the Body of Principles, Guideline 43§3 (c) of the Principles on Legal Aid, Section M(2) (d) of the Principles on Fair Trial in Africa, and Principle 5 of the Principles Relating to Persons Deprived of their Liberty in the Americas.

Among [3427]others, article 6(3) of the Convention against Torture, article 10 (3) of the Convention on Enforced Disappearances, article 7(3) of the International Convention for the Suppression of Terrorist Bombings, and article 15 (3) of the Council of Europe Convention on the Prevention of Terrorism.

([3428]) Advisory Opinion 99 / OC-16 of the Inter-American Court (1999) §86; Avena and Other Mexican Nationals (Mexico v. United States of America), ICJ (2004) §85.

The International Court of Justice ruled that the failure of the United States of America to inform foreign nationals charged with major crimes of their rights to consular assistance constituted a violation of the rights of such individuals, as well as of the duties of the United States of America to foreign States under international law. The court considered that the United States of America is required to review the conviction of the individuals concerned and the sentences issued against them, and to reconsider them.[3429]

The Inter-American Court concluded that the imposition of the death penalty on a national of a foreign state, despite the authorities' failure to inform him of his right to consular assistance, violated his right to life.[3430]

In view of the assistance and protection that such representatives can provide, individuals who are nationals of the State that arrested or detained them, and of another foreign State, should be granted the right to communicate with and receive visits from the consular representatives of the latter State.[3431]

If a person is a national of two or more foreign countries, Amnesty International is of the view that they should be allowed to communicate with the representatives of each of these countries, and to receive visits and assistance from them, if they so choose.

Seventh: The right to seek pardon and commutation of sentence

Every person sentenced to death shall have the right to seek pardon or commutation of his sentence. (Replace the penalty with a lighter one.[3432]

The International Court of Justice has considered that these amnesty procedures, although issued by the executive branch and not the judiciary, are an integral part of the public system to ensure justice and fairness in the system of administration of justice.[3433]

The right to seek pardon or commutation of sentence requires an impartial and sufficient procedure that provides an opportunity to present all relevant evidence and evidence that would support the pardon of the[3434] accused.

It gives the competent officials the power to issue pardons or commute sentences. Legal aid should be present in such endeavors.[3435]

Fundamental safeguards for pardon and commutation proceedings include rights for the convicted person to:

makes an offer in support of their request and responds to comments made by others;

be informed in advance of when their application will be considered;

The decision shall be notified promptly;)3436(.

([3429]) ICJ: LaGran Case (Germany v. United States of America), (2001) §77, §89, §91, §123- § 125, §128 (3), §128 (7), Avena and Other Mexican Nationals (Mexico v. United States of America) §41, § 50-§51, §153(2004).

([3430]) Advisory Opinion 99 / OC-16 of the Inter-American Court (1999) §137; see decision 2002/62 of the Commission on Human Rights, Preamble §6 and§14.

See [3431]Rule 27 (2) of the European Rules for Preventive Detention 4/6/28.

([3432]) Article 6(4) of the International Covenant, Article 6 of the Arab Charter, Article 4(6) of the American Convention, Paragraph 7 of the Death Penalty Safeguards, and Section N(10) (d) of the Principles of Fair Trial in Africa.

Fermín Ramírez v. Guatemala, Inter-American Court (2005) . §107- §109.

Avena [3433]and Other Mexican Nationals (Mexico v. United States of America), I.C.J. 142 § (2004);see also Fermín Ramírez v. Guatemala, I.C.J. §109 (2005).

Hillier [3434]et al. v. Trinidad and Tobago, Inter-American Court (2002) §184- §189.

([3435]) Guideline 16 §47 (c) of the Principles of Legal Aid, and Section H(c) of the Principles of Fair Trial in Africa.

Special [3436]Rapporteur on extrajudicial executions, §59- §67 (2008) UN Doc. A/HRC/8/3; Baptiste v. Grenada (11). 743), Inter-American Commission §121 (2000); see United Nations General Assembly resolution 65/208, §5.

He receives legal assistance from a lawyer.

Such requests must be considered by the appropriate officials in good faith and in earnest.

In countries where Islamic law applies, where families of victims can accept "blood money" to waive their right to retribution from the perpetrator, there must be a separate system subject to the authorities for petitioners to turn to for pardon or commutation of sentence. The Special Rapporteur on extrajudicial executions has emphasized that while such regimes do not necessarily lack consistency with international human rights law, they must be applied in a non-discriminatory manner that does not violate the right to due process, including the right to a final judgement by a court, and the right to seek pardon or commutation of State powers.

Examples of discrimination that are not allowed include that only wealthy people can buy their freedom or life, or those systems that determine different levels of value of "blood money" on prohibited grounds such as the victim being a woman or a non-Muslim person.[3437]

The Human Rights Committee considered that the predominant role of the victim's family in deciding whether or not to carry out the death penalty on the basis of financial compensation (blood money) violates the International Covenant on Civil and Political Rights.[3438]ICCPR

Eighth: The death sentence may not be carried out during the consideration of the appeal or petitions for clemency

The death sentence may not be carried out until:[3439].

the accused exhausts all his rights of appeal;

Concludes consideration of appeals filed, including grievances and complaints to international and regional bodies, such as the International Commission of Human Rights, the Committee against Torture, the European Court or the Inter-American Commission;

The accused exhausts petitions for pardon or commutation of the sentence.[3440]

States should ensure that no one is executed during the consideration of any legal procedure or petition for clemency at the national or international level.[3441]

Officers responsible for the execution of death sentences should be adequately informed of the status of appeal procedures and petitions for clemency and instructed not to carry out the death sentence as long as there is an appeal or a procedure for requesting clemency under consideration.[3442]

Regional human rights courts and international and regional human rights bodies have made it clear that executions carried out while pre-trial proceedings are being considered constitute a violation of rights, including the right to redress. The infringement is aggravated when the court or tribunal has issued immediate or provisional measures to request a stay of execution of the sentence.[3443]

([3437]) Special Rapporteur on Extrajudicial Executions, . §55- §63 (2006) UN Doc. A/61/311.

Concluding [3438]observations of the Human Rights Committee: Yemen, / UN Doc. CCPR. §15 (2005) CCO/84/YEM.

([3439]) Article 4(6) of the American Convention, paragraph 8 of the Death Penalty Safeguards; see Articles 14 (5) and(6) of the International Covenant, and Article 6 of the Arab Charter.

([3440]) See M. Nowak, The United Nations International Covenant on Civil and Political Rights: A Commentary on the International Covenant, Second Revised Edition, Engel, 2005, p. 146.

[3441]Resolution 2005/59 of the Commission on Human Rights, §7 (j).

([3442]) Resolution 1996/15 of the Economic and Social Council, §6; Special Rapporteur on extrajudicial, summary or arbitrary executions, / UN Doc. E. §553 (1996) CN. 4/1996/4.

([3443]) pen International et al., on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization, v. Nigeria (137/94, 139/94, 154/96 and 161/97), 12th Annual Report of the African Commission §102- §103 ,(1998); Hilaire, Konstantin, Benjamin et al.

The International Court of Justice considered that the United States of America had breached its obligation when it executed a Mexican citizen despite the interim measures ordered by the Court to stay the execution of the sentence.[3444]

Ninth: The need for sufficient time to pass between the issuance of the death sentence and its execution

States must allow a sufficient period of time between the issuance and execution of the sentence to prepare for and conclude appeals, as well as petitions for clemency, so that the convicted person can manage his personal affairs.[3445]

If the death sentence is carried out hastily following the issuance of the sentence, this creates obstacles to or prevents appeals in the courts, petitions for clemency, and seeking redress from international human rights bodies. It also deprives the convicted person and their family of the opportunity to prepare themselves psychologically and say goodbye to each other.

Tenth: Duty to Transparency

The secrecy surrounding the death penalty is incompatible with the rights of convicted persons, their families and society at large. Such secrecy violates the right to a fair and public trial, the prohibition on cruel or degrading treatment, and the right to know.[3446]

Transparency is an essential condition for the public and the international community to know the way in which the death penalty is applied, and to make room for knowledge-based dialogue about its use.[3447]

It should publish precise details of each execution, including the name of the person, the charge against them, and the date and place of execution. Moreover, this information should be compiled, classified and published periodically at least once a year.[3448]

Transparency also requires that all convicted prisoners and their lawyers be officially informed of the date of execution of the sentence, well in advance to enable them to resort to possible remedies at the national or international level, and to prepare themselves for what will happen.[3449]

The family of anyone suspected of committing or convicted of a major crime has the right to visit them. They shall also have the right to be informed about the conduct of judicial proceedings

---

v. Trinidad and Tobago, Inter-American Court (94/2020), Inter-American Court § 198- §200 (2002); see also Al-Saadoun and Mufdi v. United Kingdom (61498) / 08, European Court § 151- §165 (2010).

([3444]) Avena and Other Mexican Nationals (Mexico v. United States of America), ICJ, Decision on the Request for Interpretation of the Decision of 31 March 2004 (19) January 2004 §50- §53 (2009) and§61 (2) - (3); see also LaGrand Case (Germany v. United States of America), ICJ §110- §116 (2001) and§128 (5).

ECOSOC [3445]Resolution 1996/15, §5; see International Rights and Others v. Botswana (240) / 2001), African Commission, §52 (2003); Special Rapporteur on Extrajudicial Executions,UN Doc. E/CN. 4/1998/68، §553 (1996) ،UN Doc. E/CN. 4/1996/4. §118 (1998).

[3446]See United Nations General Assembly resolution 65/206, §3 (b); United Nations Secretary-General, 280 / §72 (2010) UN Doc. A/65; Human Rights Committee: Concluding observations: Botswana, / UN Doc. CCPR/C/BWA §13 (2008) CO/1, Japan, §21 (1998) UN Doc. CCPR/C/79/Add. 102, Kovaleva et al. v. Belarus, 2011 / UN Doc. CCPR/C/106/D/2120 10/ §11 (2012); Special Rapporteur on extrajudicial executions, §37 (2005) ,UN Doc. E/CN. 4/2006/53/Add. 3; Bader and Qanbar v. Sweden (13284/ 04), EC 46 § § (2005).

Special [3447]Rapporteur on extrajudicial executions, §98- §115 (2012) UN Doc. A/67/275, in particular §103; Toktakunov v. Kyrgyzstan (1470) / 2006), Commission on Human Rights, / UN Doc. CCPR . 8/7-1/ §7 (2011) C/101/D/1470/2006.

Special [3448]Rapporteur on extrajudicial executions, §28- §32(2006) ,UN Doc. E/CN. 4/2006/53 and§56 - §57, Press Release on Iraq (27 July 2012), UN Doc. A/HRC/8/3/Add. 3 (Nigeria) §78 (2004) UN Doc. E/CN. 4/2005/7 ,§82- §81 (2008); Concluding observations of the Human Rights Committee: Japan, 2008) UN Doc. CCPR/C/JPN/CO/5) §16; Special Rapporteur on Torture, 279 / §52 UN Doc. A/67; HRC Resolution 37/19, §69.

Commission [3449]on Human Rights, Pratt and Morgan v. Jamaica (210) / 1986 and 225/1987), 7/ §13 (1989) UN Doc. Supp. No. 40)A/44/40(at 222.

and the fate of petitions for clemency. They shall also have the right to be officially informed well in advance of the decision to execute the sentence until they make a final visit to the convicted person or communicate with him, and to be informed of the reasons for the execution.[3450]

The bodies of the persons executed should be returned to their families for burial according to the customs.[3451]

However, carrying out executions in public violates the prohibition on cruel, inhuman or degrading treatment or punishment.[3452]

Eleventh: Conditions of prisoners sentenced to death

The conditions of prisoners sentenced to death must not violate the right to be treated with respect for the inherent dignity of the human person, or the applicable prohibition against the use of torture or other cruel, inhuman or degrading treatment or punishment. Persons sentenced to death should not be deprived of contact with others, including their family members. At a minimum, the Standard Minimum Rules and the Bangkok Rules must be respected in their treatment.

The Human Rights Committee, in several cases related to the death penalty, has reiterated that Article 10 of the International Covenant on Civil and Political Rights includes the duty to provide adequate medical care, basic sanitation, adequate food and recreational facilities to persons detained on death row.[3453]

The jurisprudence of the Inter-American Court is no different.[3454]

The Committee against Torture raised particular concerns about reports of prisoners sentenced to death in Mongolian prisons being held in solitary confinement, kept in shackles, and deprived of adequate food, and noted that the Special Rapporteur on Torture has described such conditions as torture.[3455]

The Special Rapporteur on extrajudicial executions also raised concerns about the lack of space for visiting NGO representatives and MEPs to meet with people sentenced to death in Japan, in 2001 and 2002.[3456]

Chapter Twenty-Five: The Right to Appeal Judgments

25-1 Within the Framework of Egyptian Law

The double-degree rule is a basic guarantee for the interests of the litigant, the supreme interest of justice, and the appeal as a way to appeal to the party who believes that damage has been caused by the ruling of the court of first instance, is an expensive guarantee for the litigant, and therefore it must be considered a general principle in the proceedings, and therefore the double-

Shidko [3450]v. Belarus, Commission on Human Rights, / UN Doc. CCPR . 2/ §10 (2003) C/77/D/886/1999.

Concluding [3451]observations of the Human Rights Committee: Botswana, UN Doc. §13 (2008) CCPR/C/BWA/CO/1.

Special [3452]Rapporteur on extrajudicial executions, §43- §42 (2006) ,UN Doc. E/CN. 4/2006/53/Add. 3; see UNGA Res. 65/225, 1 § (2010) (a) (i); OHCHR Res. 2005/59, §7 (1).

Commission [3453]on Human Rights: Kelly v. Jamaica, / UN Doc. CCPR 7/ §5 (1991) C/41/D/253/1987, Henry and Douglas v. Trinidad and Tobago, 5/ §9 (1996) UN Doc. CCPR/C/37/D/571/1994, Linton v. Jamaica, . 5/ §8 (1992) UN Doc. CCPR/C/46/D/255/1987.

[3454]See, e.g., Inter-American Court: Hilaire, Konstantin, Benjamin et al. v. Trinidad and Tobago, § 133- §172 (2002), Raxcaco-Reyes v. Guatemala, §94- §102 (2005).

([3455]) Concluding observations of the Committee against Torture: Mongolia, UN Doc. §16 (2010) CAT/C/MNG/CO/1.

Special [3456]Rapporteur on extrajudicial executions, §44 § (2006) ,UN Doc. E/CN. 4/2006/53/Add. 3..

degree rule is a guarantee of good justice, and the Supreme Constitutional Court in Egypt has approved several principles in that context as follows:

1-The general rule is that people do not differentiate among themselves in the field of their right to access to their natural judge, nor within the scope of the procedural and substantive rules governing the same judicial litigation, nor in the effectiveness of the defense guarantee guaranteed by the Constitution or the legislator for the rights they claim, nor in their requirement according to unified standards when the conditions of their request are met, nor in the methods of appeal they regulate, but the same rights must have unified rules, whether in the field of litigation, defense, performance, or challenge of the provisions related to them.[3457]

2- That what the legislator stipulates of the inadmissibility of appealing some judicial judgments, there is no violation of the provisions of the Constitution that do not preclude limiting litigation to one degree in the matters in which the judgment was decided. Limiting the right of litigation on the matters in which the judgment is decided to one degree is within the framework of the discretionary authority that the legislator has in the field of regulating rights, and within the limits required by the public interest. The origin of the judgments that are initially decided in the substantive dispute is the permissibility of appeal, as the consideration of the claimant in two degrees is a basic guarantee of litigation that may not be withheld from the litigants without an explicit text and according to objective grounds to the effect that deviation from them is not assumed, whether the appeal is considered - in the judgments issued in the first instance - as an inevitable way to monitor their integrity and correct their crookedness or as a means of transferring the dispute in its entirety to the appellate court, to glossify it again, as a single judgment in this dispute does not provide an adequate guarantee that takes care of justice, and ensures the effectiveness of its management according to their levels that are committed by civilized states[3458]

3- Limiting litigation to one degree falls within the discretionary authority of the legislator,.[3459]

Therefore, it is not permissible for the legislator to make an unjustified discrimination among citizens regarding the implementation of these rules, which disrupts or restricts them to a group of them, especially at the level of fair adjudication of their civil rights and obligations. This is supported by the fact that the methods of appealing judgments are not only procedural means established by the legislator to provide means of evaluating their distortion, but are in fact more closely related to the rights they deal with, whether in the field of proving, denying them, or describing them, so that their fate is mainly due to the openness or closure of these roads, as

---

([3457]) Supreme Constitutional Court, Case No. 95 of 20 S issued at the session of May 11, 2003, the date of publication on May 29, 2003, published in the first part of the book of the Technical Office No. 10, page No. 1082, rule No. 157, Case No. 64 of 17 S issued at the session of February 7, 1998, the date of publication on February 19, 1998, published in the first part of the book of the Technical Office No. 8, page No. 1108, rule No. 78.

([3458]) Supreme Constitutional Court, Case No. 39 of 15 S. Issued at the session of February 4, 1995, the date of publication March 6, 1995, and published in the first part of the book of the Technical Office No. 6, page No. 511, rule No. 35.

([3459]) Supreme Constitutional Court, Case No. 174 of 24 S issued at the session of January 9, 2005, the date of publication January 24, 2005, published in the first part of the book of the Technical Office No. 11, page No. 1299, rule No. 218, Case No. 201 of 23 S issued at the session of December 15, 2002, the date of publication December 26, 2002, published in the first part of the book of the Technical Office No. 10, page No. 816, rule No. 119, Case No. 19 of 19 S, issued at the 7th session of March 1998, the date of publication 19 March 1998, published in the second part of the book of the Technical Office No. 8, page No. 1210, rule No. 88, Case No. 64 of 17 S, issued at the 7th session of February 1998, the date of publication 19 February 1998, published in the first part of the book of the Technical Office No. 8, page No. 1108, rule No. 78, Case No. 31 of 10 S, issued at the 7th session of December 1991, the date of publication 26 December 1991, published in the first part of the book of the Technical Office No. 5 Page No. 57 Rule No. 12, Case No. 7 of 1 s Issued at the session of February 7, 1981, the date of publication is March 5, 1981, and published in the first part of the book of the Technical Office No. 1 Page No. 160 Rule No. 3.

well as to distinguishing between citizens whose legal status is identically situated in the field of access to their opportunities.[3460]

The methods of appealing judgments are not only procedural means established by the legislator to provide ways to correct their distortion, but in fact they are more closely related to the rights they deal with, whether in the field of proving them or themselves, so that their fate is originally due to the closure or openness of these roads, as well as to the distinction between citizens whose legal status is similar in the field of access to their opportunities.[3461]

Litigation in the matters in which it has been decided has been limited to one degree, even if it falls within the discretionary authority of the legislator, and to the extent and within the narrow limits required by a public interest that has its weight, but if the legislator chooses to litigate in two degrees, each of them should complete its features, and its exhaustion after withdrawing from its guarantees should be without decrease, as litigation in two degrees - and whenever it is decided by jus cogens texts - is considered an original in the requirement of the disputed rights, to the effect that the judicial litigation does not reach its end until after it consumes its two stages by appealing it. This necessarily requires that the right of defense be withdrawn to them together, and that his eyesight be iron with them, as they are two complementary rings, and they are determined together for the judicial litigation with its final outcome, so the facts of justice do not have the same if the road of one of them is closed.[3462]

It is not permissible to invoke that limiting litigation to one level means the speed of adjudication of cases, but rather the openness or closure of the methods of appeal against judgments is determined on objective grounds under which the speed of adjudication of cases does not fall in contradiction to their nature, especially in the field of enforcing criminal laws whose penalties affect the right to life, freedom or property.[3463]

4- That the origin of the judgments is the permissibility of appeal, as the dispute in two degrees is a basic guarantee of litigation that may not be withheld from the litigants without an explicit text, and according to objective grounds, to the effect that the departure from them is not assumed, whether the appeal is considered appeal, in the judgments issued in a preliminary form - as an inevitable way to monitor their safety and correct their distortion, or as a means of transferring the entire dispute and all the elements it contains to the Court of Appeal to record its vision in it again, as a single judgment on this dispute does not provide sufficient guarantee that takes care of justice, and ensures the effectiveness of its management according to their levels committed to by civilized countries.[3464]

5- Determining the permissibility of the appeal or not is a legal matter to be decided by the judicial authority to which the opponent submits his appeal, that is, his lawsuit. The clerk's office may not prevent the appeal report on the grounds that it is not permissible. Otherwise, this

---

([3460]) Supreme Constitutional Court, Case No. 9 of 16 S, issued at the session of 5 August 1995, the date of publication 17 August 1995, published in the first part of the book of the Technical Office No. 7, page No. 106, rule No. 7.

([3461]) Supreme Constitutional Court, Case No. 64 of 17 S. Issued at the session of February 7, 1998, the date of publication of February 19, 1998, published in the first part of the book of the Technical Office No. 8, page No. 1108, rule No. 78.

([3462]) Supreme Constitutional Court, Case No. 64 of 17 S. Issued at the session of February 7, 1998, the date of publication of February 19, 1998, published in the first part of the book of the Technical Office No. 8, page No. 1108, rule No. 78.

([3463]) Supreme Constitutional Court, Case No. 64 of 17 S issued at the session of February 7, 1998, the date of publication February 19, 1998, published in the first part of the book of the Technical Office No. 8, page No. 1108, rule No. 78, Case No. 39 of 15 S issued at the session of February 4, 1995, the date of publication March 6, 1995, published in the first part of the book of the Technical Office No. 6, page No. 511, rule No. 35.

([3464]) Case No. 39 of 15 S. Issued at the session of February 4, 1995, the date of publication March 6, 1995, and published in the first part of the book of the Technical Office No. 6, page No. 511, rule No. 35.

prohibition is a violation of the right to resort to the judiciary and a violation of the provisions of the Constitution and the law.[3465]

6- When the judicial organization is at the forefront and the top is occupied by a court above the lower courts whose jurisdiction is limited to adjudicating in matters of law, there is a multiplicity in the levels of litigation, and this is not a denial of the right to litigation, but rather an affirmation of its content, and the establishment of its dimensions to ensure the purposes it seeks.[3466]

25-1-1 Opposition

First: Provisions in which opposition is permissible

The opposition shall be accepted in the judgments issued in absentia in misdemeanors.[3467]

It is clear from this that to accept the opposition, two conditions must be met: the first is to be in a judgment issued in a misdemeanor article, and the second is to be in a judgment issued in absentia.

As for the first condition, the legislator limited the challenge to the opposition to the judgments issued in absentia in misdemeanors punishable by a penalty restricting freedom, without the judgments issued by a fine. However, the Supreme Constitutional Court ruled that this distinction was differentiated between the accused in misdemeanors, in the field of determining those who have the right to appeal the opposition in the judgments issued in those misdemeanors. Those who were sentenced in absentia in misdemeanors punishable by a penalty restricting freedom were allowed to take this path, and others who were sentenced in absentia in misdemeanors punishable by a fine were prohibited from entering. Thus, the referred text established an arbitrary distinction in the field of discrimination between its addressees, despite the similarity of their circumstances, and the union of their legal positions. As all of them are sentenced, their criminal responsibility for the misdemeanors for which they are submitted to criminal trial has been determined under absentia provisions, whatever the type of punishment imposed on them, which requires ensuring equal legal protection for them, so that a group of them, who are convicted of crimes punishable by a fine alone, is deprived of dissent in those provisions, including discrimination that is not justified by objective conditions that support it, which is prohibited by a commitment to the principle of equality before the law, which was raised by Article (53) of the existing Constitution. The constitutionality of the criminal laws decided by the legislator in the criminal field - which impose the most serious and far-reaching restrictions on this freedom - assumes that the legislator does not discriminate unjustifiably among those addressed by its provisions, and that the differences between them do not prevent them from benefiting equally from its guarantees, which was not complied with by the text referred to.

Whereas, the violation of the principle of equality before the law, which affected the referred text, was also necessitated by a violation of the principle of personal freedom guaranteed by the Constitution in the text of Article (54) thereof, and considered it one of the natural rights that

---

([3465]) In this regard, the Supreme Administrative Court ruled that: [The prohibition attributed to the court clerk's office to register the lawsuit (and this applies to the appeal report) to constitute an administrative decision involving a flagrant aggression against a constitutional right guaranteed by the Constitution to all citizens, which is the right of recourse to the judiciary, which is a protected right and guaranteed to all people, and the clerks of the courts may not refrain from registering the lawsuits that citizens wish to file, because this abstention is unlawfully and without the basis of the law, the constitutional guarantee of the rule of law, which is the right of recourse to the judiciary] Supreme Administrative Court, Appeals Nos. 454 and 694 of 27 Q issued at the session of April 23, 1983 and published in the first part of the book of the Technical Office No. 28, page 679, rule No. 101.

([3466]) Supreme Constitutional Court, Case No. 102 of 12 S, issued at the session of 19 June 1993, the date of publication 8 July 1993, published in the second part of the book of the Technical Office No. 5, page No. 343, rule No. 29.

([3467]) Article 398 of the Criminal Procedure Code.

may not be violated through its regulation. This means that the determination of criminal responsibility for criminal acts in response to a social necessity and in order to achieve a legitimate interest must be carried out after following the legal means whose application is in accordance with the foundations and controls of constitutional legitimacy, as it is closely related to personal freedom, as a natural right, which Article (54) of the Constitution obliges to preserve and not to prejudice, as it is one of the rights intrinsic to the human person, which Article (92) of the Constitution does not allow to suspend, diminish or prejudice its origin or essence. Hence, distinguishing between the accused in misdemeanors in the stages of determining their responsibility for them, by depriving the opposition in the default judgment that imposed the fine on the basis of the penalty prescribed by law for the act, despite the unity of the purpose of the punishment of any kind, which is the correction of the perpetrators and the achievement of public and private deterrence, includes an infringement of personal freedom in one of its aspects in violation of the text of Article (92) of the Constitution.

Whereas, it is decided that appealing by way of opposition to the criminal judgment would return the litigation to the court that issued the default judgment to rule on it again, and the referred text did not achieve this guarantee for the group that excluded it, and they are the convicts in absentia in the misdemeanors for which the fine is prescribed. Therefore, it deprived them of a stage of litigation, which is a violation of the right to litigation guaranteed by Article (97) of the existing Constitution, and a waste of the values of justice that Article (4) of the existing Constitution considered the basis for building society and achieving its national unity. This is not affected by the fact that limiting litigation to one degree falls within the discretionary authority of the legislator in the field of regulating rights, as this matter is only to the extent and within the narrow limits required by a public interest that has its weight; and it cannot be approved, if the legislator has previously chosen to litigate in two degrees as an approach. Litigation is in two degrees, and whenever it is decided by jus cogens texts, it is considered an asset in the requirement of the disputed rights, to the effect that the judicial litigation does not reach its end until after it enters into its two stages of adjudication.

Whereas, the legislator's guarantee, as a general principle, of the right of the accused convicted in absentia, in a misdemeanor, to take the path of challenging the opposition to the judgment issued against him, to the effect that he assumed his innocence until his guilt is proven in a legal trial in which he is guaranteed the guarantees of his defense, in accordance with the text of Article (96) of the Constitution, which guaranteed the principle of innocence. This is because the legislator has approved this general principle, so it is not possible for him after depriving some of that right, which is what was stipulated in the referred text, so he came to waste the origin of innocence, which is above the Constitution, which extends in its content to every individual, whether he is suspected or accused, as a basic rule in the accusatory system approved by all laws, not to ensure the protection of the guilty, but to prevent punishment for the individual if the charge against him has been covered by suspicions in a way that prevents certainty from being compared by the accused. The criminal indictment - in itself - does not displace the origin of innocence that always accompanies the individual, nor does it remove it, whether at the pre-trial stage, during the trial, throughout its sessions, and regardless of the time it takes for its procedures. Therefore, there is no way to refute the origin of innocence without evidence whose persuasive power reaches the amount of certainty and certainty that does not leave reasonable grounds for suspicion of the absence of the charge, provided that its significance has been established by a judicial ruling that has exhausted the methods of appeal.

Whereas the closure of the text referred to the opposition to challenge the judgments issued in absentia in misdemeanors punishable by a fine would affect the guarantee of the right of the accused to defend himself because of the issuance of the judgment in his absence, and his inability to present his defenses as required by his fair trial in accordance with the levels

recognized in civilized nations, which require that he be guaranteed guarantees that help him to show his innocence of what is attributed to him, preserve his freedom from what threatens it, and preserve his dignity, while enabling him to present his defenses, defenses, or requests in the criminal case, and therefore the referred text has violated the right to defense, as well as the right to a fair trial guaranteed by Articles (96 and 98) of the Constitution.[3468]

This ruling is considered applicable as it is more suitable for the accused as long as the criminal case filed is not decided by a final judgment, pursuant to the second paragraph of Article 5 of the Penal Code, as it established for the convict a legal center that is more suitable because it allowed him to oppose it in the appeal judgment in absentia to oblige her to pay a fine for a misdemeanor punishable by a fine alone.[3469]

The opposition may also be appealed against the judgments issued by the Child Court, as Article 143 of the Child Law stipulates that: "The provisions contained in the Penal Code and the Code of Criminal Procedure shall be applied in matters not provided for in this chapter."[3470]

It is also permissible to appeal the judgments issued by the partial state security courts if the second paragraph of Article 8 of Law No. 105 of 1980 stipulates that "the judgments of the partial state security courts shall be subject to appeal before a specialized chamber of the appellate misdemeanor court. Judgments issued by this chamber may be appealed in cassation and review, as the street did not intend to reorganize the methods of appeal, but intended to distinguish between the partial state security courts established in accordance with The aforementioned law, whose rulings may be appealed by the means of appeal prescribed in the Criminal Procedure Law and between the "Emergency Court" Summary State Security Courts formed in accordance with the provisions of the Presidential Decree No. 162 of 1958 regarding the state of emergency, whose rulings may not be appealed by any means of appeal and whose rulings shall not become final until they are ratified by the President of the Republic pursuant to Article 12 of the same law, as well as the allocation of a circuit in the Appellate Misdemeanors Court to consider appeals against the rulings of the Summary State Security Court in order to ensure the proper functioning of justice and the unification of legal and judicial principles with regard to the cases it has jurisdiction over and the speed of adjudication, not This is evidenced by what was revealed in the explanatory memorandum to draft law No. 105 of 1980 and the report of the Constitutional and Legislative Affairs Committee on the same draft, as the first stated that" As for the judgments of the partial state security courts, they are subject to the normal appeal procedures stipulated in the Criminal Procedure Law, except for the challenge of the opposition, as the draft stipulated that the judgments of the opposition may not be challenged..." The second stated that the committee made some amendments to the provisions of the draft as received from the government, and the most important of these amendments are the following: (First) ..... (II) .... (Third) .... (Fourth) Allowing the challenge to the opposition in the judgments issued by the Misdemeanors Appellate Chamber in appeals against the judgments of the State Security District Courts and deleting the provision prohibiting this challenge contained at the end of the third paragraph of Article (8) of the draft" The street has taken the conclusions of the Constitutional and Legislative Affairs Committee and the aforementioned law was issued

---

([3468]) Supreme Constitutional Court, Case No. 56 of 32 S. Issued at the session of March 5, 2016, date of publication March 14, 2016.

([3469]) Appeal No. 39164 of 85 S issued on December 5, 2018 (unpublished).

([3470]) Article 143 of the Children's Law, and the Court of Cassation had ruled, under the entry into force of Law No. 31 of 1974 on juveniles, that: [The aforementioned law was free of the objection to the inadmissibility of opposition to the appeal in absentia judgments issued by the juvenile courts for appellate misdemeanors, which means that it is permissible to appeal by way of opposition to those judgments as long as the law does not explicitly stipulate their inadmissibility, and the principle established in Article 398 of the Code of Criminal Procedure is the permissibility of opposition in absentia judgments issued in misdemeanors and violations by the accused], Appeal No. 795 of 63 s issued at the session of 9 October 1997 and published in the first part of the Technical Office's letter No. 48 page No. 1074 Rule No. 160.

free of the stipulation of the inadmissibility of the objection, which means that the challenge by way of opposition to these judgments is permissible as long as the law does not explicitly stipulate their inadmissibility, especially since Article 5 of the same law stipulates that" except as stipulated in this law, the procedures and provisions prescribed by the Criminal Procedure Law shall be followed....." Since this was the case, it was decided that the legal and appealable judgment shall be subject to objection if the convict proves that an excuse prevented him from attending and he could not submit it before the judgment.[3471]

On the other hand, with regard to the second condition of accepting the opposition, the opposition is accepted only in absentia judgments.[3472]

It is decided that the judgment shall be considered in the presence of the accused in the sessions in which the pleading took place, whether the judgment was issued or issued in another session, and that the lesson in describing the judgment as present, legal or absent is the fact of the fact in the case, not what is wrong in it or in the minutes of the session.[3473]

The objection shall not be accepted in the judgment issued in the cases where the judgment is considered in presence, unless the convict proves the existence of an excuse that prevented him from attending, and he could not submit it before the judgment, and his appeal is not permissible.[3474]

Second: Who has the right to object

The opposition shall be from the accused or whoever is responsible for civil rights.[3475]

The objection shall not be accepted from the civil rights plaintiff.[3476]

This means that the judgment in the civil lawsuit of the criminal lawsuit is always tantamount to the judgment in the presence of the civil rights claimant, and therefore he is not entitled to challenge it in opposition like the judgments in the presence, it is equal to the opposition before the court of first instance or before the court of second instance.[3477]

The implication of the non-acceptance of the opposition by the plaintiff of the civil right is that he has no interest in the dispute he raises in describing the judgment as being in presence or in absentia, because describing it in either of the two descriptions does not create a right for him or waste it, in addition to the fact that the aforementioned text states that the judgment in the civil lawsuit of the criminal lawsuit is always the same as the judgment in presence before the plaintiff of civil rights.[3478]

([3471]) Appeal No. 6150 of 58 S issued at the session of February 15, 1989 and published in the first part of the book of the Technical Office No. 40 page No. 223 rule No. 38.

([3472]) Appeal No. 26484 of 59 S issued at the session of April 20, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 413 rule No. 57.

([3473]) Appeal No. 2395 of 61 s issued at the session of October 20, 1998 and published in the first part of the technical office book No. 49 page No. 1123 rule No. 152, Appeal No. 1970 of 49 s issued at the session of January 28, 1980 and published in the first part of the technical office book No. 31 page No. 142 rule No. 28, Appeal No. 1254 of 45 s issued at the session of November 30, 1975 and published in the first part of the technical office book No. 26 page No. 807 rule No. 177.

([3474]) Article 241 of the Criminal Procedure Code.

([3475]) Article 398 of the Criminal Procedure Code, and see: Appeal No. 13426 of 80 S issued at the 12th session of December 2011 and published in the Technical Office's letter No. 62, page No. 452, rule No. 74, Appeal No. 14353 of 60 S issued at the 16th session of June 1993 and published in the first part of the Technical Office's letter No. 44, page No. 623, rule No. 95.

([3476]) Article 399 of the Criminal Procedure Code.

([3477]) Appeal No. 63050 of 59 S issued at the 22nd session of October 1995 and published in the first part of the technical office book No. 46 page No. 1126 rule No. 167, Appeal No. 6733 of 54 S issued at the 30th session of April 1986 and published in the first part of the technical office book No. 37 page No. 526 rule No. 104.

([3478]) Appeal No. 19117 of 59 S issued at the 14th session of October 1996 and published in the first part of the technical office book No. 47 page No. 1012 rule No. 143, Appeal No. 1970 of 35 S issued at the 28th session of February 1966 and published in the first part of the technical office book No. 17 page No. 211 rule No. 39.

Third: The date of the opposition

The opposition shall be by the accused or whoever is responsible for civil rights within the ten days following his notification of the default judgment contrary to the legal time limit. This announcement may be by summary on a form issued by a decision by the Minister of Justice. In all cases, the announcement shall not be considered by the administration authority.

However, if the announcement of the judgment has not been made to the person of the accused, the time limit for the objection for him with regard to the sentenced punishment starts from the day he becomes aware of the announcement, otherwise the objection is permissible until the lawsuit is dropped by the lapse of the period.

The declaration of judgments in absentia and judgments considered to be in presence may be made by a member of the public authority.[3479]

The date of the appeal against the objection shall start from the date of the announcement of the judgment to the convict. If the judgment decides that the appeal objection is not accepted in a calculated form, the date of the objection shall start from the date of the issuance of the opposing judgment, it shall have erred in the correct application of the law, which is defective, and the date of the objection as a whole shall be the dates of the appeal against the judgments of the public order, and it may be adhered to for the first time before the Court of Cassation.[3480]

This means that if the announcement is made to the convicted person, this is considered a conclusive presumption of knowledge of the issuance of the default judgment, but if it is announced in his home country and the announcement is not delivered to him personally, but received by others who may legally receive it on his behalf, this is considered a presumption that his paper reached him, but it is an inconclusive presumption, as the convicted person may refute it by proving the contrary.[3481]

Fourth: Opposition Procedures

The objection shall be obtained by a report in the clerk's office of the court that issued the judgment, in which the date of the hearing specified for its consideration shall be recorded. This shall be considered a declaration of it, even if the report is from an agent. The Public Prosecution shall assign the rest of the litigants in the lawsuit to attend and notify the witnesses of the aforementioned hearing.[3482]

It is scheduled that the opposition gets a report in the registry of the book proving the date of the session that was set for its consideration, and this is considered an announcement for it, even if the report is from an agent.[3483]

The report of the opposition is a procedural act initiated by an employee of the clerk of the court competent to edit it proving the desire of the accused or the person responsible for civil rights to object to the default judgment issued against him and the street did not require a special form for this report, and therefore the absence of the signature of the head of the criminal registry does not affect its validity, and since the above indicates that the street considered the proof of

---

([3479]) Article 398 of the Criminal Procedure Code.

([3480]) Appeal No. 29828 of 59 S issued at the session of February 14, 1995 and published in the first part of the book of the Technical Office No. 46 page No. 384 rule No. 57.

([3481]) Appeal No. 15125 of 65 S issued at the session of June 3, 2004 and published in the letter of the Technical Office No. 55 page No. 573 rule No. 79, Appeal No. 29342 of 63 S issued at the session of February 18, 2003 and published in the letter of the Technical Office No. 54 page No. 316 rule No. 31, Appeal No. 1494 of 50 S issued at the session of January 28, 1981 and published in the first part of the book of the Technical Office No. 32 page No. 104 rule No. 13.

([3482]) Article 400 of the Criminal Procedure Law.

([3483]) Appeal No. 28389 of 72 S issued in the session of November 1, 2009 and published in the book of the Technical Office No. 60 page No. 399 rule No. 55.

the competent employee the date of the hearing specified for the consideration of the opposition in the report paper as an announcement, whether the report is from the opponent or his agent[3484].

Thus, the law was satisfied with the announcement of the opponent of the session specified for the consideration of his opposition as soon as the report was issued, even if the report was issued by his agent.[3485]

It is also decided that the presence of the appellant at the hearing set for the consideration of his objection and enabling him to present his full defense shall forfeit his right to adhere to the obligation to declare it.[3486]

Fifth: Governance in the Opposition

The opposition entails a reconsideration of the lawsuit for the opponent before the court that issued the default judgment.[3487]

The law requires that the lawsuit for the objection be considered before the court that issued the default judgment, and there is nothing to prevent the judge who issued the default judgment from considering it.[3488]

In no case may the opponent be harmed based on the objection filed by him.[3489]

The principle, according to Article 401 of the Code of Criminal Procedure, is that in no case may the opponent be harmed based on the objection filed by him. The rule that the status of the appellant should not be abused was a general legal rule that applies to all methods of appeal, whether ordinary or unusual, and it is a due process rule that supersedes all considerations and is applicable in all cases.[3490]

([3484]) Appeal No. 11621 of 63 S issued at the session of 22 September 1999 and published in the first part of the book of the Technical Office No. 50 page No. 457 rule No. 106.

([3485]) Appeal No. 15007 of 4Q issued at the hearing of May 19, 2014 (unpublished), Appeal No. 6996 of 4Q issued at the hearing of January 20, 2014 (unpublished), Appeal No. 1007 of 83Q issued at the hearing of July 3, 2013 (unpublished), Appeal No. 9144 of 4Q issued at the hearing of May 15, 2013 (unpublished), Appeal No. 3180 of 67Q issued at the hearing of November 16, 2006 (unpublished), Appeal No. 3182 of 67Q issued at the hearing of November 16, 2006 (unpublished), Appeal No. 3182 of 67Q issued at the hearing of November 2006 (unpublished), Appeal No. 3182 of 67 s issued at the hearing of 16 November 2006 (unpublished), Appeal No. 3180 of 67 s issued at the hearing of 16 November 2006 (unpublished), Appeal No. 25573 of 66 s issued at the hearing of 21 September 2006 (unpublished), Appeal No. 1042 of 67 s issued at the hearing of 7 September 2006 (unpublished), Appeal No. 1042 of 67 s issued at the hearing of 7 September 2006 (unpublished), Appeal No. 21514 of 66 s Issued at the session of July 31, 2006 (unpublished), Appeal No. 21847 of 66 s issued at the session of July 31, 2006 (unpublished), Appeal No. 22453 of 66 s issued at the session of July 31, 2006 (unpublished), Appeal No. 22454 of 66 s issued at the session of July 31, 2006 (unpublished), Appeal No. 22454 of 66 s issued at the session of July 31, 2006 (unpublished), Appeal No. 22453 of 66 s issued at the session of July 31, 2006 (unpublished), Appeal No. 6370 of 55 s issued at the session of March 5, 1986 and published in the first part of the Technical Office's book No. 37 page 347 rule No. 71, Appeal No. 3547 of 54 s issued at the session of October 30, 1984 and published in the first part of the Technical Office's book No. 35 page No. 699 rule No. 153.

([3486]) Appeal No. 13814 of 59 S issued at the session of November 5, 1991 and published in the second part of the book of the Technical Office No. 42 page No. 1133 rule No. 156.

([3487]) Article 401 of the Criminal Procedure Code.

([3488]) Appeal No. 2051 of 24 S issued in the session of January 10, 1955 and published in the second part of the book of the Technical Office No. 6, page No. 377, rule No. 124.

([3489]) Article 401 of the Criminal Procedure Code.

([3490]) Appeal No. 60164 of 74 S issued at the 6th session of January 2013 and published in the Technical Office letter No. 64, page No. 25, rule No. 3, Appeal No. 2020 of 69 S issued at the 12th session of February 2007 and published in the Technical Office letter No. 58, page No. 145, rule No. 29, Appeal No. 2892 of 61 S issued at the 16th session of January 1994 and published in the first part of the Technical Office letter No. 45, page No. 107, rule No. 15, Appeal No. 18555 of 59 S issued at the session of March 23, 1992 and published in the first part of the Technical Office letter No. 43 page 320 rule No. 44, Appeal No. 4440 of 59 S issued at the session of June 9, 1991 and published in the first part of the Technical Office letter No. 42 page 918 rule No. 126, Appeal No. 18303 of 59 S issued at the session of May 16, 1991 and published in the first part of the

It is not permissible for the opponent to be harmed based on the objection filed by him, which is a general provision that applies in all cases, regardless of whether the default judgment includes an error in the assessment of the facts or an error in the application of the law.[3491]

The abolition of the stay of execution is considered an aggravation of the penalty even with the reduction of the term of imprisonment.[3492]

This means that the opposition court may not increase the penalty or rule in the lawsuit on the basis that the incident is a felony so as not to worsen the position of the opponent.[3493]

It also follows from the rule that the opponent may not be harmed by the opposition filed by him, that the court, when adjudicating in opposition to the appellant, corrects the omission of adjudicating in the appeal of the Public Prosecution and the judiciary with the penalty of a fine that has not previously been initially ruled in response to the appeal of the Public Prosecution, is considered an error in the application of the law, and this does not change the request of the Public Prosecution for this amendment.[3494]

However, if the opponent does not attend any of the hearings specified for the consideration of the lawsuit, the objection shall be considered null and void. In this case, the court may sentence him to a procedural fine not exceeding one hundred pounds in the misdemeanor articles and not exceeding ten pounds in the violation articles, and it may order temporary enforcement, even with the appeal regarding the compensation awarded.[3495]

It is decided that the ruling to consider the opposition as if it were not permissible only when the opponent fails to attend the first session determined to consider his opposition, but if he attends, the court must decide on the subject of the opposition, even if he fails to attend other sessions, because Article 401/2 of the Code of Criminal Procedure arranged the ruling to consider the opposition as if it was not if the opponent did not attend the specific session to consider the opposition, it wanted to arrange a penalty for those who do not care about his opposition, so it ruled to deprive him of a review of his case by the court that convicted him in absentia unlike the opponent who attended the first session and then defaulted, the idea of the penalty does not meet with him, but it is necessary to distinguish between him and the opponent who did not attend at all.[3496]

Technical Office letter No. 42 page 840 rule No. 117, Appeal No. 7096 of 58 S issued at the session of 31 From January 1990 and published in the first part of the Technical Office letter No. 41 Page 240 Rule No. 41, Appeal No. 1739 of 55 S issued in the session of 21 October 1985 and published in the first part of the Technical Office letter No. 36 Page 905 Rule No. 163, Appeal No. 1338 of 53 S issued in the session of 27 November 1983 and published in the first part of the Technical Office letter No. 34 Page 996 Rule No. 200, Appeal No. 230 of 42 S issued in the session of 24 April 1972 and published in the second part of the Technical Office letter No. 23 Page 603 Rule No. 135.

([3491]) Appeal No. 1262 of 37 BC issued at the session of 23 October 1967 and published in the third part of the book of the Technical Office No. 18 page No. 1008 rule No. 205.

([3492]) Appeal No. 4440 of 59 S issued at the session of June 9, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 918 rule No. 126.

([3493]) Appeal No. 43317 of 85 S issued at the session of January 18, 2018 (unpublished), Appeal No. 44542 of 85 S issued at the session of January 18, 2017 (unpublished), Appeal No. 1876 of 80 S issued at the session of December 24, 2016 (unpublished).

([3494]) Appeal No. 24167 for the year 61 S issued in the session of November 4, 2001 and published in the letter of the Technical Office No. 52 page No. 791 rule No. 149.

([3495]) Article 401 of the Criminal Procedure Code.

([3496]) Appeal No. 50789 of 59 S issued at the 8th session of May 1995 and published in Part I of Technical Office Book No. 46 Page 832 Rule No. 125, Appeal No. 13814 of 59 S issued at the 5th session of November 1991 and published in Part II of Technical Office Book No. 42 Page 1133 Rule No. 156, Appeal No. 4440 of 59 S issued at the 9th session of June 1991 and published in Part I of Technical Office Book No. 42 Page 918 Rule No. 126, Appeal No. 8695 of 58 s issued at the session of May 31, 1990 and published in the first part of the Technical Office letter No. 41 page No. 802 rule No. 139, Appeal No. 6935 of 52 s issued at the session of February 2, 1983 and published in the first part of the Technical Office letter No. 34 page No. 197 rule No. 35, Appeal No. 2735 of 50 s issued at the session of April 22, 1981 and published in the first part of the Technical

The opposition shall not be accepted in any way in the judgment issued in his absence, and the court may, in this case, sentence him to a procedural fine of no less than fifty pounds and no more than two hundred pounds in misdemeanor articles and no less than ten pounds and no more than twenty pounds in violation articles.[3497]

If the court decides to accept the opposition in a form, it will have exhausted its jurisdiction with regard to the form of the opposition, which prevents it from returning to address it. If the court nonetheless returns to consider the form of the opposition by ruling it inadmissible, it will have erred in applying the law by wrongly withholding it from consideration of the object of the opposition.[3498]

It is noted that the requirement of combining the provisions of Articles 401 and 417 of the Code of Criminal Procedure makes it stipulated that the annulment of the acquittal judgment was unanimous and obligatory for the validity of both the appeal in absentia judgment issued on the basis of the prosecution's appeal and the judgment issued in opposition to the accused in that judgment. Therefore, it is not before the Court of Appeal, which decides in opposition only to uphold the appealed judgment as long as the absentia judgment was not issued unanimously and the contested judgment ruled otherwise to uphold the appeal in absentia judgment, it may have erred in the application of the law.[3499]

It is not valid in the law to rule on the objection filed by the accused to the judgment issued in his absence as if it did not exist or by accepting it in form, rejecting it as an object, and upholding the opposing judgment in it without hearing the defense of the opponent. Unless his failure to attend the hearing is without excuse , and that if this failure is due to a compelling excuse that prevented the opponent from attending the hearing in which the judgment was issued in the opposition, the judgment is invalid because the trial was held on defective procedures that would deprive the opponent of the use of his right to defense and the subject of the compelling excuse and its assessment shall be on appeal or when challenged by way of cassation.[3500]

25-1-2 Appeal

It is decided that the appeal against the appeal is a right prescribed for the convict related to public order, which may not be denied except by a special provision in the law.[3501]

Office letter No. 32 page No. 392 rule No. 69, Appeal No. 1682 For the year 48 s issued in the session of February 5, 1979 and published in the first part of the Technical Office book No. 30 page No. 219 rule No. 43, Appeal No. 1054 of 42 s issued in the session of October 29, 1972 and published in the third part of the Technical Office book No. 23 page No. 1091 rule No. 245, Appeal No. 1693 of 39 s issued in the session of December 29, 1969 and published in the third part of the Technical Office book No. 20 page No. 1508 rule No. 312, Appeal No. 1946 of 36 s issued in the session of January 9, 1967 and published in the first part of the Technical Office book No. 18 page No. 60 rule No. 8.

([3497]) Article 401 of the Code of Criminal Procedure, Appeal No. 6994 of 4Q issued at the session of January 20, 2014 (unpublished), Appeal No. 6034 of 3Q issued at the session of April 21, 2015 and published in the book of the Technical Office No. 66 Page 404 Rule No. 54, Appeal No. 7108 of 63Q issued at the session of December 30, 1998 and published in the first part of the book of the Technical Office No. 49 Page 1546 Rule No. 221.

([3498]) Appeal No. 2395 of 61 S issued at the session of October 20, 1998 and published in the first part of the book of the Technical Office No. 49 page No. 1123 rule No. 152.

([3499]) Appeal No. 29552 of 63 S issued at the 26th session of February 2003 and published in the Technical Office letter No. 54, page No. 322, rule No. 33, Appeal No. 2015 of 38 S issued at the 10th session of February 1969 and published in the first part of the Technical Office letter No. 20, page No. 240, rule No. 52, Appeal No. 548 of 24 S issued at the 17th session of May 1954 and published in the third part of the Technical Office letter No. 5, page No. 645, rule No. 216.

([3500]) Appeal No. 23535 of 61 s issued at the 6th session of April 1999 and published in the first part of the Technical Office letter No. 50 page No. 197 rule No. 46, Appeal No. 77 of 41 s issued at the 6th session of June 1971 and published in the second part of the Technical Office letter No. 22 page No. 431 rule No. 106.

([3501]) Appeal No. 5543 of 53 s issued at the session of March 1, 1984 and published in the first part of the technical office book No. 35 page No. 232 rule No. 47, Appeal No. 1089 of 46 s issued at the session of January 24, 1977 and published in the first part of the technical office book No. 28 page No. 135 rule No. 29.

25-1-2-1 Appealing judgments issued in misdemeanors and violations

First: Judgments that may be appealed

Judgments issued by the District Court in misdemeanors. If the judgment is issued in a misdemeanor punishable by a fine not exceeding three hundred pounds in addition to restitution and expenses, it may not be appealed except for violation of the law, for an error in its application or interpretation, or for an invalidity in the judgment or procedures that affected the judgment.[3502]

This means that the law does not restrict the right of the accused or the Public Prosecution to appeal the judgments issued by the District Court in misdemeanor matters in any way.[3503]

The lesson in the permissibility of appeal is the penalty prescribed by law, not what the court stipulates.[3504]

Judgments issued by the Misdemeanor Court in matters of violations may be appealed in the following cases:

By the accused if he is sentenced to anything other than a fine and expenses;

From the Public Prosecution if it requests a ruling other than the fine and expenses and the accused is acquitted or does not rule on what it requested.[3505]

With the exception of the foregoing cases, the appeal may be filed by the accused or by the Public Prosecution in the following cases:

If the judgment is issued in violation of the law or for an error in its application or interpretation

The occurrence of an invalidity in the judgment or in the procedures that affected the judgment.[3506]

Judgments issued in the civil lawsuit by the District Court may be appealed in cases of violations and misdemeanors by the plaintiff of civil rights and the person responsible for them or the accused in respect of civil rights alone if the required compensation exceeds the quorum in which the partial judge rules definitively.[3507]

Article 403 of the Code of Criminal Procedure allows the civil rights plaintiff to appeal the judgments issued in the civil lawsuit filed by association with the criminal lawsuit in relation to civil rights alone if the claimed compensation exceeds the quorum that the partial judge finally rules on, to the effect that the civil rights plaintiff may not appeal the judgment issued against him by the summary court when the claimed compensation does not exceed the final quorum of

---

([3502]) Article 402 of the Criminal Procedure Code.

([3503]) Appeal No. 6859 of 52 S issued at the session of 30 May 1983 and published in the first part of the technical office book No. 34 page No. 695 rule No. 140, Appeal No. 2264 of 49 S issued at the session of 21 May 1980 and published in the first part of the technical office book No. 31 page No. 654 rule No. 127, Appeal No. 1371 of 40 S issued at the session of 8 November 1970 and published in the third part of the technical office book No. 21 page No. 1076 rule No. 259.

([3504]) Appeal No. 12901 of 4Q issued at the session of March 25, 2014 (unpublished), Appeal No. 71300 of 74Q issued at the session of April 18, 2007 and published in the Technical Office's letter No. 58, page 380, rule No. 73, Appeal No. 4675 of 62Q issued at the session of April 8, 2002 and published in the Technical Office's letter No. 53, page No. 620, rule No. 101, Appeal No. 2196 of 38Q issued at the session of May 5, 1969 and published in the second part of the Technical Office's letter No. 20, page No. 627, rule No. 127.

([3505]) Article 402 of the Criminal Procedure Code.

([3506]) Article 402 of the Criminal Procedure Code.

([3507]) Article 403 of the Criminal Procedure Code.

the partial judge, even if the judgment is wrong in the application or interpretation of the law. This rule applies even if the claimed compensation is described as temporary.[3508]

([3508]) Appeal No. 19348 of 70 Q issued on January 19, 2006 (unpublished), Appeal No. 19462 of 70 Q issued on January 19, 2006 (unpublished), Appeal No. 19523 of 70 Q issued on January 19, 2006 (unpublished), Appeal No. 19462 of 70 Q issued on January 19, 2006 (unpublished), Appeal No. 19523 of 70 Q issued on January 19, 2006 (unpublished), Appeal No. 15965 of 70 Q issued on January 5, 2006 (unpublished), Appeal No. 16369 of 70 Q issued on January 5, 2006 (unpublished), Appeal No. 15965 of 70 Q issued on January 5, 2006 (unpublished), Appeal No. 16369 of 70 Q issued on January 5, 2006 (unpublished), Appeal No. 13111 of 70 Q issued on December 15, 2005 (unpublished), Appeal No. 13273 of 70 Q issued on December 15, 2005 (unpublished), Appeal No. 14363 of 70 Q issued on December 15, 2005 (unpublished), Appeal No. 9860 of 70 Q issued on December 1, 2005 (unpublished), Appeal No. 10608 of 70 Q issued on December 1, 2005 (unpublished), Appeal No. 12987 of 70 Q issued on November 17, 2005 (unpublished), Appeal No. 26854 of 69 Q issued on October 20, 2005 (unpublished), Appeal No. 2738 of 70 Q issued on September 22, 2005 (unpublished), Appeal No. 28815 of 69 Q issued on July 28, 2005 (unpublished), Appeal No. 28639 of 69 Q issued on July 21, 2005 (unpublished), Appeal No. 23612 of 69 Q issued on March 17, 2005 (unpublished), Appeal No. 22462 of 67 Q issued on March 17, 2005 (unpublished), Appeal No. 21853 of 65 Q issued on March 3, 2005 (unpublished), Appeal No. 18356 of 69 Q issued on February 17, 2005 (unpublished), Appeal No. 1548 of 69 Q issued on February 3, 2005 (unpublished), Appeal No. 6588 of 69 Q issued on February 3, 2005 (unpublished), Appeal No. 26052 of 68 Q issued on February 3, 2005 (unpublished), Appeal No. 34351 of 69 Q issued on February 3, 2005 (unpublished), Appeal No. 35074 of 69 Q issued on February 3, 2005 (unpublished), Appeal No. 4906 of 5 Q issued on February 17, 2016, published in Technical Office Book No. 67, page 241, Rule No. 28, Appeal No. 1548 of 69 Q issued on February 3, 2005 (unpublished), Appeal No. 26317 of 68 Q issued on January 6, 2005 (unpublished), Appeal No. 25876 of 68 Q issued on December 28, 2004 (unpublished), Appeal No. 2168 of 68 Q issued on July 31, 2004 (unpublished), Appeal No. 8782 of 68 Q issued on July 21, 2004 (unpublished), Appeal No. 6489 of 65 Q issued on April 26, 2004, published in Technical Office Book No. 55, page 450, Rule No. 60, Appeal No. 31007 of 68 Q issued on April 15, 2004, Appeal No. 38328 of 73 Q issued on April 1, 2004, published in Technical Office Book No. 55, page 287, Rule No. 42, Appeal No. 15581 of 66 Q issued on February 19, 2004 (unpublished), Appeal No. 16128 of 65 Q issued on January 19, 2004 (unpublished), Appeal No. 24083 of 67 Q issued on December 18, 2003 (unpublished), Appeal No. 12553 of 67 Q issued on December 4, 2003 (unpublished), Appeal No. 12675 of 67 Q issued on December 4, 2003 (unpublished), Appeal No. 12798 of 67 Q issued on December 4, 2003 (unpublished), Appeal No. 25583 of 67 Q issued on November 20, 2003 (unpublished), Appeal No. 19785 of 66 Q issued on November 6, 2003 (unpublished), Appeal No. 16953 of 67 Q issued on November 4, 2003 (unpublished), Appeal No. 14455 of 64 Q issued on October 20, 2003 (unpublished), Appeal No. 2904 of 67 Q issued on October 2, 2003 (unpublished), Appeal No. 21083 of 66 Q issued on July 31, 2003 (unpublished), Appeal No. 15051 of 63 Q issued on June 9, 2003 (unpublished), Appeal No. 15051 of 63 Q issued on June 9, 2003 (unpublished), Appeal No. 17131 of 71 Q issued on June 5, 2003 (unpublished), Appeal No. 17746 of 66 Q issued on June 5, 2003 (unpublished), Appeal No. 1208 of 66 Q issued on March 6, 2003 (unpublished), Appeal No. 23548 of 65 Q issued on February 24, 2003 (unpublished), Appeal No. 27204 of 63 Q issued on February 20, 2003 (unpublished), Appeal No. 2867 of 65 Q issued on February 6, 2003 (unpublished), Appeal No. 27204 of 63 Q issued on January 16, 2003 (unpublished), Appeal No. 15921 of 65 Q issued on December 23, 2002 (unpublished), Appeal No. 12791 of 63 Q issued on October 17, 2002 (unpublished), Appeal No. 20678 of 65 Q issued on October 3, 2002 (unpublished), Appeal No. 4803 of 64 Q issued on June 6, 2002 (unpublished), Appeal No. 5739 of 63 Q issued on June 6, 2002 (unpublished), Appeal No. 16765 of 64 Q issued on June 6, 2002 (unpublished), Appeal No. 21022 of 63 Q issued on June 6, 2002 (unpublished), Appeal No. 16552 of 64 Q issued on April 4, 2002 (unpublished), Appeal No. 2542 of 63 Q issued on March 21, 2002 (unpublished), Appeal No. 16517 of 64 Q issued on January 3, 2002 (unpublished), Appeal No. 16517 of 64 Q issued on January 3, 2002 (unpublished), Appeal No. 21652 of 65 Q issued on November 13, 2002, published in Technical Office Book No. 53, page 1102, Rule No. 183, Appeal No. 10929 of 64 Q issued on April 4, 2002, published in Technical Office Book No. 53, page 602, Rule No. 97, Appeal No. 8150 of 63 Q issued on December 20, 2001, published in Technical Office Book No. 52, page 977, Rule No. 189, Appeal No. 14243 of 63 Q issued on March 14, 2001, published in Technical Office Book No. 52, page 327, Rule No. 53, Appeal No. 8452 of 61 Q issued on December 9, 1999, published in the first part of Technical Office Book No. 50, page 655, Rule No. 146, Appeal No. 13331 of 63 Q issued on December 20, 1997, published in the first part of Technical Office Book No. 48, page 1457, Rule No. 221, Appeal No. 63077 of 59 Q issued on January 17, 1996, published in the first part of Technical Office Book No. 47, page 93, Rule No. 12, Appeal No. 18266 of 59 Q issued on January 14, 1993, published in the first part of Technical Office Book No. 44, page 73, Rule No. 7, Appeal No. 4504 of 57 Q issued on October 18, 1988, published in the first part of Technical Office Book No. 39, page 921, Rule No. 138, Appeal No. 4504 of 57 Q issued on October 18, 1988, published in the first part of Technical Office Book No. 39, page 921, Rule No. 138, Appeal No. 8078 of 54 Q issued on April 16, 1985, published in the first part of Technical Office Book No. 36, page 571, Rule No. 99, Appeal No. 6333 of 54 Q issued on January 24, 1985, published in the first part of Technical Office Book No. 36, page 143, Rule No. 18, Appeal No. 5638 of 52 Q issued on January 25, 1983, published in the first part of Technical Office Book No. 34, page 162, Rule No. 28, Appeal No. 34 of 49 Q issued on March 17, 1980, published in the first part of Technical Office Book No. 31, page 391, Rule No. 73, Appeal No. 1753 of 48 Q issued on February 18, 1979, published in the first part of Technical Office Book No. 30, page 275, Rule No. 55, Appeal No. 1753 of 48 Q issued on January 21, 1979, published in the first part of Technical Office Book No. 30, page 136, Rule No. 24, Appeal No. 1307 of 47 Q issued on March 20, 1978, published in the first part of Technical Office Book No. 29,

Article 403 of the Code of Criminal Procedure allows the plaintiff of civil rights and the person responsible for it or the accused with regard to civil rights only - to appeal the judgments issued in the civil lawsuit by the District Court in violations and misdemeanors, if the required compensation exceeds the quorum in which the district judge rules definitively, then the civil rights plaintiff may not appeal the judgment issued against him by the District Court if the compensation claimed does not exceed the final quorum of the district judge, even if the judgment is marred by an error in the application or interpretation of the law, even if the compensation claimed is described as temporary.[3509]

It must be taken into account that compensation related to taxes and fees are supplementary penalties that include an element of compensation, but they are not considered damages that need to exceed the quorum ruled by the partial judge in order to accept the judgment issued on appeal.[3510]

In addition, if the accused appeals the judgment issued by the District Court in the criminal and civil lawsuits, regardless of the amount of compensation claimed, it is not permissible - because the civil lawsuit is subordinate to the criminal lawsuit - to accept the appeal in relation to one of them without the other, due to its fragmentation. This means that the Appeal Court's decision to accept the accused's appeal of the criminal lawsuit for a judgment may be appealed and that the civil lawsuit may not be appealed against the same judgment because the amount of compensation claimed for the final quorum of the partial judge is considered an error in law.[3511]

5- It is permissible to appeal the judgment issued in crimes that are indivisibly linked to each other, even if the appeal is not permissible for the appellant except for some of these crimes only.[3512]

6- It is not permissible to appeal the preparatory and preliminary judgments issued in subsidiary matters before deciding on the merits of the case, and the appeal of the judgment issued on the merits inevitably entails the appeal of these judgments.[3513]

This means that it is not permissible to appeal against the preparatory and interlocutory judgments as well as the judgments issued in subsidiary matters except with the judgment issued in the original lawsuit, and the judgments issued before the adjudication of the subject matter on which the prohibition of proceeding in the lawsuit is based are the judgments that would prevent proceeding in the original lawsuit.[3514]

7- It is excluded from the previous rule, that all judgments issued for lack of jurisdiction may be appealed, and judgments issued for jurisdiction may be appealed if the court does not have jurisdiction to rule on the case.[3515]

---

page 315, Rule No. 59, Appeal No. 65 of 47 Q issued on May 29, 1977, published in the first part of Technical Office Book No. 28, page 651, Rule No. 137, Appeal No. 1541 of 45 Q issued on January 19, 1976, published in the first part of Technical Office Book No. 27, page 80, Rule No. 16, Appeal No. 599 of 44 Q issued on June 10, 1974, published in the first part of Technical Office Book No. 25, page 589, Rule No. 125, Appeal No. 990 of 43 Q issued on December 9, 1973, published in the third part of Technical Office Book No. 24, page 1157, Rule No. 236.

([3509]) Appeal No. 1991 for the year 49 S issued at the session of June 8, 1980 and published in the first part of the book of the Technical Office No. 31 page No. 712 rule No. 138.

([3510]) Appeal No. 11362 of 67 S issued at the session of November 7, 2006 and published in the letter of the Technical Office No. 57 page No. 858 rule No. 94.

([3511]) Appeal No. 2234 of 67 S issued at the session of February 21, 2005 and published in the book of the Technical Office No. 56 page No. 154 rule No. 21.

([3512]) Article 404 of the Criminal Procedure Code.

([3513]) Article 405 of the Criminal Procedure Code.

([3514]) Appeal No. 2109 of 35 S issued at the session of May 9, 1966 and published in the second part of the book of the Technical Office No. 17 page No. 572 rule No. 102.

([3515]) Article 405 of the Criminal Procedure Code.

In this regard, the Court of Cassation ruled that the decision of the Misdemeanor Court to refer the case to the Public Prosecution to take its affairs in it because it considered that the incident constitutes a felony and not a misdemeanor, the fact that what was issued by that court is a final judgment of lack of jurisdiction, and does not change its nature is what the court described as an order, and it may not be withdrawn until the evidence is based on its cancellation, because it is decided that the lesson is the truth of reality, and then it may be appealed)[3516](.

It follows that the judgments issued in requests for recusal of judges in criminal matters are, by their nature: judgments issued in subsidiary matters related to the formation of the court, and this means that they may not be challenged independently of the judgments issued on the subject of the original lawsuit.[3517]

Second: Who has the right to appeal

Both the accused and the Public Prosecution may appeal the judgments issued in the criminal case.[3518]

It is decided that the right of the Public Prosecution to appeal is absolute and shall be exercised on the date prescribed for it whenever the judgment may be appealed. The judgment issued in opposition to the accused was a stand-alone judgment. The prosecution has the right to appeal against him if it sees fit to do so, and the end of the matter is that if it appeals against the judgment issued in opposition, the appeal court may not exceed the sentence imposed by the trial judgment in absentia - so that the opponent is not harmed by his opposition - except if the prosecution has appealed the judgment in absentia.[3519]

The effect of the convict's appeal of the primary judgment issued against him in absentia is that he has waived his right to object only by resorting to the method of appeal.[3520]

Third: Scope of the Appeal

It is decided that the scope of the appeal is determined as a petitioner.[3521]

It is decided that the appeal transfers the lawsuit to the court of second instance within the limits of the interest of the appellant, and that the appeal of the accused alone is in his own interest, and that the presence of the civil rights plaintiff before the Court of Appeal - if he had not appealed the judgment issued in the civil lawsuit - is only to demand the support of the judgment issued to him for compensation.[3522]

Since the appeal takes place in a report in the clerk's office of the court that issued the appealed judgment, this report is the reference in knowing what judgment is the subject of the appeal to which the court of second instance is contacted and reconsiders the subject matter of his case.

([3516]) Appeal No. 3168 of 75 S issued at the session of February 18, 2013 and published in the Technical Office's letter No. 64, page No. 292, rule No. 30, Appeal No. 4556 of 60 S issued at the session of May 12, 1996 and published in the first part of the Technical Office's letter No. 47, page No. 619, rule No. 86.

([3517]) Appeal No. 2109 of 35 S issued at the 9th session of May 1966 and published in the second part of the technical office book No. 17 page No. 572 rule No. 102, Appeal No. 2463 of 23 S issued at the 9th session of January 1954 and published in the second part of the technical office book No. 5 page No. 221 rule No. 74.

([3518]) Article 402 of the Criminal Procedure Code.

([3519]) Appeal No. 4961 of 63 s issued at the session of April 28, 1999 and published in the first part of the Technical Office letter No. 50 page No. 253 rule No. 60, Appeal No. 1138 of 37 s issued at the session of October 9, 1967 and published in the third part of the Technical Office letter No. 18 page No. 940 rule No. 189.

([3520]) Appeal No. 65 of 49 S issued at the session of May 3, 1979 and published in the first part of the Technical Office's book No. 30 page No. 521 rule No. 111.

([3521]) Appeal No. 1644 of 47 S issued in the session of April 2, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 329 rule No. 61.

([3522]) Appeal No. 985 of 44 S issued on October 7, 1974 and published in the first part of the Technical Office's letter No. 25, page No. 648, rule No. 140.

After deciding on the extent to which it meets the legal conditions for its appeal, the court of second instance shall abide by what is stated in the appeal report, and if it exceeds it, it shall have decided what was not requested of it, and its judgment shall be null and void.[3523]

The appeal of the Public Prosecution is limited to the criminal lawsuit only. It is decided that the scope of the appeal is determined as the plaintiff. The appeal of the Public Prosecution - which has no capacity to speak only about the criminal lawsuit and has nothing to do with the civil lawsuit - does not transfer the dispute before the Court of Appeal except with regard to the criminal lawsuit and not others in accordance with the rule of the relative effect of the appeal. If the civil lawsuit has been resolved by rejecting it and this judiciary has become final by not challenging it from whoever owns it, which is the plaintiff of civil rights alone, the appeal court's response to the civil lawsuit and the judiciary of the plaintiff of civil rights with temporary compensation shall be a response to what it does not have the judiciary in and a separation of what has not been transferred to it and has not been presented to it in violation of the law)[3524](.

The prosecution's appeal is not specialized because of it, but it transfers the entire lawsuit to a second instance court for the benefit of all parties to the lawsuit in relation to the criminal lawsuit, so it decides on it in a way that entitles it to consider all aspects of it, not limited to what the prosecution puts in the decision of its appeal or expresses in the session of requests. It is not valid in the law to say that the appeal filed by the Public Prosecution is restricted by any restriction except what is stipulated in the report that it is about a specific incident without another of the facts subject of the trial. Since the prosecution's appeal is general, it does not specialize because of it, but transfers the entire case to the court of second instance for the benefit of all parties to the case in relation to the criminal case, so it communicates with it in a way that entitles it to consider it in all its aspects, not limited to what the prosecution puts in deciding the reasons for its appeal.[3525]

If the appeal of the Public Prosecution is scheduled, although it does not specialize because of it, but it is inevitably determined by its subject matter, the appeal court does not contact other than the subject that was raised by it under the appeal report, no matter how young, unless it is raised from other subjects of defect.[3526]

It is decided that the appeal of the judgment issued in opposition to its inadmissibility to lift it from an irrevocable judgment is limited in its subject matter to this judgment as a stand-alone formal judgment without the effect of the appeal to the primary judgment due to the different nature of each of the two judgments.[3527]

It is decided that the appeal of the civil rights plaintiff is limited to the civil lawsuit and does not extend to the subject of the criminal lawsuit, even if it was initiated by him - because the appeal

---

([3523]) Appeal No. 49381 of 59 S issued at the session of 13 April 1997 and published in the first part of the Technical Office book No. 48 page No. 458 rule No. 67, Appeal No. 5611 of 54 S issued at the session of 31 January 1985 and published in the first part of the Technical Office book No. 36 page No. 195 rule No. 30, Appeal No. 116 of 47 S issued at the session of 15 May 1977 and published in the first part of the Technical Office book No. 28 page No. 586 rule No. 124.

([3524]) Appeal No. 1644 of 47 S issued in the session of April 2, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 329 rule No. 61.

([3525]) Appeal No. 533 of 46 S issued at the 25th session of October 1976 and published in the first part of the Technical Office letter No. 27 page No. 785 rule No. 178, Appeal No. 672 of 41 S issued at the 12th session of December 1971 and published in the third part of the Technical Office letter No. 22 page No. 734 rule No. 178.

([3526]) Appeal No. 116 of 47 S issued at the session of May 15, 1977 and published in the first part of the Technical Office's letter No. 28 page No. 586 rule No. 124.

([3527]) Appeal No. 648 of 45 S issued at the session of 4 May 1975 and published in the first part of the book of the Technical Office No. 26 page No. 386 rule No. 88.

court's contact with this lawsuit is only through the appeal of the prosecution and the accused.[3528]

Whereas Article 403 of the Code of Criminal Procedure allowed the civil rights plaintiff to appeal the judgment issued by the Summary Court in respect of violations and misdemeanors with regard to his civil rights alone, if the required compensation exceeds the quorum that the partial judge finally rules, and his right to do so exists because it is independent of the right of the Public Prosecution and the right of the accused is restricted only by the quorum, and once his appeal is filed, the appellate court must examine the elements of the crime in terms of the availability of its elements and the proof of the act constituting it against the accused on the one hand and the validity of its attribution to him, as a result of which its legal effects are not restricted by the judgment of the court of first instance, and this does not prevent the fact that the judgment in the criminal case has acquired the force of res judicata, because the two lawsuits - criminal and civil - although they arise from the same reason, but the subject matter in each differs from the other, which is not possible to adhere to the authority of the criminal judgment[3529]

The right of appeal prescribed for the civil rights plaintiff in Article 403 of the Code of Criminal Procedure is independent of the right of the Public Prosecution and the accused. The appellate court - on the basis of that plaintiff's appeal - must examine the elements of the crime and the act constituting it against the accused, without its judgment being the same as that issued in the criminal case, preventing this, because the criminal and civil lawsuits, even if they arose for the same reason, but the subject matter in both of them is different, which does not justify adherence to the force of the res judicata, otherwise the right of appeal prescribed for the civil rights plaintiff will be suspended and the function of the appellant misdemeanor court will be suspended if his appeal is considered independently in a subsequent session to the one that has already been decided in the appeal of the Public Prosecution.[3530]

Fourth: Appeal Date

1-The appeal shall be made by a report in the clerk's office of the court that issued the judgment within ten days from the date of the pronouncement of the judgment in presence or the announcement of the judgment in absentia, or from the date of the judgment issued in opposition in cases where it is permissible to do so.[3531]

The appeal is a procedural act in nature. The law only requires the appellant to disclose his desire to object to the judgment by reporting it in the clerk's office of the court that issued the

([3528]) Appeal No. 1588 of 45 S issued in the session of February 1, 1976 and published in the first part of the Technical Office's letter No. 27, page No. 139, rule No. 27.

([3529]) Appeal No. 4838 of 67 s issued at the session of October 15, 2003 and published in the Technical Office's book No. 54 page 981 rule No. 131, Appeal No. 13409 of 61 s issued at the session of October 8, 2000 and published in the Technical Office's book No. 51 page 595 rule No. 115, Appeal No. 1933 of 53 s issued at the session of November 24, 1983 and published in the first part of the Technical Office's book No. 34 page 991 rule No. 199, Appeal No. 5638 of 52 s issued at the session of January 25, 1983 and published in the first part of the Technical Office's book No. 34 page No. 162 rule No. 28, Appeal No. 212 of 45 s issued at the session of March 24, 1975 and published in the first part of the Technical Office's book No. 26 page No. 280 rule No. 65.

([3530]) Appeal No. 212 of 45 S issued at the session of March 24, 1975 and published in the first part of the book of the Technical Office No. 26 page No. 280 rule No. 65.

([3531]) Article No. 406 of the Criminal Procedure Code, Appeal No. 12010 of 79 s issued at the session of March 24, 2011 and published in Technical Office Book No. 62 page No. 189 rule No. 31, Appeal No. 28389 of 72 s issued at the session of November 1, 2009 and published in Technical Office Book No. 60 page No. 399 rule No. 55, Appeal No. 405 of 42 s issued at the session of May 29, 1972 and published in Part II of Technical Office Book No. 23 page No. 821 rule No. 186, Appeal No. 45 of 41 s issued at the session of April 4, 1971 and published in Part I of Technical Office Book No. 22 page No. 335 rule No. 82, Appeal No. 1600 of 37 s issued at the session of November 20, 1967 and published in Part III of Technical Office Book No. 18 page No. 1133 rule No. 237, Appeal No. 324 of 26 issued at the session of May 1, 1956 and published in Part II of Technical Office Book No. 7 page No. 701 rule No. 197.

judgment within the legally specified time limit. If the appellant comes to the clerk's office and decides before the competent clerk verbally that he wishes to file it, and the clerk records this desire in the report prepared for this purpose and signs it, the appeal is legally valid, even if it is not signed by the rapporteur, which brings him into the possession of the appellate court and contacts him.[3532]

The basis is that the date for appealing the judgment issued in the opposition begins - as the present judgment - from the day it is issued.[3533]

If one of the litigants appeals within the prescribed ten days, the appeal period shall be extended for those who have the right of appeal from the rest of the litigants five days from the date of expiry of the said ten days.[3534]

Taking into account that what is meant by the litigation in the appeal in the event that it is filed by the convicted person is the Public Prosecution or the plaintiff of civil rights, and not by other convicted persons or those responsible for civil rights, and the basis of this is that Article 409 of the Code of Criminal Procedure stipulates that "if one of the litigants appeals within the prescribed ten-day period, the date of appeal shall be extended for those who have the right to appeal from the rest of the litigants five days from the date of the end of the said ten days." It is a text in which the street adopted the idea of subsidiary appeal in accordance with many legislations such as the French law and the mixed criminal investigation law because of the wisdom of the phenomenon disclosed by the street in Explanatory Memorandum No. 2 accompanying the Code of Criminal Procedure to Article 435, which became Article 409 by saying "One of the litigant may appeal at the end of the ten days and thus surprise his opponent who has refraged from appealing against the silence of his opponent. It is fair that he has an opportunity to appeal if he wants to preserve his interests. Accordingly, if the defendant appeals the judgment issued against him, the deadline for the prosecution and the civil rights plaintiff is extended for another five days, and it goes without saying that the sub-appeal may only be filed if the original appeal is filed within the ten-day deadline...."The statement that the appeal of one of the defendants on time entitles another defendant with him to report the appeal in the five days following the end of the ten days prescribed by law for the appeal and is not consistent with the correctness of the law, as the defendant's opponent is the prosecution and the civil rights plaintiff and not the other defendant who is questioned with him about committing the accident, and he is not responsible for civil rights who is asked with the defendant about reparation on the basis that the responsibility of the follower for the wrongful acts of his subordinate is a subsidiary responsibility established by law for the benefit of the injured and is based on the idea of legal guarantee, so the follower is considered to be a guarantor in solidarity with the follower[3535]

2-The Attorney General may appeal within a period of thirty days from the time of issuance of the judgment, and he may decide to appeal in the clerk's office of the court competent to hear the appeal.[3536]

([3532]) Appeal No. 2297 of 51 S issued at the 26th session of November 1981 and published in the first part of the Technical Office letter No. 32 page No. 981 rule No. 172, Appeal No. 2943 of 32 S issued at the 29th session of October 1963 and published in the third part of the Technical Office letter No. 14 page No. 729 rule No. 132.

([3533]) Appeal No. 130 of 47 s issued at the session of 30 May 1977 and published in the first part of the book of the Technical Office No. 28 page No. 658 rule No. 139.

([3534]) Article 409 of the Criminal Procedure Code.

([3535]) Appeal No. 10967 of 59 S issued at the session of January 9, 1991 and published in the first part of the Technical Office book No. 42 page No. 51 rule No. 9, Appeal No. 568 of 48 S issued at the session of January 15, 1979 and published in the first part of the Technical Office book No. 30 page No. 97 rule No. 16, Appeal No. 2055 of 34 S issued at the session of April 19, 1965 and published in the second part of the Technical Office book No. 16 page No. 377 rule No. 77.

([3536]) Article 406 of the Criminal Procedure Code.

3-The deadline for appealing the judgments issued in the absence of the accused and considered in presence of the accused shall start from the date of his notification thereof, regardless of whether he was informed by another means of the issuance of the judgment.[3537]

It is established in the case law of the Court of Cassation that the lesson in describing the judgment as being in presence, presence or absence is the reality of the lawsuit, not what is in the operative part of the judgment.[3538]

It is clear from this that the Code of Criminal Procedure made a difference between the judgments regarding the validity of the date of appeal. Article 406 stipulates that the time limit for appealing the judgments in presence and the judgments in absentia in which the opposition may be objected to. This date is considered effective from the date of pronouncing the judgment in presence or the judgment issued in opposition or the judgment as the opposition was not or from the date of expiry of the date set for the opposition in the judgment in absentia. Article 407 stipulates that the judgments issued in absentia and considered in presence. The start of the date of their appeal for the accused is considered from the date of notifying them, as these judgments - as shown by the explanatory memorandum of the Code of Criminal Procedure - are in fact absentia, and for the purpose there that they are not subject to opposition. The law requires that the start of the date of their appeal be from the date of notifying the accused of them)[3539](.

The scope of application of Article 407 of the Code of Criminal Procedure, which stipulates that the date of appeal shall not start for the accused except from the date of his notification of the judgment, is the judgments issued in the absence of the accused and considered in presence in accordance with Articles 238 to 241 of the said Code and not the judgments issued in opposition, as these judgments are subject to the text of Article 406 Procedures)[3540](.

It is decided that the date of appeal against the appeal against the judgment issued in the opposition begins as the present judgment from the date of its issuance, unless the non-attendance of the objection at the hearing that was set to consider his objection is due to compelling reasons that have nothing to do with his will. The date of the appeal does not start until the day on which he is officially informed of the judgment.[3541]

The date of appeal - as is the case with all dates of appeal against judgments - from the public order, and it may be invoked in any case in which the lawsuit is filed, but raising any plea in its

---

([3537]) Article 407 of the Code of Criminal Procedure, Appeal No. 4573 of 64 S issued at the session of December 20, 2001, Appeal No. 1180 of 42 S issued at the session of January 1, 1973 and published in the first part of the Technical Office's letter No. 24, page No. 23, rule No. 6, Appeal No. 847 of 42 S issued at the session of October 15, 1972 and published in the third part of the Technical Office's letter No. 23, page No. 1036, rule No. 230.

([3538]) Appeal No. 15582 of 62 S issued at the session of March 25, 2002 (unpublished), Appeal No. 1970 of 49 S issued at the session of January 28, 1980 and published in the first part of the book of the Technical Office No. 31 page 142 rule No. 28, Appeal No. 1171 of 40 S issued at the session of November 15, 1970 and published in the third part of the book of the Technical Office No. 21 page 1082 rule No. 261.

([3539]) Appeal No. 1201 of 40 S issued at the session of 23 November 1970 and published in Part III of the Technical Office letter No. 21 page No. 1143 rule No. 276, Appeal No. 1185 of 34 S issued at the session of 15 December 1964 and published in Part III of the Technical Office letter No. 15 page No. 829 rule No. 163, Appeal No. 239 of 24 S issued at the session of 5 July 1954 and published in Part III of the Technical Office letter No. 5 page No. 888 rule No. 283.

([3540]) Appeal No. 6963 of 67 S issued at the session of June 1, 2006 (unpublished), Appeal No. 1611 of 66 S issued at the session of January 1, 2004 (unpublished), Appeal No. 16955 of 63 S issued at the session of March 14, 1999 and published in the first part of the Technical Office letter No. 50, page No. 174, rule No. 39, Appeal No. 45 of 41 S issued at the session of April 4, 1971 and published in the first part of the Technical Office letter No. 22, page No. 335, rule No. 82.

([3541]) Appeal No. 16955 of 63 S issued at the hearing of March 14, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 174 rule No. 39.

regard for the first time before the Court of Cassation is conditional on it being based on facts proven by the judgment and does not require an objective investigation.[3542]

The day on which the judgment is issued is not counted as part of the appeal date.[3543]

It is decided that the assessment of the sufficiency of the excuse on which the appellant relies in failing to report his appeal in time is the right of the trial judge. When it is rejected, it is not subject to comment by the Court of Cassation unless the reason for the rejection is unjustifiable and cannot be rationally accepted.[3544]

If the Court of Appeal decides to accept the appeal in form, despite the fact that its judgment records contain data indicative of its own, that the convict decided to appeal after the lapse of the legally prescribed ten-day deadline, and without the court stating the reasons for this and whether the appellant has shown an excuse and evidence and accepted it or not, its judgment will have been marred by deficiency in causation as well as violation of the law.[3545]

Illness is one of the excuses that justify the failure to follow the trial procedures, and therefore - if its duration is prolonged - the failure to report the appeal within the legally prescribed time, which requires the judgment if the appellant adheres to the excuse of illness and provides his evidence, to present the judgment to this evidence and say his word in it. If the appealed judgment supports the appealed default judgment that the appeal is not accepted in form for the report after the deadline, without ever presenting the medical certificate submitted by the appellant to prove the validity of that excuse, justifying his delay in the report with the appeal, and he did not achieve that defense and turned away from it completely, it is flawed by the deficiency in the statement and the violation of the right of defense to invalidate it)[3546](.

([3542]) Appeal No. 48101 of 59 S issued at the session of July 21, 1999 and published in the first part of the Technical Office book No. 50 page No. 411 rule No. 97, Appeal No. 18295 of 59 S issued at the session of December 26, 1993 and published in the first part of the Technical Office book No. 44 page No. 1265 rule No. 192, Appeal No. 6953 of 59 S issued at the session of January 30, 1992 and published in the first part of the Technical Office book No. 43 page No. 188 rule No. 18, Appeal No. 11365 of 59 S issued at the session of March 12, 1991 and published in the first part of the Technical Office letter No. 42 page No. 490 rule No. 69, Appeal No. 1680 of 55 S issued at the session of October 8, 1985 and published in the first part of the Technical Office letter No. 36 page No. 824 rule No. 146, Appeal No. 6081 of 52 S issued at the session of February 7, 1983 and published in the first part of the Technical Office letter No. 34 page No. 206 rule No. 38, Appeal No. 785 For the year 49 S issued in the session of December 13, 1979 and published in the first part of the Technical Office book No. 30 page No. 924 rule No. 198, Appeal No. 1635 of the year 48 S issued in the session of January 28, 1979 and published in the first part of the Technical Office book No. 30 page No. 171 rule No. 33, Appeal No. 1290 of the year 48 S issued in the session of December 7, 1978 and published in the first part of the Technical Office book No. 29 page No. 883 rule No. 183, Appeal No. 1373 of the year 41 S issued in the session of January 16, 1972 and published in the first part of the Technical Office book No. 23 page No. 65 rule No. 18, Appeal No. 1397 of the year 29 S issued in the session of January 25, 1960 and published in the first part of the Technical Office book No. 11 page No. 100 rule No. 18.

([3543]) Appeal No. 4792 of 60 S issued at the session of January 12, 1997 and published in the first part of the Technical Office book No. 48 page No. 76 rule No. 11, Appeal No. 677 of 47 S issued at the session of November 14, 1977 and published in the first part of the Technical Office book No. 28 page No. 967 rule No. 199, Appeal No. 1173 of 39 S issued at the session of December 1, 1969 and published in the third part of the Technical Office book No. 20 page No. 1354 rule No. 275.

([3544]) Appeal No. 776 of 43 s issued at the session of 19 November 1973 and published in the third part of the Technical Office letter No. 24 page No. 1019 rule No. 212, Appeal No. 1303 of 29 s issued at the session of 28 December 1959 and published in the third part of the Technical Office letter No. 10 page No. 1068 rule No. 219.

([3545]) Appeal No. 11365 of 59 S issued at the session of March 12, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 490 rule No. 69.

([3546]) Appeal No. 3372 of 55 S issued at the hearing of 16 October 1985 and published in the first part of the book of the Technical Office No. 36 page No. 875 rule No. 157.

The Court of Cassation also ruled that: [Do not be reassured of the validity of the opponent's excuse based on this certificate, as in addition to his failure to attend all the hearings in which the lawsuit was considered at first and appeal before the hearing in which he submitted the certificate, it does not state that the opponent has responded to the instructions of its editor in terms of the obligation to rest and stay in bed already throughout the period for which the certificate specified its principle and end, but it was proven from the appeal report that the opponent is the one who moved to the registry of the competent court and decided to appeal in person and signed the report by signing it on May 24, 1977, which is in the period of claiming illness,

The mere restriction of the freedom of the accused and his presence in prison is not an excuse that prevents him from deciding to appeal within the legal time limit as long as the prison system enables him to decide the existence of the books prescribed for this purpose in them.[3547]

In all cases, if a compelling excuse prevents the convict from making the decision to appeal on the legally specified date, he must initiate the appeal on the day immediately following the demise of the impediment.[3548]

It is not acceptable for the convicted person to fail to file the appeal on time that he is ignorant of the legal date. If the judgment responds to his defense that he has no excuse for ignorance of the law and takes it accordingly by failing to file the appeal on the legal date calculated from the day of the issuance of the appealed present judgment, this is a correct consideration of the law.[3549]

Although the appeal report paper is an argument with regard to proving its data, including the date of receipt of the report, but when it has been proven a date that does not match the truth by omission or material error, it is irrelevant as the real date on which the convict decided to appeal.[3550]

Fifth: Court of Appeal

The appeal shall be submitted to the court of first instance in whose jurisdiction the court that issued the judgment is located. It shall be submitted within a maximum period of thirty days to the department competent to hear the appeal in the articles of violations and misdemeanors.

If the accused is detained, the Public Prosecution shall transfer him in a timely manner to the prison in the place where the court of first instance is located, and the appeal shall be considered expeditiously[3551].

Although Article 410 of the Code of Criminal Procedure stipulates that the appeal shall be submitted within a maximum period of thirty days to the competent department, but this is only as a matter of regulatory provisions that do not entail nullity as a result of violating them.[3552]

Since the power of attorney under which the lawyer decided to appeal has explicitly stipulated that he has the right to appeal any judgment issued against the client, this is legally sufficient to

---

which indicates the lack of seriousness of that certificate. In view of the foregoing, the judgment in absentia opposing it, as it ruled that the appeal is not accepted in a form to be decided after the deadline, is appropriate, with which it is necessary to rule on the subject of the objection by rejecting it and supporting the judgment in absentia opposing it], Appeal No. 1690 of 53 S issued at the session of 31 December 1984 and published in the first part of the book of the Technical Office No. 35 page No. 971 rule No. 217, Appeal No. 1290 of 48 S issued at the session of 7 December 1978 and published in the first part of the book of the Technical Office No. 29 page No. 883 rule No. 183.

([3547]) Appeal No. 44363 of 59 S issued at the session of 19 March 1996 and published in the first part of the book of the Technical Office No. 47 page No. 376 rule No. 53, Appeal No. 1600 of 37 S issued at the session of 20 November 1967 and published in the third part of the book of the Technical Office No. 18 page No. 1133 rule No. 237.

([3548]) Appeal No. 405 of 42 S issued at the session of 29 May 1972 and published in the second part of the technical office book No. 23 page No. 821 rule No. 186, Appeal No. 1282 of 35 S issued at the session of 6 December 1965 and published in the third part of the technical office book No. 16 page No. 906 rule No. 174.

([3549]) Appeal No. 1282 of 35 S issued on December 6, 1965 and published in the third part of the book of the Technical Office No. 16 page No. 906 rule No. 174.

([3550]) Appeal No. 2955 of 32 S issued on March 4, 1963 and published in the first part of the Technical Office's letter No. 14, page No. 144, rule No. 32.

([3551]) Article 410 of the Criminal Procedure Code.

([3552]) Appeal No. 1187 of 40 BC issued at the session of 22 November 1970 and published in the third part of the book of the Technical Office No. 21 page No. 1118 rule No. 271.

authorize him to appeal in each case, and the lawsuit does not need to be specifically specified in the power of attorney document.[3553]

Sixth: Setting a hearing for the appeal

The clerk's office shall specify to the appellant in the appeal report the date of the hearing specified for his consideration, and this shall be considered an announcement of it, even if the report is from an agent, and this date shall not be before the lapse of three full days, and the Public Prosecution shall assign the other litigants to attend.[3554]

It is clear from this that the legislator has satisfied himself with the announcement of the opposition or the appellant - respectively - of the specific session as soon as the objection or appeal is decided, even if the report is from an agent.[3555]

The legislator obligated the Public Prosecution to assign the litigants other than the appellants to attend the session specified for hearing the appeal.[3556]

It is established that when the judgment was issued against the plaintiff in civil rights and ruled to cancel the appealed judgment and reject the civil lawsuit, without the plaintiff being notified of the civil rights to appear before the Court of Appeal and without hearing his defense in the lawsuit pursuant to the text of Article 408 of the Code of Criminal Procedure, the judgment shall be based on a violation of a trial procedure, which invalidates it.[3557]

The appeal filed by the convicted person with a freedom-restricting penalty that is enforceable shall be forfeited if he does not apply for enforcement before the hearing in which the lawsuit is considered.

However, the court may, when considering the appeal, order a temporary suspension of the execution of the sentence or the release of the convict on bail or otherwise, until the appeal is decided.[3558]

([3553]) Appeal No. 640 of 13 S issued on March 1, 1943 and published in the letter of the Technical Office No. 6P, Part No. 1, Page No. 185, Rule No. 125.

([3554]) Article 408 of the Criminal Procedure Code.

([3555]) Appeal No. 8372 of 81 S issued at the hearing of 14 May 2012 and published in the letter of the Technical Office No. 63, page 332, rule No. 52, Appeal No. 21514 of 66 S issued at the hearing of 31 July 2006 (unpublished), Appeal No. 21353 of 66 S issued at the hearing of 25 July 2006 (unpublished), Appeal No. 15513 of 66 S issued at the hearing of 1 June 2006 (unpublished), Appeal No. 15605 of 66 S issued at the hearing of 4 May 2006 (unpublished), Appeal No. 4625 of 65 S issued at the hearing of March 4, 2004 (unpublished), Appeal No. 25337 of 63 S issued at the hearing of July 28, 2003 (unpublished), Appeal No. 20055 of 64 S issued at the hearing of June 5, 2003 (unpublished), Appeal No. 787 of 68 S issued at the hearing of May 12, 2003 (unpublished), Appeal No. 623 of 68 S issued at the hearing of April 14, 2003 (unpublished), Appeal No. 5746 of 63 S issued at the hearing of November 7 For the year 2002 (unpublished), Appeal No. 8858 of 61 s issued at the session of October 8, 2001 (unpublished), Appeal No. 14631 of 62 s issued at the session of September 27, 1997 and published in the first part of the Technical Office's letter No. 48, page No. 937, rule No. 141, Appeal No. 62266 of 59 s issued at the session of November 4, 1992 and published in the first part of the Technical Office's letter No. 43, page No. 988, rule No. 152, Appeal No. 1142 of 43 s issued at the session of December 30, 1973 and published in the third part of the Technical Office's letter No. 24, page No. 1283, rule No. 261.

([3556]) Appeal No. 7657 of 62 S issued at the session of 7 June 2000 and published in the letter of the Technical Office No. 51 page No. 499 rule No. 96, Appeal No. 2487 of 50 S issued at the session of 30 April 1981 and published in the first part of the letter of the Technical Office No. 32 page No. 445 rule No. 78.

([3557]) Appeal No. 8024 of 69 s issued at the session of January 5, 2006 (unpublished), Appeal No. 9951 of 69 s issued at the session of May 5, 2005 (unpublished), Appeal No. 21020 of 66 s issued at the session of September 29, 2003 (unpublished), Appeal No. 23575 of 65 s issued at the session of October 16, 2002 and published in the book of the Technical Office No. 53 page 965 Rule No. 160, Appeal No. 21090 of 68 s issued at the session of February 10, 2001 and published in the book of the Technical Office No. 52 page 269 Rule No. 40, Appeal No. 22334 of 62 s issued at the session of April 17, 2000 (unpublished), Appeal No. 8451 of 60 s issued at the session of May 20, 1999 and published in the first part of the book of the Technical Office No. 50 page 324 Rule No. 74.

([3558]) Article 412 of the Criminal Procedure Code.

This means that the forfeiture of the appeal is a mandatory penalty imposed on the appellant if he does not apply for the enforcement of the freedom-restricting penalty that must be enforced before the hearing specified for the consideration of his appeal, in order to prevent the abuse of the right of appeal and out of respect for the enforceable judgment, which is a procedural penalty that removes the right of the accused to initiate the appeal - which has been available to him since the issuance of the appealed judgment - by the court on its own initiative without paying attention to the appeal order in terms of form)[3559](.

The ruling stipulates that the appellant's failure to implement before the hearing specified for the hearing of his appeal shall not be due to a compelling excuse.[3560]

Whereas the legal axiom stipulates that what is required by Article 412 of the Code of Criminal Procedure to accept the appeal from the appellant to implement the sentence before the hearing is only when such implementation is legally obligatory, which does not happen if the act attributed to the accused is not punishable by a penalty restricting freedom.[3561]

It is also not verified if the penalty initially imposed is a fine.[3562]

This is not achieved in the event that the appellant pays the bail prescribed in the primary judgment.[3563]

It is also not achieved if the crime attributed to the accused has lapsed with the lapse of the period.[3564]

It is also not achieved in the event that the sentence of imprisonment is suspended and the accused is the only appellant, which means that the appellate court must first consider whether enforcement is obligatory and as long as it is not, and if it accepts it, it shall decide on the lawsuit.[3565]

Article 412 of the Criminal Procedure Law made the forfeiture of the appeal dependent on the convict's failure to apply for execution before the hearing, thus stating that his appeal shall not be forfeited when he has submitted for execution until the time of the appeal on his case on the day of the hearing, as long as the execution on him has become a fait accompli before the hearing of the appeal. Whenever he has appeared before the court at the time of the appeal on his case on the day of the hearing, he, by his appearance, has placed himself at the disposal of the dominant authority for execution, without regard to whether the dominant authority for

---

([3559]) Appeal No. 4211 of 58 S issued on 27 November 1989 and published in the first part of the book of the Technical Office No. 40 page No. 1084 rule No. 173.

([3560]) Appeal No. 6780 of 53 S issued in the session of April 10, 1984 and published in the first part of the book of the Technical Office No. 35 page No. 408 rule No. 89.

([3561]) Appeal No. 23462 of 66 S issued at the hearing of September 18, 2006 and published in the Technical Office's book No. 57, page 776, rule No. 80, Appeal No. 21168 of 66 S issued at the hearing of July 25, 2006 (unpublished), Appeal No. 699 of 69 S issued at the hearing of March 27, 2006 (unpublished), Appeal No. 699 of 69 S issued at the hearing of March 27, 2006 (unpublished), Appeal No. 1549 of 68 S issued at the hearing of March 22, 2004 (unpublished), Appeal No. 18447 of 64 S issued at the hearing of December 24, 2001 (unpublished), Appeal No. 1105 of 22 S issued at the hearing of December 30, 1952 and published in the first part of the Technical Office's book No. 4, page 285, rule No. 111.

([3562]) Appeal No. 15240 of 61 s issued at the session of 13 April 1998 and published in the first part of the technical office book No. 49 page No. 545 rule No. 71, Appeal No. 383 of 51 s issued at the session of 6 December 1981 and published in the first part of the technical office book No. 32 page No. 1058 rule No. 187.

([3563]) Appeal No. 23607 of 59 S issued at the session of 26 December 1994 and published in the first part of the technical office book No. 45 page No. 1234 rule No. 193, Appeal No. 62266 of 59 S issued at the session of 4 November 1992 and published in the first part of the technical office book No. 43 page No. 988 rule No. 152.

([3564]) Appeal No. 48 of 68 S issued at the session of February 23, 2004 (unpublished).

([3565]) Appeal No. 2801 of 65 S issued at the session of March 13, 2001 and published in the letter of the Technical Office No. 52, page No. 324, rule No. 52, Appeal No. 41721 of 59 S issued at the session of January 29, 1996 and published in the first part of the letter of the Technical Office No. 47, page No. 141, rule No. 20.

execution has taken the enforcement action before him before or after the hearing, or has failed in its duty to do so after he has placed himself at its disposal)[3566](.

The execution of the judgment does not require the writing of the execution order in preparation for the placement of the accused in prison, but it is sufficient that he has placed himself at the disposal of the authority controlling the execution before the hearing, without regard to whether this authority has taken measures before him to implement before or after the hearing. The accused, if he appeared before the Court of Appeal to decide on the subject of his appeal from a judgment covered by the enforcement, the execution on him has become a fait accompli prior to the hearing of the appeal.[3567]

It is decided that the text of Article 412 of the Code of Criminal Procedure indicates that the forfeiture of the appeal is a mandatory penalty imposed on the appellant sentenced to a custodial sentence if he does not submit to the execution of the sentence before the session specified for the consideration of his appeal.[3568]

The penalty for forfeiture of the appeal shall be that the appeal is filed by the convicted person and that the penalty restricting freedom shall be enforceable with proof that it is not submitted for execution before the hearing, and it shall not be enforceable if the appeal is filed by a non-convicted person.[3569]

If Article 412 of the Code of Criminal Procedure has made the forfeiture of the appeal dependent on the convict's failure to submit the execution before the hearing and it is not necessary to enforce it only when the execution is due and it is achieved if the bail specified in the preliminary judgment is not paid, which was initiated to ensure that the appellant attends the hearing and does not flee from the judgment that is issued, then the failure to pay it would still be enforceable and the aforementioned Article 412 would become applicable.[3570]

([3566]) Appeal No. 2775 of 69 S issued at the hearing of 14 May 2007 and published in the letter of the Technical Office No. 58 page No. 415 rule No. 82, Appeal No. 16221 of 66 S issued at the hearing of 9 November 2003 (unpublished), Appeal No. 11134 of 63 S issued at the hearing of 1 January 2003 (unpublished), Appeal No. 7730 of 63 S issued at the hearing of 27 October 1997 and published in the first part of the letter of the Technical Office No. 48 page No. 1158 rule No. 173, Appeal No. 27770 of 59 S issued at the 27th session of October 1994 and published in the first part of the Technical Office letter No. 45 page No. 898 rule No. 140, Appeal No. 1535 of 57 S issued at the 8th session of December 1988 and published in the second part of the Technical Office letter No. 39 page No. 1257 rule No. 194, Appeal No. 3702 of 58 S issued at the 13th session of October 1988 and published in the first part of the Technical Office letter No. 39 page No. 905 rule No. 135, Appeal No. 6965 of 55 S issued at the 27th session of March 1988 and published in Part I of Technical Office Letter No. 39 Page 508 Rule No. 74, Appeal No. 3239 of 54 S issued at the 25th session of December 1984 and published in Part I of Technical Office Letter No. 35 Page 958 Rule No. 214, Appeal No. 5010 of 52 S issued at the 14th session of December 1982 and published in Part I of Technical Office Letter No. 33 Page 988 Rule No. 204, Appeal No. 4331 of 51 s issued at the session of February 3, 1982 and published in the first part of the Technical Office letter No. 33 page No. 133 rule No. 26, Appeal No. 502 of 48 s issued at the session of October 15, 1978 and published in the first part of the Technical Office letter No. 29 page No. 692 rule No. 136, Appeal No. 1516 of 27 s issued at the session of December 16, 1957 and published in the third part of the Technical Office letter No. 8 page No. 993 rule No. 271, Appeal No. 2164 of 23 s issued At the session of January 19, 1954, published in the second part of the Technical Office's letter No. 5, page No. 272, rule No. 90.

([3567]) Appeal No. 3467 of 62 S issued at the session of September 19, 2001 and published in the Technical Office letter No. 52, page No. 647, rule No. 118, Appeal No. 6965 of 55 S issued at the session of March 27, 1988 and published in the first part of the Technical Office letter No. 39, page No. 508, rule No. 74, Appeal No. 1738 of 29 S issued at the session of February 2, 1960 and published in the first part of the Technical Office letter No. 11, page No. 139, rule No. 28, Appeal No. 1516 of 27 S issued at the session of December 16, 1957 and published in the third part of the Technical Office letter No. 8, page No. 993, rule No. 271.

([3568]) Appeal No. 1063 of 66 S issued at the session of February 24, 2005 and published in the book of the Technical Office No. 56 page No. 162 rule No. 22.

([3569]) Appeal No. 8374 of 69 S issued at the session of January 23, 2006 (unpublished).

([3570]) Appeal No. 21073 of 66 s issued at the session of January 5, 2006 (unpublished), Appeal No. 13163 of 65 s issued at the session of March 15, 2004 (unpublished), Appeal No. 3467 of 62 s issued at the session of September 19, 2001 and published in the Technical Office letter No. 52, page No. 647, rule No. 118, Appeal No. 3467 of 62 s issued at the session of September 19, 2001 and published in the Technical Office letter No. 52, page No. 647, rule No. 118, Appeal No. 13984 of 64 s issued at

The penalty of forfeiture of the appeal shall not be imposed except when examining the appeal of the accused against the judgment of the court of first instance. If the appeal court fails to consider the appeal of the accused, it shall rule the forfeiture of the appeal and shall be subject in its judgment to the judiciary on the merits of the case, and its decision not to appeal against it shall become final from the Public Prosecution, it shall not require the forfeiture of the appeal for the first time when considering the objection of the accused to the appeal in absentia judgment because he has acquired a right in the consideration of the merits of the case that he may not be deprived of it due to an error committed by the court.[3571]

Seventh: Appeal Review Procedures

1. Preparation of Summary Report

One of the members of the circuit entrusted with the judgment in the appeal shall draw up a report signed by him, and this report must include a summary of the facts and circumstances of the case, evidence of proof and denial, and all sub-issues that have been filed and the procedures that have been completed.[3572]

Writing a summary report is an essential element in the proceedings before the Court of Appeal.[3573]

The law required that one of the members of the circuit entrusted with the judgment in the appeal submit a report signed by him, including a summary of the facts and circumstances of the case, evidence of proof and denial, and all the sub-issues that occurred, the procedures that took place, and the obligation to read it before any other procedure so that the judiciary knows what is recorded in the lawsuit papers in order to understand the statements made by the litigants and to facilitate the review of the papers before the judgment is issued. Otherwise, the court will have overlooked one of the essential procedures necessary for the validity of its judgment.[3574]

---

the session of April 12, 2000 and published in the Technical Office letter No. 51, page No. 413, rule No. 76, Appeal No. 4492 of 56 s issued at the session of December 29, 1986 and published in the first part of the Technical Office book No. 37, page No. 1141, rule No. 219, Appeal No. 2266 of 49 s issued at the session of April 2, 1980 and published in the first part of the Technical Office book No. 31, page No. 478, rule No. 89.

([3571]) Appeal No. 7563 of 59 S issued at the session of 23 April 1992 and published in the first part of the book of the Technical Office No. 43 page No. 420 rule No. 63.

([3572]) Article 411 of the Criminal Procedure Code.

([3573]) Appeal No. 4745 of 88 S issued at the 4th session of November 2018, Appeal No. 2005 of 78 S issued at the 5th session of January 2017.

([3574]), Appeal No. 10649 of 85 S issued at the hearing of April 17, 2016 (unpublished), Appeal No. 6829 of 85 S issued at the hearing of April 2, 2016 (unpublished), Appeal No. 31822 of 83 S issued at the hearing of June 5, 2014, Appeal No. 3388 of 4 S issued at the hearing of October 27, 2013 and published in the book of the Technical Office No. 64, page No. 866, rule No. 132, Appeal No. 8926 of 82 S issued at the hearing of May 19, 2013, Appeal No. 8926 of 82 S issued at the hearing of 19 May 2013 (unpublished), Appeal No. 12023 of 79 S issued at the hearing of 1 March 2011 (unpublished), Appeal No. 10318 of 74 S issued at the hearing of 25 February 2008 (unpublished), Appeal No. 6936 of 67 S issued at the hearing of 1 June 2006 (unpublished), Appeal No. 7103 of 66 S issued at the hearing of 6 April 2006 (unpublished), Appeal No. 32313 of 69 S issued at the hearing of 14 November 2005 and published in a letter Technical Office No. 56 Page No. 565 Rule No. 88, Appeal No. 8117 of 66 S issued at the hearing of April 17, 2005 (unpublished), Appeal No. 1528 of 66 S issued at the hearing of January 1, 2004 (unpublished), Appeal No. 4614 of 66 S issued at the hearing of December 19, 2002 (unpublished), Appeal No. 757 of 62 S issued at the hearing of February 6, 2002 and published in the Technical Office Letter No. 53 Page No. 232 Rule No. 42, Appeal No. 10344 of 64 S issued at the session of January 15, 2000 and published in the Technical Office letter No. 51, page No. 52, rule No. 6, Appeal No. 5847 of 61 S issued at the session of November 17, 1998 and published in the first part of the Technical Office letter No. 49, page No. 1303, rule No. 185, Appeal No. 27954 of 59 S issued at the session of November 23, 1994 and published in the first part of the Technical Office letter No. 45, page No. 1022, rule No. 159, Appeal No. 3578 of 56 S issued at the 22nd session of February 1987, published in the first part of Technical Office Letter No. 38, page No. 310, rule No. 45, Appeal No. 4619 of 56 S issued at the 25th session of December 1986, published in the first part of Technical Office Letter No. 37, page No. 1135, rule No. 217, Appeal No. 4890 of 54 S issued at the 14th session of May 1985, published in the first part of Technical Office Letter No. 36, page No. 651, rule No. 115, Appeal No. 2672 of 54 s issued at the hearing of

The data mentioned in Article 411 of the Criminal Procedure Law shall be mentioned in the summary report if the court communicates with the subject matter of the case, but if it is in the process of deciding on the formal conditions that must be met to accept the appeal, there is nothing to prevent the summary decision from referring only to the fulfillment or non-fulfilment of those conditions - that is, to the extent required by the decision in the form)[3575](.

However, the summary report is just a statement that allows the members of the Authority to familiarize themselves with the entire facts and circumstances of the lawsuit, and the investigations and procedures that have been carried out in it. The law did not entail the deficiency or error of the report as a result of any invalidity attached to the judgment issued in the lawsuit.[3576]

November 14, 1984 and published in the first part of the Technical Office letter No. 35 page 772 rule No. 172, Appeal No. 633 of 51 s issued at the hearing of November 18, 1981 and published in the first part of the Technical Office letter No. 32 page No. 938 rule No. 161, Appeal No. 595 of 49 s issued at the hearing of March 19, 1980 and published in the first part of the Technical Office letter No. 31 page No. 424 rule No. 77, Appeal No. 105 of 45 s issued at the hearing of March 9, 1975 Published in the first part of the Technical Office's letter No. 26, page No. 217, rule No. 48, Appeal No. 1256 of 25 S issued at the session of February 21, 1956 and published in the first part of the Technical Office's letter No. 7, page No. 247, rule No. 74.

([3575]) Appeal No. 17966 of 66 S issued at the session of June 1, 2006 (unpublished), Appeal No. 4413 of 66 S issued at the session of April 20, 2006 (unpublished), Appeal No. 20438 of 65 S issued at the session of November 17, 2005 (unpublished), Appeal No. 827 of 26 S issued at the session of November 27, 1956 and published in the third part of the Technical Office's book No. 7, page No. 1191, rule No. 331.

([3576]) Appeal No. 23024 of 4 Q issued on February 27, 2016 (unpublished), Appeal No. 2788 of 5 Q issued on September 5, 2015 (unpublished), Appeal No. 2788 of 5 Q issued on September 5, 2015 (unpublished), Appeal No. 22573 of 4 Q issued on January 15, 2015 (unpublished), Appeal No. 22108 of 83 Q issued on November 27, 2014, published in Technical Office Book No. 65, page 891, Rule No. 117, Appeal No. 8789 of 6 Q issued on September 30, 2013, published in Technical Office Book No. 64, page 761, Rule No. 115, Appeal No. 8385 of 4 Q issued on July 25, 2013, published in Technical Office Book No. 64, page 745, Rule No. 110, Appeal No. 2257 of 83 Q issued on July 7, 2013 (unpublished), Appeal No. 4639 of 67 Q issued on December 7, 2006 (unpublished), Appeal No. 22444 of 66 Q issued on July 31, 2006 (unpublished), Appeal No. 19182 of 66 Q issued on July 31, 2006 (unpublished), Appeal No. 22707 of 66 Q issued on July 25, 2006 (unpublished), Appeal No. 21865 of 66 Q issued on July 25, 2006 (unpublished), Appeal No. 24241 of 67 Q issued on July 2, 2006 (unpublished), Appeal No. 20687 of 66 Q issued on July 2, 2006 (unpublished), Appeal No. 18090 of 66 Q issued on June 5, 2006 (unpublished), Appeal No. 6045 of 67 Q issued on May 18, 2006 (unpublished), Appeal No. 15492 of 66 Q issued on May 4, 2006 (unpublished), Appeal No. 10253 of 67 Q issued on October 20, 2005 (unpublished), Appeal No. 13303 of 67 Q issued on September 22, 2005 (unpublished), Appeal No. 12451 of 66 Q issued on May 19, 2005 (unpublished), Appeal No. 26256 of 66 Q issued on January 6, 2005 (unpublished), Appeal No. 20378 of 68 Q issued on July 22, 2004 (unpublished), Appeal No. 2236 of 68 Q issued on May 27, 2004 (unpublished), Appeal No. 8955 of 66 Q issued on April 1, 2004 (unpublished), Appeal No. 17158 of 65 Q issued on February 18, 2004 (unpublished), Appeal No. 11836 of 65 Q issued on January 15, 2004 (unpublished), Appeal No. 12025 of 65 Q issued on December 11, 2003 (unpublished), Appeal No. 3357 of 65 Q issued on November 20, 2003, Appeal No. 8004 of 65 Q issued on October 16, 2003 (unpublished), Appeal No. 7174 of 65 Q issued on October 2, 2003 (unpublished), Appeal No. 10252 of 65 Q issued on July 24, 2003 (unpublished), Appeal No. 26021 of 64 Q issued on May 15, 2003 (unpublished), Appeal No. 16065 of 64 Q issued on April 15, 2003, published in Technical Office Book No. 54, page 549, Rule No. 67, Appeal No. 6757 of 63 Q issued on September 26, 2002 (unpublished), Appeal No. 18708 of 63 Q issued on May 16, 2002 (unpublished), Appeal No. 11621 of 63 Q issued on September 22, 1999, published in the first part of Technical Office Book No. 50, page 457, Rule No. 106, Appeal No. 16955 of 63 Q issued on March 14, 1999, published in the first part of Technical Office Book No. 50, page 174, Rule No. 39, Appeal No. 12955 of 63 Q issued on December 30, 1998, published in the first part of Technical Office Book No. 49, page 1550, Rule No. 222, Appeal No. 2370 of 62 Q issued on October 18, 1998, published in the first part of Technical Office Book No. 49, page 1117, Rule No. 151, Appeal No. 11562 of 60 Q issued on March 25, 1998, published in the first part of Technical Office Book No. 49, page 479, Rule No. 62, Appeal No. 1820 of 60 Q issued on April 7, 1993, published in the first part of Technical Office Book No. 44, page 341, Rule No. 46, Appeal No. 62266 of 59 Q issued on November 4, 1992, published in the first part of Technical Office Book No. 43, page 988, Rule No. 152, Appeal No. 12765 of 59 Q issued on April 11, 1991, published in the first part of Technical Office Book No. 42, page 608, Rule No. 90, Appeal No. 5453 of 57 Q issued on March 3, 1988, published in the first part of Technical Office Book No. 39, page 377, Rule No. 55, Appeal No. 2117 of 56 Q issued on May 21, 1986, published in the first part of Technical Office Book No. 37, page 569, Rule No. 112, Appeal No. 7274 of 53 Q issued on May 29, 1984, published in the first part of Technical Office Book No. 35, page 538, Rule No. 121, Appeal No. 4419 of 51 Q issued on February 8, 1982, published in the first part of Technical Office Book No. 33, page 159, Rule No. 32, Appeal No. 508 of 48 Q issued on October 16, 1978, published in the first part of Technical Office Book No. 29, page 699, Rule No. 138, Appeal No. 2081 of 33 Q issued on

The loss of the summary report after its recitation - assuming its occurrence - does not invalidate the procedures.[3577]

The law does not require the name of those who read the summary report from the members of the circuit, so the judgment is not defective in that it does not refer to the name of the recipe of those who read the report as long as it is proven that it has already been read, as the law does not require the name of the recipe of those who read the summary report from the members of the circuit.[3578]

It is established that the law, although it required the signature of the rapporteur on the summary report, did not provide for nullity because the report was free of signature or because the minutes of the session were free of mention of its status.[3579]

March 23, 1964, published in the first part of Technical Office Book No. 15, page 206, Rule No. 42, Appeal No. 17085 of 4 Q issued on October 28, 2014, published in Technical Office Book No. 65, page 760, Rule No. 96, Appeal No. 3388 of 4 Q issued on October 27, 2013, published in Technical Office Book No. 64, page 866, Rule No. 132, Appeal No. 3388 of 4 Q issued on October 27, 2013, published in Technical Office Book No. 64, page 866, Rule No. 132, Appeal No. 9145 of 4 Q issued on May 15, 2013 (unpublished), Appeal No. 7853 of 66 Q issued on April 7, 2005 (unpublished), Appeal No. 3134 of 67 Q issued on March 17, 2005 (unpublished), Appeal No. 24240 of 65 Q issued on February 3, 2005 (unpublished), Appeal No. 5511 of 65 Q issued on November 17, 2003 (unpublished), Appeal No. 10667 of 67 Q issued on November 16, 2003 (unpublished), Appeal No. 18327 of 62 Q issued on May 27, 1997, published in the first part of Technical Office Book No. 48, page 663, Rule No. 99, Appeal No. 1508 of 58 Q issued on April 30, 1989, published in the first part of Technical Office Book No. 40, page 547, Rule No. 90, Appeal No. 313 of 54 Q issued on October 14, 1984, published in the first part of Technical Office Book No. 35, page 658, Rule No. 143, Appeal No. 471 of 46 Q issued on October 10, 1976, published in the first part of Technical Office Book No. 27, page 715, Rule No. 162, Appeal No. 159 of 41 Q issued on October 3, 1971, published in the third part of Technical Office Book No. 22, page 517, Rule No. 125, Appeal No. 815 of 39 Q issued on October 13, 1969, published in the third part of Technical Office Book No. 20, page 1047, Rule No. 206, Appeal No. 2739 of 67 Q issued on March 16, 2006, Appeal No. 12270 of 67 Q issued on October 18, 2004, published in Technical Office Book No. 55, page 681, Rule No. 103, Appeal No. 15275 of 67 Q issued on February 20, 2003 (unpublished), Appeal No. 20955 of 62 Q issued on December 3, 1997, published in the first part of Technical Office Book No. 48, page 1345, Rule No. 204, Appeal No. 24657 of 62 Q issued on December 22, 1994, published in the first part of Technical Office Book No. 45, page 1222, Rule No. 191, Appeal No. 955 of 61 Q issued on November 2, 1992, published in the first part of Technical Office Book No. 43, page 947, Rule No. 148, Appeal No. 87 of 27 Q issued on March 12, 1957, published in the first part of Technical Office Book No. 8, page 247, Rule No. 70.

([3577]) Appeal No. 5002 of 5 S issued at the 25th session of February 2016 and published in the Technical Office letter No. 67, page No. 260, rule No. 31, Appeal No. 24742 of 85 S issued at the 21st session of February 2016 (unpublished), Appeal No. 1399 of 85 S issued at the 21st session of January 2016 (unpublished), Appeal No. 21602 of 84 S issued at the 22nd session of March 2015 and published in the Technical Office letter No. 66, page No. 319, rule No. 45, appeal No. 11609 of 2015 4S issued at the hearing of 21 October 2013 (unpublished), Appeal No. 2144 of 67 S issued at the hearing of 19 October 2006 (unpublished), Appeal No. 6074 of 67 S issued at the hearing of 18 May 2006 (unpublished), Appeal No. 7785 of 66 S issued at the hearing of 7 April 2005 (unpublished), Appeal No. 20350 of 65 S issued at the hearing of 6 January 2005 (unpublished), Appeal No. 6944 of 66 S issued at the hearing of 25 March 2004 and published in the Office's letter Technical No. 55, page No. 278, rule No. 40, Arab Republic of Egypt, unpublished judgments, Court of Cassation, Criminal Chamber of Counsel, Appeal No. 29058 of 71 S issued at the hearing of October 2, 2003 (unpublished), Appeal No. 3088 of 64 S issued at the hearing of March 20, 2003 (unpublished), Appeal No. 10890 of 63 S issued at the hearing of October 3, 2002 (unpublished), Appeal No. 13533 of 65 S issued at the hearing of May 16, 2002 (unpublished), Appeal No. 18790 of 61 S issued at the hearing of January 4, 2000 and published in the Technical Office Book No. 51, page 33, rule No. 3, Appeal No. 18095 of 59 S issued at the hearing of October 5, 1993 and published in the first part of the Technical Office Book No. 44, page 759, rule No. 117, Appeal No. 1368 of 35 S issued at the hearing of February 8, 1966 and published in the first part of the Technical Office Book No. 17, page 115, rule No. 21.

([3578]) Appeal No. 12270 of 67 s issued at the session of 18 October 2004 and published in the Technical Office's book No. 55, page 681, rule No. 103, Appeal No. 1656 of 66 s issued at the session of 1 January 2004 (unpublished), Appeal No. 14184 of 67 s issued at the session of 21 December 2003 and published in the Technical Office's book No. 54, page No. 1256, rule No. 176, Appeal No. 1635 of 48 s issued at the session of 28 January 1979 and published in the first part of the Technical Office's book No. 30, page No. 171, rule No. 33, Appeal No. 61 of 48 s issued at the session of 13 February 1978 and published in the first part of the Technical Office's book No. 29, page No. 162, rule No. 28.

([3579]) Appeal No. 61 of 48 s issued at the session of February 13, 1978 and published in the first part of the Technical Office book No. 29 page No. 162 rule No. 28, Appeal No. 655 of 38 s issued at the session of June 3, 1968 and published in the second part of the Technical Office book No. 19 page No. 645 rule No. 130, Appeal No. 905 of 33 s issued at the session of March 2, 1964 and published in the first part of the Technical Office book No. 15 page No. 159 rule No. 33, Appeal No. 618 of

The text of Article 411 of the Criminal Procedure Law clearly indicates that the summary report is in writing, and that it is one of the papers of the lawsuit that must be found in its file. Failure to put this report in writing is a failure in one of the substantive procedures that defects the judgment and invalidates it. It is not indispensable for this report for one of the members to read the wording of the accusation and the text of the primary judgment. This is a non-serious work that does not replace the obligation to implement the law by drawing up a written report that the other two judges can rely on in understanding the lawsuit.[3580]

While the law requires that the report be in writing, on the other hand, the law did not require that the report be written privately or on a particular paper. Therefore, editing it against the case file does not result in any nullity.[3581]

The result of the absence of the summary report of the lawsuit papers is the failure of the court to fulfill its status, even if it stipulates in its judgment that it is fulfilled, even if this statement is not denied by challenging forgery.[3582]

It is sufficient that the summary report was read out at the hearing in which the case was considered, and it is not disputed that the validity of this procedure is that the report was developed by a body other than the one that adjudicated the case, as the Rapporteur for this report stated that he - having seen the case papers - considered that the elements and facts contained in the report are sufficient to express what he concluded from his side to it, and that he did not find a need to draw up another report.[3583]

It is decided that the judgment completes the minutes of the session in proving the reading of the summary report and the contested judgment proved the reading of that report, so it is not inconceivable that the proof of this reading was mentioned in the preamble of the contested judgment as long as the head of the department that issued the judgment signed it with its clerk in accordance with Article 312 of the Code of Criminal Procedure, which indicates its approval of the statements contained therein, the requirements of the legislator in this regard shall have been achieved.[3584]

2- Hearing the appellant's statements

The statements of the appellant and the aspects based on his appeal shall be heard after reading the report - and before expressing an opinion on the lawsuit from the author of the

---

23 s issued at the session of May 18, 1953 and published in the third part of the Technical Office book No. 4 page No. 837 rule No. 305.

([3580]) Appeal No. 18475 of 65 S issued at the 20th session of April 2004 and published in Technical Office Letter No. 55 Page 433 Rule No. 57, Appeal No. 10124 of 59 S issued at the 29th session of October 1992 and published in Part I of Technical Office Letter No. 43 Page 943 Rule No. 147, Appeal No. 4613 of 58 S issued at the 3rd session of May 1990 and published in Part I of Technical Office Letter No. 41 Page 665 Rule No. 114, Appeal No. 1719 of 55 S issued at the 16th session of October 1985 and published in Part I of Technical Office Letter No. 36 Page 872 Rule No. 156, Appeal No. 185 of 48 S issued at the 12th session of June 1978 and published in Part I of Technical Office Letter No. 29 Page 607 Rule No. 117.

([3581]) Appeal No. 557 of 25 S issued in the session of October 10, 1955 and published in the fourth part of the book of the Technical Office No. 6 page No. 1217 rule No. 356.

([3582]) Appeal No. 4613 of 58 s issued at the session of May 3, 1990 and published in the first part of the technical office book No. 41 page No. 665 rule No. 114, Appeal No. 185 of 48 s issued at the session of June 12, 1978 and published in the first part of the technical office book No. 29 page No. 607 rule No. 117, Appeal No. 94 of 47 s issued at the session of May 9, 1977 and published in the first part of the technical office book No. 28 page No. 581 rule No. 122.

([3583]) Appeal No. 4419 of 51 s issued at the session of February 8, 1982 and published in the first part of the Technical Office letter No. 33 page No. 159 rule No. 32, Appeal No. 508 of 48 s issued at the session of October 16, 1978 and published in the first part of the Technical Office letter No. 29 page No. 699 rule No. 138.

([3584]) Appeal No. 4419 of the year 51 S issued at the session of February 8, 1982 and published in the first part of the book of the Technical Office No. 33 page No. 159 rule No. 32, Appeal No. 1635 of the year 48 S issued at the session of January 28, 1979 and published in the first part of the book of the Technical Office No. 30 page No. 171 rule No. 33.

report or the rest of the members - and then the rest of the litigants shall speak, and the accused shall be the last to speak.[3585]

If the judgment is issued without the defendant presenting his defense in response to a memorandum submitted by the plaintiff with civil rights accepted by the court and the result of the defense is stated in its judgment, which invalidates the trial procedures for violating the defendant's rights in the defense, and this does not change that the court has authorized the submission of memoranda to whoever the litigants want, as this does not change the rules that guarantee the fairness of the litigation and not ignorance of the litigation against whoever was a party to it and that the accused is the last to speak.[3586]

However, if the accused does not ask the court to hear him, he shall be deemed to have waived his right to be the last to speak, considering that he did not have or has nothing left to say at the conclusion of the trial, and does not invalidate the trial.[3587]

The question of the accused about his charge is obligatory only before the court of first instance, but on appeal, the law did not require this question, but it is obligatory to start - after reading the report submitted by one of the judges - to hear the statements of the appellant, and then the rest of the litigants make their statements and the accused is the last to speak.[3588]

If the Public Prosecution and the civil plaintiff plead after hearing the testimony of witnesses, there is no objection in the law to prevent this, but it is prohibited that the accused is not the last to speak.[3589]

3. Hearing of witnesses

The court shall issue its judgment after reviewing the papers.[3590]

It is established that the court of second instance rules according to the original on the requirement of the papers, and it does not conduct investigations except what it deems necessary to conduct or complete what the court of first instance should have conducted. The original is that the appellate court originally rules from the fact of the papers and is not legally obligated to hear witnesses or conduct an investigation except as it deems necessary to meet a shortage in it or in response to a substantive defense presented by the opponent for whose trial the criminal litigation was held. This right corresponds to the duty of the appellate court is for one of its members to submit an updated report to be read at the hearing, which is the only procedure that attests to the oral investigation of the pleading in the appeal trial)[3591](.

The violation of the right of defense shall not be achieved if the court turns away from the request for the re-hearing of witnesses as long as it does not see for itself the need for it, and as

---

([3585]) Article 411 of the Criminal Procedure Code.
([3586]) Appeal No. 882 of 50 S issued at the session of February 25, 1981 and published in the first part of the technical office book No. 32 page No. 182 rule No. 28, Appeal No. 292 of 43 S issued at the session of May 28, 1973 and published in the second part of the technical office book No. 24 page No. 672 rule No. 139.
([3587]) Appeal No. 50614 of 74 S issued at the 7th session of December 2005 and published in the Technical Office letter No. 56, page No. 691, rule No. 105, Appeal No. 737 of 47 S issued at the 5th session of December 1977 and published in the first part of the Technical Office letter No. 28, page No. 1043, rule No. 212, Appeal No. 1023 of 21 S issued at the 31st session of December 1951 and published in the first part of the Technical Office letter No. 3, page No. 347, rule No. 132.
([3588]) Appeal No. 855 of 3S issued at the session of January 16, 1933, published in the first part of the set of legal rules, third year, page No. 108, rule No. 75, Appeal No. 1129 of 47S issued at the session of November 6, 1930, published in the first part of the set of legal rules, second year, page No. 80, rule No. 86.
([3589]) Appeal No. 125 of 46 S issued at the session of December 20, 1928 and published in the first part of the set of legal rules, the first year, page No. 85, rule No. 62.
([3590]) Article 411 of the Criminal Procedure Code.
([3591]) Appeal No. 1007 of 44 S issued at the session of 3 December 1974 and published in the first part of the technical office book No. 25 page No. 808 rule No. 173, Appeal No. 1970 of 35 S issued at the session of 28 February 1966 and published in the first part of the technical office book No. 17 page No. 211 rule No. 39.

long as the court of first instance has achieved the oral pleading by hearing the witnesses for the prosecution and the witnesses for the defense.[3592]

However, the law requires that the appellate court hear the witnesses who should have been heard before the court of first instance by itself, or by a judge delegating him for that purpose, and meet any other deficiency in the investigation procedures.

In all cases, it is justified to order what it deems necessary to complete an investigation or hear witnesses.

No witness may be assigned to attend unless ordered to do so by the court.[3593]

The established principle is that the criminal trial must be based on the oral investigation conducted by the court at the hearing and hear witnesses as long as possible, but it is permissible for it to decide to recite the statements of the witness if it is not possible to hear his testimony or if the accused or his defender accepts this. It is not permissible to violate this principle, which was assumed by the street in the rules of the trial, whatever it may be, except with the explicit or implicit waiver of the litigants. This is not objected to that the appellate court does not conduct an investigation in the hearing, but rather its judiciary is based on what it heard from the litigants and what it extracts from the papers presented to it, as its right to this scope is limited by the need to take into account the requirements of the right of defense, but that the law obligated it to hear by itself or by one of the judges - delegating it to that - the witnesses who should have been heard before the court of first instance and fulfilling all the shortcomings in the investigation procedures, and accordingly it must include in its judgment evidence that it faced the elements of the lawsuit and familiarized itself with them in a way that discloses that it was aware of them and balanced them. If the appellate court neglected to request the hearing of witnesses who did not respond to the first court degree to the request to hear them - its judgment is flawed by the lack of causation as well as the violation of the right of defense.[3594]

([3592]) Appeal No. 1007 of 44 S issued at the session of December 3, 1974 and published in the first part of the book of the Technical Office No. 25 page No. 808 rule No. 173.

([3593]) Article 413 of the Criminal Procedure Code.

([3594]) Appeal No. 6959 of 67 Q issued on June 1, 2006 (unpublished), Appeal No. 10834 of 65 Q issued on February 20, 2006, published in Technical Office Book No. 57, page 288, Rule No. 30, Appeal No. 10510 of 66 Q issued on May 5, 2005 (unpublished), Appeal No. 24397 of 67 Q issued on February 23, 2004 (unpublished), Appeal No. 24397 of 67 Q issued on February 23, 2004 (unpublished), Appeal No. 39817 of 73 Q issued on January 27, 2003 (unpublished), Appeal No. 5705 of 65 Q issued on May 28, 2001, published in Technical Office Book No. 52, page 537, Rule No. 96, Appeal No. 4575 of 65 Q issued on February 12, 2000, published in Technical Office Book No. 51, page 167, Rule No. 31, Appeal No. 15117 of 64 Q issued on June 5, 1996, published in the first part of Technical Office Book No. 47, page 732, Rule No. 106, Appeal No. 12681 of 59 Q issued on November 7, 1991, published in the second part of Technical Office Book No. 42, page 1150, Rule No. 159, Appeal No. 1620 of 59 Q issued on January 31, 1991, published in the first part of Technical Office Book No. 42, page 217, Rule No. 30, Appeal No. 3077 of 57 Q issued on November 10, 1987, published in the second part of Technical Office Book No. 38, page 931, Rule No. 171, Appeal No. 4749 of 56 Q issued on January 28, 1987, published in the first part of Technical Office Book No. 38, page 148, Rule No. 22, Appeal No. 2143 of 51 Q issued on December 17, 1981, published in the first part of Technical Office Book No. 32, page 1127, Rule No. 201, Appeal No. 638 of 47 Q issued on November 6, 1977, published in the first part of Technical Office Book No. 28, page 909, Rule No. 189, Appeal No. 829 of 46 Q issued on January 3, 1977, published in the first part of Technical Office Book No. 28, page 25, Rule No. 4, Appeal No. 451 of 46 Q issued on October 3, 1976, published in the first part of Technical Office Book No. 27, page 691, Rule No. 155, Appeal No. 1931 of 45 Q issued on March 15, 1976, published in the first part of Technical Office Book No. 27, page 316, Rule No. 66, Appeal No. 319 of 45 Q issued on May 4, 1975, published in the first part of Technical Office Book No. 26, page 375, Rule No. 86, Appeal No. 1793 of 44 Q issued on March 2, 1975, published in the first part of Technical Office Book No. 26, page 197, Rule No. 43, Appeal No. 788 of 43 Q issued on December 16, 1973, published in the third part of Technical Office Book No. 24, page 1228, Rule No. 249, Appeal No. 241 of 43 Q issued on June 3, 1973, published in the second part of Technical Office Book No. 24, page 696, Rule No. 144, Appeal No. 241 of 43 Q issued on June 3, 1973, published in the second part of Technical Office Book No. 24, page 696, Rule No. 144, Appeal No. 259 of 42 Q issued on April 30, 1972, published in the second part of Technical Office Book No. 23, page 632, Rule No. 142, Appeal No. 229 of 42 Q issued on April 17, 1972, published in the second part

It is not appropriate in the principles of inference to pre-judge evidence that has not been put forward, and if the Court of Appeal has rejected the request to hear witnesses - proof and denial - who did not respond to the court of first instance to the request to hear them - and began to respond to the request to hear witnesses on his behalf by considering his residence on an estimate of the value of their testimony before hearing them, its judgment is flawed)[3595](.

However, in the event that the appellate court considers that there is an invalidity in the proceedings or in the judgment issued by the court of first instance in the matter, it shall correct the invalidity and rule on the lawsuit, in application of the text of Article 419 of the Code of Criminal Procedure. Still, it shall not be obliged to hear the witnesses heard by the court of first instance again, as the invalidity is focused on the primary judgment and does not extend to the trial procedures that took place in accordance with the law as long as the court of first instance was competent to hear the lawsuit. The lawsuit was properly filed before it.[3596]

Eighth: Judgment on Appeal

Referral to the Public Prosecution

If the appellate court finds that the incident is a felony, or that it is a misdemeanor committed by newspapers or other means of publication on non-individuals, it shall rule not to have jurisdiction and refer the case to the Public Prosecution to take the necessary action in it.[3597]

This article applies in the case where the incident is presented to the Court of Appeal for the first time, not after a final judgment has been issued that the Misdemeanor Court does not have jurisdiction to consider it. If the judgment of the Court of Appeal decides to refer the case to the Criminal Court, it has erred in the application of the law.[3598]

---

of Technical Office Book No. 23, page 583, Rule No. 129, Appeal No. 20 of 42 Q issued on March 26, 1972, published in the first part of Technical Office Book No. 23, page 448, Rule No. 98, Appeal No. 20 of 42 Q issued on March 26, 1972, published in the first part of Technical Office Book No. 23, page 448, Rule No. 98, Appeal No. 66 of 42 Q issued on March 5, 1972, published in the first part of Technical Office Book No. 23, page 291, Rule No. 68, Appeal No. 66 of 42 Q issued on March 5, 1972, published in the first part of Technical Office Book No. 23, page 291, Rule No. 68, Appeal No. 15 of 42 Q issued on February 21, 1972, published in the first part of Technical Office Book No. 23, page 214, Rule No. 53, Appeal No. 1868 of 40 Q issued on January 18, 1971, published in the first part of Technical Office Book No. 22, page 86, Rule No. 20, Appeal No. 1104 of 40 Q issued on October 4, 1970, published in the third part of Technical Office Book No. 21, page 953, Rule No. 225, Appeal No. 516 of 40 Q issued on May 24, 1970, published in the second part of Technical Office Book No. 21, page 721, Rule No. 170, Appeal No. 114 of 37 Q issued on February 13, 1967, published in the first part of Technical Office Book No. 18, page 197, Rule No. 39, Appeal No. 1899 of 36 Q issued on February 7, 1967, published in the first part of Technical Office Book No. 18, page 178, Rule No. 35, Appeal No. 1445 of 36 Q issued on October 31, 1966, published in the third part of Technical Office Book No. 17, page 1049, Rule No. 197, Appeal No. 1753 of 35 Q issued on February 22, 1966, published in the first part of Technical Office Book No. 17, page 185, Rule No. 33, Appeal No. 941 of 35 Q issued on November 1, 1965, published in the third part of Technical Office Book No. 16, page 761, Rule No. 143, Appeal No. 1626 of 34 Q issued on November 30, 1964, published in the third part of Technical Office Book No. 15, page 765, Rule No. 151, Appeal No. 970 of 31 Q issued on June 26, 1962, published in the second part of Technical Office Book No. 13, page 567, Rule No. 143, Appeal No. 514 of 27 Q issued on October 7, 1957, published in the third part of Technical Office Book No. 8, page 754, Rule No. 202, Appeal No. 168 of 24 Q issued on March 29, 1954, published in the second part of Technical Office Book No. 5, page 437, Rule No. 148, Appeal No. 1242 of 22 Q issued on January 27, 1953, published in the second part of Technical Office Book No. 4, page 442, Rule No. 169, Appeal No. 1241 of 22 Q issued on December 17, 1952, published in the first part of Technical Office Book No. 4, page 252, Rule No. 99..

([3595]) Appeal No. 22974 of 4Q issued at the 6th session of December 2014 and published in the Technical Office letter No. 65, page No. 921, rule No. 121, Appeal No. 7718 of 82Q issued at the 24th session of December 2013 and published in the Technical Office letter No. 64, page No. 1043, rule No. 156, Appeal No. 20 of 42Q issued at the 26th session of March 1972 and published in the first part of the Technical Office letter No. 23, page No. 448, rule No. 98.

([3596]) Appeal No. 1393 of 25 S issued in the session of April 10, 1956 and published in the second part of the book of the Technical Office No. 7 page No. 538 rule No. 157

See the following: the appellate court's correction of the nullity and the judgment in the lawsuit.

([3597]) Article 414 of the Criminal Procedure Code.

([3598]) Appeal No. 994 of 25 S issued at the session of March 20, 1956 and published in the first part of the book of the Technical Office No. 7 page No. 405 rule No. 118.

Appeal filed by the Public Prosecution

If the appeal is filed by the Public Prosecution, the court may confirm, annul or amend the judgment, whether against or in the interest of the accused. The sentence imposed may not be aggravated or the judgment of acquittal can be annulled except by unanimous opinion of the judges of the court.[3599]

In the interpretation of Article 417 of the Code of Procedure, it is decided that the appeal of any of the parties to the case reopens the dispute for its own benefit, except for the appeal of the Public Prosecution. It transfers the entire dispute regarding the criminal case in the interest of both parties - the accused and the prosecution. If the Public Prosecution appeals the first instance judgment, this allows the court of second instance to increase the penalty within the limits of the crime for which the accused was convicted. The prosecution's appeal restores the entire case to its original state and makes the appeal court resolve to assess the charge and its evidence, the penalty and the amount of the estimate it deems necessary to acquit or convict the accused and reduce the penalty to its minimum or increase it to its maximum limit without being obliged to state the reasons for this increase.[3600]

It is not valid in the law to say that the appeal filed by the Public Prosecution is subject to any restriction unless it is stipulated in the report that it is for a specific incident and not for another of the facts subject to trial, and the appeal of the Public Prosecution is not allocated because of it, but rather it transfers the entire case to the second instance court for the benefit of all parties to the lawsuit in relation to the criminal lawsuit, and it decides on it in a way that entitles it to consider in all its aspects unconstrained, including what the Public Prosecution puts in the report of its appeal or expresses in the session of requests.[3601]

This means that if the appeal is filed by the Public Prosecution, it is not permissible to increase the sentence imposed or to annul the judgment issued for acquittal except by unanimous opinion of the judges of the court. If the judgment of the Court of Appeal is issued to annul the initial judgment issued for the acquittal of the accused without mentioning that it was issued unanimously by the judges who issued it, this would, as ruled by the Court of Cassation, render the said judgment null and void in the decision to annul the acquittal, due to the failure of the condition of validity of the judgment of such annulment in accordance with the law.[3602]

It is required to combine the provisions of Articles 401 and 417 of the Code of Criminal Procedure by making it clear that the emphasis was unanimous and that both the appeal in absentia judgment issued on the basis of the prosecution's appeal and the judgment issued in opposition to the accused in that judgment are valid. Therefore, it is not before the Court of

---

([3599]) Article 417 of the Criminal Procedure Code.
([3600]) Appeal No. 7082 of 66 S issued at the session of June 3, 1998 and published in the first part of the Technical Office's book No. 49 page No. 790 rule No. 104, Appeal No. 1888 of 39 S issued at the session of March 23, 1970 and published in the first part of the Technical Office's book No. 21 page No. 450 rule No. 109, Appeal No. 1236 of 36 S issued at the session of November 7, 1966 and published in the third part of the Technical Office's book No. 17 page No. 1086 rule No. 203.
([3601]) Appeal No. 6115 of 53 S issued at the session of March 5, 1984 and published in the first part of the technical office book No. 35 page No. 243 rule No. 50, Appeal No. 1274 of 42 S issued at the session of January 8, 1973 and published in the first part of the technical office book No. 24 page No. 54 rule No. 14.
([3602]) Appeal No. 3944 of 64 s issued at the session of February 21, 1999 and published in Part I of Technical Office Book No. 50 Page 132 Rule No. 28, Appeal No. 20867 of 59 s issued at the session of January 27, 1994 and published in Part I of Technical Office Book No. 45 Page 164 Rule No. 25, Appeal No. 3747 of 56 s issued at the session of February 22, 1987 and published in Part I of Technical Office Book No. 38 Page 313 Rule No. 46, Appeal No. 55 of 42 s issued at the session of March 6, 1972 and published in Part I of Technical Office Book No. 23 Page 312 Rule No. 72, Appeal No. 49 of 25 s issued at the session of May 17, 1955 and published in Part III of Technical Office Book No. 6 Page 1001 Rule No. 299, Appeal No. 2410 of 23 s issued at the session of February 8, 1954 and published in Part II of Technical Office Book No. 5 Page 313 Rule No. 100.

Appeal, which rules in opposition, except to uphold the appealed judgment as long as the default judgment was not issued unanimously.[3603]

The judgment issued by the judgment of the Court of Appeal to uphold the appeal judgment in absentia opposed by the accused and the decision to cancel the judgment of acquittal issued by the court of first instance without mentioning that it was issued unanimously with the opinions of the judges is null and void, because the condition of the validity of the judgment of this annulment in accordance with the law is not sufficient in that the appeal judgment to cancel the acquittal judgment has been stipulated unanimously with the opinions of the judges because the opposition in the absentia judgment would return the case to its first state with regard to the opponent, so that if the court decides to rule in opposition to uphold the judgment in absentia issued to cancel the acquittal judgment, it must state in its judgment that it was issued unanimously with the opinions of the judges because the judgment in opposition, even if it was issued to uphold the appeal absentia judgment, but in fact it was ruled to cancel the judgment of acquittal from the court of first instance.[3604]

The unanimity of the judges of the court when aggravating the penalty or canceling the acquittal judgment is limited to cases of disagreement between them and the court of first instance in assessing the facts and evidence, and that these facts and evidence are sufficient in assessing the responsibility of the accused and his entitlement to punishment, or establishing proportionality between this responsibility and the amount of punishment, all within the limits of the law altruistically from the street in favor of the accused. As for considering the leveling of the rule of law, it is not correct to respond to the difference of fate that it applies to its correct face, it

---

([3603]) Appeal No. 13831 of 67 s issued at the session of March 28, 2007 (unpublished), Appeal No. 29552 of 63 s issued at the session of February 26, 2003 and published in the book of the Technical Office No. 54 page No. 322 rule No. 33, Appeal No. 2015 of 38 s issued at the session of February 10, 1969 and published in the first part of the book of the Technical Office No. 20 page No. 240 rule No. 52, Appeal No. 548 of 24 s issued at the session of May 17, 1954 and published in the third part of the book of the Technical Office No. 5 page No. 645 rule No. 216, Appeal No. 427 of 24 s issued at the session of May 10, 1954 and published in the third part of the book of the Technical Office No. 5 page No. 589 rule No. 200.

([3604]) Appeal No. 5109 of 4Q issued at the session of May 19, 2014 (unpublished), Appeal No. 4918 of 4Q issued at the session of December 16, 2013 (unpublished), Appeal No. 7621 of 82Q issued at the session of February 24, 2013 (unpublished), Appeal No. 1889 of 67Q issued at the session of September 21, 2006, Appeal No. 5316 of 67Q issued at the session of May 4, 2006, Appeal No. 11031 of 67Q issued at the session of September 21, 2006. July 2005, Appeal No. 12463 of 66 S issued at the hearing of 19 May 2005, Appeal No. 1993 of 66 S issued at the hearing of 17 March 2005, Appeal No. 3171 of 66 S issued at the hearing of 3 March 2005, Appeal No. 14958 of 65 S issued at the hearing of 17 February 2005, Appeal No. 14957 of 65 S issued at the hearing of 3 February 2005, Appeal No. 24118 of 65 S issued at the hearing of 3 February 2005, Appeal No. 24198 of 65 S issued at the hearing of 3 From February 2005, Appeal No. 8126 of 65 S issued at the hearing of 16 October 2003, Appeal No. 838 of 68 S issued at the hearing of 26 May 2003, Appeal No. 885 of 68 S issued at the hearing of 26 May 2003, Appeal No. 585 of 68 S issued at the hearing of 14 April 2003, Appeal No. 593 of 68 S issued at the hearing of 14 April 2003, Appeal No. 571 of 68 S issued at the hearing of 14 April 2003, Appeal No. 574 of 68 S issued at the hearing of 14 April 2003, Appeal No. 591 of 68 S issued at the hearing of 14 April 2003, Appeal No. 14811 of 85 S issued at the hearing of 19 December 2015 and published in the letter of the Technical Office No. 66 Page No. 920 Rule No. 131, Appeal No. 14626 of 65 S issued at the hearing of 19 March 2004 and published in the letter of the Technical Office No. 55 Page No. 263 Rule No. 36, Appeal No. 10625 of 64 S issued at the hearing of 9 February 2000 Published in Technical Office Letter No. 51 Page No. 153 Rule No. 27, Appeal No. 18331 of 64 S issued at the session of January 26, 2000 and published in Technical Office Letter No. 51 Page No. 96 Rule No. 15, Appeal No. 7028 of 54 S issued at the session of November 10, 1985 and published in the first part of Technical Office Letter No. 36 Page No. 1002 Rule No. 182, Appeal No. 4041 of 54 S issued at the session of January 17, 1985 Published in the first part of Technical Office Letter No. 36 Page No. 98 Rule No. 11, Appeal No. 2682 of 50 S issued at the session of 16 April 1981 and published in the first part of Technical Office Letter No. 32 Page No. 363 Rule No. 65, Appeal No. 1535 of 49 S issued at the session of 3 February 1980 and published in the first part of Technical Office Letter No. 31 Page No. 169 Rule No. 34, Appeal No. 185 of 44 S issued at the session of 25 March 1974 and published in the first part of Technical Office Letter No. 25 Page No. 337 Rule No. 73, Appeal No. 1124 of 37 s issued at the session of 19 June 1967 and published in the second part of the Technical Office's letter No. 18 page No. 857 Rule No. 172, Appeal No. 476 of 36 s issued at the session of 30 May 1966 and published in the second part of the Technical Office's letter No. 17 page No. 705 Rule No. 130, Appeal No. 2481 of 24 s issued at the session of 17 May 1955 and published in the third part of the Technical Office's letter No. 6 page No. 998 Rule No. 298.

does not need unanimity, but it is not conceivable that unanimity is an excuse to exceed the limits of the law or omit one of its provisions[3605].

The weighting of the opinion of the judge of the court of first instance in the absence of unanimity is due to the fact that he conducted the investigation in the case and heard the witnesses himself, which suggests that the requirement of unanimity of the judges is limited to the case of disagreement in the assessment of facts and evidence and the assessment of punishment. As for considering the leveling of the rule of law, it is not correct to respond to a dispute, and the fate to apply it to its correct face does not require unanimity, but it is not imagined that unanimity is only to enable the law and to conduct its provisions, not to be a pretext for exceeding its limits or omitting one of its provisions. Whereas, the primary judgment did not rule on the subject of the lawsuit, but its judgment was limited to the lapse of the criminal lawsuit by the lapse of the period to the application of the provisions of the law. If the appellate court corrects that error, the statement that its judgment is invalid because it was not issued unanimously by the judges of the court is misplaced.[3606]

The ruling that the criminal lawsuit has lapsed is considered a presumption of innocence within the meaning of that article, so it is incumbent on the court to mention in its ruling that it was issued unanimously by the judges.[3607]

The same ruling applies to the civil rights plaintiff's appeal of the ruling issued to dismiss his case based on the acquittal of the accused because the incident was not proven, whether or not the Public Prosecution appealed it. Whenever the preliminary ruling acquitted the accused and rejected the civil lawsuit filed by the civil rights plaintiff, this ruling issued in the civil lawsuit and the compensation appeal may not be canceled except by unanimous opinion of the judges of the court, as is the case in the criminal lawsuit, due to the dependency between the two lawsuits on the one hand and the linkage of the compensation ruling to the proof of the criminal incident on the other hand.[3608]

([3605]) Appeal No. 6063 of 67 S issued at the session of May 18, 2006 (unpublished), Appeal No. 7895 of 66 S issued at the session of June 2, 2005 (unpublished), Appeal No. 60 of 67 S issued at the session of October 25, 2004 (unpublished), Appeal No. 17875 of 65 S issued at the session of December 5, 2004 and published in the letter of the Technical Office No. 55, page No. 797, rule No. 120, Appeal No. 1423 of 68 S issued at the session of December 22, 2004 2003 (unpublished), Appeal No. 9378 of 60 S issued at the 8th session of October 1997 and published in Part I of Technical Office Letter No. 48 Page 1046 Rule No. 156, Appeal No. 1431 of 60 S issued at the 12th session of January 1997 and published in Part I of Technical Office Letter No. 48 Page 71 Rule No. 10, Appeal No. 14878 of 59 S issued at the 31st session of January 1993 and published in Part I of Technical Office Letter No. 44 Page 155 Rule No. 16, Appeal No. 3747 for the year 56 S issued at the session of February 22, 1987 and published in the first part of the Technical Office book No. 38 page No. 313 rule No. 46, Appeal No. 7719 for the year 54 S issued at the session of January 2, 1985 and published in the first part of the Technical Office book No. 36 page No. 43 rule No. 2, Appeal No. 537 for the year 48 S issued at the session of February 5, 1979 and published in the first part of the Technical Office book No. 30 page No. 210 rule No. 41, Appeal No. 116 of 47 S issued at the hearing of May 15, 1977 and published in the first part of the Technical Office letter No. 28 page No. 586 rule No. 124, Appeal No. 444 of 40 S issued at the hearing of May 10, 1970 and published in the second part of the Technical Office letter No. 21 page No. 677 rule No. 160, Appeal No. 1266 of 36 S issued at the hearing of February 14, 1967 and published in the first part of the Technical Office letter No. 18 page No. 200 rule No. 40, Appeal No. 1939 of 35 S issued at the session of February 21, 1966 and published in the first part of the Technical Office letter No. 17, page No. 169, rule No. 31, Appeal No. 1879 of 34 S issued at the session of February 16, 1965 and published in the first part of the Technical Office letter No. 16, page No. 144, rule No. 33, Appeal No. 1554 of 29 S issued at the session of March 1, 1960 and published in the first part of the Technical Office letter No. 11, page No. 201, rule No. 39.

([3606]) Appeal No. 23928 of 67 S issued at the 25th session of July 2006 (unpublished), Appeal No. 3747 of 56 S issued at the 22nd session of February 1987 and published in the first part of the Technical Office's letter No. 38 page No. 313 rule No. 46.

([3607]) Appeal No. 29504 of 67 S issued at the 22nd session of April 2007 (unpublished).

([3608]) Appeal No. 344 of 69 S issued at the session of February 13, 2006 (unpublished), Appeal No. 19904 of 66 S issued at the session of November 17, 2005 (unpublished), Appeal No. 10087 of 61 S issued at the session of October 21, 2001 and published in Technical Office Letter No. 52 Page 764 Rule No. 142, Appeal No. 1431 of 60 S issued at the session of January 12, 1997 and published in the first part of Technical Office Letter No. 48 Page 71 Rule No. 10, Appeal No. 47330 of 59 S issued at the session of November 25, 1996 and published in the first part of the Technical Office letter No. 47 page No. 1246

However, the conduct of the legislator in determining the rule of unanimity of the opinions of the judges of the Court of Appeal when aggravating the penalty or canceling the acquittal judgment - which is an exception to the general rule that he has drawn for the issuance of judgments by a majority of opinions - and listing it in Article 417 in its second paragraph supplementing the first paragraph of the appeal filed by the Public Prosecution alone, is apparent in limiting it to a case that offends the position of the accused in relation to the criminal incident alone, or when the civil compensation claimed in the civil lawsuit filed by association with the criminal lawsuit relates to the establishment of that criminal incident For the same reason on which that exception is based - whether the Public Prosecution appealed the judgment or not - its ruling does not apply to the last paragraph of the aforementioned article if it is related to the deterioration of the position of the accused in the civil lawsuit independently based on the appeal filed by the civil rights plaintiff in order to increase the amount of compensation decided at first instance after the ratio of the criminal incident to the accused has been achieved, which is not valid with the implementation of the judgment of measurement by settlement between this last case, in which the unanimous judgment was not included, and the case of the appeal of the Public Prosecution, whose judgment was stated in its breast alone because of the difference Bug in both cases)[3609](.

The street necessitated the convening of the consensus contemporary to the issuance of the judgment in the appeal to tighten the sentence imposed or cancel the acquittal sentence, but it indicated the direction of its desire - until the consensus is contemporary to the issuance of the judgment and does not have a following because this is what the judgment achieved its legislation, and therefore the provision of unanimity of views in conjunction with the pronouncement of the judgment to cancel the acquittal is a necessary condition for the validity of the ruling to cancel and to rule on the conviction, and if the lesson in the judgments is what the judge pronounces in the public session after hearing the lawsuit, it is not enough that the reasons for the judgment include what indicates the convening of the consensus as long as it is not proven in the judgment paper that these reasons have been publicly read in the pronouncement session with the operative part)[3610](.

The unanimity of the judges of the court in accordance with the text of Article 417 of the Code of Criminal Procedure is limited - in the field of criminal proceedings - to cases of increasing the penalty or canceling the acquittal judgment in the event of disagreement in the assessment of facts and evidence and the assessment of the penalty. As for the formal judgments, the law

---

rule No. 180, Appeal No. 22592 of 59 S issued at the session of March 7, 1991 and published in the first part of the Technical Office letter No. 42 page No. 459 rule No. 65, Appeal No. 4632 of 58 S issued at the session of November 27, 1989 and published in the first part of the Technical Office letter No. 40 page No. 1088 rule No. 174, Appeal No. 556 of 1989 46 s issued at the session of 31 October 1976 and published in Part I of Technical Office Letter No. 27 Page 800 Rule No. 183, Appeal No. 151 of 40 s issued at the session of 16 March 1970 and published in Part I of Technical Office Letter No. 21 Page 395 Rule No. 97, Appeal No. 24725 of 59 s issued at the session of 25 October 1994 and published in Part I of Technical Office Letter No. 45 Page 893 Rule No. 139, Appeal No. 17480 of 59 S issued at the session of October 28, 1993 and published in the first part of the Technical Office letter No. 44 page No. 896 rule No. 141, Appeal No. 14290 of 60 S issued at the session of December 16, 1992 and published in the first part of the Technical Office letter No. 43 page No. 1165 rule No. 182, Appeal No. 6417 of 56 S issued at the session of April 8, 1987 and published in the first part of the Technical Office letter No. 38 page No. 582 rule No. 97, Appeal No. 537 of 48 S issued At the session of February 5, 1979, published in the first part of the Technical Office's book No. 30, page 210, rule No. 41, appeal No. 672 of 43 s issued in the session of October 21, 1973, published in the third part of the Technical Office's book No. 24, page No. 859, rule No. 178, appeal No. 823 of 25 s issued in the session of April 24, 1956, published in the second part of the Technical Office's book No. 7, page No. 646, rule No. 180, appeal No. 1019 of 24 s issued in the session of December 6, 1954, published in the first part of the Technical Office's book No. 6, page No. 245, rule No. 83.

([3609]) Appeal No. 943 of 33 S issued at the session of December 23, 1963 and published in the third part of the book of the Technical Office No. 14 page No. 967 rule No. 177.

([3610]) Appeal No. 21274 of 64 S issued at the session of July 24, 2000 and published in the letter of the Technical Office No. 51 page No. 536 rule No. 104.

does not require that they be issued unanimously. This is the case of the contested judgment and the appeal in absentia judgment issued in support of the judgment in the preliminary objection that is not accepted to be lifted from a judgment that is not amenable to them. These judgments are the ones to which the previous judgments deciding on the subject matter are invalid because they were not issued unanimously by the opinions of the judges in the cases that require this, as it is not correct to delve into the recent judgments that were decided alone on the subject of the case and gained the force of the thing ruled on)[3611](.

Since the right of the prosecution to appeal is absolute, it shall proceed on the date prescribed for it, even if in the interest of the accused, as long as the judgment may be appealed, and it considers itself a face to that, and the end of the matter is that if it appeals the judgment issued in opposition, the appellate court may not exceed the sentence imposed by the primary judgment in absentia, so that the opponent is not harmed by his opposition, except if the prosecution has appealed this judgment, so avoiding the judgment is a mistake in the application of the law.[3612]

It is decided that the scope of the appeal is determined in the capacity of a plaintiff. The appeal of the Public Prosecution - which has no capacity to speak only about the criminal case and has nothing to do with the civil case - does not transfer the dispute before the Court of Appeal except with regard to the criminal case only in accordance with the rule of the relative effect of the appeal. Since the civil lawsuit has been resolved by rejecting it and this judiciary has become final by not challenging it from those who own it and it is the civil rights plaintiff alone, the appeal court's response to the civil lawsuit and the judiciary to the civil rights plaintiff with temporary compensation is a response to what it does not have the judiciary in and a separation of what was not transferred to it and was not presented to it in violation of the law.[3613]

Appeal filed by a person other than the Public Prosecution

If the appeal is filed by a person other than the Public Prosecution, the court may only confirm or amend the judgment in the interest of the appellant. If it rules that the appeal is forfeited, inadmissible, inadmissible, or rejected, it may sentence the appellant to a fine not exceeding five pounds.[3614]

It is decided that the rule that the status of the appellant should not be abused is a general rule of law that applies to all methods of appeal, whether ordinary or extraordinary.[3615]

([3611]) Appeal No. 7475 of 56 S issued on December 2, 1987 and published in the second part of the book of the Technical Office No. 38 page No. 1057 rule No. 192.

([3612]) Appeal No. 33 of 44 s issued at the session of February 4, 1974 and published in the first part of the technical office book No. 25 page No. 94 rule No. 21, Appeal No. 2317 of 52 s issued at the session of October 26, 1982 and published in the first part of the technical office book No. 33 page No. 807 rule No. 165.

([3613]) Appeal No. 1644 of 47 S issued in the session of April 2, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 329 rule No. 61.

([3614]) Article No. 417 of the Code of Criminal Procedure, and see: Appeal No. 8429 of 58 S issued at the hearing of March 16, 1989 and published in the first part of the technical office letter No. 40 page No. 416 rule No. 70, Appeal No. 87 of 55 S issued at the hearing of February 21, 1985 and published in the first part of the technical office letter No. 36 page No. 293 rule No. 49 The Court of Cassation ruled that: [It is established that the appellant is not harmed by his appeal in accordance with the provisions of the third paragraph of Article No. 417 of the Criminal Procedure Law. The contested judgment had tightened the sentence imposed on the appellant by the court of first instance by releasing the period of deposit based on his appeal alone. He has violated the law, which authorizes this court to correct this error.] Appeal No. 29223 of 67 BC issued at the session of April 15, 2007 (unpublished).

([3615]) Appeal No. 3858 of 67 S issued at the 6th session of April 2005 (unpublished), Appeal No. 7527 of 79 S issued at the 7th session of March 2015 and published in the Technical Office's letter No. 66, page No. 274, rule No. 37, Appeal No. 20535 of 83 S issued at the 2nd session of April 2014 and published in the Technical Office's letter No. 65, page No. 207, rule No. 21, Appeal No. 2020 of 69 S issued at the 12th session of February 2014 2007 and published in Technical Office Letter No. 58, Page No. 145, Rule No. 29, Appeal No. 19772 of 67 S issued in the session of May 12, 2005 and published in Technical Office Letter No. 56, Page No. 322, Rule No. 48, Appeal No. 18555 of 59 S issued in the session of March 23, 1992 and published in

Therefore, it is established that it is not permissible in law to increase the penalty imposed by the court of first instance if the appeal is filed by the accused alone without prosecution so as not to prejudice his appeal.[3616]

It is decided that the lesson in aggravating or reducing the penalty is the degree of severity in the order of penalties. However, if the court of first instance has sentenced the accused to two types of punishment, imprisonment and fine, the appellate court cannot increase the amount of the fine, even if it reduces the penalty of imprisonment or keeps its implementation as long as he is the appellant alone, and it has not harmed the appellant by his appeal as it did not achieve the innocence or reduction of the penalty as long as it imposed both types of punishment.[3617]

If the Public Prosecution did not appeal the primary judgment, it is not permissible for the Court of Appeal to punish the appellant accused with a penalty that was not included in the appealed judgment or to increase the amount of any of the penalties imposed by the aforementioned judgment because it has harmed him with the appeal filed by him, which is not permissible.[3618]

It is clear from this that if the appeal is filed by the accused alone without the Public Prosecution, the appellate court may not aggravate the sentence or rule that the court of first instance does not have jurisdiction to hear the case, if it is proven to it that the incident in which the lawsuit is filed is in fact a felony, because this harms the status of the appellant and is not before it in this case, except to uphold the initial conviction or amend it in the interest of the appellant after his implicit jurisdiction has acquired the force of the res judicata.[3619]

---

the first part of Technical Office Letter No. 43, Page No. 320, Rule No. 44, Appeal No. 7096 of 58 S issued in the session of January 31, 1990 and published in the first part of Technical Office Letter No. 41, Page No. 240, Rule No. 41, Appeal No. 7096 of 58 s issued at the session of 31 January 1990 and published in the first part of the Technical Office letter No. 41 page No. 240 rule No. 41, Appeal No. 1739 of 55 s issued at the session of 21 October 1985 and published in the first part of the Technical Office letter No. 36 page No. 905 rule No. 163, Appeal No. 1262 of 37 s issued at the session of 23 October 1967 and published in the third part of the Technical Office letter No. 18 page No. 1008 rule No. 205.

([3616]) Appeal No. 1 of 72 s issued at the session of April 11, 2004 (unpublished), Appeal No. 23199 of 2 s issued at the session of May 18, 2013 and published in the Technical Office's letter No. 64, page No. 642, rule No. 91, Appeal No. 24657 of 62 s issued at the session of December 22, 1994 and published in the first part of the Technical Office's letter No. 45, page No. 1222, rule No. 191, appeal No. 18303 For the year 59 S issued in the session of May 16, 1991 and published in the first part of the Technical Office book No. 42 Page 840 Rule No. 117, Appeal No. 81 of 55 S issued in the session of March 21, 1985 and published in the first part of the Technical Office book No. 36 Page 444 Rule No. 75, Appeal No. 673 of 25 S issued in the session of November 14, 1955 and published in the fourth part of the Technical Office book No. 6 Page 1310 Rule No. 385, Appeal No. 151 of 43 S issued in the session of April 8, 1973 and published in the second part of the Office book Technician No. 24 Page No. 490 Rule No. 101

The Court of Cassation ruled that: [The revocation of the stay of execution is considered an aggravation of the penalty even with the reduction of the amount of the fine imposed, or the reduction of the period of imprisonment imposed, the contested judgment has erred in the law], Appeal No. 15525 of 64 S issued at the session of October 17, 2000 and published in the Technical Office's letter No. 51, page No. 657, rule No. 128, Appeal No. 4440 of 59 S issued at the session of June 9, 1991 and published in the first part of the Technical Office's letter No. 42, page No. 918, rule No. 126

It also ruled that: [The contested judgment has aggravated the sentence imposed on the respondent by the Court of First Instance by releasing the period of the deposit as described on the basis of his appeal alone, it has violated the law, and then it had to be corrected by upholding the appealed judgment and making the penalty of the deposit for a period of one year], Appeal No. 13962 of 59 BC issued at the session of 23 April 1992 and published in the first part of the book of the Technical Office No. 43 page 425 rule No. 64,.

([3617]) Appeal No. 1760 of 55 S issued at the 22nd session of October 1985 and published in the first part of the Technical Office book No. 36 page No. 915 rule No. 165, Appeal No. 5566 of 53 S issued at the 18th session of January 1984 and published in the first part of the Technical Office book No. 35 page No. 62 rule No. 11, Appeal No. 2416 of 49 S issued at the 8th session of June 1980 and published in the first part of the Technical Office book No. 31 page No. 717 rule No. 139.

([3618]) Appeal No. 18555 of 59 S issued at the session of March 23, 1992 and published in the first part of the book of the Technical Office No. 43 page No. 320 rule No. 44.

([3619]) Appeal No. 16182 of 67 S issued at the session of May 3, 2005 (unpublished), Appeal No. 20237 of 64 S issued at the session of December 20, 2000 and published in the Technical Office's letter No. 51 page 850 Rule No. 168, Appeal No. 24574 of 62 S issued at the session of April 22, 1998 and published in the first part of the Technical Office's letter No. 49 page 603 Rule No. 78, Appeal No. 12791 For the year 62 S issued in the session of March 22, 1997 and published in the first part of the

If the appeal is filed by the accused alone without the Public Prosecution, the court cannot rule on the lack of jurisdiction of the court of first instance to hear the case, saying that the State Security Emergency Court is competent to adjudicate the case because of the abuse of the status of the accused, who cannot be harmed by the appeal filed by him alone, because his interest requires that he be tried before the ordinary courts with general jurisdiction in the consideration of all crimes and cases because the street has surrounded these courts with guarantees, represented by its formation of purely judicial elements, and its multiple degrees, and the right to challenge its judgments by way of cassation when its conditions are met, which are guarantees that are not available in the emergency judiciary, and the appeal court in this case only has to uphold the primary conviction or amend it for the benefit of the appellant after his implicit judiciary has acquired jurisdiction over the force of the judicial order.[3620]

Also, it is not in the interest of the accused to be tried before the State Security Court formed in accordance with the Emergency Law, because this is an affront to his position, which cannot be harmed by the appeal filed by him alone, because his interest requires, in the form of the lawsuit - to be tried before the ordinary courts of general jurisdiction in the consideration of all crimes and cases - except for what is excluded by a special text - because the street has surrounded these courts with guarantees, represented by its formation of purely judicial elements, and from the multiplicity of degrees, and the right to challenge its rulings by way of cassation when its conditions are met, and these guarantees are not available in the emergency judiciary.[3621]

However, when the court of second instance considered that the incident attributed to the accused was a felony and not a misdemeanor, and indicated in the records of its judgment that it did not rule that it had no qualitative jurisdiction to consider the case on this basis so that the appellant would not be harmed by his appeal, and then it ruled that the appellant was innocent of what was assigned to him, then it had to abide by the text of Article 417, so it decided to uphold or amend the appealed judgment in the interest of the accused, but it ruled that he was innocent in order to avoid the ruling that the incident attributed to him was not a felony and so as not to harm his position as the appellant alone, so it would be in violation of the law, as the ruling of innocence comes only after the court is exposed to the incident in which the criminal case was filed in terms of law and subject matter.[3622]

On the other hand, if the civil rights plaintiff is the only one - without the Public Prosecution or the accused - who appealed the judgment issued by the court of first instance, which ruled to convict the accused and oblige him to compensate, and it was decided that it is not valid for the appellant to be harmed based on the appeal filed by him alone, in accordance with the provision of the third paragraph of Article 417 of the Code of Criminal Procedure, which stipulated that if

---

technical office book No. 48 Page 386 Rule No. 54, Appeal No. 1800 of the year 61 S issued in the session of October 5, 1992 and published in the first part of the technical office book No. 43 Page 776 Rule No. 119, Appeal No. 2292 of the year 58 S issued in the session of June 15, 1989 and published in the first part of the technical office book No. 40 Page 641 Rule No. 108, Appeal No. 8111 of the year 54 S issued in the session of January 21, 1985 and published in the first part of the office book Technical No. 36 Page No. 105 Rule No. 13, Appeal No. 1060 of 45 S issued at the session of October 13, 1975 and published in the first part of the Technical Office's book No. 26 Page No. 590 Rule No. 132, Appeal No. 1505 of 44 S issued at the session of December 9, 1974 and published in the first part of the Technical Office's book No. 25 Page No. 846 Rule No. 182, Appeal No. 1830 of 35 S issued at the session of February 7, 1966 and published in the first part of the Technical Office's book No. 17 Page No. 91 Rule No. 16, Appeal No. 1375 of 30 S issued at the session of November 28, 1960 and published in the third part of the Technical Office's book No. 11 Page No. 841 Rule No. 162, Appeal No. 1493 of 23 S issued at the session of December 21, 1953 and published in the first part of the Technical Office's book No. 5 Page No. 178 Rule No. 60.

([3620]) Appeal No. 1130 of 68 S issued on December 8, 2003 (unpublished).

([3621]) Appeal No. 3311 of 66 S issued at the 10th session of March 2005 and published in the Technical Office's letter No. 56, page No. 195, rule No. 28, Appeal No. 5058 of 55 S issued at the 5th session of February 1986 and published in the first part of the Technical Office's letter No. 37, page No. 239, rule No. 49.

([3622]) Appeal No. 19403 of 59 S issued at the session of March 17, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 292 rule No. 38.

the appeal is filed by other than the Public Prosecution, the court can only confirm or amend the judgment in the interest of the appellant, which is a provision that applies to the civil lawsuit of the criminal lawsuit pursuant to Article 266 of the Code of Criminal Procedure, since the foregoing, the judgment of the Court of Appeal - by implicitly ruling to reject the civil lawsuit - is tainted with nullity and wrong in law.[3623]

The person responsible for civil rights benefits from the accused's appeal against independence if he gains it by way of dependence and necessity.[3624]

Reimbursement of compensation in the event of revocation of the judgment issued

If the judgment issued for damages is canceled, and it has been temporarily implemented, it shall be refunded based on the cancellation judgment.[3625]

Opposition in absentia judgments issued by the Court of Appeal

Judgments in absentia and opposition thereto before the Court of Appeal shall follow what is prescribed before the courts of first instance.[3626]

The objection shall not be accepted in the legal presence judgment unless the convicted person proves the existence of an excuse that prevented him from attending and he could not submit it before the judgment, and his appeal is not permissible and it is obligatory to act in relation to the legal presence judgments issued by the court of second instance.[3627]

If the appealed judgment has been issued null and void because it is devoid of the text of the law under which the punishment was inflicted on the accused, then the Court of Appeal may rule its nullity and address the judgment on the merits of the case.[3628]

Correction of the Court of Appeal for nullity and judgment in the lawsuit

If there is nullity in the procedures or in the judgment of the court of first instance, the appellate court may correct the nullity and rule on the lawsuit.[3629]

It is scheduled to require Article 419 of the Code of Criminal Procedure that in the event of invalidity of the procedures or invalidity of the judgment, the street has authorized the Court of Appeal to correct this invalidity and rule on the case.[3630]

([3623]) Appeal No. 2855 of 63 S issued at the session of 19 October 1997 and published in the first part of the book of the Technical Office No. 48 page No. 1113 rule No. 167.

([3624]) Appeal No. 605 of 51 S issued at the session of November 15, 1981 and published in the first part of the book of the Technical Office No. 32 page No. 907 rule No. 156.

([3625]) Article 416 of the Criminal Procedure Code.

([3626]) Article 418 of the Criminal Procedure Code, see the above regarding the opposition.

([3627]) Appeal No. 1587 of 52 S issued at the session of 24 May 1983 and published in the first part of the Technical Office book No. 34 page No. 663 rule No. 134, Appeal No. 748 of 43 S issued at the session of 21 January 1974 and published in the first part of the Technical Office book No. 25 page No. 45 rule No. 10, Appeal No. 135 of 42 S issued at the session of 21 May 1972 and published in the second part of the Technical Office book No. 23 page No. 748 rule No. 166, Appeal No. 97 of 36 S issued at the session of 21 March 1966 and published in the first part of the Technical Office book No. 17 page No. 333 rule No. 65.

([3628]) Appeal No. 2316 of 66 S issued on 21 October 1999 (unpublished).

([3629]) Article No. 419 of the Criminal Procedure Code, Appeal No. 136 of 28 S issued at the session of March 24, 1958 and published in the first part of the Technical Office's letter No. 9 page No. 339 rule No. 93, Appeal No. 1234 of 27 S issued at the session of December 3, 1957 and published in the third part of the Technical Office's letter No. 8 page No. 955 rule No. 262, Appeal No. 419 of 27 S issued at the session of June 3, 1957 and published in the part The second part of Technical Office Letter No. 8 Page No. 581 Rule No. 160, Appeal No. 841 of 26 S issued at the 22nd session of October 1956 and published in Part III of Technical Office Letter No. 7 Page No. 1049 Rule No. 288, Appeal No. 1393 of 25 S issued at the 10th session of April 1956 and published in Part II of Technical Office Letter No. 7 Page No. 538 Rule No. 157, Appeal No. 1394 of 25 S issued at the 6th session of March 1956 and published in Part I of Technical Office Letter No. 7 Page No. 303 Rule No. 92.

This means that the legislator is entitled to the Court of Appeal in the event of the nullity of the procedures or the nullity of the judgment to correct this nullity and rule on the lawsuit.[3631]

However, if it decides to uphold the appealed judgment despite having previously ruled its nullity, it shall have set aside the proper application of the law, which disadvantages its ruling.[3632]

If the court of second instance has found that there is an invalidity in the primary judgment that affects its subjectivity and loses an element of its existence because of the absence of the preamble to the appointment of the court from which it was issued and the body that issued it and the date of its issuance and reference to the text of the law under which it was ruled to correct this invalidity and rule in the lawsuit again, but has done so and decided to support the appealed judgment despite its absence, it has avoided the proper application of the law, which defects its ruling, which invalidates it and requires its revocation. It does not change the fact that its judgment has established independent reasons for its receipt in support of the nonexistent.[3633]

The street did not require the appellate court to return the case to the court of first instance unless the latter ruled not to have jurisdiction or to accept a subsidiary plea that would result in preventing the proceedings from proceeding, but in the event of the nullity of the procedures or the nullity of the judgment, the street authorized the appellate court to correct this nullity and rule on the lawsuit.[3634]

In order for the Court of Appeal to correct the invalidity of the judgment of the Court of First Instance and to address the adjudication of the case, it is required that the Court of First Instance is already competent in the case at first instance. If the Court of First Instance is not

---

([3630]) Appeal No. 22291 of 59 S issued at the session of April 23, 1992 and published in the first part of the Technical Office book No. 43 page No. 429 rule No. 65, Appeal No. 1704 of 56 S issued at the session of June 4, 1986 and published in the first part of the Technical Office book No. 37 page No. 643 rule No. 122, Appeal No. 217 of 29 S issued at the session of March 30, 1959 and published in the first part of the Technical Office book No. 10 page No. 375 rule No. 84, Appeal No. 2039 of 27 S issued at the session of April 8, 1958 and published in the second part of the Technical Office book No. 9 page No. 367 rule No. 101.

([3631]) In this regard, the Court of Cassation ruled that: [Whereas it is clear from the papers that the court of first instance ruled on the subject of the case to punish the appellant with six months' imprisonment with work for the two charges against him and to oblige him to pay the civil plaintiff an amount of 51 pounds based on its statement : (Whereas the court is reassured by the seizure record that the accused committed the violation described in the description of the Public Prosecution, and therefore the elements of the charge against him have been fulfilled and are sufficiently proven before him, and the court decides to punish him with the articles of indictment and the text of Article 304 of the Code of Criminal Procedure) The appellant appealed this judgment and ruled in absentia to accept the appeal in form and on the merits by rejecting it and supporting the appealed judgment for its reasons, and if the court objected to accept the objection in form and on the merits by canceling the opposing judgment in it and accepting the appeal in form and on the merits by invalidating the appealed judgment and ruling again to imprison the accused for six months with work and obliging him to pay the civil claimant an amount of 51 pounds as temporary compensation and the judgment returned new reasons sufficient to carry his conviction in order to correct the shortcomings of the appealed judgment in the reasoning, the contested judgment was consistent with the correct law The Court of First Instance, having exhausted its jurisdiction by the judgment it issued on the subject, has no way to return the case to it a second time, regardless of the implication of its judgment or similar defects of causation, and therefore what the appellant raises regarding the Second Instance Court's response to the decision on the merits of the case is invalid [Appeal No. 23713 of 62 S issued at the session of January 24, 1996 and published in the first part of the Technical Office's book No. 47, page No. 127, rule No. 18.

([3632]) Appeal No. 1812 of 36 S issued in the session of January 2, 1967 and published in the first part of the book of the Technical Office No. 18 page No. 31 rule No. 3.

([3633]) Appeal No. 1923 of 34 S issued on March 8, 1965 and published in the first part of the book of the Technical Office No. 16 page No. 220 rule No. 47.

([3634]) Appeal No. 2513 of 55 S issued at the 10th session of October 1985 and published in Part I of the Technical Office Book No. 36 Page 846 Rule No. 150, Appeal No. 1540 of 48 S issued at the 11th session of January 1979 and published in Part I of the Technical Office Book No. 30 Page 71 Rule No. 11, Appeal No. 531 of 48 S issued at the 10th session of December 1978 and published in Part I of the Technical Office Book No. 29 Page 892 Rule No. 185, Appeal No. 853 of 39 S issued at the 23rd session of June 1969 and published in Part II of the Technical Office Book No. 20 Page 944 Rule No. 187.

competent, the Court of Appeal must refer the case to the Public Prosecution to take its affairs in it, in accordance with Article 414 of the Criminal Procedure Law.[3635]

Because to say otherwise means allowing the trial of the accused before the Court of Appeal directly for an incident that the Court of First Instance does not have the right to try for its departure from its jurisdiction, in addition to the fact that this is a judiciary in matters that the court has not contacted in accordance with the law, in addition to the fact that it deprives the accused of a degree of litigation and this is due to his attachment to the judicial system and its degrees is contrary to the provisions related to public order.[3636]

However, if the court of first instance ruled on the merits of the case, but its decision was null and void related to the public order for its issuance by a judge who did not hear the pleading, it is not considered as a first degree of litigation, and the court of second degree may not correct this nullity because of the loss of that degree on the appellant, which must be the cassation coupled with the cancellation of the appealed primary judgment and the return of the case to the court of first instance for further adjudication by another judge.[3637]

If the court of first instance has ruled on the lawsuit in the matter and exhausted its jurisdiction, it is obligatory for the appellate court to determine, according to its ruling, the nullity of the procedures before the court of first instance to correct the nullity and rule on the lawsuit, but it has implemented the provision of the last paragraph - in other cases - and ruled to return the lawsuit to the court of first instance for reconsideration, its ruling was based on an error in the application of the law, which must be corrected and the lawsuit returned to the appellate court to rule on its merits.[3638]

If the court of first instance ruled on the merits of the case, but its ruling was null and void related to public order because it was issued by a judge who did not hear the pleading, it is not considered as a first degree of litigation, and the court of second degree may not correct this nullity because of the loss of that degree on the appellant, which must be the cassation coupled with the cancellation of the appealed primary judgment and the referral of the case to the court of first instance for further adjudication by another judge.[3639]

Whereas the court of first instance has exhausted its jurisdiction by issuing a judgment convicting the accused, but that judgment has been devoid of a statement of the date of its issuance, and it was decided that the judgment paper is one of the official papers that must bear

---

([3635]) Appeal No. 568 of 47 s issued at the session of December 4, 1977 and published in the first part of the Technical Office's letter No. 28 page No. 1002 rule No. 205, Appeal No. 489 of 29 s issued at the session of April 20, 1959 and published in the second part of the Technical Office's letter No. 10 page No. 451 rule No. 99

It also ruled that: [If it is established from the papers that the accused is a public servant of the maintenance weapon, and that the theft occurred on state-owned money - which is the electric current produced and distributed by the Electricity and Gas Department - and the Public Prosecution had appealed the primary default judgment of his conviction and the judgment issued in the opposition acquitting him of the charge against him, the judiciary of the Court of Appeal considering the incident a misdemeanor and punishing the accused on this basis is an error in the law that requires the reversal of the judgment with the referral of the case to the Court of Appeal for reconsideration guided by the rules stipulated in Articles 414, 415 of the Code of Criminal Procedure, considering that the incident is a felony to which Article 113 of the Penal Code applies] Appeal No. 581 of 29 Q issued at the hearing of June 2, 1959 and published in the second part of the Technical Office's letter No. 10, page No. 616, rule No. 136.

([3636]) Appeal No. 568 of 47 S issued at the 4th session of December 1977 and published in the first part of the book of the Technical Office No. 28 page No. 1002 rule No. 205.

([3637]) Appeal No. 14579 of 63 S issued at the session of June 1, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 345 rule No. 81.

([3638]) Appeal No. 15173 of 59 S issued at the session of 4 November 1990 and published in the first part of the book of the Technical Office No. 41 page No. 994 rule No. 176, Appeal No. 567 of 44 S issued at the session of 3 June 1974 and published in the first part of the book of the Technical Office No. 25 page No. 564 rule No. 120.

([3639]) Appeal No. 584 of 54 S issued at the session of December 20, 1984 and published in the first part of the book of the Technical Office No. 35 page No. 934 rule No. 207.

the date of its issuance, otherwise it is nullified because it loses one of the elements of its existence legally because it is the only document that certifies the existence of the judgment in its entirety in the manner in which it was issued and based on the reasons on which it was based, and if the judgment itself is nullified, the appealed judgment must be nullified, and - after nullifying it - the appeal court must decide on the subject matter of the case.[3640]

In the event that the appealed judgment does not have the signature of the judge and the statement of the authority, the Court of Appeal shall not return the case to the court of first instance, and the Court of Appeal shall consider the case and rule on its merits.[3641]

The appeal court must also consider the lawsuit in the event of the issuance of the primary judgment that is not signed by the judge, and there is no objection that this misses one of the degrees of litigation against the accused.[3642]

Also, if the Court of First Instance has exhausted its jurisdiction by ruling on the subject of the objection in support, the Court of Appeal, if it considers that there is an invalidity in the proceedings or in the judgment - because the accused was not given a valid declaration - should correct the invalidity and rule in the case, and therefore the judgment of the Court of Appeal, if it decided to return the case to the Court of First Instance to decide on the objection otherwise, is wrong, which must be overturned.[3643]

If the appellate court has erred in returning the case, except in the cases stipulated by law, which is the case of the ruling of lack of jurisdiction or the acceptance of a subsidiary plea that results in preventing the proceeding of the lawsuit, to the court of first instance to adjudicate the lawsuit despite the exhaustion of the jurisdiction of the last court to adjudicate on its subject matter, the ruling of the court of first instance that the lawsuit may not be considered because it was previously adjudicated shall be valid in law.[3644]

It must be taken into account that the authority of the appellate court to correct the invalidity pursuant to Article 419 of the Code of Criminal Procedure is limited to the judgment of the court of first instance and may not extend to the judgment issued by it because of the implication of this violation of the authority of the judgments[3645].

Cancellation of the judgment by the Court of Appeal and return of the case to the Court of First Instance

If the judgment of the court of first instance is issued for lack of jurisdiction or acceptance of a subsidiary plea that results in preventing the proceeding of the lawsuit, and the appellate court decides to cancel the judgment and the jurisdiction of the court or to reject the subsidiary plea

---

([3640]) Appeal No. 5873 of 53 S issued at the 27th session of December 1983 and published in the first part of the Technical Office letter No. 34 page No. 1082 rule No. 216, Appeal No. 1438 of 48 S issued at the 4th session of May 1981 and published in the first part of the Technical Office letter No. 32 page No. 448 rule No. 79.

([3641]) Appeal No. 741 of 43 S issued at the session of November 13, 1973 and published in the third part of the book of the Technical Office No. 24 page No. 996 rule No. 207.

([3642]) Appeal No. 11 of 43 s issued at the session of March 4, 1973 and published in the first part of the book of the Technical Office No. 24 page No. 279 rule No. 61.

([3643]) Appeal No. 1834 of 39 s issued at the session of March 2, 1970 and published in the first part of the book of the Technical Office No. 21 page No. 338 rule No. 84, Appeal No. 893 of 39 s issued at the session of December 22, 1969 and published in the third part of the book of the Technical Office No. 20 page No. 1430 rule No. 295.

([3644]) Appeal No. 1696 of 33 S issued at the session of January 6, 1964 and published in the first part of the technical office book No. 15 page No. 24 rule No. 5, Appeal No. 2186 of 32 S issued at the session of February 4, 1963 and published in the first part of the technical office book No. 14 page No. 64 rule No. 14, Appeal No. 323 of 31 S issued at the session of May 22, 1961 and published in the second part of the technical office book No. 12 page No. 594 rule No. 113.

([3645]) Appeal No. 171 of 29 S issued at the session of March 23, 1959 and published in the first part of the book of the Technical Office No. 10 page No. 337 rule No. 75.

and consider the lawsuit, the court of appeal must return the case to the court of first instance to rule on its merits.[3646]

This means that returning the case to the court of first instance is not permissible except in the following cases:

First: The issuance of a judgment by the Court of Appeal annulling the judgment issued by the Court of First Instance for lack of jurisdiction.

Second: The issuance of a judgment by the Court of Appeal annulling the judgment issued by the Court of First Instance to accept a subsidiary plea that resulted in preventing the proceedings from proceeding.

It is not permissible for the appellate court - in other than these two cases - to abandon the consideration of the case and return the case to the court of first instance after this has exhausted all its authority in it, and therefore the appellant's statement of the absence of the first instance judgment for the loss of his official paper and the error of the court of second instance in addressing the subject because of missing one of the degrees of litigation against the accused is incorrect and the appellate court was correct when it considered the subject of the case and ruled on it[3647].

The street requires the appellate court to return the case to the court of first instance if the latter ruled not to have jurisdiction or to accept a subsidiary plea that would result in preventing the case from proceeding. If the court of first instance ruled that the case could not be considered because of the precedent of adjudication, and the appellate court ruled to cancel this case based on the appeal of the Public Prosecution, the aforementioned court should have ruled in the appeal against the judgment of the court of first instance to cancel it and reject the plea that the case may not be considered because of the precedent of adjudication and return the case to the court of first instance to decide on the matter so that one of the two degrees of litigation

---

([3646]) Article 419 of the Criminal Procedure Code, and see: Appeal No. 19833 of 4S issued at the session of December 24, 2014 and published in the Technical Office's letter No. 65, page No. 1005, rule No. 135, Appeal No. 17180 of 3S issued at the session of April 28, 2013 and published in the Technical Office's letter No. 64, page No. 544, rule No. 76, Appeal No. 11544 of 64S issued at the session of October 11, 1999 and published in the first part of the Technical Office's letter No. 50, page No. 528 Rule No. 119, Appeal No. 17399 of 64 s issued at the session of January 18, 2001 and published in Technical Office Letter No. 52 Page No. 136 Rule No. 21, Appeal No. 8635 of 67 s issued at the session of July 1, 1997 and published in Part I of Technical Office Letter No. 48 Page No. 719 Rule No. 110, Appeal No. 6399 of 54 s issued at the session of October 29, 1987 and published in Part II of Technical Office Letter No. 38 Page No. 898 Rule No. 164, Appeal No. 6860 of 56 S issued at the hearing of April 16, 1987 and published in Part I of Technical Office Letter No. 38 Page 620 Rule No. 105, Appeal No. 1806 of 39 S issued at the hearing of February 22, 1970 and published in Part I of Technical Office Letter No. 21 Page 269 Rule No. 66, Appeal No. 1872 of 39 S issued at the hearing of January 19, 1970 and published in Part I of Technical Office Letter No. 21 Page 141 Rule No. 33, Appeal No. 2039 of 27 S issued at the 8th session of April 1958 and published in the second part of the Technical Office letter No. 9 page 367 rule No. 101, Appeal No. 136 of 28 S issued at the 24th session of March 1958 and published in the first part of the Technical Office letter No. 9 page 339 rule No. 93, Appeal No. 841 of 26 S issued at the 22nd session of October 1956 and published in the third part of the Technical Office letter No. 7 page 1049 rule No. 288, Appeal No. 965 of 23 S issued At the session of June 23, 1953, published in the third part of the Technical Office's letter No. 4, page No. 1016, rule No. 360.

([3647]) Appeal No. 8635 of 67 s issued at the 1st session of July 1997 and published in Part I of Technical Office Book No. 48 Page 719 Rule No. 110, Appeal No. 23713 of 62 s issued at the 24th session of January 1996 and published in Part I of Technical Office Book No. 47 Page 127 Rule No. 18, Appeal No. 8248 of 54 s issued at the 12th session of November 1986 and published in Part I of Technical Office Book No. 37 Page 865 Rule No. 166, Appeal No. 1696 of 33 s issued at the 6th session of January 1964 and published in Part I of Technical Office Book No. 15 Page 24 Rule No. 5, Appeal No. 1234 of 27 s issued at the 3rd session of December 1957 and published in Part III of Technical Office Book No. 8 Page 955 Rule No. 262, Appeal No. 419 of 27 s issued at the 3rd session of June 1957 and published in Part II of Technical Office Book No. 8 Page 581 Rule No. 160.

against the accused does not miss, according to the text of Article 419/2 of the Criminal Procedure Law, but it did not do so, it has erred in the application of the law.[3648]

If the judgment of the Court of Appeal decides to invalidate the judgment issued by the court of first instance, but it did not rule to return the lawsuit to the court of first instance to decide on it, but ruled on its subject matter and thus missed the convict one of the two degrees of litigation, it is wrongly defective in the law, which requires its cassation and referral to the court of first instance to decide on the subject matter of the lawsuit.[3649]

The legislator also obligated the Court of Appeal, when ruling to cancel the preliminary ruling not to accept the civil lawsuit; to return the lawsuit to the court of first instance to decide on its merits.[3650]

If the Court of Appeal ruled in the appeal submitted to it to cancel the appealed judgment and to accept the civil lawsuit - before the accused - and dealt with its subject matter and ruled on it in a chapter starting with obliging temporary compensation, although it had to rule to cancel the appealed judgment - in the decision not to accept the civil lawsuit - and return the case to the court of first instance to decide on the subject of the civil lawsuit so as not to miss the accused one of the two degrees of litigation, but it did not do so, it would have erred in the application of the law.[3651]

It is decided that the appeal of the judgment issued in the objection that it is not permissible - or that it is not accepted in form - is limited in its subject matter to this judgment as a stand-alone formal judgment without the effect of the appeal going to the primary default judgment due to the different nature of each of the two judgments. The contested judgment, as it omitted to adjudicate in the form of the objection and dealt with the subject matter of the law, has erred in the correctness of the law, as in this case it must focus on the form of the objection only, either by upholding the appealed judgment or by canceling it and returning the lawsuit to the court of first instance to consider the subject matter of the objection.[3652]

([3648]) Appeal No. 22375 of 61 S issued at the 1st session of October 2001 and published in Technical Office Letter No. 52 Page 687 Rule No. 126, Appeal No. 19257 of 60 S issued at the 12th session of September 1993 and published in Part I of Technical Office Letter No. 44 Page 698 Rule No. 109, Appeal No. 6209 of 53 S issued at the 20th session of March 1984 and published in Part I of Technical Office Letter No. 35 Page 310 Rule No. 65, Appeal No. 2506 of 53 S issued at the 11th session of January 1984 and published in Part I of Technical Office Letter No. 35 Page 39 Rule No. 6, Appeal No. 202 of 40 S issued at the 5th session of April 1970 and published in Part II of Technical Office Letter No. 21 Page 510 Rule No. 123.

([3649]) Appeal No. 27180 of 59 S issued at the 6th session of December 1994 and published in the first part of the Technical Office book No. 45 page No. 1086 rule No. 170, Appeal No. 9974 of 59 S issued at the 29th session of November 1992 and published in the first part of the Technical Office book No. 43 page No. 1077 rule No. 167, Appeal No. 6978 of 53 S issued at the 26th session of April 1984 and published in the first part of the Technical Office book No. 35 page No. 483 rule No. 106.

([3650]) Appeal No. 9378 of 60 BC issued at the session of October 8, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 1046 rule No. 156.

([3651]) Appeal No. 23152 of 64 S issued at the session of November 10, 2002 and published in the letter of the Technical Office No. 53 page No. 1098 rule No. 182, Appeal No. 41964 of 59 S issued at the session of November 7, 1995 and published in the first part of the letter of the Technical Office No. 46 page No. 1162 rule No. 174, Appeal No. 11681 of 59 S issued at the session of February 6, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 252 rule No. 34, Appeal No. 1601 of 45 S issued at the session of February 2, 1976 and published in the first part of the book of the Technical Office No. 27 page No. 152 rule No. 30.

([3652]) Appeal No. 23511 of 64 S issued at the 28th session of January 2001 and published in the Technical Office letter No. 52, page No. 178, rule No. 28, Appeal No. 16398 of 60 S issued at the 27th session of October 1998 and published in the first part of the Technical Office letter No. 49, page No. 1155, rule No. 158, Appeal No. 2167 of 56 S issued at the 15th session of May 1986 and published in the first part of the Technical Office letter No. 37, page No. 561, rule No. 110, Appeal No. 984 of 40 S issued at the 5th session of October 1970 and published in Part III of Technical Office Letter No. 21 page 957 Rule No. 226, Appeal No. 1652 of 39 S issued at the 4th session of May 1970 and published in Part II of Technical Office Letter No. 21 page 651 Rule No. 154, Appeal No. 1406 of 37 S issued at the 6th session of November 1967 and published in Part III of Technical Office Letter No. 18 page 1079 Rule No. 222, Appeal No. 1772 of 35 S Issued at the session of March 22, 1966 and published in the first part of the Technical Office's letter No. 17, page No. 343, rule No. 68.

The legislator obliged the appellate court, if the court of first instance issued its ruling of lack of jurisdiction and ruled to cancel it, and the jurisdiction of the court to return the case to the court of first instance to rule on its merits, the decision of the appeal judgment on the merits of the case - after the primary ruling of lack of jurisdiction was canceled - and did not return the case to the court of first instance, he may have violated the law, which requires his cassation and return the case to the court of first instance to rule on it.[3653]

The issuance of the judgment by a judge who has performed the function of the Public Prosecution in the lawsuit, although he must refrain from considering it automatically, otherwise his judgment is null and void related to public order, and that judgment must not be considered as a first degree of litigation, even if he has decided on the subject matter of the lawsuit, and it is not permissible to correct the court of the second degree of this nullity and decide on the lawsuit, because of missing a degree of litigation on the appellant, which must be coupled with the cassation of the judgment coupled with the cancellation of the appealed primary judgment and the referral of the case to the court of first instance for further adjudication by another judge.[3654]

If the court of first instance has ruled in absentia that the lawsuit is inadmissible based on the nullity of the procedures for initiating criminal proceedings. The Public Prosecution appealed the judgment, and the Court of Appeal ruled in absentia to accept the appeal in form and in substance to cancel the appealed judgment and punish the accused. The convicted person objected, and the court ruled that the objection was as if it were not. The contested judgment, as it ruled that the judgment issued by the Court of First Instance was invalid based on the invalidity of the procedures for initiating the criminal case and did not rule to return the case to the Court of First Instance for adjudication, but rather ruled on its subject matter and thus missed the convicted person one of the two degrees of litigation, it is wrongly defective in the law.[3655]

If the Court of Appeal has ruled to cancel the appealed judgment and return the papers to the Court of First Instance to consider the objection of the accused and based its judiciary on the fact that the Court of First Instance ruled on the case without hearing the defense of the accused, it has erred in the application of the law, as returning the case to the Court of First Instance is not permissible except in the two cases stipulated in the second paragraph of Article 419 of the Code of Criminal Procedure.[3656]

25-1-2-2 Appealing judgments issued in felonies

First: Judgments that may be appealed

Judgments rendered in person by the Criminal Court of First Instance may be appealed.[3657]

([3653]) Appeal No. 47840 of 59 S issued at the session of February 18, 1997 and published in the first part of the Technical Office book No. 48 page No. 214 rule No. 28, Appeal No. 26018 of 59 S issued at the session of April 23, 1992 and published in the first part of the Technical Office book No. 43 page No. 438 rule No. 66, Appeal No. 38 of 46 S issued at the session of April 11, 1976 and published in the first part of the Technical Office book No. 27 page No. 407 rule No. 88.

([3654]) Appeal No. 2 of 56 s issued at the session of 31 March 1988 and published in the first part of the Technical Office letter No. 39 page No. 516 rule No. 76, Appeal No. 529 of 42 s issued at the session of 12 June 1972 and published in the second part of the Technical Office letter No. 23 page No. 914 rule No. 205.

([3655]) Appeal No. 138 of 44 s issued at the session of March 3, 1974 and published in the first part of the Technical Office letter No. 25 page No. 201 rule No. 44, Appeal No. 1006 of 42 s issued at the session of December 17, 1972 and published in the third part of the Technical Office letter No. 23 page No. 1374 rule No. 309.

([3656]) Appeal No. 904 of 26 S issued at the session of November 12, 1956 and published in the third part of the book of the Technical Office No. 7 page No. 1144 rule No. 316.

([3657]) Article 419 bis of the Criminal Procedure Code.

Judgments issued in the civil lawsuit may be appealed from the Criminal Court of First Instance if the required compensation exceeds the quorum that is finally ruled by the Court of First Instance.[3658]

Judgments rendered in absentia in criminal matters may be appealed only by the Public[3659] Prosecution.

Second: Who has the right to appeal

The Public Prosecution and the accused may appeal the summonses issued by the Criminal Court of First Instance.[3660]

The civil rights plaintiff, the person responsible for it, and the accused may appeal the judgments issued in the civil lawsuit from the Criminal Court of First Instance with regard to civil rights only, if the required compensation exceeds the quorum finally ruled by the Court of First Instance.[3661]

The Public Prosecution may appeal the judgments issued in absentia in the articles of felonies.[3662]

Third: Appeal date

The accused, the public prosecution, the plaintiff of civil rights and those responsible for them may appeal the judgments issued in the articles of felonies within forty days from the date of the judgment, and the public prosecutor may appeal the judgment within sixty days from the date of its issuance.[3663]

Fourth: The Court of Appeal

The Registry shall submit the appeal report and the case file immediately after the expiry of the deadline for depositing the reasons for the judgment issued in it to the President of the Court of Appeal after inserting the appeal in a schedule prepared for that. The President of the Court shall specify a session for its consideration, and order the notification of the accused and the notification of the rest of the litigants.[3664]

Fifth: Setting a hearing for the appeal

The President of the Court of Appeal shall determine a session for the hearing of the appeal and shall order the notification of the accused and the notification of the rest of the litigants thereto.[3665]

Sixth: Suspension of the execution of the appealed judgment

The principle is that the appeal of the judgment issued by the Criminal Court of First Instance does not result in the suspension of the execution of the judgment, unless the Criminal Court of Appeal decides to suspend the execution, or the judgment is issued with the death penalty.[3666]

([3658]) Article 419 bis 1 of the Criminal Procedure Code.
([3659]) Article 419 bis/2.
([3660]) Article 419 bis of the Criminal Procedure Code.
([3661]) Article 419 bis /1.
([3662]) Article 419 bis/2.
([3663]) Article 419 bis /4.
([3664]) Article 419 bis/5.
([3665]) Article 419 bis/5.
([3666]) Article 419 bis /9 of the Criminal Procedure Code.

Seventh: Appeal Review Procedures

The Court of Appeal shall send copies of the case files and the judgments issued therein to the judges appointed to hear the appeal well in advance of the date of the hearing.[3667]

1- Hearing the appellant's statements

The court hears the statements of the appellant and the aspects on which he relies in his appeal, the aspects of his defense and defenses, as well as the rest of the litigants, provided that the accused is the last to speak.[3668]

2- Hearing the statements of the remaining litigants and witnesses

The court shall hear the rest of the litigants other than the accused, provided that the accused is the last to speak.[3669]

3-Consideration of the appeal in the absence of the accused

If the convict or his agent fails without excuse to attend the session set for the consideration of his appeal, or at any subsequent session, the court shall assign him a lawyer to defend him and decide on the appeal.[3670]

25.1.3 Denunciation

First: Who has the right to appeal in cassation

The prosecution, the convicted person, and the person responsible for civil rights and the plaintiff shall have the right to appeal in cassation the final judgment issued from the last degree in the articles of felonies and misdemeanors.[3671]

It is required that the judgment has harmed the appellant, and if this condition fails to negate the appellant's interest in the appeal, his appeal is not permissible; considering that the interest is the subject of the appeal, and if the contested judgment did not impose a penalty on the appellant or oblige him to do something, then the appeal has been decided upon by the person who has no place, and therefore the appeal against it is not permissible as the interest is the subject of the appeal)[3672](.

The capacity of the convicted person is available only to those who are a party to the litigation and the judgment was issued against their interest. If the judgment is not imposed on the appellant, there is a penalty, they have no capacity to challenge it by way of cassation.[3673]

Whereas Article 211 of the Code of Procedure - which is one of the faculties of law - does not allow appealing against the judgments of those to whom all his requests were ruled, taking into account the rule that the interest in the lawsuit according to Article 3 of the aforementioned law, which is applied in the case of cassation appeal and when the judgment is appealed, as well as the beginning of the case, and the criterion of the true interest, whether it is a case or a potential

---

([3667]) Article 419 bis /6.
([3668]) Article 419 bis /7.
([3669]) Article 419 bis /7.
([3670]) Article 419 bis /9 of the Criminal Procedure Code.
([3671]) Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.
([3672]) Appeal No. 17012 of 4Q issued at the session of 21 October 2014 and published in the Technical Office's letter No. 65, page No. 734, rule No. 91, Appeal No. 12804 of 4Q issued at the session of 4 July 2013 (unpublished), Appeal No. 12243 of 59Q issued at the session of 22 January 1991 and published in the first part of the Technical Office's letter No. 42, page No. 160, rule No. 19, Appeal No. 4683 of 54Q issued at the session of 6 June 1985 and published in the first part of the Technical Office's letter No. 36, page No. 762, rule No. 134.
([3673]) Appeal No. 32081 for the year 83 S issued in the session of October 1, 2014 and published in the letter of the Technical Office No. 65 page No. 628 rule No. 80.

one, is that the judgment in which the appeal procedure was taken harmed the appellant when he ruled to reject all his requests or ruled against each other, and therefore it is not in the interest of the appellant if the judgment was issued in accordance with his requests or achieved his intent. In other words, proving the right to appeal is not sufficient to accept it, but rather it requires the existence of direct conditions for the right of appeal, which is that the appellant has an interest in revoking the right that he attributes to himself. Whereas, Article 30 of the Law on Cases and Procedures of Appeal in Cassation does not allow an appeal in cassation other than the final judgments issued in the articles of felonies and misdemeanors, and this stipulates - and based on what has been done by the judiciary of this court - that the judgment has harmed the appellant so that he is entitled to appeal it. If this condition is not met, the appeal is not permissible, considering that the interest is subject to the appeal.[3674]

It should be noted that the judiciary of the Court of Cassation had considered the compensation stipulated in the laws related to taxes and fees as complementary penalties that include the element of compensation, and allowed, due to the availability of this element, the intervention of the public treasury before the criminal court to request a ruling and then appeal against the judgment issued in regard to it. However, since the Supreme Constitutional Court ruled on 4/11/2007 in Case No. 9 of 28 S Constitutional unconstitutionality of the first paragraph of Article 43 of the General Sales Tax Law No. 11 of 1991, It included (that the perpetrators must be sentenced in solidarity to compensation that does not exceed the like of the tax), and therefore, pursuant to this judiciary, the representative of the Public Treasury has no capacity to intervene in these cases or challenge the judgments issued thereon, after the punishment prescribed for the crime did not include the element of compensation that was explicitly mentioned in it, and therefore the basis for its intervention in these cases collapsed and the right to intervene in them was taken away by requesting the judgment of compensation and the criminal courts refrained from ruling it on their own after the issuance of the judgment of the Supreme Constitutional Court. - And then the appeal is sacrificed with this reward is not permissible. The Minister of Finance, in his capacity as the appellant, was not a party to the contested judgment and may not accordingly challenge it by way of cassation.[3675]

The right to appeal in cassation is vested in the appellant to be a party to the final judgment issued by the court of last instance and that this judgment has harmed him. If this condition is not met, his appeal against the judgment issued by cassation is not permissible.[3676]

It is not enough for the appellant to be considered a party to the contested judgment to have been disputed before the court of first instance without the court of second instance.[3677]

According to the second paragraph of Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation, it is not accepted by any of the civil rights claimant and those responsible for it to appeal the judgment issued in the criminal case for lack of interest in it.[3678]

([3674]) Appeal No. 8359 of 83 S issued at the 8th session of October 2014 and published in the book of the Technical Office No. 65 page No. 638 rule No. 82.

([3675]) Appeal No. 7428 of 4S issued at the session of 22 December 2013 (unpublished), and reviewed the judgment of the Supreme Constitutional Court in, Case No. 9 of 28S issued at the session of 4 November 2007, the date of publication 13 November 2007 and published in the first part of the book of the Technical Office No. 12 page No. 719 rule No. 71.

([3676]) Appeal No. 1517 of 51 s issued at the session of 31 October 1981 and published in the first part of the technical office book No. 32 page No. 791 rule No. 136, Appeal No. 1627 of 50 s issued at the session of 8 January 1981 and published in the first part of the technical office book No. 32 page No. 32 rule No. 2.

([3677]) Appeal No. 1627 of 50 S issued at the session of January 8, 1981 and published in the first part of the book of the Technical Office No. 32 page No. 32 rule No. 2.

([3678]) Appeal No. 1944 of 52 S issued at the hearing of June 14, 1982 and published in the first part of the Technical Office letter No. 33 page No. 707 rule No. 146, Appeal No. 2726 of 51 S issued at the hearing of January 27, 1982 and published in the first part of the Technical Office letter No. 33 page No. 92 rule No. 17, Appeal No. 2726 of 51 S issued at the hearing of January 27, 1982 and published in the first part of the Technical Office letter No. 33 page No. 92 rule No. 17, Appeal No. 579

Whereas it is not permissible to appeal from the plaintiff of civil rights and those responsible for them except with regard to their civil rights, and if the appellant did not claim civil rights before the appellee, then his appeal before them is not permissible.[3679]

However, if the defect that the person responsible for civil rights - the appellant - throws the judgment in his part related to the criminal lawsuit involves a violation of his civil obligations because of his attachment to the validity of the procedures for initiating the criminal lawsuit, and his acceptance results in the ruling that the criminal lawsuit may not be filed against the accused, and the consequent non-acceptance of the civil lawsuit against the appellant and his subordinate, because it is established that the civil lawsuit filed before the criminal courts is subordinate to the criminal lawsuit, and if the latter is inadmissible, the first must be ruled inadmissible as well, and then the appellant, as a civil rights official, has the right to challenge the contested judgment by what he raised in his appeal, which is a defense that may be raised in any case in which the lawsuit is based.[3680]

It is also taken into account that the Illicit Gain Law No. 62 of 1975, although it gave the examination and investigation bodies the right to investigate those subjects to the provisions of this law, but it did not give those bodies the right to initiate criminal proceedings before the competent court or to appeal against the judgments issued therein. If the present appeal is filed by the Public Defender in his capacity as authorized by the Illicit Gain Department, and the reasons report was signed by one of the members of that department, the appeal must not be accepted in form to be filed by a person without capacity.[3681]

The basis of the right of the person responsible for civil rights to appeal - in relation to civil rights - before the Court of Cassation against the final judgments issued by the last degree in the articles of felonies and misdemeanors in the cases stipulated therein, is that the appellant is a party to the final judgment issued by the court of the last degree and that this judgment has harmed him. If this condition is not met, his appeal against the judgment issued by way of cassation is not permissible.[3682]

It is decided that - in order for the Public Prosecution to have the right to appeal in cassation against the judgment issued by the court of second instance in the event that it does not appeal the first instance judgment, this judgment must have been canceled in the appeal or amended

---

of 48 S issued at the 29th session of October 1978 and published in the first part of the Technical Office letter No. 29 page No. 749 rule No. 151, Appeal No. 1535 of 45 S issued at the 18th session of January 1976 and published in the first part of the Technical Office letter No. 27 page No. 70 rule No. 14, Appeal No. 339 of 31 S issued at the 1st session of January 1962 and published in the first part of the Technical Office letter No. 13 page No. 4 rule No. 1, Appeal No. 927 For the year 50 s issued in the session of November 5, 1980 and published in the first part of the technical office book No. 31 page No. 960 rule No. 186, Appeal No. 1328 of 49 s issued in the session of February 7, 1980 and published in the first part of the technical office book No. 31 page No. 208 rule No. 42.

([3679]) Appeal No. 33594 of 75 s issued at the session of November 14, 2012 and published in the Technical Office's book No. 63 page 701 rule No. 124, Appeal No. 90125 of 75 s issued at the session of November 14, 2012 and published in the Technical Office's book No. 63 page No. 703 rule No. 125, Appeal No. 7730 of 75 s issued at the session of November 11, 2012 and published in the Technical Office's book No. 63 page No. 646 rule No. 116, Appeal No. 3449 of 55 s issued at the session of December 19, 1985 and published in the first part of the Technical Office's book No. 36 page No. 1138 rule No. 211, Appeal No. 34 of 49 s issued at the session of March 17, 1980 and published in the first part of the Technical Office's book No. 31 page No. 391 rule No. 73.

([3680]) Appeal No. 1817 of 51 S issued on December 1, 1981 and published in the first part of the book of the Technical Office No. 32 page No. 1009 rule No. 176.

([3681]) Appeal No. 52528 of 75 S issued at the session of May 15, 2008 and published in the letter of the Technical Office No. 59 page No. 283 rule No. 50.

([3682]) Appeal No. 17296 of 59 S issued at the session of April 29, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 425 rule No. 59.

so that the judgment issued in the appeal filed by the accused is a new judiciary completely separate from the judiciary of the court of first instance.[3683]

Second: Judgments and cases that may be appealed in cassation Courts

The cassation appeal shall be against the final judgment issued from the last degree in the articles of felonies and misdemeanors - punishable by a fine exceeding twenty thousand pounds - in the following cases:

- If the contested judgment is based on a violation of the law or an error in its application or interpretation.
- If the judgment is null and void.
- If the proceedings are null and void, it shall influence the judgment.[3684]

1- Judgments that may be appealed in cassation

It is permissible to appeal in cassation the judgments issued from the last degree in the articles of felonies, and misdemeanors punishable by a fine exceeding twenty thousand pounds.[3685]

It is decided that the permissibility of the appeal is a matter prior to considering its form, and therefore the court must decide on this initially before considering the form of the appeal.[3686]

It is established that if the crimes attributed to the accused were committed for a single purpose or were indivisibly connected and adjudicated by a single judgment, this judgment shall be appealed. The judgment deals with all crimes, and this is not precluded by the fact that one of these crimes is a misdemeanor punishable by a fine not exceeding twenty thousand pounds, because the provision that it is not permissible to appeal in cassation in these misdemeanors is due to the appeal addressed to the misdemeanor punishable by a fine not exceeding twenty thousand pounds alone, but if this misdemeanor is related to a misdemeanor that may be challenged, it may be subject to the appeal that is filed against it and the misdemeanor associated with it.[3687]

It is also clear that Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation has limited the right of appeal to the final judgments issued in the articles of felonies and misdemeanors without violations except those related to them. Violations mean crimes punishable by a fine not exceeding a maximum amount of one hundred pounds.[3688]

([3683]) Appeal No. 4721 of 55 S issued at the session of January 14, 1986 and published in the first part of the book of the Technical Office No. 37 page No. 76 rule No. 16.

([3684]) Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3685]) Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3686]) Appeal No. 4135 of 5Q issued at the 20th session of January 2016 and published in the Technical Office letter No. 67, page No. 135, rule No. 17, appeal No. 32421 of 83Q issued at the 15th session of March 2015 and published in the Technical Office letter No. 66, page No. 299, rule No. 40, appeal No. 18990 of 4Q issued at the 18th session of February 2015 and published in the Technical Office letter No. 66, page No. 245, rule No. 31, appeal No. 3137 of 4Q issued at the 27th session of October 2013 and published in the Technical Office letter No. 64, page No. 861, rule No. 130, appeal No. 2465 of 80Q issued at the 7th session of April 2011 (unpublished).

([3687]) Appeal No. 4677 of 82 S issued at the session of 21 May 2016 and published in the letter of the Technical Office No. 67, page No. 554, rule No. 62, Appeal No. 24742 of 85 S issued at the session of 21 February 2016 (unpublished), Appeal No. 18990 of 4 S issued at the session of 18 February 2015 and published in the letter of the Technical Office No. 66, page No. 245, rule No. 31.

([3688]) Appeal No. 4906 of 5 S issued at the 17th session of February 2016 and published in the Technical Office letter No. 67 page No. 241 rule No. 28, Appeal No. 11526 of 4 S issued at the 18th session of November 2013 and published in the Technical Office letter No. 64 page No. 919 rule No. 140, Appeal No. 15296 of 65 S issued at the 4th session of July 2004 and published in the Technical Office letter No. 55 page No. 603 rule No. 85, Appeal No. 21786 of 63 s issued in the session of July 28, 1999 and published in the first part of the Technical Office letter No. 50 page 438 rule No. 101, Appeal No. 15047 of 62 s issued in the session of December 20, 1994 and published in the first part of the Technical Office letter No. 45 page No. 1197 rule No. 187, Appeal No. 14254 of 59 s issued in the session of March 4, 1992 and published in the first part of the

It is not permissible to appeal in cassation the judgment issued in the criminal case against the accused in a crime punishable by a fine that does not exceed the limits of the penalty of the violation, and the court decides not to accept the appeal, and it does not change this consideration that the criminal case has lapsed by the lapse of more than one year from the date of the report of the appeal and the submission of its reasons and between the date of the hearing in which the appeal was considered, as its inadmissibility prevents consideration of this, because it is established that the task in examining this matter is to properly communicate the appeal to the Court of Cassation that allows it to address its examination and express its judgment in it.[3689]

The grounds for the inadmissibility of appealing misdemeanor articles punishable by a fine not exceeding twenty thousand pounds, is the amount of the penalty included in the text in appreciation of the legislator that the penalty mentioned in its maximum limit is not of seriousness or importance commensurate with the permissibility of appealing it by way of cassation, and therefore the judgment issued in these crimes if it does not comply with the maximum penalty prescribed to exceed it or inflict a heavier penalty than it, it is not justified to close before the convict the way of this appeal after the judgment has wasted the considerations assessed by the legislator, and it was The basis of this prohibition, and to say otherwise, is a matter of justice that is repugnant to the logic of the law. The Court of Cassation distances itself from it because its main function is to review the validity of the application of the law to the incident in a correct manner because it recognizes a penalty - definitively sentenced - that has no basis in the law, and it violates the rule of the legality of crimes and punishment, which means limiting the sources of criminalization and punishment in the texts of the law so that the judge may not impose a punishment other than the punishment specified by the street in this

---

Technical Office letter No. 43 page No. 286 rule No. 36, Appeal No. 11267 of 59 s issued in the session of May 15, 1992 1991 and published in the first part of Technical Office Letter No. 42 Page No. 799 Rule No. 114, Appeal No. 8540 of 58 S issued at the session of October 31, 1990 and published in the first part of Technical Office Letter No. 41 Page No. 965 Rule No. 170, Appeal No. 3923 of 57 S issued at the session of March 8, 1989 and published in the first part of Technical Office Letter No. 40 Page No. 361 Rule No. 57, Appeal No. 6465 of 55 S issued at the session of May 11, 1988 and published in the first part of the Technical Office letter No. 39 page 685 rule No. 102, Appeal No. 3378 of 56 S issued at the session of October 14, 1986 and published in the first part of the Technical Office letter No. 37 page 757 rule No. 145, Appeal No. 4964 of 55 S issued at the session of March 10, 1986 and published in the first part of the Technical Office letter No. 37 page 367 rule No. 76, Appeal No. 6362 of 53 S issued at the session of February 28, 1984 and published in the part First of Technical Office Letter No. 35 Page No. 211 Rule No. 43, Appeal No. 906 of 49 S issued at the 12th session of November 1979 and published in Part I of Technical Office Letter No. 30 Page No. 802 Rule No. 171, Appeal No. 1855 of 45 S issued at the 23rd session of February 1976 and published in Part I of Technical Office Letter No. 27 Page No. 273 Rule No. 57, Appeal No. 1004 of 43 S issued at the 9th session of December 1973 and published in the third part of the Technical Office letter No. 24 page No. 1167 rule No. 238, Appeal No. 715 of 39 s issued at the 9th session of June 1969 and published in the second part of the Technical Office letter No. 20 page No. 879 rule No. 175, Appeal No. 23544 of 63 s issued at the 31st session of December 1998 and published in the first part of the Technical Office letter No. 49 page No. 1558 rule No. 224, Appeal No. 16340 of 62 s issued at the 24th session of July 1997 and published in the first part of the letter Technical Office No. 48 Page 802 Rule No. 123, Appeal No. 16340 of 62 S issued at the session of July 24, 1997 and published in the first part of the Technical Office's letter No. 48 Page No. 802 Rule No. 123, Appeal No. 27954 of 59 S issued at the session of November 23, 1994 and published in the first part of the Technical Office's letter No. 45 Page No. 1022 Rule No. 159, Appeal No. 23674 of 59 S issued at the session of April 5 For the year 1993 and published in the first part of the Technical Office letter No. 44 Page 331 Rule No. 44, Appeal No. 13847 of 59 s issued at the session of May 10, 1990 and published in the first part of the Technical Office letter No. 41 Page 699 Rule No. 121, Appeal No. 6647 of 58 s issued at the session of February 26, 1990 and published in the first part of the Technical Office letter No. 41 Page 443 Rule No. 73, Appeal No. 4809 of 58 s issued at the session of October 25, 1989 and published in the first part of the Technical Office letter No. 40 Page No. 809 Rule No. 135, Appeal No. 3873 of 57 S issued at the session of March 22, 1989 and published in the first part of the Technical Office's book No. 40 Page No. 422 Rule No. 71, Appeal No. 2236 of 38 S issued at the session of April 28, 1969 and published in the second part of the Technical Office's book No. 20 Page No. 551 Rule No. 115.

([3689]) Appeal No. 4906 for the year 5 issued in the session of February 17, 2016 and published in the letter of the Technical Office No. 67 page No. 241 rule No. 28.

text, adhering to its type and amount, and the waste of this principle is a waste of the rights of individuals, and therefore To rectify it by allowing it to be challenged by way of cassation.[3690]

The fine, which may be appealed against the judgment issued - if it exceeds twenty thousand pounds - is the criminal fine, which is a penalty subject to all the characteristics of the penalties, including that the judgment is issued by a criminal court at the request of the indictment authority and is multiplied by the number of defendants and after a precedent is ruled in the recidivism, and the lawsuit lapses in its regard even after the initial judgment is issued for all the reasons for the expiry of criminal cases such as criminal statute of limitations, blanket amnesty, death, and it is implemented by physical coercion, and in all of this it differs from the civil fine, which has other characteristics contrary to the above, It is established that the forgery fine imposed on the plaintiff of forgery, if it is proven that there is no forgery, which is stipulated in the last paragraph of Article 297 of the Criminal Procedure Code, is a civil fine and not one of the criminal fines stipulated in Article 22 of the Penal Code. By imposing the forgery fine, the street wanted to put an end to people's denial of what was in their hands, so it decided to oblige the plaintiff of forgery to pay it for causing him to obstruct the progress of the case unjustly or for finding a dispute that could have been resolved if he admitted to writing the alleged forgery, it is a purely civil fine There is no place for the judge to pay attention to the extenuating circumstances, and the explanatory memorandum of Chapter VIII of the Criminal Procedure Law stipulates that a penalty must be imposed on the plaintiff of forgery if his appeal results in the suspension of the original lawsuit and then his lawsuit is proven to be invalid, or the Civil Court of Cassation has ruled that the fine for forgery is a penalty imposed by law on the plaintiff of forgery when deciding the forfeiture of his right to his lawsuit or his inability to prove it and that its infliction As a penalty, it is related to public order and the Court of Cassation may be subjected to it on its own initiative, as this fine is prescribed as a deterrent to deterring the litigants from continuing to deny or delaying the adjudication of the case and is not a punishment for a crime; because the allegation of forgery is only a defense in the case that does not necessarily require its suspension and is not a criminal act; and because there is nothing to prevent the penalty from being civil such as compensation and others, and the Penal Code when it actually sins, it provides for the accountability of the perpetrator by pronouncing punishment or judgment, as well as the case in the Code of Criminal Procedure in crimes that occur in violation of its provisions Such as the crimes of refraining from swearing or giving testimony or others, and then the description of the forgery fine as a penalty required by the plaintiff for forgery is inferior to what the street wants to distinguish between it as a civil fine and criminal fines, and since Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation has limited the right of appeal by cassation from the Public Prosecution, the convicted person and the person responsible for civil rights and the defendant to the final judgments issued from the last degree in the articles of felonies and misdemeanors and not others, and Article 31 of the same law stipulates that it is not permissible to appeal by cassation against judgments issued before adjudicating the matter, unless it is based on the prohibition of proceeding with the lawsuit, when the contested judgment has ruled in relation to the criminal lawsuit by the lapse of the period, and its decision to fine the appellant that there is no forgery is

---

([3690]) Appeal No. 3945 of 5 S issued at the 15th session of February 2016 (unpublished), Appeal No. 9405 of 84 S issued at the 22nd session of February 2015 and published in the Technical Office's letter No. 66 page No. 256 Rule No. 34 of the Arab Republic of Egypt Unpublished judgments of the Court of Cassation Criminal Chamber of Counsel, Appeal No. 21223 of 4 S issued at the 21st session of January 2015, Appeal No. 18087 of 4 S issued at the 3rd session of September 2014, Appeal No. 8907 of 4 S issued at the 23rd session of February 2014 and published in the Technical Office's letter No. 65 page No. 136 Rule No. 10.

a judgment in a preliminary subordinate matter, and not a penalty, the appeal by cassation of that judgment is not permissible.[3691]

It is not permissible to appeal in cassation if the penalty for the crime is a fine not exceeding twenty thousand pounds and that crime does not combine it with any other crime - which is subject to appeal in cassation - unity of purpose or indivisible link.[3692]

In the case of continuing misdemeanors or violations punishable by a daily fine that exceeds the number of days of the violation, this is only an exception to the principle of the unity of the incident in continuous crimes, in which the street is considered every day in which the violation is multiple as a stand-alone incident punishable by a fine, and therefore, regardless of the multiple days of the violation and the increase according to its multiplicity, the total amount of the fine imposed does not change the type of crime as it is a violation, it is not permissible to appeal the judgment issued in it by way of cassation.[3693]

Also, if the crime for which the appellant was convicted in application of the provisions of the Labor Law is punishable by a fine of no less than five hundred pounds and no more than one thousand pounds, the appeal by way of cassation shall be inadmissible and shall not change the legislator's stipulation of the multiplicity of the fine penalty by the multiplicity of workers, as they are crimes of a special nature that are distinguished from other crimes by requiring the street, when deciding the penalty in them, to multiply the fine to the extent of the workers whose rights have been violated by the crime. This multiplicity does not change the type of crime and considers it one of the misdemeanors in which the judgment issued by way of cassation may not be challenged.[3694]

Since it is stipulated that it is not permissible to appeal in cassation against judgments in misdemeanor articles punishable by a fine not exceeding twenty thousand pounds, and since the crime for which the appellant was convicted is punishable by a fine less than the quorum of the cassation appeal, the judgment shall be issued within the limits of the final quorum, and it shall be according to the original inadmissible, which was required to adjudicate the inadmissibility of the appeal. However, since the rules relating to the jurisdiction of the criminal courts in criminal matters are all considered public order, given that the street, in its assessment, has based this on general considerations related to the proper functioning of justice, and it is permissible to pay for violating them for the first time before the Court of

---

([3691]) Appeal No. 4135 of 5 S issued at the session of January 20, 2016 and published in the letter of the Technical Office No. 67, page No. 135, rule No. 17.

([3692]) Appeal No. 14811 of 85 s issued at the session of 19 December 2015 and published in the Technical Office letter No. 66, page No. 920, rule No. 131, Appeal No. 34074 of 83 s issued at the session of 22 March 2015 (unpublished), Appeal No. 18122 of 4 s issued at the session of 3 September 2014 (unpublished), Appeal No. 29536 of 3 s issued at the session of 22 April 2013 (unpublished), Appeal No. 4663 of 81 s issued at the session of 19 November 2012 and published in the Technical Office letter No. 63, page No. 734, rule No. 131, Appeal No. 5018 of 81 s issued at the session of 12 December 2011 and published in the Technical Office letter No. 62, page No. 456, rule No. 75.

([3693]) Appeal No. 32587 of 4S issued at the 27th session of July 2015 and published in Technical Office Letter No. 66, page No. 566, rule No. 77, Appeal No. 32421 of 83S issued at the 15th session of March 2015 and published in Technical Office Letter No. 66, page No. 299, rule No. 40, Appeal No. 8540 of 81S issued at the 28th session of May 2012 (unpublished), Appeal No. 2465 of 80S issued at the 7th session of April 2011 (unpublished), Appeal No. 3381 of 65 s issued at the session of June 11, 2001 and published in the Technical Office letter No. 52 page No. 566 rule No. 103, Appeal No. 23536 of 64 s issued at the session of January 21, 2001 and published in the Technical Office letter No. 52 page No. 142 rule No. 22, Appeal No. 16951 of 59 s issued at the session of October 31, 1993 and published in the first part of the Technical Office letter No. 44 page No. 887 rule No. 139, Appeal No. 30255 of 59 s issued at the session of May 8, 1991 Published in the first part of Technical Office Letter No. 42 Page No. 761 Rule No. 109, Appeal No. 7834 of 54 S issued on the 8th of October 1986 and published in the first part of Technical Office Letter No. 37 Page No. 706 Rule No. 134.

([3694]) Appeal No. 20846 of 4Q issued at the session of January 17, 2015 and published in the letter of the Technical Office No. 66 page No. 164 rule No. 16, Appeal No. 15161 of 5Q issued at the session of February 19, 2014 and published in the letter of the Technical Office No. 65 page No. 134 rule No. 9, Appeal No. 5523 of 4Q issued at the session of December 24, 2013.

Cassation or to adjudicate it on its own without a request, whenever this is in the interest of the convict, and the elements of the violation are fixed in the judgment.

However, since the crime for which the convict was convicted falls within the jurisdiction of the economic courts, an exclusive and unilateral jurisdiction that is not shared by any other court, and therefore the court of the second degree should not decide to uphold the appealed judgment in what was ruled in the subject matter, but rather to cancel it and the lack of jurisdiction of the ordinary misdemeanors court to hear the case in accordance with the law, but did not do so and ruled to uphold the appealed judgment, it has erred in the application of the law, and therefore it is not justified to close the way of this appeal after the judgment wasted the rules of jurisdiction in the criminal and public order articles, and to say otherwise is interested in the correct application of the law, because it recognizes the jurisdiction of ordinary courts for crimes not provided for by law, which fall within the jurisdiction of other courts, and must be remedied by allowing the appeal of this judgment by way of cassation as the legal way to correct this error in which the court, which accused its jurisdiction of the crime it convicted the appellant.[3695]

It is noted that the crime of refraining from implementing the judgment or the final decision issued by the competent authority to remove, correct or resume is a crime of concern of a kind. It is considered a violation or a misdemeanor depending on the amount of the fine to be imposed on the violator calculated from the total value of the violating acts. If the contested judgment does not indicate the total value of those acts, the Court of Cassation can't determine the amount of the fine prescribed by law for the crime in question and determine whether it is a violation or a misdemeanor punishable by a fine not exceeding twenty thousand pounds. It is not permissible to appeal in cassation the judgment issued from the last degree in either of either of them, or otherwise, which is a preliminary matter that must be decided before deciding on the form and subject of the appeal, which this court was unable to decide in a way that prevents it from determining the validity of the contested judgment from its corruption, so it must then be overturned and returned[3696].

The Law on Cases and Procedures of Appeal before the Court of Cassation also did not provide for the permissibility of appealing against the decision issued by the Court of Appeal to reject the request for interpretation, as did the Criminal Procedure Law as well. Appealing it by way of cassation is not permissible.[3697]

The judgment issued in the form follows the judgment issued on the subject of the criminal lawsuit in terms of the permissibility or inadmissibility of challenging it by way of cassation.[3698]

2- What is meant by the final judgment

The principle in the jurisdiction of the criminal chambers of the Court of Cassation is limited to the final judgments issued by the court of last instance in the articles of felonies and

---

([3695]) Appeal No. 12307 of 4S issued at the 27th session of April 2014 and published in the letter of the Technical Office No. 65, page No. 310, rule No. 35.

([3696]) Appeal No. 5540 of 4S issued at the 26th session of February 2014 and published in the Technical Office's letter No. 65, page No. 144, rule No. 12.

([3697]) Appeal No. 7937 of 66 S issued at the hearing of April 14, 2005 and published in the book of the Technical Office No. 56 page No. 265 rule No. 39.

([3698]) Appeal No. 9141 of 60 S issued at the session of January 19, 1997 and published in the first part of the Technical Office book No. 48 page No. 118 rule No. 17, Appeal No. 761 of 49 S issued at the session of October 22, 1979 and published in the first part of the Technical Office book No. 30 page No. 773 rule No. 163, Appeal No. 1842 of 39 S issued at the session of March 29, 1970 and published in the first part of the Technical Office book No. 21 page No. 474 rule No. 114.

misdemeanors (Article 30 of Law No. 57 of 1959 on the cases and procedures of appeal before the Court of Cassation).[3699]

Whereas Article 30 of Law 57 of 1959 regarding the cases and procedures of appeal before the Court of Cassation has limited the right of appeal in cassation from the prosecution, the accused and the person responsible for civil rights and the defendant to the final judgments issued from the last degree in the articles of felonies and misdemeanors, and the meaning of the fact that the judgment is final that it was issued unappealable by an ordinary method of appeal. Hence, when the judgment issued by the court of first instance became final by accepting the one who was issued against him or by missing his appeal on time, he acquired the force of the res judicata and was not allowed to contest it afterwards by way of cassation, and the reason for that is that cassation is not a normal way of appeal that the street allowed only under special conditions to correct the error of the final judgments in the law. If the opponent has closed himself the door of appeal - which is a normal way - where he could have corrected the error of the judgment in reality or in the law, he was not allowed to appeal after cassation, and this is of the same axiom.[3700]

What is meant by the final judgment is the judgment in which the ordinary appeal was blocked and became subject to cassation appeal, and there is no doubt that the acquittal and the rejection of the civil lawsuit of this nature, as well as other judgments that require non-conviction by the criminal court in the absence of the accused for a felony, is a final judgment from the time of its issuance, because it is not considered to have harmed him because he did not convict him of anything, and therefore he does not forfeit in his presence or by arresting him; because the forfeiture and the review of the case before the criminal court are limited to the sentence or compensation in the absence of the accused for a felony, and therefore it is a final judgment, and the appeal of the Public Prosecution, the civil rights plaintiff and the person responsible for it by way of cassation is permissible.[3701]

([3699]) Appeal No. 14814 of 85 S issued at the session of November 28, 2015 and published in the Technical Office letter No. 66, page No. 21, rule No. 6, Appeal No. 25555 of 75 S issued at the session of October 12, 2005 and published in the Technical Office letter No. 56, page No. 24, rule No. 4, Appeal No. 620 of 46 S issued at the session of November 1, 1976 and published in the first part of the Technical Office letter No. 27, page No. 830, rule No. 189.

([3700]) Appeal No. 12522 of 60 S issued at the 10th session of March 1997 and published in the first part of the Technical Office letter No. 48 page No. 313 rule No. 45, Appeal No. 62708 of 59 S issued at the 24th session of October 1993 and published in the first part of the Technical Office letter No. 44 page No. 870 rule No. 135, Appeal No. 5555 of 59 S issued at the 28th session of November 1991 and published in the second part of the Technical Office letter No. 42 page No. 1265 rule No. 175, Appeal No. 2643 of 56 S issued at the session of November 4, 1986 and published in the first part of the Technical Office letter No. 37 page 824 rule No. 159, Appeal No. 4784 of 55 S issued at the session of February 2, 1986 and published in the first part of the Technical Office letter No. 37 page 211 rule No. 43, Appeal No. 776 of 53 S issued at the session of June 1, 1983 and published in the first part of the Technical Office letter No. 34 page No. 725 rule No. 145, Appeal No. 1127 For the year 45 s issued in the session of November 2, 1975 and published in the first part of the Technical Office book No. 26 page No. 652 rule No. 143, Appeal No. 1374 of the year 41 s issued in the session of January 16, 1972 and published in the first part of the Technical Office book No. 23 page No. 69 rule No. 19, Appeal No. 1950 of the year 40 s issued in the session of March 22, 1971 and published in the first part of the Technical Office book No. 22 page No. 278 rule No. 66, Appeal No. 438 of the year 37 s issued in the session of April 17, 1967 and published in the second part of the Technical Office book No. 18 page No. 527 rule No. 101, Appeal No. 1803 of the year 35 s issued in the session of March 15, 1966 and published in the first part of the Technical Office book No. 17 page 298 rule No. 59, Appeal No. 1029 of the year 47 s issued in the session of February 26, 1978 and published in the first part of the Technical Office book No. 29 page 175 rule No. 30.

([3701]) Appeal No. 14244 of 82 S issued at the 25th session of February 2018, Appeal No. 7703 of 81 S issued at the 21st session of March 2017 and published in the book of the Technical Office No. 65 page No. 5 rule No. 1.

The principle is that it is not permissible to appeal by way of cassation, which is an exceptional way except in the final judgments issued in the subject matter by which the lawsuit ends. As for decisions and orders, they may not be challenged by way of cassation except by a text.[3702]

The Law on Regulating Terrorist Entities and Terrorists No. 8 of 2015, issued by a decision of the President of the Republic in its article 6, allowed the concerned parties and the Public Prosecution to appeal by cassation against the decision of the Criminal Court to include the terrorist entity in the list of terrorist entities and its decision to include the names of natural persons on the list of terrorists on the date specified by it. It stipulated that: "The concerned parties and the Public Prosecution may appeal against the decision issued regarding the inclusion on the lists of terrorist entities or the lists of terrorists within sixty days from the date of publication of the decision before the Criminal Chamber of the Court of Cassation, which is determined annually by the General Assembly of the Court, in accordance with the usual procedures for appeal.

The concerned parties may include in the appeal a request for permission to exclude some amounts of funds or other assets frozen to meet their requirements from expenses necessitated by the purchase of foodstuffs, rent, medicines, medical treatment or other[3703] expenses.

The point in determining whether the appeal is based on a judgment, a decision, or a matter related to the investigation or referral is the reality, not what the issuing authority mentions about it or what it describes.[3704]

Accordingly, it is not permissible to appeal against the judgment issued by the Criminal Court in appealing against the order of the Public Prosecution that there is no face to file a criminal case because what was issued by this court in this case is in fact a decision related to an act of investigation under Articles 167 and 210 of the Criminal Procedure Law, as amended by Law No. 170 of 1981. It is not a judgment in the legal sense contained in Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation, and it does not change its nature. This is what the court described as a judgment and addressed in the name of the people and pronounced in a public session, because it is decided that the lesson in this regard is a fact, not a reality.[3705]

Since the principle is that it is not permissible to appeal by way of cassation - which is an exceptional way - except in the final judgments issued in the subject matter by which the lawsuit ends, appealing the judgment issued in the form is not permissible, and since the problem of implementation is not considered an obituary of the judgment, but rather an obituary of the implementation itself, and it is required for the jurisdiction of the ordinary judiciary to consider that problem and decide on it that the judgment in question in its implementation is issued by one of the courts of that authority.

If the judgment on the subject matter of the criminal case in question was issued by the Supreme State Security Criminal Court and ratified by the President of the Republic, and the judgment was issued in the form of the implementation of this judgment by that court, which is an exceptional judicial body, and Article 12 of Law No. 162 of 1958 on emergency cases

([3702]) Appeal No. 1 of 2017 issued at the session of 20 May 2017 (unpublished), Appeal No. 1 of 2017 issued at the session of 20 May 2017 (unpublished), Appeal No. 7937 of 66 Q issued at the session of 14 April 2005 and published in the letter of the Technical Office No. 56 page No. 265 rule No. 39.

([3703]) Article 6 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, and see: Appeal No. 1 of 2017 issued at the session of May 20, 2017 (unpublished).

([3704]) Appeal No. 6708 of 78 BC issued at the 29th session of May 2016 (unpublished).

([3705]) Appeal No. 6708 of 78 S issued at the 29th session of May 2016 (unpublished), Appeal No. 7520 of 82 S issued at the 11th session of January 2016 and published in the Technical Office's letter No. 67, page No. 112, rule No. 11, Appeal No. 34648 of 77 S issued at the 15th session of November 2014 and published in the Technical Office's letter No. 65, page No. 838, rule No. 106.

prohibited the appeal in any way against the judgments issued by the State Security Courts, and stipulated that these judgments are not final until after they are ratified by the President of the Republic, and it was decided that the judgment issued in the form follows the judgment issued in the subject matter of the criminal case in terms of the permissibility or inadmissibility of appeal, and the judgment in the form of the implementation of the judgment issued by the Supreme State Security Court "Emergency", which may not be appealed in any way against the judgments issued in the subject matter of the criminal case, then the cassation appeal against the judgment issued by this court rejecting the form and continuing to implement - regardless of the opinion in this judgment - is not permissible.[3706]

The Code of Criminal Procedure and the Law on Cases and Procedures of Appeal before the Court of Cassation also did not provide for the permissibility of cassation appeal in criminal orders.[3707]

An appeal by way of cassation against the judgment shall not be accepted as long as it is appealed by way of opposition.[3708]

It is decided that the announcement is the one that opens the door of opposition and begins with the validity of the deadline specified in the law. If the contested judgment has not yet been announced to the appellant, the door of opposition to this judgment is still open, and it is not permissible to appeal it by way of cassation.[3709]

It is also not permissible to appeal in cassation the judgment issued in absentia by the court of first instance to oblige the appellant to pay temporary civil compensation because it is decided

---

([3706]) Appeal No. 9287 of 78 S issued at the session of November 4, 2015 and published in the letter of the Technical Office No. 66 page No. 725 rule No. 111.

([3707]) Appeal No. 13748 of 4Q issued at the 13th session of July 2014 and published in the Technical Office's letter No. 65, page No. 583, rule No. 69, Appeal No. 7690 of 4Q issued at the 15th session of May 2013 and published in the Technical Office's letter No. 64, page No. 627, rule No. 88.

([3708]) Article 32 of the Law on Cases and Procedures of Appeal before the Court of Cassation, and see: Appeal No. 27024 of 63 S issued at the session of 27 December 1998 and published in the first part of the Technical Office's letter No. 49 page No. 1527 Rule No. 217, Appeal No. 21681 of 59 S issued at the session of 7 June 1994 and published in the first part of the Technical Office's letter No. 45 page No. 729 Rule No. 111, Appeal No. 5459 of 58 S issued at the session of February 7, 1990 and published in the first part of the technical office letter No. 41, page No. 322, rule No. 52, appeal No. 7779 of 59 S issued at the session of January 18, 1990 and published in the first part of the technical office letter No. 41, page No. 177, rule No. 26, appeal No. 506 of 46 S issued at the session of October 17, 1976 and published in the first part of the technical office letter No. 27, page No. 746, rule No. 169, appeal No. 1047 of 41 S issued at the session of December 20, 1971 and published in the third part of the office letter Technician No. 22 Page No. 795 Rule No. 190, Appeal No. 558 of 38 S issued at the hearing of May 6, 1968 and published in Part II of the Technical Office Book No. 19 Page No. 526 Rule No. 102, Appeal No. 570 of 37 S issued at the hearing of April 17, 1967 and published in Part II of the Technical Office Book No. 18 Page No. 538 Rule No. 104, Appeal No. 1290 of 36 S issued at the hearing of March 7, 1967 and published in Part I of the Technical Office Book No. 18 Page No. 334 Rule No. 68, Appeal No. 126 of 36 S issued at the hearing of March 28, 1966 and published in Part I of the Technical Office Book No. 17 Page 371 Rule No. 73.

([3709]) Appeal No. 7781 of 85 S issued at the session of March 20, 2016 (unpublished), Appeal No. 4883 of 81 S issued at the session of September 15, 2012 (unpublished), Appeal No. 4 of 2010 S issued at the session of March 19, 2012 and published in the letter of the Technical Office No. 55 page No. 27 rule No. 5, Appeal No. 15049 of 66 S issued at the session of May 18, 2006 (unpublished), Appeal No. 29703 of 59 S issued at the session of October 16, 1996 and published in the first part of the Technical Office letter No. 47 page No. 1035 rule No. 147, Appeal No. 663 of 55 S issued at the session of April 8, 1985 and published in the first part of the Technical Office letter No. 36 page No. 551 rule No. 94, Appeal No. 1666 of 50 S issued at the session of May 28, 1981 and published in the first part of the Technical Office letter No. 32 page No. 577 rule No. 102, Appeal No. 1130 of 43 S issued at the session of December 24, 1973 and published in the third part of Technical Office Letter No. 24 Page 1268 Rule No. 258, Appeal No. 1796 of 38 S issued at the hearing of February 17, 1969 and published in Part I of Technical Office Letter No. 20 Page No. 254 Rule No. 55, Appeal No. 25048 of 64 S issued at the hearing of April 16, 2002 and published in Technical Office Letter No. 53 Page 638 Rule No. 106, Appeal No. 795 of 31 S issued at the hearing of December 11, 1961 and published in Part III of Technical Office Letter No. 12 Page 978 Rule No. 203, Appeal No. 19736 of 59 S issued at the hearing of May 24, 1993 and published in Part I of Technical Office Letter No. 538 Rule No. 77, Appeal No. 6913 of 53 S issued at the hearing of November 14, 1984 and published in Part I of Technical Office Letter No. 35 Page 763 Rule No. 169.

that the cassation appeal is not valid to be addressed to other than the final judgment issued from the last degree.[3710]

Since the appeal is by way of cassation, it is not valid to direct it to anything other than the final judgment issued from the last degree, and this judgment was limited to upholding the judgment issued on the inadmissibility of the objection - and its ruling is valid - the primary judgment ruling on the merits of the case by conviction has acquired the force of the res judicata, which is not permissible for the Court of Cassation to expose to similar defects.[3711]

It is also not permissible to appeal in cassation against a legal presence judgment issued by the Criminal Court.[3712]

The lesson in describing the judgment as absent or in my presence is the reality of reality, not what the court mentions about it.[3713]

Whereas Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation has limited the right of appeal in cassation to the final judgments issued from the last degree in the articles of felonies and misdemeanors, which means that the judgments issued by the Court of Cassation are final judgments that are not subject to appeal, and thus the criminal case lapses, and it is not permissible to reconsider it before the judiciary again, because the judgment issued by the Court of Cassation to convict or acquittal when deciding on the subject of the criminal case after cassation for the second time - like all other final judgments - is the title of the truth, but it is stronger than the truth itself, and therefore it must be ruled that the appeal is not permissible.[3714]

3- Judgments issued before adjudicating the matter

It is not permitted to appeal by way of cassation against the judgments issued before the adjudication of the matter unless they are based on the prohibition to proceed with the lawsuit.[3715]

The principle is that it is not permissible to appeal in cassation except after a judgment has been issued in the subject matter of the lawsuit that terminates the litigation or prevents the proceeding of the lawsuit.[3716]

([3710]) Appeal No. 17200 of 4Q issued at the session of October 15, 2014 (unpublished).

([3711]) Appeal No. 537 of 55 S issued at the session of March 20, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 431 rule No. 73.

([3712]) Appeal No. 14845 of 70 S issued at the 26th session of September 2000 and published in the letter of the Technical Office No. 51, page No. 558, rule No. 109.

([3713]) Appeal No. 494 of 58 S issued at the 22nd session of February 1989 and published in Part I of Technical Office Book No. 40 Page 310 Rule No. 49, Appeal No. 5634 of 58 S issued at the 1st session of December 1988 and published in Part II of Technical Office Book No. 39 Page 1201 Rule No. 185, Appeal No. 7120 of 53 S issued at the 7th session of March 1984 and published in Part I of Technical Office Book No. 35 Page 254 Rule No. 53, Appeal No. 1029 of 47 S issued at the 26th session of February 1978 and published in Part I of Technical Office Book No. 29 Page 175 Rule No. 30, Appeal No. 1047 of 41 S issued at the 20th session of December 1971 and published in Part III of Technical Office Book No. 22 Page 795 Rule No. 190.

([3714]) Appeal No. 21536 of 65 S issued at the session of December 11, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 1391 rule No. 212.

([3715]) Article 31 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3716]) Appeal No. 39618 of 72 S issued at the session of January 16, 2003 and published in the book of the Technical Office No. 54 page 112 rule No. 11, Appeal No. 13106 of 60 S issued at the session of June 7, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 376 rule No. 88, Appeal No. 63405 of 59 S issued at the session of January 9, 1996 and published in the first part of the book of the Technical Office No. 47 page No. 40 rule No. 4, Appeal No. 25218 of 59 S issued at the session of December 1, 1994 and published in the first part of the book of the Technical Office No. 45 page No. 1050 rule No. 165, Appeal No. 62703 of 59 S issued at the session of October 24, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 866 rule No. 134, Appeal No. 7322 of 54 S issued at the session of January 29, 1985 and published in the first part of the book of the Technical Office No. 36 page No. 182 rule No. 26.

The principle is that it is not permissible to appeal by way of cassation, which is an exceptional way, except in the judgments issued in the subject matter by which the lawsuit ends. Decisions and orders related to investigation or referral of any kind may not be challenged by cassation except by a special text.[3717]

The point in determining whether the appeal is based on a judgment, decision or order related to the investigation or referral, is the fact of the fact, not what the issuing authority mentions about it or what it describes. Therefore, the judgment issued by the court in contesting the order of the Public Prosecution that there is no face to file a criminal case, issued in a felony article before the Criminal Court, is in fact a decision related to an act of investigation under Articles 167 and 210 of the Criminal Procedure Code, and not a judgment within the legal meaning of Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.[3718]

As well as the court's decision to dismiss the lawsuit is not a judgment in the legal sense contained in Article 30 of the Law of Cases and Procedures of Appeal before the Court of Cassation and does not change its nature. The court described it as a judgment and addressed

([3717]) Article 31 of Law No. 57 of 1959 on Appeal Cases and Procedures before the Court of Cassation, Appeal No. 13874 of 77 S issued at the 25th session of February 2013 and published in the Technical Office's letter No. 64, page No. 308, rule No. 34, Appeal No. 37938 of 72 S issued at the 17th session of February 2009, Appeal No. 22359 of 66 S issued at the 12th session of July 2006 and published in the Technical Office's letter No. 57, page No. 767, rule No. 77, Appeal No. 3718 of 65 s issued at the session of March 9, 2005 and published in the Technical Office letter No. 56, page No. 190, rule No. 27, appeal No. 27004 of 69 s issued at the session of March 27, 2002 and published in the Technical Office letter No. 53, page No. 534, rule No. 87, appeal No. 19526 of 62 s issued at the session of April 11, 2001 and published in the Technical Office letter No. 52, page No. 415, rule No. 68, appeal No. 825 of 61 s issued at the session of November 2, 1999 and published in the first part of the letter Technical Office No. 50 Page No. 553 Rule No. 124, Appeal No. 13325 of 60 S issued at the session of 22 September 1999 and published in the first part of the Technical Office's letter No. 50 Page No. 453 Rule No. 105, Appeal No. 13103 of 60 S issued at the session of 9 December 1997 and published in the first part of the Technical Office's letter No. 48 Page No. 1387 Rule No. 211, Appeal No. 3129 of 62 S issued at the session of 10 October For the year 1995 and published in the first part of the Technical Office letter No. 46 Page No. 1084 Rule No. 158, Appeal No. 62822 of 59 S issued at the session of November 10, 1994 and published in the first part of the Technical Office letter No. 45 Page No. 991 Rule No. 154, Appeal No. 313 of 59 S issued at the session of January 29, 1991 and published in the first part of the Technical Office letter No. 42 Page No. 191 Rule No. 24, Appeal No. 1042 of 55 S issued at the session of April 11, 1985 and published in the first part of the Technical Office letter No. 36 Page No. 564 Rule No. 97, Appeal No. 1725 of 32 S issued at the session of June 12, 1962 and published in the second part of the Technical Office's letter No. 13 Page No. 550 Rule No. 139, Appeal No. 19144 of 59 S issued at the session of December 28, 1993 and published in the first part of the Technical Office's letter No. 44 Page No. 1271 Rule No. 194, Appeal No. 26000 of 59 S issued at the session of October 12, 1993 and published in the first part of Technical Office Letter No. 44 Page No. 787 Rule No. 121, Appeal No. 15819 of 59 S issued at the hearing of 11 April 1993 and published in Part I of Technical Office Letter No. 44 Page No. 359 Rule No. 48, Appeal No. 3305 of 55 S issued at the hearing of 27 January 1986 and published in Part I of Technical Office Letter No. 37 Page No. 152 Rule No. 31, Appeal No. 1803 of 55 S issued at the hearing of 3 December 1985 and published in Part I of Technical Office Letter No. 36 Page No. 1061 Rule No. 195.

([3718]) Appeal No. 3718 of 65 S issued at the session of March 9, 2005 and published in the Technical Office letter No. 56, page No. 190, rule No. 27, Appeal No. 13325 of 60 S issued at the session of September 22, 1999 and published in the first part of the Technical Office letter No. 50, page No. 453, rule No. 105, Appeal No. 45090 of 59 S issued at the session of May 17, 1998 and published in the first part of the Technical Office letter No. 49, page No. 713, rule No. 91, Appeal No. 7276 of 54 S issued at the session of April 23, 1985 and published in the first part of the Technical Office letter No. 36 page No. 581 rule No. 102, Appeal No. 6840 of 53 S issued at the session of March 14, 1984 and published in the first part of the Technical Office letter No. 35 page No. 274 rule No. 56, Appeal No. 45090 of 59 S issued at the session of May 17, 1998 and published in the first part of the Technical Office letter No. 49 page No. 713 rule No. 91, Appeal No. 45090 of 59 S Issued at the session of May 17, 1998 and published in the first part of the Technical Office's book No. 49 page No. 713 rule No. 91, Appeal No. 7276 of 54 s issued at the session of April 23, 1985 and published in the first part of the Technical Office's book No. 36 page No. 581 rule No. 102, Appeal No. 7276 of 54 s issued at the session of April 23, 1985 and published in the first part of the Technical Office's book No. 36 page No. 581 rule No. 102, Appeal No. 6840 of 53 s issued at the session of March 14, 1984 and published in the first part of the Technical Office's book No. 35 page No. 274 rule No. 56, Appeal No. 6840 of 53 s issued at the session of March 14, 1984 and published in the first part of the Technical Office's book No. 35 page No. 274 rule No. 56.

it in the name of the people and pronounced it in a public session because it is decided that the lesson in this regard is the reality of reality.[3719]

Also, the judiciary in the civil lawsuit not to accept it does not end the litigation or prevent it from proceeding if it properly contacted the competent court, which is the civil court that has jurisdiction in civil disputes, and therefore the civil rights plaintiff's appeal in it by way of cassation is not permissible.[3720]

The court's decision to suspend the lawsuit until the appeal of unconstitutionality is decided is only a procedure prior to the issuance of the judgment, but it is not a judgment that ends the lawsuit, which reveals that appealing it by way of cassation is not permissible.[3721]

It is also not permissible to appeal against the decision of the appellate misdemeanor court to suspend the conduct of the criminal case until the civil lawsuit included in the decision is decided, which is not permissible.[3722]

It is also not permissible to appeal the decision of the Criminal Court to take the opinion of the Mufti of the Republic before the death sentence, as consulting the opinion of the Mufti is only a procedure necessary for the validity of the death sentence, which means that it is a procedure prior to the issuance of the judgment, but it is not a judgment that ends the case.[3723]

The ruling of the contested judgment regarding the civil lawsuit rejecting the claim of forgery is a ruling on a preliminary sub-issue that may not be appealed in cassation against the independence of.[3724]

4- Appeal by the civil rights plaintiff

Article 30 of the Law of Cases and Procedures of Appeal before the Court of Cassation - promulgated by Law No. 57 of 1959 replaced by Law No. 74 of 2007 amending some provisions of the Criminal Procedure Law and the Law of Cases and Procedures of Appeal before the Court of Cassation - does not allow appeal in relation to the civil lawsuit alone if the required compensation does not exceed the quorum of the cassation appeal stipulated in Article 248 of the Civil and Commercial Procedure Law, which is one hundred thousand pounds, stipulating that: «It is not permissible to appeal in relation to the civil lawsuit alone if the required compensation does not exceed the quorum of the cassation appeal stipulated in Article 248 of the Civil and Commercial Procedure Law».[3725]

Whereas Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation allows the civil rights plaintiff to appeal to the Court of Cassation against the final judgments issued from the last degree in the articles of felonies and misdemeanors in the cases indicated therein with regard to his civil rights only, and the right of the civil rights plaintiff to do

---

([3719]) Appeal No. 13103 of 60 BC issued at the session of 9 December 1997 and published in the first part of the book of the Technical Office No. 48 page No. 1387 rule No. 211.

([3720]) Appeal No. 11638 for the year 61 S issued in the session of April 12, 2000 and published in the letter of the Technical Office No. 51 page No. 407 rule No. 74.

([3721]) Appeal No. 439 of 61 S issued on November 25, 1997 and published in the first part of the Technical Office's book No. 48 page No. 1310 rule No. 198.

([3722]) Appeal No. 15935 for the year 62 S issued at the session of September 20, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 898 rule No. 136.

([3723]) Appeal No. 14725 of 62 S issued at the session of January 17, 1994 and published in the first part of the book of the Technical Office No. 45 page No. 115 rule No. 17.

([3724]) Appeal No. 691 of 43 BC issued at the session of May 13, 1974 and published in the first part of the book of the Technical Office No. 25 page No. 470 rule No. 100.

([3725]) Article 30 of the Law of Cases and Procedures of Appeal before the Court of Cassation, Appeal No. 11436 of 82 S issued at the session of February 25, 2018 (unpublished), Appeal No. 470 of 84 S issued at the session of May 4, 2016 and published in the letter of the Technical Office No. 67 page No. 467 rule No. 54, Appeal No. 8794 of 78 S issued at the session of March 5, 2016 (unpublished).

so is independent of the right of both the Public Prosecution and the accused and the person responsible for civil rights, and when he files his appeal by way of cassation and decides to accept it in form and in substance to overturn the contested judgment and return it, The Court of Repeat had to examine the elements of the crime in terms of the availability of its elements and the proof of the act constituting it against the accused in terms of its occurrence and the validity of its attribution to him, which resulted in its legal effects not restricted by the previous judiciary. This is not precluded by the fact that the judgment in the criminal case has the force of res judicata; because the criminal and civil lawsuits, even if they arise from the same reason, but the subject matter in each of them differs from the other, which makes it impossible to adhere to the authority of the final judgment, otherwise the right of appeal by cassation prescribed for the plaintiff of civil rights is suspended and the function of the Court of Repeat is suspended in its regard if the plaintiff of rights Civil is the only appellant, and this is to argue that the force of res judicata in the criminal judgment issued by the criminal court on the subject of the criminal case is not in accordance with Article 456 of the Criminal Procedure Law except before the civil courts and not before the criminal courts themselves as they consider the civil case by association with the criminal case, and if the contested judgment violated this consideration and withheld itself from examining the availability of the elements of the crime against the appellee, adhering to the previous judgment of acquittal in the criminal case, it may have erred in the application of the law, which makes it defective in a way that requires its cassation.[3726]

The street is intended by what is stipulated in Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation that the condition for the permissibility of cassation appeal in the judgments issued in the civil lawsuit alone is that the claimed compensation exceeds the quorum of the cassation appeal stipulated in Article 248 of the Civil and Commercial Procedures Law, which is one hundred thousand pounds, even if the compensation is described as temporary, it is a general rule that if the accused in cassation appeals against the judgment issued against him for compensation, he is subject to the quorum of cassation appeal if it is limited to the civil lawsuit alone, but if the accused in cassation appeals against the judgment issued against him in the civil and criminal lawsuits, a specific quorum is not limited to that the civil lawsuit is subordinate to the criminal lawsuit, the cassation appeal may not be accepted for one without the other because of its fragmentation, and all that is required in this case that his cassation appeal against the criminal judgment is permissible.[3727]

The right of the civil rights plaintiff to appeal in cassation is that the compensation stipulated in Article 248 of the Civil and Commercial Procedures Law exceeds one hundred thousand pounds, and if the civil rights plaintiff's requests before the court of first instance are an amount of temporary compensation, the quorum of the appeal stipulated in the Civil and Commercial Procedures Law shall not exceed, even if it is described as temporary, and therefore it must be decided that the appeal is not permissible.[3728]

([3726]) Appeal No. 15742 of 4Q issued at the session of July 21, 2015 and published in the letter of the Technical Office No. 66, page No. 551, rule No. 73.

([3727]) Appeal No. 19779 of the year 4 issued in the session of December 28, 2014 and published in the letter of the Technical Office No. 65 page No. 1015 rule No. 138.

([3728]), Appeal No. 18142 of 4Q issued at the hearing of 3 September 2014 (unpublished), Appeal No. 6990 of 4Q issued at the hearing of 20 January 2014 (unpublished), Appeal No. 6938 of 4Q issued at the hearing of 20 January 2014 (unpublished), Appeal No. 6977 of 4Q issued at the hearing of 20 January 2014, Appeal No. 23574 of 4Q issued at the hearing of 27 November 2013 and published in the letter of the Technical Office No. 64, page No. 944, rule No. 145, Appeal No. 10232 of 4Q issued at the hearing of 26 September 2013 (unpublished), Appeal No. 678 of 4Q issued at the hearing of 4 July 2013 and published in the letter of the Technical Office No. 64, page No. 702, rule No. 101, Appeal No. 2289 of 4Q issued at the hearing of 21 April 2013 (unpublished), Appeal No. 7221 of 79Q issued at the hearing of 17 September 2011 (unpublished).

The right to appeal in cassation is based on the fact that the compensation exceeds the quorum stipulated in Article 248 of the Code of Procedure, and the priority in assessing the lawsuit is what the litigants claim, not what is actually ruled.[3729]

5-Cases in which it is permissible to appeal in cassation

It is permitted to appeal in cassation in the following cases:

1. If the contested judgment is based on a violation of the law or an error in its application or interpretation;

2- If the judgment is null and void;

3- If the proceedings are null and void, it shall have an effect on the judgment.[3730]

It is also required in the judgment to include the reasons on which it was based. The legislator has stipulated that the reasons for the judgment must include the factual evidence and legal arguments on which the court relied in issuing its judgment in the dispute. The legislator has arranged the nullity on the lack of factual or legal reasons for the judgment.

The deficiency in the reasons for the contested judgment - the deficiency in causation - which results in the invalidity of the judgment, is such as an error in attribution or attribution of the judgment to evidence that has no fixed origin in the papers, or the existence of a contradiction in the reasons on which the judgment is based that makes it dilapidated so that its operative part does not find what it is based on, or an error in understanding the reality in the lawsuit.

The contradiction that defects and invalidates the judgment is the one that falls between its reasons so that some of them deny what others have proven and do not know which of the two things the court intended.[3731]

The error in attribution that defects the judgment is the one that occurs in what is influential in the doctrine of the court that concluded it.[3732]

The reasons for the judgment are considered tainted by corruption in inference if it involves a defect that affects the integrity of the deduction. This is achieved if the court bases its judgment on an understanding that is contrary to what is established in the lawsuit papers, or if there is no logical necessity between what it concluded in its judiciary and what has been proven to it, or if the court bases its conviction on evidence that is objectively invalid to be convinced of, or on a lack of understanding of the fact that has been proven to it, or on extracting this fact from a source that does not exist or exists but is contrary to what it has proven. This is also achieved if the judgment is based on a fact that was deduced from an imaginary source that does not exist, or exists but is contrary to what it has proven, or is not contradictory, but it is reasonably impossible to deduce that fact from it, it is necessary in the principles of inference that the evidence on which the judgment is based to lead to the consequences it has without arbitrariness in conclusion and does not contradict the judgment of reason and logic.[3733]

([3729]) Appeal No. 15745 of 4Q issued on July 2, 2014 (unpublished).
([3730]) Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.
([3731]) Appeal No. 22936 of 64 S issued at the session of July 9, 2003 and published in the letter of the Technical Office No. 54 page No. 773 rule No. 103.
([3732]) Appeal No. 19153 of 61 S issued at the session of May 18, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 499 rule No. 74.
([3733]) See Appeal No. 3815 of 80 S issued on April 11, 2011 (unpublished).

An error in the application of the law means misinterpreting a legal rule and applying it to something other than the subject to which the street wanted to apply and drawing incorrect conclusions.[3734]

The violation of the law is in three forms:

First: Violation of the law by abandoning a legal text that cannot be interpreted, and there is no dispute that it must be taken into account in the lawsuit;

Second: The error in the application of the law by the acts of a legal text that does not apply to the lawsuit;

Third: The error in the interpretation of the law, by giving the text to be applied a meaning that is not its correct meaning.

The nullity of the judgment means the penalty arranged by law for violating the rules and procedures that the courts are obligated to follow in forming their bodies and in issuing and editing judgments, and they often do not realize that they are not observed until when they are issued or after they are issued.

The invalidity of the procedures that affect the judgment means that there is a defect in one of the lawsuit procedures from its filing until the issuance of the judgment, and that there is a close link between this defect and the judgment issued in the lawsuit.

6. Scope of the challenge

The right of the civil rights plaintiff to appeal by way of cassation is limited to what has been decided by the judgment related to the civil lawsuit only, and therefore his appeal to the criminal part is not permissible, which must be decided not to accept the appeal in relation to the criminal lawsuit. The civil right plaintiff may not challenge the verdict of the acquittal of the accused without the verdict of rejecting the civil lawsuit, and the appeal report is the reference in determining the contested part of the judgment.[3735]

Nor does the plaintiff of civil rights accept what he attributes to the judgment issued in the criminal case regarding the description of the charge.[3736]

However, the civil plaintiff may, if he appeals in cassation against the judgment issued in the civil lawsuit, rely on aspects related to the criminal lawsuit, as long as it has an impact on the civil lawsuit and the civil lawsuit can be adjudicated, and the civil plaintiff is not considered to have exceeded his capacity and interest.[3737]

([3734]) Dictionary of Law - Arabic Language Academy - Arab Republic of Egypt - Public Authority for Amiri Press Affairs - 1420AH - 1999AD - p. 317.

([3735]) Appeal No. 29609 of 77 S issued at the session of November 4, 2013 (unpublished), Appeal No. 22876 of 77 S issued at the session of May 20, 2013 (unpublished), Appeal No. 53204 of 73 S issued at the session of October 19, 2010 and published in the Technical Office letter No. 61 page No. 567 rule No. 68, Appeal No. 53204 of 73 S issued at the session of October 19, 2010 and published in the Technical Office letter No. 61 page No. 567 rule No. 68, Appeal No. 34065 of 71 s issued at the session of 3 August 2008, Appeal No. 24469 of 70 s issued at the session of 29 July 2008 and published in the letter of the Technical Office No. 59 page No. 341 rule No. 62, Appeal No. 16241 of 63 s issued at the session of 28 May 2001 and published in the letter of the Technical Office No. 52 page No. 530 rule No. 95, Appeal No. 2282 of 62 s issued at the session of 15 October 2000 and published in the letter of the Technical Office No. 51 page No. 626 rule No. 122, Appeal No. 18790 For the year 61 S issued in the session of January 4, 2000 and published in the Technical Office letter No. 51, page No. 33, rule No. 3, appeal No. 25644 of 59 S issued in the session of November 15, 1994 and published in the first part of the Technical Office letter No. 45, page No. 999, rule No. 156, appeal No. 4480 of 58 S issued in the session of December 4, 1989 and published in the first part of the Technical Office letter No. 40, page No. 1131, rule No. 183.

([3736]) Appeal No. 9126 of 69 S issued at the session of March 7, 2002 and published in the book of the Technical Office No. 53 page No. 393 rule No. 70.

([3737]) Appeal No. 23408 of 73 S issued at the 16th session of March 2013 and published in the Technical Office letter No. 64, page No. 370, rule No. 44, Appeal No. 17139 of 64 S issued at the 8th session of February 2000 and published in the Technical

When the civil rights plaintiff filed his appeal by way of cassation and decided to accept it in form and in the matter of cassation of the contested judgment and restitution, the Court of Repetition had to examine the elements of the crime in terms of the availability of its elements and the proof of the act constituting it against the accused on the one hand and the validity of his attribution to him, which resulted in its legal effects not restricted by the previous judiciary. This is not precluded by the fact that the judgment in the criminal lawsuit has acquired the force of res judicata because the two lawsuits - criminal and civil - although they arise from one reason, the subject matter in each differs from the other, which makes it impossible to adhere to the authority of the criminal judgment, otherwise to disrupt the right of appeal prescribed to the civil rights plaintiff and to disrupt the function of the court of restitution in its regard if the civil rights plaintiff is the sole appellant)[3738](.

It is not permissible to appeal from any of the litigants in criminal and civil lawsuits, except with regard to his rights.[3739]

It is not permissible to appeal from the plaintiff of civil rights and those responsible for them except in relation to their civil rights.[3740]

However, the Attorney General may appeal the verdict in the interest of the accused.[3741]

7. Appeal on grounds of non-observance of trial proceedings

The principle is to consider that the procedures have been taken into account during the consideration of the lawsuit. However, the concerned party may prove by all means that these procedures have been neglected or violated, unless they are mentioned in the minutes of the session or in the judgment. If it is stated in one of them that they were followed, it is not permissible to prove that they were not followed except by challenging forgery.[3742]

Office letter No. 51, page No. 142, rule No. 25, Appeal No. 2406 of 31 S issued at the 23rd session of October 1962 and published in the third part of the Technical Office letter No. 13, page No. 664, rule No. 165.

([3738]) Appeal No. 1822 of 59 S issued at the session of May 4, 1989 and published in the first part of the technical office book No. 40 page No. 565 rule No. 93, Appeal No. 5962 of 52 S issued at the session of May 16, 1983 and published in the first part of the technical office book No. 34 page No. 636 rule No. 128.

([3739]) Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3740]) Appeal No. 2582 of 86 S issued at the session of April 3, 2018 (unpublished), Appeal No. 339 of 31 S issued at the session of January 1, 1962 and published in the first part of the Technical Office Book No. 13 Page No. 4 Rule No. 1.

([3741]) Article 30 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3742]) Article 30 of the Law of Cases and Procedures of Appeal before the Court of Cassation, Appeal No. 32788 of 85 S issued at the session of 25 November 2017 (unpublished), Appeal No. 33679 of 84 S issued at the session of 1 September 2015 and published in the Technical Office's letter No. 66 Page 588 Rule No. 83, Appeal No. 14148 of 84 S issued at the session of 10 May 2015 (unpublished), Appeal No. 4898 of 82 S issued at the session of 1 December 2013 and published in the Office's letter Technical No. 64 Page No. 967 Rule No. 148, Appeal No. 8015 of 81 S issued at the hearing of March 20, 2012 and published in the book of the Technical Office No. 63 Page No. 308 Rule No. 48, Appeal No. 9702 of 80 S issued at the hearing of January 18, 2012 (unpublished), Appeal No. 10641 of 80 S issued at the hearing of March 6, 2011 (unpublished), Appeal No. 20657 of 73 S issued at the hearing of December 14, 2008 (unpublished), Appeal No. 8004 of 65 S issued at the hearing of December 16, 2008 (unpublished) October 2003 (unpublished), Appeal No. 6501 of 71 S issued at the session of October 7, 2003 (unpublished), Appeal No. 12336 of 65 S issued at the session of July 31, 2003 (unpublished), Appeal No. 42490 of 72 S issued at the session of March 5, 2003 and published in the book of the Technical Office No. 54 Page No. 333 Rule No. 35, Appeal No. 4881 of 63 S issued at the session of May 16, 2002 (unpublished), Appeal No. 14318 of 71 s issued at the session of March 7, 2002 and published in the Technical Office letter No. 53 page 397 rule No. 71, Appeal No. 41 of 62 s issued at the session of October 1, 2000 and published in the Technical Office letter No. 51 page 571 rule No. 111, Appeal No. 26297 of 64 s issued at the session of December 22, 1996 and published in the first part of the Technical Office letter No. 47 page 1392 rule No. 200, Appeal No. 3972 of 61 s issued at the session of January 10, 1993 and published in the first part of the letter Technical Office No. 44 Page No. 57 Rule No. 4, Appeal No. 864 of 61 S issued at the session of October 22, 1992 and published in the first part of the Technical Office's letter No. 43 Page No. 895 Rule No. 137, Appeal No. 6944 of 61 S issued at the session of December 16, 1991 and published in the second part of the Technical Office's letter No. 42 Page No. 1342 Rule No. 185, Appeal No. 5092 of 61 S issued at the session of November 4 For the year 1991 and published in the second part of the Technical Office letter No. 42 Page 1119 Rule No. 155, Appeal No. 24875 of 59 S issued at the session of 5 April 1990

However, the absence of the minutes of the hearing and the judgment proves that the court is in the presence of the lawyer present with the accused in the list of lawyers' registration, with the fact that his name is not found in the Bar Association, which results in the invalidity of the trial and the judgment proceedings and the need for the Court of Cassation to revoke it on its own and return. This does not prejudice the statement that the original in the judgments is that the procedures were taken into account during the consideration of the case, as this requires that the procedures are mentioned in the minutes of the hearing or the judgment, which is devoid of each of the aforementioned statement of registration, which stigmatizes the trial proceedings as invalidity.[3743]

It is decided that the mere absence of the minutes of the hearing and the judgment from mentioning the publicity should not be a face to the cassation of the judgment unless the appellant proves that the hearing was confidential.[3744]

It was ruled that since the report paper does not actually exist, it is not valid in this regard to object within the meaning of the text of the last paragraph of Article 30 of Law No. 57 of 1959 regarding the cases and procedures of appeal in cassation by saying that the judgment as long as it is proven that this procedure has been fulfilled, there is no way to deny it except by challenging forgery as long as the report paper does not actually exist.[3745]

8- Presenting the judgments issued in the presence of the death penalty to the Court of Cassation

The Public Prosecution shall submit the case, if the judgment was issued in presence of the death penalty, to the Court of Cassation accompanied by a memorandum of its opinion on the judgment, within the time limit set for the cassation appeal.[3746]

---

and published in the first part of the Technical Office letter No. 41 Page 582 Rule No. 100, Appeal No. 3807 of 56 S issued at the session of 19 November 1986 and published in the first part of the Technical Office letter No. 37 Page 904 Rule No. 173, Appeal No. 613 of 55 S issued at the session of 16 May 1985 and published in the first part of the Technical Office letter No. 36 Page No. 688 Rule No. 122, Appeal No. 1307 of 47 S issued at the session of March 20, 1978 and published in the first part of the Technical Office's letter No. 29 Page No. 315 Rule No. 59, Appeal No. 1309 of 45 S issued at the session of December 21, 1975 and published in the first part of the Technical Office's letter No. 26 Page No. 844 Rule No. 186, Appeal No. 1542 of 41 S issued at the session of April 3, 1972 and published in the second part of Technical Office Letter No. 23 Page No. 518 Rule No. 114, Appeal No. 989 of 40 S issued at the session of 5 October 1970 and published in Part III of Technical Office Letter No. 21 Page No. 960 Rule No. 227, Appeal No. 2081 of 33 S issued at the session of 23 March 1964 and published in Part I of Technical Office Letter No. 15 Page No. 206 Rule No. 42, Appeal No. 2308 of 31 S issued at the session of 8 May 1962 and published in Part II of Technical Office Letter No. 13 Page No. 458 Rule No. 115, Appeal No. 4332 of 62 s issued at the hearing of 13 December 1994 and published in Part I of Technical Office Book No. 45 page 1141 Rule No. 180, Appeal No. 4100 of 61 s issued at the hearing of 2 November 1992 and published in Part I of Technical Office Book No. 43 page 957 Rule No. 149, Appeal No. 10124 of 59 s issued at the hearing of 29 October 1992 and published in Part I of Technical Office Book No. 43 page 943 Rule No. 147, Appeal No. 1719 of 55 s issued at the hearing of 16 October 1985 and published in Part I of Technical Office Book No. 36 page 872 Rule No. 156, Appeal No. 185 of 48 s issued at the hearing of 12 June 1978 and published in Part I of Technical Office Book No. 29 page 607 Rule No. 117.

([3743]) Appeal No. 12393 of 85 s issued at the hearing of November 14, 2015 and published in Technical Office Letter No. 66, page No. 796, rule No. 119, Appeal No. 3621 of 81 s issued at the hearing of December 19, 2012 and published in Technical Office Letter No. 63, page No. 858, rule No. 155, Appeal No. 54932 of 75 s issued at the hearing of December 6, 2005 and published in Technical Office Letter No. 56, page No. 677, rule No. 103, Appeal No. 5562 of 69 s issued at the hearing of February 15, 2000 and published in Technical Office Letter No. 51, page No. 187, rule No. 36, Appeal No. 19861 of 64 s issued at the hearing of June 5, 1995 and published in the first part of Technical Office Letter No. 46, page No. 897, rule No. 137.

([3744]) Appeal No. 4332 of 62 S issued at the session of 13 December 1994 and published in the first part of the book of the Technical Office No. 45 page No. 1141 rule No. 180.

([3745]) Appeal No. 4613 of 58 S issued at the session of May 3, 1990 and published in the first part of the book of the Technical Office No. 41 page No. 665 rule No. 114.

([3746]) Article 46 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

If the judgment is issued in presence of the death penalty, and it is not appealed within the time limit prescribed by law, the Public Prosecution shall submit the case to the Court of Cassation, accompanied by a memorandum of its opinion on the judgment, on the date prescribed for the cassation appeal.[3747]

The function of the Court of Cassation regarding death sentences is of a special nature, which requires the implementation of its control over all elements of the judgment, objective and formal, and it decides on its own initiative to overturn the judgment in any case of error in the law or nullity, even on its own initiative, not limited to the limits of the aspects of the appeal or the basis of the opinion by which the Public Prosecution presents those provisions.[3748]

([3747]) Article 419 bis /8 of the Criminal Procedure Code.

([3748]) Appeal No. 8236 of 88 Q issued on April 11, 2019 (unpublished), Appeal No. 9508 of 87 Q issued on April 3, 2018 (unpublished), Appeal No. 5939 of 87 Q issued on January 4, 2018 (unpublished), Appeal No. 15321 of 85 Q issued on February 3, 2016, published in Technical Office Book No. 67, page 153, Rule No. 21, Appeal No. 12393 of 85 Q issued on November 14, 2015, published in Technical Office Book No. 66, page 796, Rule No. 119, Appeal No. 12393 of 85 Q issued on November 14, 2015, published in Technical Office Book No. 66, page 796, Rule No. 119, Appeal No. 6101 of 84 Q issued on February 2, 2015, published in Technical Office Book No. 66, page 213, Rule No. 24, Appeal No. 5762 of 82 Q issued on December 1, 2013, published in Technical Office Book No. 64, page 1009, Rule No. 149, Appeal No. 5086 of 81 Q issued on October 10, 2012, published in Technical Office Book No. 63, page 491, Rule No. 83, Appeal No. 9400 of 79 Q issued on February 7, 2010, published in Technical Office Book No. 61, page 94, Rule No. 14, Appeal No. 7486 of 78 Q issued on October 25, 2009, Appeal No. 1 of 78 Q issued on October 27, 2008, Appeal No. 45127 of 76 Q issued on December 6, 2006, published in Technical Office Book No. 57, page 938, Rule No. 108, Appeal No. 45127 of 76 Q issued on December 6, 2006, published in Technical Office Book No. 57, page 938, Rule No. 108, Appeal No. 21267 of 76 Q issued on November 5, 2006, published in Technical Office Book No. 57, page 851, Rule No. 93, Appeal No. 39975 of 76 Q issued on November 2, 2006, Appeal No. 39975 of 76 Q issued on November 2, 2006, Appeal No. 83644 of 75 Q issued on March 2, 2006, Appeal No. 54932 of 75 Q issued on December 6, 2005, published in Technical Office Book No. 56, page 677, Rule No. 103, Appeal No. 38004 of 75 Q issued on October 2, 2005, published in Technical Office Book No. 56, page 452, Rule No. 67, Appeal No. 24467 of 75 Q issued on June 4, 2005, Appeal No. 8591 of 75 Q issued on May 15, 2005, Appeal No. 30947 of 73 Q issued on December 4, 2003, Appeal No. 39918 of 72 Q issued on February 5, 2003, published in Technical Office Book No. 54, page 293, Rule No. 26, Appeal No. 6627 of 72 Q issued on October 20, 2002, published in Technical Office Book No. 53, page 982, Rule No. 164, Appeal No. 22612 of 71 Q issued on February 4, 2002, published in Technical Office Book No. 53, page 213, Rule No. 38, Appeal No. 21910 of 71 Q issued on February 3, 2002, published in Technical Office Book No. 53, page 191, Rule No. 33, Appeal No. 21910 of 71 Q issued on February 3, 2002, published in Technical Office Book No. 53, page 191, Rule No. 33, Appeal No. 21868 of 71 Q issued on February 2, 2002, published in Technical Office Book No. 53, page 176, Rule No. 30, Appeal No. 20301 of 71 Q issued on January 6, 2002, published in Technical Office Book No. 53, page 58, Rule No. 10, Appeal No. 10228 of 71 Q issued on November 15, 2001, published in Technical Office Book No. 52, page 861, Rule No. 165, Appeal No. 6860 of 70 Q issued on February 6, 2001, published in Technical Office Book No. 52, page 237, Rule No. 38, Appeal No. 5562 of 69 Q issued on February 15, 2000, published in Technical Office Book No. 51, page 187, Rule No. 36, Appeal No. 6911 of 68 Q issued on December 14, 1998, published in the first part of Technical Office Book No. 49, page 1449, Rule No. 206, Appeal No. 27320 of 64 Q issued on October 10, 1995, published in the first part of Technical Office Book No. 46, page 1095, Rule No. 159, Appeal No. 19861 of 64 Q issued on June 5, 1995, published in the first part of Technical Office Book No. 46, page 897, Rule No. 137, Appeal No. 12044 of 64 Q issued on January 10, 1995, published in the first part of Technical Office Book No. 46, page 112, Rule No. 12, Appeal No. 7979 of 64 Q issued on January 5, 1995, published in the first part of Technical Office Book No. 46, page 94, Rule No. 9, Appeal No. 7705 of 62 Q issued on December 13, 1993, published in the first part of Technical Office Book No. 44, page 1124, Rule No. 176, Appeal No. 6777 of 62 Q issued on November 3, 1993, published in the first part of Technical Office Book No. 44, page 919, Rule No. 144, Appeal No. 2654 of 62 Q issued on October 13, 1993, published in the first part of Technical Office Book No. 44, page 808, Rule No. 125, Appeal No. 474 of 60 Q issued on May 7, 1991, published in the first part of Technical Office Book No. 42, page 743, Rule No. 106, Appeal No. 24526 of 59 Q issued on May 28, 1990, published in the first part of Technical Office Book No. 41, page 780, Rule No. 135, Appeal No. 22419 of 59 Q issued on February 8, 1990, published in the first part of Technical Office Book No. 41, page 345, Rule No. 56, Appeal No. 22437 of 59 Q issued on February 8, 1990, published in the first part of Technical Office Book No. 41, page 355, Rule No. 57, Appeal No. 6007 of 58 Q issued on December 8, 1988, published in the second part of Technical Office Book No. 39, page 1261, Rule No. 195, Appeal No. 3725 of 58 Q issued on October 4, 1988, published in the first part of Technical Office Book No. 39, page 853, Rule No. 128, Appeal No. 4118 of 57 Q issued on January 12, 1988, published in the first part of Technical Office Book No. 39, page 122, Rule No. 12, Appeal No. 4114 of 57 Q issued on January 7, 1988, published in the first part of Technical Office Book No. 39, page 112, Rule No. 10, Appeal No. 5946 of 56 Q issued on January 14, 1987, published in the first part of Technical Office Book No. 38, page 92, Rule No. 12, Appeal No. 3968 of 56 Q issued on December 31, 1986, published in the first part of Technical Office Book No. 37, page 1109, Rule No. 210, Appeal No. 4421 of 55 Q issued on January 20, 1986, published in the first part of Technical

However, exceeding the deadline for presenting the death sentences accompanied by a memorandum of opinion of the prosecution signed by a public lawyer or signed by an illegible signature, or without proving the date of its submission, does not result in the non-acceptance of the prosecution's offer, but that the Court of Cassation relates to the lawsuit as soon as it is presented to it and discovers on its own - without being bound by the opinion building guaranteed by the prosecution in its memorandum - what may have been defects in the judgment, and this is equal to the fact that the prosecution's presentation is on time or after its lapse, and its memorandum is signed by a public lawyer or without it in the degree, because the legislator wanted to identify it merely by setting an organizational rule and not leaving the door open indefinitely and expediting the presentation of the death sentences to the Court of Cassation in all cases when the judgment is issued in presence, in order to avoid suspicion between the right of the prosecution and its duty: its right to appeal by cassation in the judgment as a litigable criminal lawsuit, and its duty to present the case.[3749]

Office Book No. 37, page 105, Rule No. 24, Appeal No. 4018 of 55 Q issued on December 19, 1985, published in the first part of Technical Office Book No. 36, page 1145, Rule No. 212, Appeal No. 1725 of 55 Q issued on October 10, 1985, published in the first part of Technical Office Book No. 36, page 840, Rule No. 149, Appeal No. 2500 of 51 Q issued on January 21, 1982, published in the first part of Technical Office Book No. 33, page 72, Rule No. 13, Appeal No. 275 of 51 Q issued on November 1, 1981, published in the first part of Technical Office Book No. 32, page 795, Rule No. 137, Appeal No. 1294 of 48 Q issued on October 1, 1978, published in the first part of Technical Office Book No. 29, page 649, Rule No. 126, Appeal No. 166 of 47 Q issued on May 22, 1977, published in the first part of Technical Office Book No. 28, page 642, Rule No. 135, Appeal No. 488 of 38 Q issued on April 15, 1968, published in the second part of Technical Office Book No. 19, page 460, Rule No. 89, Appeal No. 6911 of 68 Q issued on December 14, 1998, published in the first part of Technical Office Book No. 49, page 1449, Rule No. 206, Appeal No. 27320 of 64 Q issued on October 10, 1995, published in the first part of Technical Office Book No. 46, page 1095, Rule No. 159, Appeal No. 12044 of 64 Q issued on January 10, 1995, published in the first part of Technical Office Book No. 46, page 112, Rule No. 12, Appeal No. 6713 of 63 Q issued on February 1, 1994, published in the first part of Technical Office Book No. 45, page 171, Rule No. 27, Appeal No. 7705 of 62 Q issued on December 13, 1993, published in the first part of Technical Office Book No. 44, page 1124, Rule No. 176, Appeal No. 6777 of 62 Q issued on November 3, 1993, published in the first part of Technical Office Book No. 44, page 919, Rule No. 144, Appeal No. 2654 of 62 Q issued on October 13, 1993, published in the first part of Technical Office Book No. 44, page 808, Rule No. 125, Appeal No. 7896 of 60 Q issued on October 7, 1991, published in the first part of Technical Office Book No. 42, page 973, Rule No. 134, Appeal No. 22419 of 59 Q issued on February 8, 1990, published in the first part of Technical Office Book No. 41, page 345, Rule No. 56, Appeal No. 3725 of 58 Q issued on October 4, 1988, published in the first part of Technical Office Book No. 39, page 853, Rule No. 128, Appeal No. 4113 of 57 Q issued on January 6, 1988, published in the first part of Technical Office Book No. 39, page 79, Rule No. 6, Appeal No. 5928 of 56 Q issued on February 5, 1987, published in the first part of Technical Office Book No. 38, page 226, Rule No. 32, Appeal No. 3828 of 56 Q issued on November 16, 1986, published in the first part of Technical Office Book No. 37, page 883, Rule No. 170, Appeal No. 4421 of 55 Q issued on January 20, 1986, published in the first part of Technical Office Book No. 37, page 105, Rule No. 24, Appeal No. 1725 of 55 Q issued on October 10, 1985, published in the first part of Technical Office Book No. 36, page 840, Rule No. 149, Appeal No. 1646 of 52 Q issued on May 10, 1982, published in the first part of Technical Office Book No. 33, page 572, Rule No. 115, Appeal No. 2500 of 51 Q issued on January 21, 1982, published in the first part of Technical Office Book No. 33, page 72, Rule No. 13, Appeal No. 2365 of 51 Q issued on January 3, 1982, published in the first part of Technical Office Book No. 33, page 11, Rule No. 1, Appeal No. 414 of 44 Q issued on June 3, 1974, published in the first part of Technical Office Book No. 25, page 539, Rule No. 116, Appeal No. 324 of 44 Q issued on April 14, 1974, published in the first part of Technical Office Book No. 25, page 408, Rule No. 87, Appeal No. 626 of 38 Q issued on May 20, 1968, published in the second part of Technical Office Book No. 19, page 589, Rule No. 117..

([3749]) Appeal No. 10017 of 88 Q issued on October 10, 2019 (unpublished), Appeal No. 8528 of 88 Q issued on May 12, 2019 (unpublished), Appeal No. 8352 of 88 Q issued on May 5, 2019 (unpublished), Appeal No. 8236 of 88 Q issued on April 11, 2019 (unpublished), Appeal No. 21565 of 87 Q issued on January 13, 2019 (unpublished), Appeal No. 61 of 88 Q issued on November 25, 2018 (unpublished), Appeal No. 16471 of 87 Q issued on October 9, 2018 (unpublished), Appeal No. 11192 of 87 Q issued on April 2, 2018 (unpublished), Appeal No. 4042 of 87 Q issued on January 20, 2018 (unpublished), Appeal No. 33074 of 86 Q issued on November 11, 2017 (unpublished), Appeal No. 2518 of 87 Q issued on November 9, 2017 (unpublished), Appeal No. 33194 of 86 Q issued on November 4, 2017 (unpublished), Appeal No. 29658 of 86 Q issued on June 7, 2017 (unpublished), Appeal No. 28565 of 86 Q issued on May 6, 2017 (unpublished), Appeal No. 28605 of 86 Q issued on May 4, 2017 (unpublished), Appeal No. 27833 of 86 Q issued on April 11, 2017 (unpublished), Appeal No. 23981 of 86 Q issued on February 1, 2017 (unpublished), Appeal No. 48552 of 85 Q issued on November 5, 2016 (unpublished), Appeal No. 45046 of 85 Q issued on May 4, 2016 (unpublished), Appeal No. 25951 of 85 Q issued on February 6, 2016 (unpublished), Appeal No. 30847 of 85 Q issued on February 4, 2016 (unpublished), Appeal No. 22909 of 85 Q issued on January 10, 2016,

published in Technical Office Book No. 67, page 78, Rule No. 9, Appeal No. 25689 of 85 Q issued on January 5, 2016 (unpublished), Appeal No. 22912 of 85 Q issued on January 2, 2016 (unpublished), Appeal No. 12898 of 85 Q issued on December 5, 2015 (unpublished), Appeal No. 21819 of 85 Q issued on December 3, 2015 (unpublished), Appeal No. 2288 of 85 Q issued on June 13, 2015 (unpublished), Appeal No. 24057 of 84 Q issued on February 5, 2015 (unpublished), Appeal No. 6101 of 84 Q issued on February 2, 2015, published in Technical Office Book No. 66, page 213, Rule No. 24, Appeal No. 22305 of 83 Q issued on October 12, 2014, published in Technical Office Book No. 65, page 656, Rule No. 85, Appeal No. 4007 of 82 Q issued on May 15, 2014, published in Technical Office Book No. 65, page 410, Rule No. 46, Appeal No. 17203 of 83 Q issued on May 12, 2014, published in Technical Office Book No. 65, page 369, Rule No. 41, Appeal No. 18500 of 83 Q issued on May 8, 2014, published in Technical Office Book No. 65, page 331, Rule No. 38, Appeal No. 6709 of 82 Q issued on December 5, 2013 (unpublished), Appeal No. 5762 of 82 Q issued on December 1, 2013, published in Technical Office Book No. 64, page 1009, Rule No. 149, Appeal No. 2983 of 82 Q issued on October 1, 2013, published in Technical Office Book No. 64, page 770, Rule No. 116, Appeal No. 3190 of 81 Q issued on July 7, 2013 (unpublished), Appeal No. 8958 of 81 Q issued on May 7, 2013 (unpublished), Appeal No. 8842 of 81 Q issued on May 5, 2013 (unpublished), Appeal No. 6068 of 81 Q issued on March 9, 2013, published in Technical Office Book No. 64, page 332, Rule No. 40, Appeal No. 2790 of 81 Q issued on October 10, 2012 (unpublished), Appeal No. 5086 of 81 Q issued on October 10, 2012, published in Technical Office Book No. 63, page 491, Rule No. 83, Appeal No. 6542 of 80 Q issued on March 12, 2012, published in Technical Office Book No. 63, page 280, Rule No. 43, Appeal No. 6071 of 80 Q issued on February 21, 2012 (unpublished), Appeal No. 6132 of 80 Q issued on February 18, 2012 (unpublished), Appeal No. 8409 of 79 Q issued on February 17, 2011, published in Technical Office Book No. 62, page 68, Rule No. 11, Appeal No. 7352 of 79 Q issued on December 15, 2010 (unpublished), Appeal No. 2823 of 79 Q issued on November 21, 2010, published in Technical Office Book No. 61, page 633, Rule No. 81, Appeal No. 5658 of 79 Q issued on October 13, 2010 (unpublished), Appeal No. 4864 of 79 Q issued on October 3, 2010 (unpublished), Appeal No. 10664 of 79 Q issued on March 4, 2010, published in Technical Office Book No. 61, page 215, Rule No. 27, Appeal No. 9400 of 79 Q issued on February 7, 2010, published in Technical Office Book No. 61, page 94, Rule No. 14, Appeal No. 9651 of 79 Q issued on February 3, 2010 (unpublished), Appeal No. 9507 of 78 Q issued on December 21, 2009 (unpublished), Appeal No. 1261 of 79 Q issued on December 17, 2009 (unpublished), Appeal No. 7486 of 78 Q issued on October 25, 2009 (unpublished), Appeal No. 7570 of 78 Q issued on October 19, 2009, published in Technical Office Book No. 60, page 343, Rule No. 47, Appeal No. 6416 of 78 Q issued on May 18, 2009 (unpublished), Appeal No. 4923 of 78 Q issued on April 7, 2009, published in Technical Office Book No. 60, page 201, Rule No. 26, Appeal No. 3506 of 78 Q issued on December 17, 2008, published in Technical Office Book No. 59, page 557, Rule No. 99, Appeal No. 34150 of 77 Q issued on June 11, 2008 (unpublished), Appeal No. 37001 of 77 Q issued on April 10, 2008, published in Technical Office Book No. 59, page 267, Rule No. 46, Appeal No. 28680 of 77 Q issued on April 3, 2008 (unpublished), Appeal No. 19830 of 77 Q issued on December 12, 2007, published in Technical Office Book No. 58, page 794, Rule No. 148, Appeal No. 56449 of 76 Q issued on February 4, 2007, published in Technical Office Book No. 58, page 113, Rule No. 20, Appeal No. 42103 of 75 Q issued on April 4, 2006, published in Technical Office Book No. 57, page 470, Rule No. 55, Appeal No. 69824 of 75 Q issued on March 13, 2006 (unpublished), Appeal No. 41101 of 75 Q issued on February 27, 2006, published in Technical Office Book No. 57, page 355, Rule No. 39, Appeal No. 28073 of 75 Q issued on February 27, 2006 (unpublished), Appeal No. 71175 of 75 Q issued on January 16, 2006, published in Technical Office Book No. 57, page 100, Rule No. 10, Appeal No. 43595 of 75 Q issued on December 21, 2005, published in Technical Office Book No. 56, page 793, Rule No. 110, Appeal No. 46448 of 75 Q issued on December 15, 2005 (unpublished), Appeal No. 56397 of 75 Q issued on December 7, 2005, published in Technical Office Book No. 56, page 761, Rule No. 106, Appeal No. 54932 of 75 Q issued on December 6, 2005, published in Technical Office Book No. 56, page 677, Rule No. 103, Appeal No. 38004 of 75 Q issued on October 2, 2005, published in Technical Office Book No. 56, page 452, Rule No. 67, Appeal No. 10854 of 75 Q issued on May 16, 2005 (unpublished), Appeal No. 8323 of 75 Q issued on May 7, 2005 (unpublished), Appeal No. 695 of 75 Q issued on March 3, 2005 (unpublished), Appeal No. 40661 of 73 Q issued on April 5, 2004, published in Technical Office Book No. 55, page 360, Rule No. 46, Appeal No. 38328 of 73 Q issued on April 1, 2004, published in Technical Office Book No. 55, page 287, Rule No. 42, Appeal No. 22878 of 73 Q issued on January 6, 2004, published in Technical Office Book No. 55, page 86, Rule No. 4, Appeal No. 7369 of 73 Q issued on December 22, 2003 (unpublished), Appeal No. 25219 of 68 Q issued on December 8, 2003 (unpublished), Appeal No. 31093 of 73 Q issued on December 6, 2003, published in Technical Office Book No. 54, page 1165, Rule No. 162, Appeal No. 52083 of 72 Q issued on October 18, 2003, published in Technical Office Book No. 54, page 993, Rule No. 134, Appeal No. 52711 of 72 Q issued on October 12, 2003, published in Technical Office Book No. 54, page 962, Rule No. 127, Appeal No. 4362 of 73 Q issued on October 5, 2003, published in Technical Office Book No. 54, page 937, Rule No. 125, Appeal No. 28408 of 72 Q issued on July 28, 2003 (unpublished), Appeal No. 5337 of 69 Q issued on April 14, 2003 (unpublished), Appeal No. 31536 of 72 Q issued on March 10, 2003 (unpublished), Appeal No. 37282 of 72 Q issued on February 2, 2003, published in Technical Office Book No. 54, page 263, Rule No. 23, Appeal No. 19015 of 72 Q issued on November 13, 2002, published in Technical Office Book No. 53, page 1105, Rule No. 184, Appeal No. 6627 of 72 Q issued on October 20, 2002, published in Technical Office Book No. 53, page 982, Rule No. 164, Appeal No. 34413 of 71 Q issued on April 3, 2002, published in Technical Office Book No. 53, page 581, Rule No. 95, Appeal No. 21866 of 71 Q issued on March 25, 2002 (unpublished), Appeal No. 14318 of 71 Q issued on March 7, 2002, published in Technical Office Book No. 53, page 397, Rule No. 71, Appeal No. 17310 of 71 Q issued on March 7, 2002, published in Technical Office Book No. 53, page 436, Rule No. 72, Appeal No. 7981 of 70 Q issued on February 8, 2002, published in Technical Office Book No. 52, page 243, Rule No. 39, Appeal No. 26346 of 71 Q issued on February 7, 2002 (unpublished), Appeal No. 23449 of 71 Q issued on February 5,

2002, published in Technical Office Book No. 53, page 224, Rule No. 41, Appeal No. 22612 of 71 Q issued on February 4, 2002, published in Technical Office Book No. 53, page 213, Rule No. 38, Appeal No. 21868 of 71 Q issued on February 2, 2002, published in Technical Office Book No. 53, page 176, Rule No. 30, Appeal No. 29339 of 70 Q issued on January 17, 2002, published in Technical Office Book No. 53, page 125, Rule No. 23, Appeal No. 20301 of 71 Q issued on January 6, 2002, published in Technical Office Book No. 53, page 58, Rule No. 10, Appeal No. 24740 of 70 Q issued on December 24, 2001, published in Technical Office Book No. 52, page 1027, Rule No. 191, Appeal No. 10228 of 71 Q issued on November 15, 2001, published in Technical Office Book No. 52, page 861, Rule No. 165, Appeal No. 23369 of 70 Q issued on May 17, 2001, published in Technical Office Book No. 52, page 512, Rule No. 91, Appeal No. 13665 of 70 Q issued on March 22, 2001, published in Technical Office Book No. 52, page 353, Rule No. 59, Appeal No. 6860 of 70 Q issued on February 6, 2001, published in Technical Office Book No. 52, page 237, Rule No. 38, Appeal No. 5223 of 70 Q issued on February 4, 2001, published in Technical Office Book No. 52, page 205, Rule No. 35, Appeal No. 29744 of 69 Q issued on January 8, 2001 (unpublished), Appeal No. 17411 of 69 Q issued on April 3, 2000, published in Technical Office Book No. 51, page 373, Rule No. 68, Appeal No. 10016 of 66 Q issued on April 2, 2000, published in Technical Office Book No. 51, page 354, Rule No. 66, Appeal No. 33899 of 68 Q issued on February 16, 2000, published in Technical Office Book No. 51, page 198, Rule No. 38, Appeal No. 5562 of 69 Q issued on February 15, 2000, published in Technical Office Book No. 51, page 187, Rule No. 36, Appeal No. 32586 of 68 Q issued on January 4, 2000, published in Technical Office Book No. 51, page 38, Rule No. 4, Appeal No. 25219 of 68 Q issued on December 6, 1999, published in the first volume of Technical Office Book No. 50, page 617, Rule No. 139, Appeal No. 8086 of 68 Q issued on November 10, 1998, published in the first volume of Technical Office Book No. 49, page 1258, Rule No. 176, Appeal No. 5189 of 68 Q issued on November 8, 1998, published in the first volume of Technical Office Book No. 49, page 1227, Rule No. 170, Appeal No. 2353 of 68 Q issued on June 3, 1998, published in the first volume of Technical Office Book No. 49, page 813, Rule No. 106, Appeal No. 28462 of 67 Q issued on May 7, 1998, published in the first volume of Technical Office Book No. 49, page 666, Rule No. 85, Appeal No. 26620 of 67 Q issued on May 6, 1998, published in the first volume of Technical Office Book No. 49, page 639, Rule No. 83, Appeal No. 29653 of 67 Q issued on March 10, 1998, published in the first volume of Technical Office Book No. 49, page 388, Rule No. 53, Appeal No. 984 of 67 Q issued on October 7, 1997, published in the first volume of Technical Office Book No. 48, page 1041, Rule No. 155, Appeal No. 14780 of 66 Q issued on May 15, 1997, published in the first volume of Technical Office Book No. 48, page 576, Rule No. 86, Appeal No. 10639 of 66 Q issued on April 3, 1997, published in the first volume of Technical Office Book No. 48, page 420, Rule No. 61, Appeal No. 7257 of 66 Q issued on March 11, 1997, published in the first volume of Technical Office Book No. 48, page 335, Rule No. 47, Appeal No. 86 of 66 Q issued on March 5, 1997, published in the first volume of Technical Office Book No. 48, page 285, Rule No. 41, Appeal No. 11283 of 65 Q issued on October 9, 1996, published in the first volume of Technical Office Book No. 47, page 971, Rule No. 138, Appeal No. 9758 of 65 Q issued on May 9, 1996, published in the first volume of Technical Office Book No. 47, page 602, Rule No. 84, Appeal No. 4731 of 65 Q issued on February 6, 1996, published in the first volume of Technical Office Book No. 47, page 179, Rule No. 27, Appeal No. 3943 of 65 Q issued on January 10, 1996, published in the first volume of Technical Office Book No. 47, page 55, Rule No. 6, Appeal No. 24149 of 64 Q issued on September 27, 1995, published in the first volume of Technical Office Book No. 46, page 973, Rule No. 150, Appeal No. 19862 of 64 Q issued on May 2, 1995, published in the first volume of Technical Office Book No. 46, page 801, Rule No. 121, Appeal No. 19551 of 64 Q issued on April 6, 1995, published in the first volume of Technical Office Book No. 46, page 677, Rule No. 102, Appeal No. 15249 of 64 Q issued on April 4, 1995, published in the first volume of Technical Office Book No. 46, page 646, Rule No. 98, Appeal No. 12044 of 64 Q issued on January 10, 1995, published in the first volume of Technical Office Book No. 46, page 112, Rule No. 12, Appeal No. 7979 of 64 Q issued on January 5, 1995, published in the first volume of Technical Office Book No. 46, page 94, Rule No. 9, Appeal No. 10319 of 64 Q issued on January 8, 1995, published in the first volume of Technical Office Book No. 46, page 100, Rule No. 10, Appeal No. 6713 of 63 Q issued on February 1, 1994, published in the first volume of Technical Office Book No. 45, page 171, Rule No. 27, Appeal No. 14725 of 62 Q issued on January 17, 1994, published in the first volume of Technical Office Book No. 45, page 115, Rule No. 17, Appeal No. 17097 of 62 Q issued on January 6, 1994, published in the first volume of Technical Office Book No. 45, page 61, Rule No. 6, Appeal No. 6430 of 62 Q issued on November 8, 1993, published in the first volume of Technical Office Book No. 44, page 949, Rule No. 148, Appeal No. 1143 of 62 Q issued on November 7, 1993, published in the first volume of Technical Office Book No. 44, page 931, Rule No. 146, Appeal No. 6777 of 62 Q issued on November 3, 1993, published in the first volume of Technical Office Book No. 44, page 919, Rule No. 144, Appeal No. 6649 of 62 Q issued on November 2, 1993, published in the first volume of Technical Office Book No. 44, page 899, Rule No. 142, Appeal No. 11646 of 61 Q issued on March 9, 1993, published in the first volume of Technical Office Book No. 44, page 246, Rule No. 32, Appeal No. 8637 of 61 Q issued on January 19, 1993, published in the first volume of Technical Office Book No. 44, page 115, Rule No. 12, Appeal No. 20883 of 60 Q issued on March 8, 1992, published in the first volume of Technical Office Book No. 43, page 292, Rule No. 37, Appeal No. 20997 of 60 Q issued on November 7, 1991, published in the second volume of Technical Office Book No. 42, page 1188, Rule No. 163, Appeal No. 7896 of 60 Q issued on October 7, 1991, published in the first volume of Technical Office Book No. 42, page 973, Rule No. 134, Appeal No. 474 of 60 Q issued on May 7, 1991, published in the first volume of Technical Office Book No. 42, page 743, Rule No. 106, Appeal No. 63 of 60 Q issued on April 1, 1991, published in the first volume of Technical Office Book No. 42, page 557, Rule No. 81, Appeal No. 24526 of 59 Q issued on May 28, 1990, published in the first volume of Technical Office Book No. 41, page 780, Rule No. 135, Appeal No. 30123 of 59 Q issued on May 10, 1990, published in the first volume of Technical Office Book No. 41, page 714, Rule No. 124, Appeal No. 22419 of 59 Q issued on February 8, 1990, published in the first volume of

The value of what the street owed to the Public Prosecution in presenting the case in which the death sentence was issued is limited to the case in which this judgment was issued in the presence of the defendant. If this description is not met, that obligation shall be removed, as there is no point in that procedure regarding a judgment that is to be overturned in the presence of the defendant or his arrest and reconsideration of his lawsuit.[3750]

However, the death sentence must be issued by a court whose rulings may be challenged before the Court of Cassation, in order for that court to communicate with the case and have jurisdiction to decide on it. This means that the presentation by the Public Prosecution of the

---

Technical Office Book No. 41, page 345, Rule No. 56, Appeal No. 22437 of 59 Q issued on February 8, 1990, published in the first volume of Technical Office Book No. 41, page 355, Rule No. 57, Appeal No. 22443 of 59 Q issued on February 7, 1990, published in Volume 1 of Technical Office Book No. 41, page 330, Rule No. 54, Appeal No. 22427 of 59 Q issued on February 6, 1990, published in Volume 1 of Technical Office Book No. 41, page 312, Rule No. 51, Appeal No. 2805 of 59 Q issued on November 23, 1989, published in Volume 1 of Technical Office Book No. 40, page 1038, Rule No. 168, Appeal No. 153 of 59 Q issued on April 19, 1989, published in Volume 1 of Technical Office Book No. 40, page 525, Rule No. 84, Appeal No. 154 of 59 Q issued on April 6, 1989, published in Volume 1 of Technical Office Book No. 40, page 661, Rule No. 112, Appeal No. 152 of 59 Q issued on April 4, 1989, published in Volume 1 of Technical Office Book No. 40, page 491, Rule No. 81, Appeal No. 6176 of 58 Q issued on January 10, 1989, published in Volume 1 of Technical Office Book No. 40, page 33, Rule No. 4, Appeal No. 6174 of 58 Q issued on January 9, 1989, published in Volume 1 of Technical Office Book No. 40, page 21, Rule No. 3, Appeal No. 6007 of 58 Q issued on December 8, 1988, published in Volume 2 of Technical Office Book No. 39, page 1261, Rule No. 195, Appeal No. 3722 of 58 Q issued on October 20, 1988, published in Volume 1 of Technical Office Book No. 39, page 938, Rule No. 141, Appeal No. 3725 of 58 Q issued on October 4, 1988, published in Volume 1 of Technical Office Book No. 39, page 853, Rule No. 128, Appeal No. 4112 of 57 Q issued on April 12, 1988, published in Volume 1 of Technical Office Book No. 39, page 574, Rule No. 88, Appeal No. 4118 of 57 Q issued on January 12, 1988, published in Volume 1 of Technical Office Book No. 39, page 122, Rule No. 12, Appeal No. 109 of 57 Q issued on April 1, 1987, published in Volume 1 of Technical Office Book No. 38, page 530, Rule No. 88, Appeal No. 2269 of 55 Q issued on January 23, 1986, published in Volume 1 of Technical Office Book No. 37, page 137, Rule No. 29, Appeal No. 5943 of 56 Q issued on January 18, 1987, published in Volume 1 of Technical Office Book No. 38, page 111, Rule No. 14, Appeal No. 3968 of 56 Q issued on December 31, 1986, published in Volume 1 of Technical Office Book No. 37, page 1109, Rule No. 210, Appeal No. 150 of 56 Q issued on April 3, 1986, published in Volume 1 of Technical Office Book No. 37, page 453, Rule No. 93, Appeal No. 4018 of 55 Q issued on December 19, 1985, published in Volume 1 of Technical Office Book No. 36, page 1145, Rule No. 212, Appeal No. 1587 of 55 Q issued on June 12, 1985, published in Volume 1 of Technical Office Book No. 36, page 772, Rule No. 137, Appeal No. 2989 of 54 Q issued on June 5, 1984, published in Volume 1 of Technical Office Book No. 35, page 560, Rule No. 127, Appeal No. 4971 of 52 Q issued on December 13, 1982, published in Volume 1 of Technical Office Book No. 33, page 973, Rule No. 201, Appeal No. 1646 of 52 Q issued on May 10, 1982, published in Volume 1 of Technical Office Book No. 33, page 572, Rule No. 115, Appeal No. 882 of 52 Q issued on April 6, 1982, published in Volume 1 of Technical Office Book No. 33, page 441, Rule No. 90, Appeal No. 2500 of 51 Q issued on January 21, 1982, published in Volume 1 of Technical Office Book No. 33, page 72, Rule No. 13, Appeal No. 2503 of 51 Q issued on January 19, 1982, published in Volume 1 of Technical Office Book No. 33, page 37, Rule No. 6, Appeal No. 275 of 51 Q issued on November 1, 1981, published in Volume 1 of Technical Office Book No. 32, page 795, Rule No. 137, Appeal No. 361 of 50 Q issued on December 4, 1980, published in Volume 1 of Technical Office Book No. 31, page 1065, Rule No. 205, Appeal No. 2225 of 49 Q issued on February 11, 1980, published in Volume 1 of Technical Office Book No. 31, page 218, Rule No. 44, Appeal No. 580 of 48 Q issued on December 11, 1978, published in Volume 1 of Technical Office Book No. 29, page 916, Rule No. 190, Appeal No. 1430 of 48 Q issued on November 20, 1978, published in Volume 1 of Technical Office Book No. 29, page 809, Rule No. 167, Appeal No. 1334 of 47 Q issued on February 27, 1978, published in Volume 1 of Technical Office Book No. 29, page 207, Rule No. 38, Appeal No. 982 of 47 Q issued on January 29, 1978, published in Volume 1 of Technical Office Book No. 29, page 113, Rule No. 20, Appeal No. 1857 of 45 Q issued on February 29, 1976, published in Volume 1 of Technical Office Book No. 27, page 279, Rule No. 59, Appeal No. 1797 of 45 Q issued on February 15, 1976, published in Volume 1 of Technical Office Book No. 27, page 201, Rule No. 41, Appeal No. 1019 of 44 Q issued on December 2, 1974, published in Volume 1 of Technical Office Book No. 25, page 798, Rule No. 172, Appeal No. 1006 of 43 Q issued on December 9, 1973, published in Volume 3 of Technical Office Book No. 24, page 1176, Rule No. 240, Appeal No. 986 of 33 Q issued on October 22, 1963, published in Volume 3 of Technical Office Book No. 14, page 678, Rule No. 123, Appeal No. 2 of 31 Q issued on May 16, 1961, published in Volume 2 of Technical Office Book No. 12, page 385, Rule No. 2..

([3750]) Appeal No. 4007 of 82 S issued at the session of May 15, 2014 and published in the book of the Technical Office No. 65 page No. 410 rule No. 46.

contested judgment issued by the Supreme State Security Court "Emergency", which is not permissible in any way, is not permissible.[3751]

Third: Procedures for filing an appeal in cassation

1- Time limit for appeal in cassation

The appeal shall be filed by a report in the registry of the court that issued the judgment within sixty days from the date of the judgment in presence, or from the date of expiry of the date of the objection or from the date of the judgment issued in the objection, and the reasons on which the appeal was based must be filed within this date.[3752]

The time limit of the appeal shall not be added to the time limit of the appeal. This principle shall not be granted except where the law requires a declaration from which the date of validity of the time limit of the appellant begins. Whereas the Code of Criminal Procedure does not require the announcement of the present judgments until the time limit of the appeal begins, it does not provide for the time limit of the distance except when it is necessary to announce the validity of the time limit of the appeal.[3753]

In the event that its end coincides with an official holiday, the deadline shall be extended to the day following the end of[3754] this holiday.

([3751]) Appeal No. 6006 of 58 S issued in the session of February 1, 1989 and published in the first part of the book of the Technical Office No. 40 page No. 152 rule No. 27.

([3752]) Article 34 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3753]) Appeal No. 22263 of 69 S issued at the 10th session of October 2007 and published in the Technical Office Letter No. 58 Page No. 600 Rule No. 115, Appeal No. 6725 of 75 S issued at the 17th session of April 2006, Appeal No. 21668 of 66 S issued at the 19th session of December 2005 and published in the Technical Office Letter No. 56 Page No. 790 Rule No. 109, Appeal No. 395 of 69 S issued at the 4th session of November 2001 and published in the Technical Office Letter No. 52 Page No. 812 Rule No. 154, Appeal No. 82 of 61 S issued at the session of October 4, 1992 and published in the first part of the Technical Office's letter No. 43 Page No. 762 Rule No. 117, Appeal No. 2007 of 48 S issued at the session of April 5, 1979 and published in the first part of the Technical Office's letter No. 30 Page No. 430 Rule No. 91, Appeal No. 189 of 43 S issued at the session of April 16, 1973 and published in the second part of the Technical Office's letter No. 24 Page No. 522 Rule No. 108.

([3754]) Appeal No. 15321 of 85 S issued at the session of February 3, 2016 and published in the letter of the Technical Office No. 67, page No. 153, rule No. 21, appeal No. 7607 of 81 S issued at the session of May 28, 2012 and published in the letter of the Technical Office No. 55, page No. 44, rule No. 8, appeal No. 14527 of 72 S issued at the session of October 21, 2009 and published in the letter of the Technical Office No. 60, page No. 354, rule No. 49, appeal No. 20908 of 74 S issued at the session of 2 of July of 2008, Appeal No. 11424 of 67 s issued at the session of 16 of January of 2007 and published in the Technical Office letter No. 58 page No. 57 rule No. 10, Appeal No. 29070 of 67 s issued at the session of 19 of October of 2006, Appeal No. 13334 of 75 s issued at the session of 19 of September of 2006 and published in the Technical Office letter No. 57 page No. 786 rule No. 82, Appeal No. 1178 of 70 s issued at the session of 21 of July of 2005, Appeal No. 7749 of 66 s issued At the session of June 2, 2005, Appeal No. 21988 of 64 s issued at the session of November 18, 2003 and published in the Technical Office letter No. 54 page No. 1100 rule No. 148, Appeal No. 16979 of 62 s issued at the session of January 8, 2001 and published in the Technical Office letter No. 52 page No. 70 rule No. 8, Appeal No. 2284 of 61 s issued at the session of December 5, 1999 and published in the first part of the Technical Office letter No. 50 page No. 611 rule No. 138, Appeal No. 29342 of 59 S issued at the session of November 3, 1998 and published in the first part of the Technical Office letter No. 49 page No. 1174 rule No. 162, Appeal No. 20996 of 65 S issued at the session of December 6, 1997 and published in the first part of the Technical Office letter No. 48 page No. 1354 rule No. 206, Appeal No. 9378 of 60 S issued at the session of October 8, 1997 and published in the first part of the Technical Office letter No. 48 page No. 1046 rule No. 156, Appeal No. 13560 For the year 65 s issued in the session of October 5, 1997 and published in the first part of the Technical Office book No. 48 page No. 1016 rule No. 151, Appeal No. 23999 of 63 s issued in the session of October 1, 1995 and published in the first part of the Technical Office book No. 46 page No. 1006 rule No. 152, Appeal No. 7570 of 61 s issued in the session of January 9, 1994 and published in the first part of the Technical Office book No. 45 page No. 71 rule No. 8, Appeal No. 13904 of 61 s issued at the session of April 11, 1993 and published in the first part of the Technical Office letter No. 44 page No. 362 rule No. 49, Appeal No. 5661 of 59 s issued at the session of March 11, 1992 and published in the first part of the Technical Office letter No. 43 page No. 298 rule No. 38, Appeal No. 17458 of 60 s issued at the session of January 16, 1992 and published in the first part of the Technical Office letter No. 43 page No. 165 rule No. 14, Appeal No. 1846 of 59 s Issued at the session of December 21, 1989 and published in the first part of the Technical Office book No. 40 page No. 1260 rule No. 203, Appeal No. 1398 of 57 s issued at the session of June 7, 1987 and published in the second part of the Technical Office book

It also extends if there is a coercive impediment that prevents him from knowing the date of the judgment or from submitting the report within the legal time limit until this impediment is removed, and then he must decide immediately after its removal.[3755]

Travel by the will of the appellant without the necessity of a resort and no excuse to prevent the return to submit the appeal within the legal time limit is not considered a reason beyond the will of the appellant to excuse the failure to attend.[3756]

The presence of the appellant in prison at the time of the appeal report does not merely provide an excuse to submit his reasons after the deadline as long as the appellant does not claim that he was prevented from contacting his lawyer.[3757]

However, his travel abroad on official business is a compelling excuse that prevents him from attending.[3758]

The illness of the appellant's lawyer does not have a compelling excuse that prevents him from deciding to appeal and providing reasons in a timely manner because this is the business of the appellant and not his lawyer.[3759]

The reasons for the appeal must be submitted within ten days from the date of the removal of the impediment in the event that the litigant decides directly to appeal.[3760]

No. 38 page No. 745 rule No. 133, Appeal No. 5636 of 56 s issued at the session of January 4, 1987 and published in the first part of the Technical Office book No. 38 page No. 31 rule No. 2, Appeal No. 2361 of 55 s issued at the session of January 16, 1986 and published in the first part of the Technical Office book No. 37 page No. 99 rule No. 22, Appeal No. 6049 of 53 s issued at the session of February 19, 1984 and published in the first part of the Technical Office book No. 35 page No. 168 rule No. 34.

([3755]) Appeal No. 13065 of 59 S issued at the session of February 11, 1992 and published in Part I of Technical Office Book No. 43 Page 230 Rule No. 25, Appeal No. 49 of 45 S issued at the session of February 23, 1975 and published in Part I of Technical Office Book No. 26 Page 179 Rule No. 40, Appeal No. 49 of 45 S issued at the session of February 23, 1975 and published in Part I of Technical Office Book No. 26 Page 179 Rule No. 40, Appeal No. 1436 of 39 S issued at the session of October 27, 1969 and published in Part III of Technical Office Book No. 20 Page 1179 Rule No. 233, Appeal No. 2007 of 38 S issued at the session of February 10, 1969 and published in Part I of Technical Office Book No. 20 Page 237 Rule No. 51, Appeal No. 500 of 37 S issued at the session of June 19, 1967 and published in Part II of Technical Office Book No. 18 Page 829 Rule No. 166.

([3756]) Appeal No. 144 of 50 S issued at the session of March 16, 1980 and published in the first part of the Technical Office letter No. 31 page 389 rule No. 72, Appeal No. 343 of 57 S issued at the session of March 2, 1988 and published in the first part of the Technical Office letter No. 39 page 366 rule No. 53, Appeal No. 296 of 45 S issued at the session of May 12, 1975 and published in the first part of the Technical Office letter No. 26 page 414 rule No. 95.

([3757]) Appeal No. 631 of 55 S issued at the hearing of May 15, 1985 and published in the first part of the Technical Office's letter No. 36 page No. 660 rule No. 117

The Court of Cassation ruled that: [The principle is that appealing criminal judgments is the concern of the convicts only and the intervention of their lawyers is only at their will to appeal the judgment and their desire to proceed with it, and as long as the appellant did not personally show his desire to appeal the judgment issued against him until after the legal deadline has passed, it does not help that his lawyer sends a telegram to the director of his unit in which he is imprisoned in the army requesting permission for the appellant to report the cassation of the judgment issued against him, because the appellant could have decided to appeal before the clerk's office or the army on the legal deadline, and he or his defender did not claim that he was prevented from doing so. He is not entitled to invoke the delay of the prison administration in his case for this purpose], Appeal No. 1799 of 37 s issued at the session of January 8, 1968, published in the first part of the Technical Office's letter No. 19, page No. 18, rule No. 3, Appeal No. 1189 of 35 s issued at the session of December 21, 1965, published in the third part of the Technical Office's letter No. 16, page No. 954, rule No. 182.

([3758]) Appeal No. 220 of 44 S issued on June 24, 1974 and published in the first part of the Technical Office's letter No. 25, page No. 625, rule No. 134.

([3759]) Appeal No. 2129 of 49 s issued at the session of March 19, 1980 and published in the first part of the technical office book No. 31 page No. 434 rule No. 79, Appeal No. 1913 of 40 s issued at the session of March 14, 1971 and published in the first part of the technical office book No. 22 page No. 246 rule No. 59.

([3760]) Appeal No. 2518 of 32 S issued at the session of December 31, 1962 and published in the third part of the book of the Technical Office No. 13 page No. 883 rule No. 214.

The date of the cassation appeal, like other dates, is from the public order, and it is permitted to adhere to it in any case in which the lawsuit is pending.

The appeal report also requires the filing of the reasons on time, and the writing of the judgment and the filing of its reasons may be delayed from the scheduled date, as the legislator did not arrange for the nullity of the delay in writing the judgment and depositing it within a period of thirty days from its issuance if it was issued with acquittal.

The report of the cassation appeal is the point of contact of the court with it and that the submission of the reasons on which it is based within the time limit specified by the law is a condition for its acceptance and that the report of the appeal and the submission of its reasons are together a procedural unit in which one does not take the place of the other and does not dispense with it.[3761]

([3761]) Appeal No. 3243 of 84 Q issued on February 15, 2020 (unpublished), Appeal No. 8352 of 88 Q issued on May 5, 2019 (unpublished), Appeal No. 5979 of 88 Q issued on November 21, 2018 (unpublished), Appeal No. 4745 of 88 Q issued on November 4, 2018 (unpublished), Appeal No. 4042 of 87 Q issued on January 20, 2018 (unpublished), Appeal No. 5939 of 87 Q issued on January 4, 2018 (unpublished), Appeal No. 30612 of 85 Q issued on June 1, 2016 (unpublished), Appeal No. 21000 of 4 Q issued on March 22, 2016 (unpublished), Appeal No. 9980 of 84 Q issued on November 15, 2014, published in Technical Office Book No. 65, page 845, Rule No. 108, Appeal No. 16955 of 83 Q issued on April 8, 2014 (unpublished), Republic of Egypt, unpublished rulings, Court of Cassation, Criminal Advisory Chamber, Appeal No. 6952 of 4 Q issued on January 20, 2014 (unpublished), Appeal No. 5762 of 82 Q issued on December 1, 2013, published in Technical Office Book No. 64, page 1009, Rule No. 149, Appeal No. 2015 of 83 Q issued on May 8, 2013, published in Technical Office Book No. 64, page 578, Rule No. 82, Appeal No. 8958 of 81 Q issued on May 7, 2013 (unpublished), Appeal No. 13855 of 82 Q issued on May 5, 2013 (unpublished), Appeal No. 1876 of 81 Q issued on November 18, 2012 (unpublished), Appeal No. 9311 of 81 Q issued on June 6, 2012 (unpublished), Appeal No. 8136 of 81 Q issued on June 3, 2012 (unpublished), Appeal No. 8070 of 81 Q issued on March 26, 2012 (unpublished), Appeal No. 2499 of 81 Q issued on December 18, 2011 (unpublished), Appeal No. 5491 of 80 Q issued on May 12, 2011 (unpublished), Appeal No. 8409 of 79 Q issued on February 17, 2011, published in Technical Office Book No. 62, page 68, Rule No. 11, Appeal No. 47324 of 73 Q issued on May 10, 2010, published in Technical Office Book No. 61, page 384, Rule No. 49, Appeal No. 26574 of 77 Q issued on January 20, 2010 (unpublished), Appeal No. 50733 of 76 Q issued on January 17, 2010 (unpublished), Appeal No. 9187 of 78 Q issued on May 21, 2009 (unpublished), Appeal No. 18992 of 71 Q issued on February 8, 2009 (unpublished), Appeal No. 64272 of 75 Q issued on February 8, 2009 (unpublished), Appeal No. 1 of 78 Q issued on October 27, 2008 (unpublished), Appeal No. 63528 of 75 Q issued on January 5, 2008 (unpublished), Appeal No. 52293 of 72 Q issued on November 6, 2007 (unpublished), Appeal No. 16532 of 64 Q issued on May 12, 2003 (unpublished), Appeal No. 39918 of 72 Q issued on February 5, 2003, published in Technical Office Book No. 54, page 293, Rule No. 26, Appeal No. 11185 of 71 Q issued on September 23, 2002, published in Technical Office Book No. 53, page 851, Rule No. 144, Appeal No. 21868 of 71 Q issued on February 2, 2002, published in Technical Office Book No. 53, page 176, Rule No. 30, Appeal No. 9143 of 62 Q issued on December 18, 2000 (unpublished), Appeal No. 20108 of 60 Q issued on May 22, 2000 (unpublished), Appeal No. 23765 of 67 Q issued on January 17, 2000 (unpublished), Appeal No. 32586 of 68 Q issued on January 4, 2000, published in Technical Office Book No. 51, page 38, Rule No. 4, Appeal No. 11343 of 68 Q issued on January 11, 1999, published in Volume 1 of Technical Office Book No. 50, page 41, Rule No. 7, Appeal No. 20029 of 66 Q issued on September 23, 1998, published in Volume 1 of Technical Office Book No. 49, page 941, Rule No. 123, Appeal No. 16491 of 66 Q issued on July 2, 1998, published in Volume 1 of Technical Office Book No. 49, page 854, Rule No. 108, Appeal No. 28462 of 67 Q issued on May 7, 1998, published in Volume 1 of Technical Office Book No. 49, page 666, Rule No. 85, Appeal No. 26620 of 67 Q issued on May 6, 1998, published in Volume 1 of Technical Office Book No. 49, page 639, Rule No. 83, Appeal No. 29653 of 67 Q issued on March 10, 1998, published in Volume 1 of Technical Office Book No. 49, page 388, Rule No. 53, Appeal No. 86 of 66 Q issued on March 5, 1997, published in Volume 1 of Technical Office Book No. 48, page 285, Rule No. 41, Appeal No. 6857 of 59 Q issued on February 14, 1996, published in Volume 1 of Technical Office Book No. 47, page 244, Rule No. 35, Appeal No. 24149 of 64 Q issued on September 27, 1995, published in Volume 1 of Technical Office Book No. 46, page 973, Rule No. 150, Appeal No. 19861 of 64 Q issued on June 5, 1995, published in Volume 1 of Technical Office Book No. 46, page 897, Rule No. 137, Appeal No. 19862 of 64 Q issued on May 2, 1995, published in Volume 1 of Technical Office Book No. 46, page 801, Rule No. 121, Appeal No. 12044 of 64 Q issued on January 10, 1995, published in Volume 1 of Technical Office Book No. 46, page 112, Rule No. 12, Appeal No. 23361 of 61 Q issued on November 21, 1993, published in Volume 1 of Technical Office Book No. 44, page 1042, Rule No. 160, Appeal No. 6430 of 62 Q issued on November 8, 1993, published in Volume 1 of Technical Office Book No. 44, page 949, Rule No. 148, Appeal No. 6777 of 62 Q issued on November 3, 1993, published in Volume 1 of Technical Office Book No. 44, page 919, Rule No. 144, Appeal No. 6649 of 62 Q issued on November 2, 1993, published in Volume 1 of Technical Office Book No. 44, page 899, Rule No. 142, Appeal No. 7899 of 60 Q issued on October 22, 1991, published in Volume 1 of Technical Office Book No. 42, page 1032, Rule No. 142, Appeal No. 60993 of 59 Q issued on January 1, 1991, published in Volume 1 of Technical Office Book No. 42, page 16, Rule No. 3, Appeal No. 2485 of 59 Q

It is not valid to indicate the reasons for the appeal by referring to reasons filed in another appeal. In that case, the appeal is free of the reasons on which it is based. The principle is that when the law requires the validity of the appeal as a procedural act in a certain form, this procedural act itself must meet the conditions of its validity without supplementing it with other facts outside it.[3762]

Therefore, the legislator stipulated that the date of the appeal extends to ten days starting from the date of notifying the Public Prosecution of the deposit of the judgment with the Registry of the Book or the date of notifying the civil plaintiff of this deposit: «However, if the judgment is issued with acquittal and the appellant obtains a certificate of non-deposit of the judgment with the Registry of the Book within thirty days from the date of its issuance, the appeal and its reasons shall be accepted within ten days from the date of notifying him of the deposit of the judgment with the Registry of the Book, and the appellant in this case shall designate in his application for the aforementioned certificate a chosen place in the town in which the court center is located to announce the deposit of the judgment, otherwise it is valid to announce it in the Registry of the Book»([3763]

The negative testimony gives the Public Prosecution the right to wait for a notice of the filing of the acquittal judgment to report the appeal and submit its reasons within ten days from the date of its notice of filing.[3764]

The certificate that is reliable in this regard is issued after the expiry of the deadline specified in the law, including that the judgment was not deposited at the time of writing the lawsuit file signed despite the expiry of this deadline, and that the certificate issued after the expiry of the deadline for appeal and filing the reasons is not useful in extending the deadline, and that the certificate issued on the day of the deadline until the end of working hours does not negate the deposit of the judgment after that, because determining the date of work in the pens of the book does not mean that these pens are prevented from performing work after the expiry of the

---

issued on June 6, 1989, published in Volume 1 of Technical Office Book No. 40, page 613, Rule No. 102, Appeal No. 6176 of 58 Q issued on January 10, 1989, published in Volume 1 of Technical Office Book No. 40, page 33, Rule No. 4, Appeal No. 3030 of 58 Q issued on October 5, 1988, published in Volume 1 of Technical Office Book No. 39, page 866, Rule No. 130, Appeal No. 5943 of 56 Q issued on January 18, 1987, published in Volume 1 of Technical Office Book No. 38, page 111, Rule No. 14, Appeal No. 1725 of 55 Q issued on October 10, 1985, published in Volume 1 of Technical Office Book No. 36, page 840, Rule No. 149, Appeal No. 1587 of 55 Q issued on June 12, 1985, published in Volume 1 of Technical Office Book No. 36, page 772, Rule No. 137, Appeal No. 631 of 55 Q issued on May 15, 1985, published in Volume 1 of Technical Office Book No. 36, page 660, Rule No. 117, Appeal No. 1646 of 52 Q issued on May 10, 1982, published in Volume 1 of Technical Office Book No. 33, page 572, Rule No. 115, Appeal No. 2503 of 51 Q issued on January 19, 1982, published in Volume 1 of Technical Office Book No. 33, page 37, Rule No. 6, Appeal No. 2007 of 48 Q issued on April 5, 1979, published in Volume 1 of Technical Office Book No. 30, page 430, Rule No. 91, Appeal No. 580 of 48 Q issued on December 11, 1978, published in Volume 1 of Technical Office Book No. 29, page 916, Rule No. 190, Appeal No. 1430 of 48 Q issued on November 20, 1978, published in Volume 1 of Technical Office Book No. 29, page 809, Rule No. 167, Appeal No. 1294 of 48 Q issued on October 1, 1978, published in Volume 1 of Technical Office Book No. 29, page 649, Rule No. 126, Appeal No. 1913 of 40 Q issued on March 14, 1971, published in Volume 1 of Technical Office Book No. 22, page 246, Rule No. 59, Appeal No. 1852 of 39 Q issued on January 12, 1970, published in Volume 1 of Technical Office Book No. 21, page 91, Rule No. 23, Appeal No. 1 of 36 Q issued on December 12, 1966, published in Volume 3 of Technical Office Book No. 17, page 886, Rule No. 2, Appeal No. 1189 of 35 Q issued on December 21, 1965, published in Volume 3 of Technical Office Book No. 16, page 954, Rule No. 182, Appeal No. 1055 of 33 Q issued on October 28, 1963, published in Volume 3 of Technical Office Book No. 14, page 722, Rule No. 130.

([3762]) Appeal No. 1456 of 48 BC issued at the session of 31 December 1978 and published in the first part of the book of the Technical Office No. 29 page No. 990 rule No. 205.

([3763]) Article 34 of the Appeal Cases and Procedures Law before the Court of Cassation, Appeal No. 27766 of 59 S issued at the session of February 6, 1992 and published in the first part of the Technical Office's letter No. 43 page 201 rule No. 22, Appeal No. 4495 of 58 S issued at the session of January 24, 1990 and published in the first part of the Technical Office's letter No. 41 page 214 rule No. 34.

([3764]) Appeal No. 44784 of 76 S issued in the session of December 1, 2013 and published in the book of the Technical Office No. 64 page No. 962 rule No. 147.

deadline, and the Court of Cassation has settled at the expense of the lapse of thirty full days from the day following the date on which the judgment was issued)[3765](.

It is required that the judgment in question of the certificate obtained is issued with innocence, not with conviction, and there is no way to measure the convictions against the acquittals in this field because the wisdom for which the street saw that the judgment of innocence of the accused should not be invalidated if the aforementioned period lapses without signing it, which is not to harm him for a reason in which he has nothing to do with it. Since this is so, and the failure to file the conviction judgment within thirty days from the date of its issuance is not considered an excuse that results in an extension of the period specified by law to challenge the judgment and provide reasons, the appellant prosecution had to obtain from the Registry the certificate proving that the judgment was not deposited within the aforementioned date to initiate the report and provide its reasons based on the specified time limit, but it did not do so but exceeded the report by appealing and providing its reasons within the time limit specified in the law, if its appeal is not accepted.[3766]

With regard to the filing of reasons, the Registry of the Book is relied upon by the statement issued by this same Registry of the filing of reasons on a certain date after its signature by the competent person, and that there is no basis for the request of the Appellant Prosecution to extend the deadline unless it provides a certificate of robbery of any indication that the judgment is not deposited with the Registry of the Book within thirty days, and it is not valid to take the place of that certificate visa free of signature on the margin of the judgment.[3767]

2- Signing the appeal report and its reasons

A- Appeal submitted by a person other than the Public Prosecution or the State Cases Authority

With regard to appeals filed by other than the Public Prosecution, the law requires that their reasons be signed by a lawyer acceptable before the Court of Cassation, otherwise they are null and void and have no effect on criminal litigation, and are inadmissible in form.[3768]

([3765]) Appeal No. 1304 of 78 S issued at the 9th session of May 2013 and published in the Technical Office letter No. 64, page No. 598, rule No. 84, Appeal No. 2015 of 83 S issued at the 8th session of May 2013 and published in the Technical Office letter No. 64, page No. 578, rule No. 82, Appeal No. 37871 of 73 S issued at the 18th session of April 2010 (unpublished), Appeal No. 32501 of 70 S issued at the 7th session of September 2008 and published in the Office letter Technical No. 59 Page No. 352 Rule No. 64, Appeal No. 23763 of 63 S issued at the hearing of 15 October 2002 and published in Technical Office Letter No. 53 Page No. 957 Rule No. 158, Appeal No. 6479 of 68 S issued at the hearing of 10 October 2000 and published in Technical Office Letter No. 51 Page No. 613 Rule No. 119, Appeal No. 23462 of 61 S issued at the hearing of 18 April 2000 (unpublished), Appeal No. 29751 of 59 S issued at the hearing of 19 October 1997 and published in Part I From the Technical Office Letter No. 48 Page No. 1108 Rule No. 166, Appeal No. 5720 of 59 S issued at the 10th session of May 1993 and published at the first part of the Technical Office Letter No. 44 Page No. 457 Rule No. 65, Appeal No. 5396 of 59 S issued at the 21st session of April 1993 and published at the first part of the Technical Office Letter No. 44 Page No. 418 Rule No. 58, Appeal No. 4164 of 57 S issued at the 24th session of March 1988 and published at the first part of the Technical Office Letter No. 39 Page No. 493 Rule No. 71, Appeal No. 533 of 57 S issued at the 10th session of May 1987 and published at the first part of the Technical Office Letter No. 38 Page No. 666 Rule No. 115, Appeal No. 5943 of 53 S issued at the 7th session of March 1985 and published at the first part of the Technical Office Letter No. 36 Page No. 338 Rule No. 58.

([3766]) Appeal No. 47324 of 73 S issued at the 10th session of May 2010 and published in the Technical Office's letter No. 61, page No. 384, rule No. 49, Appeal No. 1810 of 34 S issued at the 16th session of March 1965 and published in the first part of the Technical Office's letter No. 16, page No. 238, rule No. 51.

([3767]) Appeal No. 4537 of 57 S issued at the session of March 23, 1989 and published in the first part of the technical office book No. 40 page No. 436 rule No. 74, Appeal No. 659 of 45 S issued at the session of May 4, 1975 and published in the first part of the technical office book No. 26 page No. 393 rule No. 90, Appeal No. 1179 of 42 S issued at the session of January 1, 1973 and published in the first part of the technical office book No. 24 page No. 19 rule No. 5.

([3768]) Article 34 of the Law on Cases and Procedures of Appeal before the Court of Cassation, Appeal No. 7872 of 84 S issued at the 11th session of December 2014 and published in the Technical Office's letter No. 65, page No. 966, rule No. 128, Appeal No. 2436 of 83 S issued at the 12th session of February 2014 (unpublished), Appeal No. 28406 of 64 S issued at the 7th session of September 2006 (unpublished), Appeal No. 51732 of 73 S issued at the 6th session of March 2006, published in

The report of the appeal drawn up by the law is the one that entails the entry of the appeal into the possession of the court and its contact with it based on a significant declaration of its desire. The failure to report the appeal does not make it a list and the Court of Cassation does not contact it and does not dispense with the appellant's submission of reasons to the Registry of the Book in a timely manner.[3769]

The reason for the necessity of the signature of a lawyer accepted before the Court of Cassation on the reasons for the appeal is the accuracy of the cassation appeal and the need to base it on pure legal reasons, and this requires that he edit it or at least approve it and sign it by a person with sufficient legal experience, and this is also justified by taking care of the time and effort of the Court of Cassation so that they are spent only for serious reasons of some kind that the court has jurisdiction over, which does not improve its estimate except for those who have previous experience, and it was mentioned in the explanatory memorandum of the law of cassation "The reason for this is to limit the appeals to a scope that only those with experience and experience, and to close it in the face of others in order to achieve the public interest and provide seriousness in these appeals".[3770]

The reasons report is a form sheet of procedural papers in the litigation, which must bear the elements of its existence and must be signed by those who issued it in the manner considered legally, and this statement may not be supplemented by evidence outside it that is not derived from it[3771].

Technical Office Letter No. 57, Page No. 384, Rule No. 42, Appeal No. 51732 of 73 s issued at the hearing of March 6, 2006, published in Technical Office Letter No. 57, Page No. 384, Rule No. 42, Appeal No. 4111 of 67 s issued at the hearing of February 16, 2006 (unpublished), Appeal No. 16201 of 61 s issued at the hearing of March 1, 2000, published in Technical Office Letter No. 51, Page No. 227, Rule No. 42, Appeal No. 18471 of 63 s issued at the hearing of October 8, 1998, published in part First of Technical Office Letter No. 49 Page No. 996 Rule No. 136, Appeal No. 18471 of 63 S issued at the 8th session of October 1998 and published in Part I of Technical Office Letter No. 49 Page No. 996 Rule No. 136, Appeal No. 11605 of 65 S issued at the 1st session of December 1997 and published in Part I of Technical Office Letter No. 48 Page No. 1318 Rule No. 201, Appeal No. 4665 of 63 S issued at the session of November 23, 1997 and published in the first part of the technical office letter No. 48, page No. 1301, rule No. 196, appeal No. 10201 of 65 s issued at the session of July 9, 1997 and published in the first part of the technical office letter No. 48, page No. 766, rule No. 117, appeal No. 5737 of 59 s issued at the session of May 8, 1996 and published in the first part of the technical office letter No. 47, page No. 594, rule No. 82, appeal No. 23842 of 61 s issued at the session of December 20, 1993 and published in the first part of the letter Technical Office No. 44 Page No. 1214 Rule No. 186, Appeal No. 15454 of 59 S issued at the hearing of November 15, 1990 and published in the first part of the Technical Office's letter No. 41 Page No. 1023 Rule No. 183, Appeal No. 7604 of 54 S issued at the hearing of November 12, 1985 and published in the first part of the Technical Office's letter No. 36 Page No. 1007 Rule No. 184, Appeal No. 8275 of 54 S issued at the hearing of January 21, 1985 and published in the first part of the Technical Office's letter No. 36 Page No. 110 Rule No. 14.

([3769]) Appeal No. 8288 of 87 S issued at the session of June 23, 2019 (unpublished), Appeal No. 3324 of 57 S issued at the session of December 25, 1988 and published in the second part of the book of the Technical Office No. 39 page No. 1367 rule No. 207.

([3770]) Appeal No. 3597 of 59 S issued at the session of 26 November 1991 and published in the second part of the technical office book No. 42 page No. 1242 rule No. 172, Appeal No. 8213 of 58 S issued at the session of 30 October 1990 and published in the first part of the technical office book No. 41 page No. 962 rule No. 169.

([3771]) Appeal No. 43950 of 75 S issued at the session of March 19, 2006 (unpublished), Appeal No. 1660 of 66 S issued at the session of July 29, 2004 (unpublished), Appeal No. 15661 of 65 S issued at the session of October 15, 2002 and published in the Technical Office Letter No. 53 Page 961 Rule No. 159, Appeal No. 8696 of 67 S issued at the session of April 11, 1999 and published in the first part of the Technical Office Letter No. 50 Page 210 Rule No. 50, Appeal No. 12720 of 60 S issued at the session of January 12, 1998 and published in the first part of the Technical Office letter No. 49, page No. 84, rule No. 11, Appeal No. 8201 of 60 S issued at the session of October 24, 1991 and published in the first part of the Technical Office letter No. 42, page No. 1053, rule No. 145, Appeal No. 3324 of 57 S issued at the session of December 25, 1988 and published in the second part of the Technical Office letter No. 39, page No. 1367, rule No. 207, appeal No. 3324 of 1988 57 S issued at the hearing of 25 December 1988 and published in Part II of Technical Office Letter No. 39 Page 1367 Rule No. 207, Appeal No. 5112 of 56 S issued at the hearing of 26 May 1987 and published in Part I of Technical Office Letter No. 38 Page 721 Rule No. 127, Appeal No. 4099 of 56 S issued at the hearing of 11 December 1986 and published in Part I of Technical Office Letter No. 37 Page 1035 Rule No. 197, Appeal No. 8275 of 54 S issued at the session of January 21, 1985 and published in the first part of the Technical Office letter No. 36 page No. 110 rule No. 14, Appeal No. 695 of 50 S issued at the session of

This is not altered by the fact that the lawyer who is inadmissible before the Court of Cassation has signed the grounds of appeal paper on behalf of another lawyer acceptable before this court, as the legislator, when the reasons for the appeals filed by the convicts must be signed by a lawyer acceptable before the Court of Cassation, but he wanted to take care of setting the grounds of the appeal. If he assigned one of his assistants from the lawyers who are inadmissible before the Court of Cassation to put it, he must sign its paper to indicate his approval of it, because the reasons are in fact the essence of the appeal, its basis, and its status is one of its most special characteristics. If the reasons paper is not signed by the person concerned in it, it becomes a paper without effect in the litigation and it is a worthless rhetoric.[3772]

If the memorandum of the reasons for the appeal, even if it bears what indicates that it was issued by a lawyer's office, but it is removed with a signature that is impossible or impossible to read and to know the name and capacity of its owner, then this reasons paper shall be devoid of the signature of a lawyer accepted before the Court of Cassation until the deadline for the appeal has passed.[3773]

October 8, 1980 and published in the first part of the Technical Office letter No. 31 page No. 859 rule No. 165, Appeal No. 1029 of 50 S issued at the session of October 5, 1980 and published in the first part of the Technical Office letter No. 31 page No. 839 rule No. 162, Appeal No. 1401 of 47 S issued At the session of January 15, 1978, published in the first part of the Technical Office letter No. 29, page No. 52, rule No. 9, appeal No. 842 of 47 s issued in the session of January 1, 1978, published in the first part of the Technical Office letter No. 29, page No. 16, rule No. 1, appeal No. 831 of 47 s issued in the session of December 4, 1977, published in the first part of the Technical Office letter No. 28, page No. 1023, rule No. 210, Appeal No. 1514 of 46 s issued at the 10th session of April 1977 and published in the first part of the Technical Office letter No. 28 page No. 481 rule No. 100, Appeal No. 1762 of 38 s issued at the 13th session of January 1969 and published in the first part of the Technical Office letter No. 20 page No. 82 rule No. 17, Appeal No. 652 of 38 s issued at the 3rd session of June 1968 and published in the second part of the Technical Office letter No. 19 page No. 639 rule No. 128, Appeal No. 783 of 36 s issued at the 20th session of June 1966, published in the second part of the Technical Office's letter No. 17, page No. 838, rule No. 158.

([3772]) Appeal No. 8275 of 54 S issued at the session of January 21, 1985 and published in the first part of the Technical Office book No. 36 page No. 110 rule No. 14, Appeal No. 1401 of 47 S issued at the session of January 15, 1978 and published in the first part of the Technical Office book No. 29 page No. 52 rule No. 9, Appeal No. 1965 of 45 S issued at the session of March 28, 1976 and published in the first part of the Technical Office book No. 27 page No. 359 rule No. 76.

([3773]) Appeal No. 9410 of 88 S issued at the session of April 18, 2019 (unpublished), Appeal No. 2159 of 80 S issued at the session of October 19, 2010 and published in the book of the Technical Office No. 61 page No. 570 Rule No. 69, Appeal No. 27633 of 72 S issued at the session of February 8, 2009 (unpublished), Appeal No. 12464 of 68 S issued at the session of January 6, 2008 and published in the book of the Technical Office No. 59 page No. 46 Rule No. 6, Appeal No. 5337 of 67 S Issued at the hearing of May 4, 2006 (unpublished), Appeal No. 7203 of 67 s issued at the hearing of May 4, 2006 (unpublished), Appeal No. 4364 of 66 s issued at the hearing of April 20, 2006 (unpublished), Appeal No. 9682 of 66 s issued at the hearing of April 20, 2006 (unpublished), Appeal No. 22616 of 67 s issued at the hearing of April 20, 2006 (unpublished), Appeal No. 17580 of 64 s issued at the hearing of March 20, 2006 (unpublished), Appeal No. 22616 of 67 s issued at the hearing of April 20, 2006 (unpublished), Appeal No. 17580 of 64 s issued at the hearing of March 20, 2006 (unpublished), Appeal No. 51732 of 73 S issued at the 6th session of March 2006 and published in the Technical Office letter No. 57, page No. 384, rule No. 42, Appeal No. 4111 of 67 S issued at the 16th session of February 2006 (unpublished), Appeal No. 23496 of 65 S issued at the 19th session of January 2006 (unpublished), Appeal No. 2156 of 75 S issued at the 1st session of December 2005 (unpublished), Appeal No. 31275 of 70 S Issued at the hearing of 27 March 2005 and published in Technical Office Letter No. 56 Page 235 Rule No. 35, Appeal No. 17529 of 70 S issued at the hearing of 2 January 2003 (unpublished), Appeal No. 6931 of 62 S issued at the hearing of 17 January 2002 (unpublished), Appeal No. 7476 of 63 S issued at the hearing of 25 March 1998 and published in the first part of the Technical Office Letter No. 49 Page 487 Rule No. 63, Appeal No. 12720 of 60 S issued at the hearing of 12 January 1998 and published in the first part of the Office Letter Technical No. 49 Page No. 84 Rule No. 11, Appeal No. 63005 of 59 S issued at the session of March 19, 1995 and published in the first part of the Technical Office's letter No. 46 Page No. 564 Rule No. 82, Appeal No. 5449 of 63 S issued at the session of July 7, 1993 and published in the first part of the Technical Office's letter No. 44 Page No. 662 Rule No. 103, Appeal No. 1526 of 60 S issued at the session of October 12, 1992 Published in Part I of Technical Office Letter No. 43 Page 829 Rule No. 127, Appeal No. 15454 of 59 S issued at the hearing of 15 November 1990 and published in Part I of Technical Office Letter No. 41 Page No. 1023 Rule No. 183, Appeal No. 1811 of 58 S issued at the hearing of 27 July 1989 and published in Part I of Technical Office Letter No. 40 Page No. 680 Rule No. 116, Appeal No. 1967 of 30 S issued at the hearing of 3 April 1961 and published in Part II of Technical Office Letter No. 12 Page No. 408 Rule No. 74.

The Court of Cassation also ruled on the nullity report as a penalty for signing the reasons by a lawyer who is not acceptable to it.[3774]

The signature must be on the last page that contained the final requests of the appellant, and the signature on some pages of the memorandum of reasons does not affect this as long as it is not signed on its last page.[3775]

The signature of the reasons for the appeal on the first page, as this is not considered a signature on the reasons for the appeal and does not achieve the purpose required by the law for it and entails a ruling that the appeal is not accepted in form.[3776]

The deemed signature is the one that is made at the end of the memorandum of the reasons for the appeal until it indicates that these reasons are issued by those who signed them in full and in detail.[3777]

Also, mentioning the name of the lawyer or the signature by photocopying, typewriting or any other technical means does not take the place of the original of the signature, which is the only document that was written by its owner, which attests to the issuance of the procedural work by the person to whom it was attributed.[3778]

Also, the appendix of the reasons for the appeal with the fingerprint of a seal - a cliché - bears the name of a lawyer who does not meet the form required by law to sign the reasons for the appeal.[3779]

The signing of the reasons for the appeal with a bilateral signature is not useful in inferring whether it was signed by lawyers admitted to the Court of Cassation because of the lack of a triple name. The appeal is inadmissible as a form because it has not been proven that it was signed by a lawyer admitted to the Court of Cassation.[3780]

The presence of a lawyer defending the appellant at the trial hearing does not dispense with the signature of a lawyer admitted before the Court of Cassation for the reasons of the appeal and does not make the reasons paper valid.[3781]

It is established that the cassation appeal is a personal right of the person against whom the judgment is issued to exercise it or not to exercise it as he deems in his interest, and no one

---

([3774]) Appeal No. 1660 of 66 S issued at the session of July 29, 2004 (unpublished).

([3775]) Appeal No. 3827 of 70 S issued on October 4, 2007 and published in the Technical Office's letter No. 58, page No. 569, rule No. 111.

([3776]) Appeal No. 8696 of 67 s issued at the session of April 11, 1999 and published in the first part of the technical office book No. 50 page No. 210 rule No. 50, Appeal No. 517 of 59 s issued at the session of April 18, 1989 and published in the first part of the technical office book No. 40 page No. 522 rule No. 83.

([3777]) Appeal No. 517 of 59 S issued at the session of April 18, 1989 and published in the first part of the book of the Technical Office No. 40 page No. 522 rule No. 83.

([3778]) Appeal No. 7078 of 75 s issued at the session of October 13, 2008 and published in the Technical Office book No. 59 page No. 423 rule No. 78, Appeal No. 3872 of 70 s issued at the session of October 4, 2007 (unpublished), Appeal No. 3827 of 70 s issued at the session of October 4, 2007 and published in the Technical Office book No. 58 page No. 569 rule No. 111, Appeal No. 62352 of 76 s issued at the session of March 20, 2007 and published in the Technical Office book No. 58 page No. 265 rule No. 54, Appeal No. 20669 of 62 s issued at the session of September 28, 1994 and published in the first part of the Technical Office book No. 45 page No. 803 rule No. 125, Appeal No. 21005 of 60 s issued at the session of December 9, 1992 and published in the first part of the Technical Office book No. 43 page No. 1139 rule No. 177.

([3779]) Appeal No. 12464 of 68 S issued at the 6th session of January 2008 and published in the Technical Office's letter No. 59, page No. 46, rule No. 6, Appeal No. 17580 of 64 S issued at the 20th session of March 2006 (unpublished), Appeal No. 40127 of 59 S issued at the 21st session of April 1996 and published in the first part of the Technical Office's letter No. 47, page No. 540, rule No. 75.

([3780]) Appeal No. 33964 of 77 S issued at the 7th session of March 2011 (unpublished), Appeal No. 2160 of 66 S issued at the 24th session of January 1998 and published in the first part of the Technical Office's letter No. 49 page No. 153 rule No. 20.

([3781]) Appeal No. 22835 of 77 S issued at the session of April 11, 2010 and published in the book of the Technical Office No. 61 page No. 319 rule No. 41.

may act on his behalf to initiate it, unless he is entrusted with a fixed power of attorney that entitles him to this right, or he is legally acting on his behalf, then the appeal shall have been decided without capacity.[3782]

Also, the report of the natural guardian's agent for the minor by appealing on his behalf in the criminal part alone, although it is not an unacceptable event.[3783]

The lawyer's presence at the trial session and his denial of the signature attributed to him on the memorandum of the reasons for the appeal, to the effect that the appeal has been devoid of a memorandum of reasons signed by a lawyer accepted before the Court of Cassation and therefore lost the elements of his acceptance of what must be ruled not to accept the appeal in form)[3784](.

It must be taken into account that the first paragraph of Article 8 of the Advocacy Law stipulates that: «Without prejudice to the provisions of the Civil and Commercial Procedure Law, the lawyers of the legal departments of public bodies, public sector companies and press institutions may not practice the work of lawyers other than the party in which they work, otherwise the work is invalid...», and this text indicates that the street has set a condition for the validity of the work carried out by the lawyer who works in the parties mentioned in the text is that the work is limited to the party in which he works and arranged a penalty for violating the invalidity of the work, and then the signature of the memorandum of the reasons for the appeal of the convict is invalid for his departure from the circle of privatization specified by the Advocacy Law, and the reasons sheet in its case is one of the procedural papers issued by the litigants, which must be signed by the person concerned in which is a paper that has no effect in the litigation and is of no value. If it is established that the reasons paper was issued without capacity and remained anonymous from the signature of a lawyer legally accepted before the Court of Cassation until the deadline for appeal was missed, the appeal shall be inadmissible in form.[3785]

B- Appeal submitted by the Public Prosecution or the State Cases Authority

If the appeal is filed by the Public Prosecution, the appeal report and its reasons must be signed by a public lawyer at least.[3786]

It is clear from this that Article No. 34 of the Law on Cases and Procedures of Appeal before the Court of Cassation has obligated for appeals filed by the Public Prosecution to be signed at least by a public lawyer, and the Court of Cassation has ruled that the reasons paper that is devoid of this signature is null and void and has no effect on the litigation and violates a nonsense that has no value.[3787]

([3782]) Appeal No. 12464 for the year 68 S issued in the session of January 6, 2008 and published in the letter of the Technical Office No. 59 page No. 46 rule No. 6.

([3783]) Appeal No. 5264 of 60 S issued at the session of March 9, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 154 rule No. 35.

([3784]) Appeal No. 1723 of 72 S issued at the session of 20 October 2007 and published in the letter of the Technical Office No. 58 page No. 643 rule No. 122, Appeal No. 786 of 43 S issued at the session of 25 November 1973 and published in the third part of the letter of the Technical Office No. 24 page No. 1041 rule No. 216.

([3785]) Article 8 of the Advocacy Law, Appeal No. 3324 of 57 S issued at the session of December 25, 1988 and published in the second part of the Technical Office's book No. 39 page No. 1367 rule No. 207, Appeal No. 4099 of 56 S issued at the session of December 11, 1986 and published in the first part of the Technical Office's book No. 37 page No. 1035 rule No. 197.

([3786]) Article 34 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3787]) Appeal No. 20914 of 83 s issued at the session of January 6, 2016 and published in Technical Office Letter No. 67, page No. 47, rule No. 5, Appeal No. 999 of 85 s issued at the session of December 2, 2015 (unpublished), Appeal No. 31660 of 84 s issued at the session of November 10, 2015 and published in Technical Office Letter No. 66, page No. 745, rule No. 114, Appeal No. 16955 of 83 s issued at the session of April 8, 2014 (unpublished), Appeal No. 24649 of 3 s issued at the session of

The memorandum of the reasons for the appeal must be that it is signed with a legible signature. If it is signed in the form of a signature that is never read, which makes it impossible to know whether it is signed by a public lawyer, the appeal may have lost one of the elements of its acceptance.[3788]

If the memorandum of the reasons for the appeal bears an indication of its signature by the head of the overall prosecution, the appeal shall have lost one of the elements of its acceptance, and this defect shall not be removed by marking by the Attorney General on the memorandum of the reasons for the appeal by consideration, as that visa alone does not indicate his adoption or approval of it.[3789]

Requiring the signature of the public defender on the grounds for the appeal does not change the existence of a printed form for the name of a public defender, as it does not meet the form required by law to sign the grounds for the appeal.[3790]

The signature by photocopying, typewriting, or any other means does not take the place of the original signature, which is the only document, as it is in the handwriting of its owner.[3791]

The deemed signature is the one that is made at the end of the memorandum of the reasons for the appeal until it indicates that these reasons are issued by the one who signed them in their entirety and in detail, and no part of that is the fixed signature on the first pages of it, as it does not indicate that the signature has gone to the reasons contained in the memorandum.[3792]

If the appeal is filed by the State Lawsuits Authority, the appeal report and its reasons must be signed by an advisor to that body.[3793]

When the reasons for the appeal are submitted signed with an unclear signature so that it is not possible to read it and know the name of its owner, it is unacceptable in form.[3794]

This does not change its appendix with the fingerprint of the "Ecclesiastical" ring read in the name of a consultant, and thus it has no effect on the litigation and is irrelevant.[3795]

November 27, 2013 and published in Technical Office Letter No. 64, page No. 932, rule No. 144, Appeal No. 1605 of 82 s issued at the session of October 1, 2012 and published in Technical Office Letter No. 63, page No. 417, rule No. 71.

([3788]) Appeal No. 16154 of 86 S issued at the session of 13 November 2016 (unpublished), Appeal No. 34946 of 84 S issued at the session of 8 May 2016 and published in the letter of the Technical Office No. 67 page 495 rule No. 57, Appeal No. 8136 of 81 S issued at the session of 3 June 2012 (unpublished).

([3789]) Appeal No. 17269 of 4 S issued at the hearing of October 15, 2014 (unpublished), Appeal No. 4075 of 82 S issued at the hearing of October 10, 2013 (unpublished), Appeal No. 5340 of 78 S issued at the hearing of October 7, 2013 (unpublished), Appeal No. 2174 of 83 S issued at the hearing of June 2, 2013, Appeal No. 25748 of 3 S issued at the hearing of April 24, 2013 (unpublished), Appeal No. 3966 of 82 S Issued at the hearing of 19 December 2012 (unpublished), Appeal No. 6487 of 78 s issued at the hearing of 25 May 2009 (unpublished), Appeal No. 34946 of 84 s issued at the hearing of 8 May 2016 and published in Technical Office Letter No. 67 Page 495 Rule No. 57, Appeal No. 31660 of 84 s issued at the hearing of 10 November 2015 and published in Technical Office Letter No. 66 Page 745 Rule No. 114, Appeal No. 24649 of 3 s issued at the hearing of 27 November 2013 and published in Technical Office Letter No. 64 Page No. 932 Rule No. 144, Appeal No. 1605 of 82 S issued on October 1, 2012 and published in the Technical Office Letter No. 63 Page No. 417 Rule No. 71.

([3790]) Appeal No. 16154 of 86 S issued at the session of 13 November 2016 (unpublished), Appeal No. 2174 of 83 S issued at the session of 2 June 2013 (unpublished).

([3791]) Appeal No. 20914 of 83 S issued at the 6th session of January 2016 and published in the letter of the Technical Office No. 67, page No. 47, rule No. 5, Appeal No. 16955 of 83 S issued at the 8th session of April 2014 (unpublished).

([3792]) Appeal No. 16154 of 86 S issued at the session of 13 November 2016 (unpublished).

([3793]) Article 34 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3794]) Appeal No. 14901 of 63 S issued at the 10th session of July 1997 (unpublished), Appeal No. 47613 of 59 S issued at the 26th session of December 1996 (unpublished), Appeal No. 49538 of 59 S issued at the 26th session of December 1996 (unpublished).

([3795]) Appeal No. 12096 for the year 62 S issued at the session of September 20, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 896 rule No. 135.

The reason for this - as we explained above - is the accuracy of the cassation appeal and the need to base it on pure legal reasons, and this requires that it be edited or at least approved and signed by a person with sufficient legal experience, and this is also justified by taking care of the time and effort of the Court of Cassation so that they are spent only for serious reasons of some kind that the court has jurisdiction over, which only those with previous experience can estimate. The explanatory memorandum of the cassation law states: "The reason for this is to limit the appeals to a scope that only those with experience and experience can enter, and to close it to others in order to achieve the public interest and provide seriousness in these appeals." Whereas, and since the signatory of the memorandum of reasons for appeal is of the rank of deputy in the State Cases Authority, which is equivalent to the rank of prosecutor, and therefore it is not considered those mentioned in the third and fourth paragraphs in the aforementioned article 34 or its capacity similar to theirs.

Whereas the judiciary of this court has settled on the assessment of nullity as a penalty for omitting to sign the reasons or signing them from those who are not mentioned, by deciding that the reasons paper is one of the documents of the procedures issued in the litigation, which must be signed by the concerned party, otherwise it is considered a paper that has no effect in the litigation and it is a worthless vowel.[3796]

3- Deposit of a guarantee

A- Deposit a guarantee in the court treasury

To accept the appeal in form - if the appeal is not filed by the Public Prosecution or by a person sentenced to a custodial penalty - the petitioner must deposit, upon the decision of the appeal, the treasury of the court that issued the judgment or the treasury of the Court of Cassation an amount of three hundred pounds as bail, unless he was exempted from it by a decision of the Legal Aid Committee. The state and those exempted from judicial fees shall be exempted from depositing the bail.[3797]

If the appellant - who is not sentenced to a penalty restricting freedom - does not deposit with the court the full amount of the bail prescribed until the consideration of the appeal, and does not obtain a decision from the Judicial Assistance Committee to exempt him from it, then his appeal shall be disclosed about his non-acceptance in form.[3798]

([3796]) Appeal No. 3597 of 59 S issued at the session of November 26, 1991 and published in the second part of the book of the Technical Office No. 42 page No. 1242 rule No. 172.

([3797]) Article 36 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3798]) Appeal No. 15006 of 4S issued at the session of 19 May 2014 (unpublished), Appeal No. 10690 of 4S issued at the session of 18 May 2014 (unpublished), Appeal No. 5968 of 82S issued at the session of 5 February 2014 and published in the letter of the Technical Office No. 65 Page 101 Rule No. 6, Appeal No. 6994 of 4S issued at the session of 20 January 2014 (unpublished), Appeal No. 1236 of 70S issued at the session of 25 July 2006 (unpublished), Appeal No. 22257 of 67 S issued at the hearing of April 6, 2006 (unpublished), Appeal No. 11381 of 68 S issued at the hearing of January 19, 2006 (unpublished), Appeal No. 19061 of 66 S issued at the hearing of October 26, 2005 and published in the letter of the Technical Office No. 56, page No. 532, rule No. 82, Appeal No. 5698 of 66 S issued at the hearing of February 3, 2005 (unpublished), Appeal No. 5713 of 66 S issued at the hearing of February 3, 2005 (unpublished), Appeal No. 5713 of 66 S issued at the hearing of February 3, 2005 (unpublished) No. 26217 of 68 s issued at the hearing of January 6, 2005 (unpublished), Appeal No. 3642 of 68 s issued at the hearing of July 31, 2004 (unpublished), Appeal No. 8067 of 68 s issued at the hearing of July 28, 2004 (unpublished), Appeal No. 8317 of 68 s issued at the hearing of July 21, 2004 (unpublished), Appeal No. 6409 of 68 s issued at the hearing of July 12, 2004 (unpublished), Appeal No. 15387 of 65 s issued at the hearing of 5 July 2004 (unpublished), Appeal No. 3675 of 68 s issued at the hearing of 1 July 2004 (unpublished), Appeal No. 11197 of 66 s issued at the hearing of 6 May 2004 and published in Technical Office Letter No. 55 Page 477 Rule No. 64, Appeal No. 5558 of 65 s issued at the hearing of 26 February 2004 (unpublished), Appeal No. 4793 of 66 s issued at the hearing of 25 February 2004 (unpublished), Appeal No. 22256 of 67 s issued at the hearing of 22 February 2004 (unpublished) 2004 (unpublished), Appeal No. 1440 of 65 BC issued at the hearing of January 12, 2004 (unpublished), Appeal No. 18601 of 65 BC issued at the hearing of January 6, 2004 (unpublished), Appeal No. 1534 of 66 BC issued at the hearing of January 1, 2004 (unpublished), Appeal No. 24470 of 65 BC issued at the hearing of December 18, 2003 (unpublished), Appeal No. 8612 of 65 BC issued at the

The principle is that the guarantee that must be deposited is multiplied by the number of appellants, unless they have one interest, so only one guarantee is deposited.[3799]

The placement of the juvenile is considered one of the social welfare institutions - even if it is a precautionary measure - but it restricts freedom in what is considered with him to be a punishment of imprisonment, so it is not necessary to accept the cassation appeal from the convict to deposit the bail.[3800]

The punishment of being placed under police supervision is considered the same as the punishment of imprisonment and similar to it in that it is a penalty restricting freedom. If this is the case, it is not necessary to accept the cassation appeal and deposit the bail.[3801]

However, the criminal measure of handing over the appellant to his guardian is not considered one of the penalties restricting freedom stipulated by the law, and therefore the legislator was obliged to accept the appeal in the form of depositing the bail. If the appellant does not deposit with the treasury of the court that issued the judgment the amount of the bail prescribed by the law, and does not obtain a decision from the Judicial Assistance Committee to exempt him from it, it must be decided not to accept the appeal.[3802]

---

hearing of December 14, 2003 (unpublished), Appeal No. 22202 of 70 S issued at the hearing of 2 December 2003 (unpublished), Appeal No. 15627 of 67 S issued at the hearing of 2 December 2003 (unpublished), Appeal No. 12090 of 65 S issued at the hearing of 1 December 2003 (unpublished), Appeal No. 6644 of 65 S issued at the hearing of 1 October 2003 (unpublished), Appeal No. 3012 of 65 S issued at the hearing of 20 November 2003 (unpublished), Appeal No. 6032 of 65 S issued at the hearing of 4 October 2003 (unpublished), Appeal No. 17431 For the year 65 S issued at the hearing of October 2, 2003 (unpublished), Appeal No. 1686 of 64 S issued at the hearing of March 6, 2003 (unpublished), Appeal No. 12010 of 64 S issued at the hearing of April 15, 2002 (unpublished), Appeal No. 6490 of 62 S issued at the hearing of January 17, 2002 (unpublished), Appeal No. 3207 of 63 S issued at the hearing of November 1, 2001 (unpublished), Appeal No. 24937 of 62 s issued at the session of 18 September 1995 and published in the first part of the Technical Office letter No. 46 page No. 924 rule No. 141, Appeal No. 1046 of 59 s issued at the session of 22 April 1991 and published in the first part of the Technical Office letter No. 42 page No. 677 rule No. 97, Appeal No. 3597 of 57 s issued at the session of 22 January 1989 and published in the first part of the Technical Office letter No. 40 page No. 109 rule No. 15, Appeal No. 1665 of 53 s issued at the session of 15 November 1983 and published in the part The first part of Technical Office Book No. 34 Page No. 954 Rule No. 190, Appeal No. 1381 of 50 S issued at the 10th session of December 1980 and published in Part I of Technical Office Book No. 31 Page No. 1090 Rule No. 209, Appeal No. 626 of 43 S issued at the 12th session of November 1973 and published in Part III of Technical Office Book No. 24 Page No. 958 Rule No. 199, Appeal No. 325 of 38 S issued at the 10th session of February 1969 and published in Part I of Technical Office Book No. 20 Page No. 225 Rule No. 47, Appeal No. 1556 of 30 S issued at the 22nd session of November 1960 and published in Part III of Technical Office Book No. 11 Page No. 817 Rule No. 157.

([3799]) Appeal No. 3388 of 4Q issued at the 27th session of October 2013 and published in the Technical Office's letter No. 64, page No. 866, rule No. 132, Appeal No. 10218 of 67Q issued at the 20th session of October 2005 (unpublished), Appeal No. 20172 of 62Q issued at the 16th session of May 2002 and published in the Technical Office's letter No. 53, page No. 741, rule No. 124, Appeal No. 13654 of 60Q issued at the 11th session From May 1997 and published in the first part of the Technical Office letter No. 48 page No. 525 rule No. 77, Appeal No. 24725 of 59 s issued in the session of 25 October 1994 and published in the first part of the Technical Office letter No. 45 page No. 893 rule No. 139, Appeal No. 393 of 54 s issued in the session of 27 January 1985 and published in the first part of the Technical Office letter No. 36 page No. 154 rule No. 20, Appeal No. 1381 of 50 s issued in the session of 10 December 1980 and published in the first part of the Technical Office letter No. 31 Page No. 1090 Rule No. 209, Appeal No. 640 of 49 S issued at the 8th session of October 1979 and published in the first part of the Technical Office's book No. 30 Page No. 755 Rule No. 159, Appeal No. 669 of 31 S issued at the 6th session of November 1961 and published in the third part of the Technical Office's book No. 12 Page No. 880 Rule No. 175.

([3800]) Appeal No. 12848 of 66 S issued at the session of May 21, 2005 (unpublished), Appeal No. 2396 of 62 S issued at the session of November 1, 1998 and published in Part I of Technical Office Book No. 49, Page No. 1169, Rule No. 161, Appeal No. 322 of 56 S issued at the session of November 28, 1988 and published in Part II of Technical Office Book No. 39, Page No. 1137, Rule No. 176, Appeal No. 7559 of 53 S issued at the session of June 6, 1984 and published in Part I of Technical Office Book No. 35, Page No. 572, Rule No. 129, Appeal No. 2198 of 52 S issued at the session of March 2, 1983 and published in Part I of Technical Office Book No. 34, Page No. 307, Rule No. 59, Appeal No. 5078 of 52 S issued at the session of December 29, 1982 and published in Part I of Technical Office Book No. 33, Page No. 1100, Rule No. 224.

([3801]) Appeal No. 1228 of 51 S issued on 21 November 1981 and published in the first part of the book of the Technical Office No. 32 page No. 954 rule No. 165.

([3802]) Appeal No. 20723 of 60 BC issued at the session of 8 December 1993 and published in the first part of the book of the Technical Office No. 44 page No. 1111 rule No. 173.

The penalty of prohibition from residing in a specific place is a type of preventive measure, and it is a real penalty arranged by law for a special category of perpetrators, even if it is not mentioned in the Penal Code, but it is not one of the penalties that deprive or restrict freedom stipulated by law. Hence, the legislator was obliged at the time to accept the appeal in form - submitted by other than the Public Prosecution - depositing the guarantee.[3803]

B. Bail Forfeiture Cases

If the Court of Cassation rules that the appeal is inadmissible, forfeited, inadmissible in form or rejected, it may also rule to confiscate the bail, and it may also rule to fine the appellant an amount equal to the amount of the bail, and the fine shall be permissible in the event that the appeal is rejected.[3804]

The decision to confiscate bail shall, in the event that the appeal is ruled inadmissible, rejected, inadmissible, or forfeited, the appeal shall be from the person sentenced to a penalty not restricting freedom, and if he is sentenced to a penalty restricting freedom, the court shall not be obliged to confiscate it, but rather to deposit it in the first place.[3805]

The abandonment of the litigation or the waiver of the appeal entails the return of the bail. Article 36 of the Law on Cases and Procedures of Appeal before the Court of Cassation does not allow for the confiscation of the bail except in the case of a ruling that the appeal is inadmissible, forfeited, inadmissible in form or rejected. As long as the waiver of the appeal is accepted and signed before the consideration of the lawsuit and before the issuance of any judgment in the appeal, the bail must be returned. There is no question of whether the appeal contained in the waiver is an appeal that would in itself accept or not accept, nor to say that the return of the bail is not valid if the appeal itself is inadmissible, but every such search is on the one hand deflecting the necessity of the waiver that nothing can be considered in the lawsuit, and on the other hand deflecting the requirement that the text cannot be confiscated except in the event that the appeal is not permissible, forfeited, forfeited, not accepted in form or rejected.[3806]

Fourth: Request to Suspend the Execution of the Contested Judgment

The appellant may, in a judgment issued by the criminal court with a restrictive punishment or deprivation of liberty, request in the memorandum of the reasons for the appeal to temporarily suspend the enforcement of the judgment issued against him until the appeal is decided. The president of the court shall promptly specify a session to consider this request, in which the prosecution shall announce it.

The court shall, if it orders the suspension of the execution of the punishment, set a hearing to consider the appeal before it within a time limit not exceeding six months, and refer the appeal file to the prosecution to deposit a memorandum of its opinion within the time limit it specifies.

([3803]) Appeal No. 1915 of 49 S issued at the session of January 14, 1980 and published in the first part of the technical office book No. 31 page No. 65 rule No. 13, Appeal No. 243 of 40 S issued at the session of April 12, 1970 and published in the second part of the technical office book No. 21 page No. 566 rule No. 135.

([3804]) Article 36 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3805]) Appeal No. 5935 of 86 S issued at the session of July 31, 2017 (unpublished), Appeal No. 4599 of 65 S issued at the session of July 17, 2003 and published in the book of the Technical Office No. 54 page 826 rule No. 110, Appeal No. 2730 of 51 S issued at the session of January 27, 1982 and published in the first part of the book of the Technical Office No. 33 page 100 rule No. 18.

([3806]) Appeal No. 13666 of 83 S issued at the session of January 21, 2015 (unpublished), Appeal No. 13658 of 83 S issued at the session of October 22, 2014 and published in the letter of the Technical Office No. 65 page No. 736 rule No. 92.

In all cases, the court may, if it orders a stay of execution, order the submission of a bail, or the procedures it deems necessary to ensure that the appellant does not escape.[3807]

Fifth: The adherence of the courts to the principles established by the Court of Cassation

The criminal courts of the Cairo Court of Appeal, which hear appeals against the judgments of the Court of Appeal Misdemeanors, shall abide by the established legal principles established in the jurisdiction of the Court of Cassation. If they decide to abandon a stable legal principle decided by the Court of Cassation, they shall refer the case, along with the reasons for which they decided to do so, to the President of the Court of Cassation.

The General Assembly of the Court of Cassation shall form two bodies of the Court, each of which shall be composed of eleven judges headed by the President of the Court or one of his deputies, one of them for criminal matters and the other for civil, commercial, personal status and other matters.

If one of the circuits of the court decides to abandon a legal principle decided by previous judgments, the lawsuit shall be referred to the competent authority of the court for adjudication, and the authority shall issue its judgments by novation by a majority of at least seven members.

If one of the circuits decides to withdraw a legal principle decided by previous judgments issued by other circuits, it shall refer the lawsuit to the two bodies jointly for adjudication. The judgments in this case shall be issued by a majority of at least fourteen members.

If those courts rule on the appeal without complying with the rulings and in violation of a stable legal principle decided by the Court of Cassation, without referring it to the General Authority for Criminal Matters, the Public Prosecutor alone, whether on his own or at the request of the concerned parties, may request the Court of Cassation to present the matter to the General Authority for Criminal Matters to consider this ruling. If the Authority finds that the ruling presented is contrary to a legal principle decided by the Court of Cassation, it shall cancel it and rule again on the appeal. If the Authority decides to approve the ruling, it shall rule that the request is not accepted.

The request must be submitted by the Attorney General within sixty days from the date of the judgment, accompanied by a memorandum of reasons signed by a public lawyer at least.[3808]

The function of the Court of Cassation in this regard is to unify the interpretation of laws and the integrity of their application, and the stability of legal principles to ensure convergence in the judicial solutions reached by the courts of the subject, and achieve its meeting on the same rules, and this is the function of the court, which required that there be only one court of cassation in the state, at the top of the judicial system, so that it is not topped by a court, and its provisions are not subject to the control of any party.[3809]

This means that the appeal against the judgments of the Misdemeanors Court of Appeal before one or more of the criminal courts of the Cairo Court of Appeal is held in a consultation room to decide by a reasoned decision on what discloses its inadmissibility in form or subject matter, and to decide to refer other appeals for consideration at the hearing before it as a matter of urgency. In this case, it may order the suspension of the execution of the custodial sentence until the appeal is decided. The provisions of the Law of Cases and Procedures of Appeal

---

([3807]) Article 36 bis of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3808]) Article No. 36 bis of the Law on Cases and Procedures of Appeal before the Court of Cassation, and Article No. 4 of the Judicial Authority Law, and see: Appeal No. 1 of 2010 issued at the session of March 19, 2012 and published in the letter of the Technical Office No. 55 page No. 8 rule No. 2.

([3809]) Appeal No. 11838 of 60 S issued at the session of April 13, 1997 and published in the first part of the Technical Office's letter No. 44 page No. 5.

before the Court of Cassation shall apply to the appeals that these courts have jurisdiction to consider. However, if the court decides to accept the appeal, it must, if the reason for the appeal is related to the subject, set a subsequent hearing to the consideration of the subject and rule on it. Whereas, these courts must abide by the established legal principles established in the Court of Cassation's judiciary, and if they decide to abandon a stable legal principle decided by the Court of Cassation, they must refer the case, along with the reasons for which they considered that reversal, to the President of the Court of Cassation to implement the provisions of Article 4 of the Judicial Authority Law. If these courts rule on the appeal without abiding by the provisions of the previous paragraph, the Attorney General alone, whether on his own initiative or at the request of the concerned parties, may request the Court of Cassation to present the matter to the Public Authority for Criminal Materials to consider this ruling. If the Authority finds that the ruling violates a legal principle of the established principles decided by the Court of Cassation, it shall cancel it and rule again on the appeal.[3810]

The meaning of Article 4 of the Judicial Authority Law is that whenever the authority decides to abandon a principle decided by previous judgments, it shall issue its judgment by repeal by a majority of seven members of the authority, and fourteen members for the two bodies combined, and it has not yet obligated either of the two formations to decide on the issue of reversal by deciding on the subject of the appeal - obligatorily - which is what the phrase "and the judgments in this case shall be issued by a majority of at least fourteen members", which was stated by the deficit of the article, as the reversal is the one for which the majority referred to therein is necessary, without ruling on the appeal itself, which is then sufficient for the ordinary majority prescribed for the issuance of judgments.[3811]

Consideration of the application before the General Authority for Criminal Materials is not an appeal against the judgment. It is decided that the judgments of the Court of Cassation and the judgments of the Cairo Criminal Courts sitting in a consultation room are final judgments that may not be appealed by any means of appeal unless one of the cases of review stipulated in the Criminal Procedure Law is available, or if one of the members of the issuing circuit has a reason for invalidity as stipulated in the second paragraph of Article 147 of the Code of Procedure.

If the reasons on which the Attorney General based the request to present the judgment to the General Authority for Criminal Materials, do not constitute a violation of the legal principles established in the Court of Cassation, this is not permissible, which must approve the judgment and the judiciary not to accept the request.[3812]

Sixth: The jurisdiction of the Cairo Court of Appeal to consider appeals against the judgments of the Appellate Misdemeanors Court

---

([3810]) Appeal No. 2 of 2010 issued at the session of March 19, 2012 and published in the letter of the Technical Office No. 55, page No. 17, rule No. 3.

([3811]) Appeal No. 16995 of 86 S issued at the 6th session of September 2017 and published in the letter of the Technical Office No. 65 page No. 11 rule No. 2, Appeal No. 7703 of 81 S issued at the 21st session of March 2017 and published in the letter of the Technical Office No. 65 page No. 5 rule No. 1, Appeal No. 6677 of 80 S issued at the 23rd session of March 2013 and published in the letter of the Technical Office No. 57 page No. 5, Appeal No. 14203 of 74 S issued at the session of 19 December 2012 and published in the technical office letter No. 56 page No. 5, Appeal No. 4224 of 70 S issued at the session of 19 May 2009 and published in the technical office letter No. 54 page No. 35 rule No. 5, Appeal No. 43276 of 77 S issued at the session of 14 April 2009 and published in the technical office letter No. 54 page No. 12 rule No. 2, Appeal No. 49390 of 75 S issued at the session of 12 November 2006 and published in the technical office letter No. 51 page No. 4 rule No. 1, Appeal No. 72594 for the year 75 S issued in the session of November 12, 2006 and published in the letter of the Technical Office No. 51, page No. 11, rule No. 2.

([3812]) Appeal No. 5 of 2010 issued at the session of March 19, 2012 and published in the letter of the Technical Office No. 55, page No. 33, rule No. 6.

The appeal against the judgments of the Misdemeanors Court of Appeal shall be before one or more of the criminal courts of the Cairo Court of Appeal, sitting in a consultation chamber, to decide by a reasoned decision on the disclosure of these appeals of non-acceptance in form or subject matter, and to decide to refer other appeals for consideration at the hearing before it as a matter of urgency. In this case, it may order the suspension of the enforcement of the penalty restricting freedom until the appeal is decided. The provisions of the Law of Cases and Procedures of Appeal before the Court of Cassation shall apply to the appeals that these courts are competent to hear.

However, if the court decides to accept the appeal, it must, if the reason for the appeal is related to the subject, set a next session to consider the subject and rule on it.[3813]

Seventh: The convict shall submit a penalty restricting freedom or a measure restricting it for execution

The appeal filed by the accused sentenced to a custodial penalty or a measure restricting it shall be forfeited if he does not apply for execution before the day of the hearing unless the court considers, when considering the appeal, the suspension of execution until it is decided, or his release on bail or without it. The court may order the procedures it deems necessary to ensure that the appellant does not escape.[3814]

The forfeiture of the appeal is a mandatory penalty imposed on the appellant fleeing the implementation of a penalty restricting freedom if he does not apply for implementation before the day of the hearing that was set for the consideration of the appeal, considering that the cassation appeal only responds to a final judgment and that the report does not result in suspending the implementation of the penalties restricting freedom imposed by the enforceable provisions.[3815]

([3813]) Article 36 bis of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3814]) Article 41 of the Law of Cases and Procedures of Appeal before the Court of Cassation, Appeal No. 18777 of 83 S issued at the session of July 2, 2014 (unpublished), Appeal No. 9177 of 4 S issued at the session of July 3, 2013 (unpublished), Appeal No. 8823 of 5 S issued at the session of March 27, 2013 (unpublished), Appeal No. 7625 of 82 S issued at the session of February 24, 2013 (unpublished), Appeal No. 2057 of 82 S issued at the session of October 10, 2012 (Unpublished), Appeal No. 2 of 2010 issued at the session of March 19, 2012 and published in the letter of the Technical Office No. 55, page No. 17, rule No. 3, Appeal No. 2152 of 80 s issued at the session of March 1, 2011 (unpublished), Appeal No. 38514 of 75 s issued at the session of January 6, 2011 (unpublished), Appeal No. 4970 of 78 s issued at the session of December 26, 2010 (unpublished), Appeal No. 80934 of 75 s issued at the session of April 18, 2010 (unpublished)), Appeal No. 80934 of 75 S issued at the session of 18 April 2010 (unpublished), Appeal No. 23205 of 67 S issued at the session of 18 May 2006.

([3815]) Appeal No. 8528 of 88 S issued at the hearing of May 12, 2019 (unpublished), Appeal No. 25172 of 66 S issued at the hearing of September 21, 2006 (unpublished), Appeal No. 17358 of 66 S issued at the hearing of May 18, 2006 (unpublished), Appeal No. 23205 of 67 S issued at the hearing of May 18, 2006 (unpublished), Appeal No. 36102 of 75 S issued at the hearing of March 12, 2006 (unpublished), Appeal No. 6099 of 2006 66 S issued at the hearing of March 2, 2006 (unpublished), Appeal No. 10364 of 66 S issued at the hearing of December 18, 2005 and published in the letter of the Technical Office No. 56, page No. 779, rule No. 107, Appeal No. 18243 of 67 S issued at the hearing of December 1, 2005 (unpublished), Appeal No. 3238 of 74 S issued at the hearing of November 17, 2005 (unpublished), Appeal No. 12323 of 69 S issued at the hearing of September 22, 2005 (unpublished), Appeal No. 12533 of 66 S issued at the hearing of May 19, 2005 For the year 2005 (unpublished), Appeal No. 7814 of 66 S issued at the hearing of April 7, 2005 (unpublished), Appeal No. 1991 of 66 S issued at the hearing of March 17, 2005 (unpublished), Appeal No. 3184 of 67 S issued at the hearing of March 17, 2005 (unpublished), Appeal No. 31624 of 69 S issued at the hearing of March 17, 2005 (unpublished), Appeal No. 3146 of 66 S issued at the hearing of March 3, 2005 (unpublished), Appeal No. 958 of 66 S issued at the hearing of February 17, 2005 (unpublished), Appeal No. 24161 of 65 S issued at the hearing of February 3, 2005 (unpublished), Appeal No. 17214 of 65 S issued at the hearing of April 15, 2004 (unpublished), Appeal No. 21836 of 65 S issued at the hearing of March 15, 2004 (unpublished), Appeal No. 6391 of 66 S issued at the hearing of March 7, 2004 (unpublished), Appeal No. 40508 of 72 S issued at the hearing of January 1, 2004 (unpublished), Appeal No. 2839 of 65 S issued at the hearing of 18 November 2003 (unpublished), Appeal No. 9374 of 65 S issued at the hearing of 6 November 2003 (unpublished), Appeal No. 20680 of 65 S issued at the hearing of 5 November 2003 (unpublished), Appeal No. 8112 of 65 S issued at the hearing of 16 October 2003 (unpublished), Appeal No. 15820 of 63 S issued at the hearing of 17 October 2002 (unpublished), Appeal No. 20398 of 65 S issued at the hearing of 3 October 2002 (unpublished), Appeal No. 13640 of 63 s issued at the 3 October 2002 session

This also applies a fortiori to the appeal of the death sentence issued as a more severe penalty aimed at ending the life of the convict and depriving him of his freedom before execution - which is the same meaning derived from what the legislator stated in Article 471 of the Code of Criminal Procedure to instruct the Public Prosecution when the death sentence becomes final to place the convict in prison until the execution of the death sentence. This does not change that the legislator excluded cases where the death sentence was imposed, so Article 469 obligated the suspension of the execution of the death penalty by appeal in cassation; This means that the legislator intended to postpone the execution of the death penalty itself until it was settled in cassation in the appeal of the convict or the presentation of the Public Prosecution and the completion of its procedures, which requires that the convict be under execution, whether he was imprisoned before the sentence or arrested after it. Consideration of his appeal requires that he be under execution in one of the prisons prepared for that and to say otherwise to a person who walks away from him in the street. The legislator did not mean in any way to differ between those sentenced to death and others sentenced to a penalty of deprivation of liberty, so they may appeal in cassation - while they are free - without The accused puts himself under execution and decides that the appeal of the convicts shall be forfeited with custodial penalties if they do not apply for execution.

If the convict does not submit the death penalty for execution before the day of the session set for the consideration of the appeal, the appeal submitted by him must be overturned.[3816]

The purpose of the legislator's stipulation of the rule of forfeiture of the appeal as a penalty for the appellant's failure to apply for the enforcement of the freedom-restricting penalty imposed on him before the hearing is that it was noted that many of the convicts escape from the implementation of the judgments issued to them and challenge them at the same time by way of power of attorney.[3817]

Therefore, the court's decision to drop the appeal because the appellant did not apply to implement the freedom-restricting sentence imposed on him until the day of the hearing is correct, even if he had contracted an illness before it.[3818]

(unpublished), Appeal No. 27940 of 64 s issued at the 21 March 2002 session (unpublished), Appeal No. 13648 of 64 s issued at the 15 October 2000 session and published in Technical Office Letter No. 51 Page 628 Rule No. 123, Appeal No. 12471 of 60 s issued at the 18 October 1998 session and published in the first part of Technical Office Letter No. 49 Page 1103 Rule No. 149, Appeal No. 20999 of 66 S issued at the 8th session of October 1998 and published in Part I of Technical Office Letter No. 49 Page 1039 Rule No. 140, Appeal No. 3280 of 57 S issued at the 25th session of December 1988 and published in Part II of Technical Office Letter No. 39 Page 1364 Rule No. 206, Appeal No. 5903 of 56 S issued at the 12th session of February 1987 and published in Part I of Technical Office Letter No. 38 Page 252 Rule No. 38, Appeal No. 2691 of 54 s issued at the session of November 12, 1985 and published in the first part of the Technical Office letter No. 36 page No. 1005 rule No. 183, Appeal No. 2604 of 50 s issued at the session of April 19, 1981 and published in the first part of the Technical Office letter No. 32 page No. 366 rule No. 66, Appeal No. 6 of 45 s issued at the session of March 24, 1975 and published in the first part of the Technical Office letter No. 26 page No. 255 rule No. 59, Appeal No. 1142 For the year 42 s issued at the session of December 18, 1972 and published in the third part of the technical office book No. 23 page No. 1410 rule No. 317, Appeal No. 809 of 42 s issued at the session of October 9, 1972 and published in the third part of the technical office book No. 23 page No. 1015 rule No. 225, Appeal No. 1650 of 41 s issued at the session of March 19, 1972 and published in the first part of the technical office book No. 23 page No. 394 rule No. 87, Appeal No. 2059 of 37 s issued at the session of March 26, 1968 and published in the first part of the technical office book No. 19 page No. 377 rule No. 72.

([3816]) Appeal No. 8528 of 88 S issued at the session of May 12, 2019 (unpublished).

([3817]) Appeal No. 5402 of 65 S issued at the session of 20 April 2004 and published in the letter of the Technical Office No. 55 page No. 427 rule No. 56, Appeal No. 12471 of 60 S issued at the session of 18 October 1998 and published in the first part of the letter of the Technical Office No. 49 page No. 1103 rule No. 149.

([3818]) Appeal No. 5402 of 65 S issued at the 20th session of April 2004 and published in the Technical Office letter No. 55, page No. 427, rule No. 56, Appeal No. 12471 of 60 S issued at the 18th session of October 1998 and published in the first part of the Technical Office letter No. 49, page No. 1103, rule No. 149, Appeal No. 20999 of 66 S issued at the 8th session of October 1998 and published in the first part of the Technical Office letter No. 49, page No. 1039, rule No. 140.

It is not useful for the appellant to invoke his travel in an assignment outside the country, as this is not considered a compelling excuse that prevents him from progressing to implementation.[3819]

The issuance of a ruling that the appeal has lapsed is presumed to have met the formal conditions for its validity, and then it fell due to the failure to apply for implementation before the day of the hearing.

The penalty shall be enforceable. If the prosecution orders a temporary stay of execution or if the convicted person complains about the execution of the penalty, the court shall not rule that the appeal is forfeited. If it rules that the appeal is forfeited, it may revoke that ruling when it is proven that the appellant's obligation to apply for execution has lapsed before it issues a ruling that the appeal is forfeited.[3820]

It must also be decided that the appeal is forfeited if the appellant executes part of the freedom-restricting sentence imposed on him and does not submit to complete its implementation after the issuance of the contested judgment and even before the day of the session set for the consideration of his appeal.[3821]

Since the appeal report does not entail the suspension of the enforcement of the sentence of restriction of liberty imposed by the enforceable provisions, if the appellant begins to implement the sentence, but he escaped from his prison before the completion of the implementation of the sentence of restriction of liberty imposed on him and did not submit to complete its implementation before the day of the session specified for the consideration of the appeal, the appeal shall be overturned.[3822]

However, it is not necessary for the appellant to apply for the enforcement of the freedom-restricting penalty imposed before the day of the hearing if the criminal lawsuit has lapsed by the lapse of the legally prescribed period. The obligation of the appellant to apply for the enforcement of the freedom-restricting penalty is incompatible in a lawsuit that has lapsed by virtue of the law, which requires that the judiciary to forfeit has become irrelevant, considering that the enforcement of the penalty is an effect of the judgment issued in the criminal lawsuit. In that case, the court shall rule on the lapse of the criminal lawsuit by the lapse of the period.[3823]

Eighth: Deciding on the appeal

The court shall rule on the appeal after reading the report drawn up by one of its members, and it may hear the statements of the Public Prosecution and lawyers on behalf of the litigants if it deems it necessary to do so.[3824]

Oral pleading before the Court of Cassation is permissible if the court deems it necessary to do so, and the appeal is considered filed before the court as soon as the appellant discloses his desire to object to the judgment in the form envisaged by the law and within the time limit set by it. This formal procedure entails the entry of the appeal into the possession of the Court of

---

([3819]) Appeal No. 80 of 42 S issued at the session of February 28, 1972 and published in the first part of the book of the Technical Office No. 23 page No. 259 rule No. 62.

([3820]) Appeal No. 303 of 46 s issued at the session of 27 March 1977 and published in the first part of the Technical Office letter No. 28 page No. 386 rule No. 82, Appeal No. 1225 of 37 s issued at the session of 29 April 1968 and published in the second part of the Technical Office letter No. 19 page No. 486 rule No. 92, Appeal No. 1748 of 36 s issued at the session of 31 January 1967 and published in the first part of the Technical Office letter No. 18 page No. 133 rule No. 25.

([3821]) Appeal No. 20562 of 83 S issued at the session of 25 May 2014 and published in the book of the Technical Office No. 65 page No. 469 rule No. 54.

([3822]) Appeal No. 3027 of 80 S issued on October 4, 2011 and published in the Technical Office's letter No. 62, page No. 283, rule No. 46.

([3823]) Appeal No. 25576 for the year 2S issued at the session of March 16, 2013 and published in the Technical Office's letter No. 64, page No. 378, rule No. 46.

([3824]) Article 37 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

Cassation and its communication with it, and it is not necessary to consider the appeal as filed to order the appellant to appear before it, because the Court of Cassation is not an appeal level that restores the work of the trial judge, but rather it is an exceptional level whose field of work is limited to monitoring the non-application of the law.[3825]

Accordingly, the hearing of litigants - including the Public Prosecution - is one of the leaves entrusted to the discretion of the Court of Cassation when it contacted the appeal based on the report, and therefore it is not necessary to invite litigants, whatever their capacity, to announce or notify them of the session that determines the consideration of the appeal, whether they are accused or claimants of civil rights or responsible for them because those who should not be heard do not need to be invited.[3826]

If the appeal is rejected on the merits, it is not permissible in any case for the person who filed it to file another appeal from the same judgment for any reason.[3827]

This means that the basis of the ruling that the subsequent appeal is not permissible is the issuance of the judgment in the previous appeal filed by the appellant for the same judgment, rejecting the appeal on the merits.[3828]

It is established that the judgment issued in the form follows the judgment issued on the subject of the criminal lawsuit in terms of the permissibility or inadmissibility of the appeal by way of cassation. If the contested judgment was issued in a form in the implementation of a judgment of the Criminal Court that has already been rejected in cassation, the cassation appeal against this judgment is not permissible and the inadmissibility of the appeal must be ruled.[3829]

([3825]) Appeal No. 1005 of 31 S issued on October 2, 1962 and published in the third part of the book of the Technical Office No. 13 page No. 590 rule No. 148.

([3826]) Appeal No. 18637 of 84 S issued at the 14th session of April 2015 and published in Technical Office Letter No. 66, page 360, rule No. 51, Appeal No. 2943 of 60 S issued at the 8th session of February 1995 and published in Part I of Technical Office Letter No. 46, page 326, rule No. 47, Appeal No. 26730 of 59 S issued at the 2nd session of February 1995 and published in Part I of Technical Office Letter No. 46, page 295, rule No. 42, Appeal No. 1197 of 39 S issued at the 9th session of February 1970 and published in Part I of Technical Office Letter No. 21, page 248, rule No. 61.

([3827]) Article 38 of the Appeal Cases and Procedures Law before the Court of Cassation, Appeal No. 9486 of 79 S issued at the 12th session of December 2015 and published in the Technical Office's letter No. 66, page No. 865, rule No. 128, Appeal No. 17685 of 4 S issued at the 1st session of September 2014 and published in the Technical Office's letter No. 65, page No. 600, rule No. 73, Appeal No. 761 of 83 S issued at the 3rd session of July 2013 (unpublished), Appeal No. 5340 of 80 s issued at the 6th session of March 2013 and published in Technical Office Letter No. 64 Page 330 Rule No. 39, Appeal No. 15701 of 75 s issued at the 25th session of November 2012 and published in Technical Office Letter No. 63 Page 782 Rule No. 140, Appeal No. 17411 of 70 s issued at the 23rd session of November 2008 (unpublished), Appeal No. 27036 of 67 s issued at the 21st session of December 2006 (unpublished), Appeal No. 26552 of 67 s issued at the 16th session of November 2006 (unpublished)), Appeal No. 25171 of 67 S issued at the 21st session of September 2006 (unpublished), Appeal No. 24540 of 67 S issued at the 7th session of September 2006 (unpublished), Appeal No. 22435 of 66 S issued at the 31st session of July 2006 (unpublished), Appeal No. 22513 of 67 S issued at the 20th session of April 2006 (unpublished), Appeal No. 3675 of 67 S issued at the 20th session of October 2005 (unpublished), Appeal No. 8758 of 67 S issued at the 22nd session of September 2005 (unpublished), Appeal No. 330 of 67 s issued at the hearing of March 17, 2005 (unpublished), Appeal No. 24315 of 66 s issued at the hearing of February 3, 2005 (unpublished), Appeal No. 25251 of 65 s issued at the hearing of June 7, 2004 (unpublished), Appeal No. 11916 of 65 s issued at the hearing of May 17, 2004 (unpublished), Appeal No. 20099 of 65 s issued at the hearing of March 15, 2004 (unpublished), Appeal No. 1514 of 68 s Issued at the session of February 23, 2004 (unpublished), Appeal No. 13494 of 65 s issued at the session of December 4, 2003 (unpublished), Appeal No. 290 of 68 s issued at the session of March 24, 2003 (unpublished), Appeal No. 23630 of 67 s issued at the session of March 21, 2002 (unpublished), Appeal No. 20517 of 62 s issued at the session of January 14, 2002 (unpublished), Appeal No. 6379 of 61 s issued at the session of October 22, 2001 (unpublished), Appeal No. 2670 of 54 s issued at the session of November 12, 1984 and published in the first part of Technical Office Book No. 35, page 749 Rule No. 165, Appeal No. 6852 of 52 s issued at the session of March 28, 1983 and published in the first part of Technical Office Book No. 34, page 448 Rule No. 91.

([3828]) Appeal No. 11469 of 65 S issued at the session of November 4, 2003 and published in the letter of the Technical Office No. 54 page No. 1054 rule No. 143.

([3829]) Appeal No. 256 of 41 s issued at the session of October 18, 1971 and published in the third part of the book of the Technical Office No. 22 page No. 557 rule No. 133.

The meaning of the violation is that if the appeal has been previously ruled inadmissible in form, this does not preclude the filing of a subsequent appeal against the same judgment.[3830]

The court shall rule that the appeal shall not be accepted in form if the appeal or its reasons are submitted after the deadline.[3831]

The court shall correct the error and rule according to the law if the appeal is accepted and it is based on the violation of the law or the error in its application or interpretation.[3832]

According to the above, the Court of Cassation shall overturn the contested judgment if it is convinced of the reasons on which it was based or which it saw on its own initiative. Whenever the appeal is based on a violation of the law or an error in its application or interpretation, the court shall correct this error and rule according to the law correctly, as long as the error in which the judgment is deteriorated is not subject to any objective assessment.[3833]

([3830]) Appeal No. 16612 of 65 S issued at the hearing of January 15, 2004 (unpublished), Appeal No. 11469 of 65 S issued at the hearing of November 4, 2003 and published in the Technical Office's letter No. 54, page No. 1054, rule No. 143, Appeal No. 61678 of 59 S issued at the hearing of March 13, 1997 and published in the first part of the Technical Office's letter No. 48, page No. 351, rule No. 48, appeal No. 7226 of 60 S issued at the hearing of April 10, 1996 and published in the first part of the Technical Office's letter No. 47, page No. 501, rule No. 70, appeal No. 14043 of 59 S issued at the hearing of March 19, 1992 and published in the first part of the Technical Office's letter No. 43, page No. 307, rule No. 41.

([3831]) Article 39 of the Law on Cases and Procedures of Appeal before the Court of Cassation, see the above statement regarding the date of the cassation appeal.

([3832]) Article 39 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3833]) Appeal No. 6594 of 86 Q issued on October 16, 2016, published in Technical Office Book No. 67, page 713, Rule No. 90; Appeal No. 24022 of 67 Q issued on March 6, 2007 (unpublished); Appeal No. 14537 of 65 Q issued on February 3, 2005 (unpublished); Appeal No. 14536 of 65 Q issued on December 16, 2004 (unpublished); Appeal No. 28674 of 83 Q issued on March 21, 2015, published in Technical Office Book No. 66, page 309, Rule No. 43; Appeal No. 3165 of 70 Q issued on May 12, 2008, published in Technical Office Book No. 59, page 279, Rule No. 49; Appeal No. 121 of 65 Q issued on May 26, 2001, published in Technical Office Book No. 52, page 526, Rule No. 94; Appeal No. 12491 of 59 Q issued on March 20, 1997, published in Volume 1 of Technical Office Book No. 48, page 380, Rule No. 53; Appeal No. 41365 of 59 Q issued on March 29, 1995, published in Volume 1 of Technical Office Book No. 46, page 625, Rule No. 93; Appeal No. 23580 of 59 Q issued on February 27, 1994, published in Volume 1 of Technical Office Book No. 45, page 320, Rule No. 46; Appeal No. 16701 of 59 Q issued on October 31, 1993, published in Volume 1 of Technical Office Book No. 44, page 881, Rule No. 138; Appeal No. 6118 of 61 Q issued on February 17, 1993, published in Volume 1 of Technical Office Book No. 44, page 201, Rule No. 25; Appeal No. 17708 of 59 Q issued on February 16, 1993, published in Volume 1 of Technical Office Book No. 44, page 193, Rule No. 23; Appeal No. 11519 of 59 Q issued on January 24, 1993, published in Volume 1 of Technical Office Book No. 44, page 145, Rule No. 15; Appeal No. 5343 of 59 Q issued on January 7, 1992, published in Volume 1 of Technical Office Book No. 43, page 88, Rule No. 2; Appeal No. 9016 of 60 Q issued on December 3, 1991, published in Volume 2 of Technical Office Book No. 42, page 1269, Rule No. 176; Appeal No. 16184 of 59 Q issued on October 8, 1990, published in Volume 1 of Technical Office Book No. 41, page 887, Rule No. 155; Appeal No. 8421 of 58 Q issued on March 9, 1989, published in Volume 1 of Technical Office Book No. 40, page 381, Rule No. 62; Appeal No. 5898 of 55 Q issued on December 31, 1987, published in Volume 2 of Technical Office Book No. 38, page 1182, Rule No. 215; Appeal No. 3928 of 56 Q issued on December 18, 1986, published in Volume 1 of Technical Office Book No. 37, page 1095, Rule No. 207; Appeal No. 6733 of 54 Q issued on April 30, 1986, published in Volume 1 of Technical Office Book No. 37, page 526, Rule No. 104; Appeal No. 5097 of 55 Q issued on February 13, 1986, published in Volume 1 of Technical Office Book No. 37, page 280, Rule No. 58; Appeal No. 2317 of 52 Q issued on October 26, 1982, published in Volume 1 of Technical Office Book No. 33, page 807, Rule No. 165; Appeal No. 526 of 51 Q issued on November 5, 1981, published in Volume 1 of Technical Office Book No. 32, page 825, Rule No. 143; Appeal No. 1420 of 51 Q issued on October 27, 1981, published in Volume 1 of Technical Office Book No. 32, page 757, Rule No. 132; Appeal No. 144 of 51 Q issued on June 3, 1981, published in Volume 1 of Technical Office Book No. 32, page 603, Rule No. 106; Appeal No. 1330 of 50 Q issued on May 6, 1981, published in Volume 1 of Technical Office Book No. 32, page 467, Rule No. 82; Appeal No. 1710 of 50 Q issued on January 22, 1981, published in Volume 1 of Technical Office Book No. 32, page 68, Rule No. 9; Appeal No. 1481 of 49 Q issued on May 18, 1980, published in Volume 1 of Technical Office Book No. 31, page 626, Rule No. 121; Appeal No. 1528 of 49 Q issued on January 31, 1980, published in Volume 1 of Technical Office Book No. 31, page 162, Rule No. 32; Appeal No. 1022 of 49 Q issued on December 26, 1979, published in Volume 1 of Technical Office Book No. 30, page 977, Rule No. 210; Appeal No. 261 of 46 Q issued on June 6, 1976, published in Volume 1 of Technical Office Book No. 27, page 602, Rule No. 133; Appeal No. 1837 of 45 Q issued on February 22, 1976, published in Volume 1 of Technical Office Book No. 27, page 244, Rule No. 49; Appeal No. 1340 of 45 Q issued on December 28, 1975, published in Volume 1 of Technical Office Book No. 26, page 874, Rule No. 192; Appeal No. 1020 of 45 Q issued on June 23, 1975, published in Volume 1 of Technical

If the reasons for the judgment include an error in the law or if there is an error in the mention of its provisions, it is not permissible to overturn the judgment when the sentence imposed is prescribed in the law for the crime, and the court shall correct the error that occurred.[3834]

It is decided that the error in the number of the applicable penalty article does not result in the nullity of the judgment as long as the act has been sufficiently described and the fact of the lawsuit subject of conviction has been adequately described and a penalty has been imposed that does not exceed the limits of the applicable article.[3835]

Also, the error of the judgment in determining the crime with the most severe punishment does not invalidate it and its cassation does not require only correcting its causes.[3836]

The decision of the contested judgment to oblige the child to pay the criminal expenses is contrary to what is required by Article 140 of the Child Law, which stipulates that: "Children are not obligated to pay any fees or expenses before all courts in cases related to this chapter," and according to the Court of Cassation to correct that error by canceling the penalty of the contested judgment of obliging the second appellant.[3837]the child) to pay the criminal expenses.

It does not affect the integrity of the judgment that the judge has included some erroneous legal reports in his blogs as long as they do not affect the essence of his judiciary and the result he

---

Office Book No. 26, page 578, Rule No. 129; Appeal No. 969 of 44 Q issued on October 27, 1974, published in Volume 1 of Technical Office Book No. 25, page 700, Rule No. 151; Appeal No. 254 of 44 Q issued on March 17, 1974, published in Volume 1 of Technical Office Book No. 25, page 280, Rule No. 62; Appeal No. 1094 of 42 Q issued on December 31, 1972, published in Volume 3 of Technical Office Book No. 23, page 1476, Rule No. 331; Appeal No. 1410 of 41 Q issued on January 10, 1972, published in Volume 1 of Technical Office Book No. 23, page 45, Rule No. 13; Appeal No. 1390 of 36 Q issued on December 20, 1966, published in Volume 3 of Technical Office Book No. 17, page 1285, Rule No. 247; Appeal No. 1760 of 35 Q issued on December 6, 1965, published in Volume 3 of Technical Office Book No. 16, page 916, Rule No. 176; Appeal No. 1295 of 34 Q issued on March 9, 1965, published in Volume 1 of Technical Office Book No. 16, page 227, Rule No. 49.

([3834]) Article 40 of the Law of Cases and Procedures of Appeal before the Court of Cassation, Appeal No. 2388 of 50 S issued at the session of November 17, 1981 and published in the first part of the Technical Office's letter No. 32 page No. 912 rule No. 157.

([3835]) Appeal No. 23666 of 87 S issued at the hearing of February 11, 2020 (unpublished), Appeal No. 11606 of 86 S issued at the hearing of May 8, 2018 (unpublished), Appeal No. 29953 of 86 S issued at the hearing of April 27, 2017 (unpublished), Appeal No. 20454 of 84 S issued at the hearing of December 3, 2016 (unpublished), Appeal No. 18521 of 84 S issued at the hearing of February 14, 2016 (unpublished), Appeal No. 4898 of 82 s issued at the 1 December 2013 session and published in Technical Office Letter No. 64 page 967 rule No. 148, Appeal No. 31979 of 2 s issued at the 8 July 2013 session and published in Technical Office Letter No. 64 page 708 rule No. 103, Appeal No. 42103 of 75 s issued at the 4 April 2006 session and published in Technical Office Letter No. 57 page 470 rule No. 55, Appeal No. 56397 of 75 s issued at the 7 December 2005 session and published in Technical Office Letter No. 56 page 761 Rule No. 106, Appeal No. 12507 of 61 s issued at the hearing of February 15, 2000 (unpublished), Appeal No. 19862 of 64 s issued at the hearing of May 2, 1995 and published in the first part of Technical Office Letter No. 46, page 801 Rule No. 121, Appeal No. 13702 of 60 s issued at the hearing of January 6, 1992 and published in the first part of Technical Office Letter No. 43, page 74 Rule No. 1, Appeal No. 6840 of 60 S issued at the session of October 3, 1991 and published in the first part of the Technical Office letter No. 42 page 958 rule No. 133, Appeal No. 2825 of 57 S issued at the session of October 13, 1987 and published in the second part of the Technical Office letter No. 38 page 787 rule No. 144, Appeal No. 4423 of 51 S issued at the session of February 8, 1982 and published in the first part of the Technical Office letter No. 33 page 165 rule No. 33, Appeal No. 2224 of 51 S issued at the session of December 22, 1982 1981, published in the first part of Technical Office Letter No. 32, page No. 1179, rule No. 210, Appeal No. 3605 of 50 S issued at the session of June 14, 1981, published in the first part of Technical Office Letter No. 32, page No. 667, rule No. 118, Appeal No. 1299 of 47 S issued at the session of February 26, 1978, published in the first part of Technical Office Letter No. 29, page No. 182, rule No. 31, Appeal No. 104 of 37 S issued at the session of March 13, 1967, published in the first part of Technical Office Letter No. 18, page No. 400, rule No. 74.

([3836]) Appeal No. 20893 of 86 S issued at the 7th session of April 2019 (unpublished).

([3837]) Appeal No. 13303 of 82 S issued at the session of February 11, 2014 and published in the letter of the Technical Office No. 65 page No. 125 rule No. 8.

reached is correct and consistent with proper legal application, and accordingly the Court of Cassation decides to correct those reasons.[3838]

It is decided that the error of judgment on the date of the incident - assuming its occurrence - does not affect their safety as long as this date is not related to the rule of law in it, and as long as the appellant did not claim that the criminal case has lapsed by the lapse of the period.[3839]

According to the foregoing, the Law on Cases and Procedures of Appeal before the Court of Cassation has ruled in the first paragraph of Article 39 that if the appeal is acceptable and based on the first case set forth in Article 30 - violation of the law or error in its application or interpretation - the court corrects the error and rules according to the law, and in Article 40 it prohibits the revocation of the judgment if its reasons include an error in the law or an error in the mention of its texts, and it must be limited to correcting the error when the penalty is prescribed in the law for the crime, while in the second paragraph of Article 39 it ruled that if the appeal is based on the second case of Article 30 - the invalidity of the judgment or the procedures affected the judgment - by revoking the judgment and returning the case to the court that issued it, the effect of the foregoing is that whenever the judgment must be corrected, it is prohibited to revoke all or part of it, and whenever the revocation is necessary, the cassation must be determined.[3840]

The court shall revoke the judgment if the appeal is based on the nullity of the judgment or the nullity of the procedures that affected it, and shall consider its subject matter. The principles prescribed by law for the crime that occurred shall be followed, and the judgment issued in all cases shall be in presence.[3841]

This means that the legislator has implicitly canceled one of the methods of appeal, which is the appeal in cassation for the second time.[3842]

There is no legal objection to the Court of Cassation considering an appeal before it, ruling to overturn the contested judgment, setting a session to consider the matter, and then the Chamber that issued the judgment itself - with the same members or others - considers the matter and decides on it.[3843]

Because he was able to accept the judgment and not appeal it by way of cassation.[3844]

The Court of Cassation shall not deal with the merits of the case.

Or for the facts proven by the contested judgment, but they are recognized, and they are limited to the application of the law by correcting the legal characterization and mitigating or aggravating the punishment, as the case may be.

([3838]) Appeal No. 7109 of 67 s issued at the session of 9 May 2004 and published in the letter of the Technical Office No. 55 page No. 480 rule No. 65, Appeal No. 5631 of 52 s issued at the session of 24 January 1983 and published in the first part of the letter of the Technical Office No. 34 page No. 147 rule No. 25.

([3839]) Appeal No. 4898 for the year 82 S issued in the session of December 1, 2013 and published in the book of the Technical Office No. 64 page No. 967 rule No. 148.

([3840]) Appeal No. 786 of 57 S issued at the session of October 13, 1987 and published in the second part of the Technical Office book No. 38 page No. 784 rule No. 143, Appeal No. 925 of 44 S issued at the session of October 13, 1974 and published in the first part of the Technical Office book No. 25 page No. 670 rule No. 144, Appeal No. 240 of 44 S issued at the session of April 1, 1974 and published in the first part of the Technical Office book No. 25 page No. 361 rule No. 78, Appeal No. 33 of 44 S issued at the session of February 4, 1974 and published in the first part of the Technical Office book No. 25 page No. 94 rule No. 21.

([3841]) Article 39 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3842]) Appeal No. 16995 of 86 S issued at the 6th session of September 2017 and published in the letter of the Technical Office No. 65 page No. 11 rule No. 2, Appeal No. 28605 of 86 S issued at the 4th session of May 2017 (unpublished).

([3843]) Appeal No. 3131 of 82 S issued on October 3, 2015 and published in the Technical Office's letter No. 66, page No. 622, rule No. 92.

([3844]) Appeal No. 11567 of 85 S issued on 11 November 2017 (unpublished).

Provided that the cassation of the judgment based on the appeal of any of the litigants other than the Public Prosecution shall result in the inadmissibility of aggravation of the sentence imposed by the overturned judgment. If the cassation of the judgment occurs at the request of any of the litigants other than the Public Prosecution, its appeal shall not be prejudiced. The Court of Cassation shall not have the right to overturn the judgment if it is made in error if the appeal is filed by one of the litigants and this would harm the appellant.[3845]

This rule applies to those to whom the effect of the cassation has extended as an exception, even if his appeal was ruled inadmissible, as the legislator did not envisage this exception except to achieve justice that refuses to differentiate between the positions of similar litigants at the unity of the incident, so this rule must be adhered to for all defendants in the case who have ruled in their favor and the Public Prosecution had not decided to appeal the judgment before them.

([3845]) Article 43 of the Law on Cases and Procedures of Appeal before the Court of Cassation, Appeal No. 3559 of 87 S issued at the session of 3 September 2019 (unpublished), Appeal No. 4156 of 87 S issued at the session of 4 March 2019 (unpublished), Appeal No. 4156 of 87 S issued at the session of 4 March 2019 (unpublished), Appeal No. 5979 of 88 S issued at the session of 21 November 2018 (unpublished), Appeal No. 6737 of 86 S issued at the session of 8 April 2018 (unpublished), Appeal No. 10913 of 86 S issued at the 8th session of April 2018 (unpublished), Appeal No. 111 of 86 S issued at the 24th session of March 2018 (unpublished), Appeal No. 32783 of 85 S issued at the 25th session of November 2017 (unpublished), Appeal No. 4220 of 85 S issued at the 18th session of November 2017 (unpublished), Appeal No. 902 of 86 S issued at the 4th session of November 2017 (unpublished), Appeal No. 5292 of 87 S issued at the 1st session of November 2017 (unpublished), Appeal No. 25310 of 86 S issued at the hearing of July 31, 2017 (unpublished), Appeal No. 2353 of 87 S issued at the hearing of May 14, 2017 (unpublished), Appeal No. 1203 of 86 S issued at the hearing of March 14, 2017 (unpublished), Appeal No. 44542 of 85 S issued at the hearing of January 18, 2017 (unpublished), Appeal No. 29358 of 86 S issued at the hearing of January 14, 2017 (unpublished), Appeal No. 19721 of 86 S issued at the session of 28 December 2016 and published in the letter of the Technical Office No. 67, page No. 961, rule No. 120, Appeal No. 40756 of 85 S issued at the session of 24 November 2016 and published in the letter of the Technical Office No. 67, page No. 826, rule No. 102, Appeal No. 22461 of 85 S issued at the session of 22 November 2016 (unpublished), Appeal No. 2015 of 84 S issued at the session of 3 October 2016 (unpublished), Appeal No. 6001 of 84 S issued at the session of 17 May 2016 (unpublished) For the year 2016 (unpublished), Appeal No. 6604 of 84 S issued at the hearing of March 17, 2016 and published in Technical Office Letter No. 67 Page 380 Rule No. 43, Appeal No. 22195 of 84 S issued at the hearing of February 7, 2016 (unpublished), Appeal No. 8675 of 85 S issued at the hearing of February 4, 2016 (unpublished), Appeal No. 22909 of 85 S issued at the hearing of January 10, 2016 and published in Technical Office Letter No. 67 Page 78 Rule No. 9, Appeal No. 6016 of 85 S issued at the session of January 2, 2016 (unpublished), Appeal No. 24983 of 4 S issued at the session of December 5, 2015 (unpublished), Appeal No. 11258 of 84 S issued at the session of October 8, 2015 and published in the Technical Office letter No. 66, page No. 657, rule No. 97, Appeal No. 20242 of 84 S issued at the session of April 2, 2015 (unpublished), Appeal No. 7527 of 79 S issued at the session of March 7, 2015 and published in the Technical Office letter No. 66 Page No. 274 Rule No. 37, Appeal No. 30729 of 83 S issued at the hearing of 6 November 2014 and published in the Technical Office Letter No. 65 Page No. 800 Rule No. 101, Appeal No. 24118 of 83 S issued at the hearing of 7 June 2014 and published in the Technical Office Letter No. 65 Page No. 505 Rule No. 60, Appeal No. 26793 of 83 S issued at the hearing of 8 May 2014 and published in the Technical Office Letter No. 65 Page No. 354 Rule No. 39, Appeal No. 7129 of 81 s issued at the session of 23 April 2014 and published in Technical Office Letter No. 65, page No. 306, rule No. 34, Appeal No. 668 of 83 s issued at the session of 7 April 2014 and published in Technical Office Letter No. 65, page No. 252, rule No. 26, Appeal No. 20535 of 83 s issued at the session of 2 April 2014 and published in Technical Office Letter No. 65, page No. 207, rule No. 21, Appeal No. 7988 of 83 s issued at the session of 25 February 2014 (Unpublished), Appeal No. 10227 of 83 S issued at the 10th session of February 2014 (Unpublished), Appeal No. 6318 of 82 S issued at the 14th session of April 2013 (Unpublished), Appeal No. 11748 of 82 S issued at the 2nd session of April 2013 (Unpublished), Appeal No. 6079 of 82 S issued at the 24th session of February 2013 (Unpublished), Appeal No. 4061 of 82 S issued at the 1st session of January 2013 (Unpublished), Appeal No. 46766 of 75 S issued at the 11th session of November 2012 and published in Technical Office Letter No. 63, page 656, rule No. 118, Appeal No. 8050 of 81 S issued at the 1st session of July 2012 (unpublished), Appeal No. 8824 of 81 S issued at the 9th session of April 2012 (unpublished), Appeal No. 2840 of 80 S issued at the 3rd session of December 2011 and published in Technical Office Letter No. 62, page 414, rule No. 69, Appeal No. 13277 of 80 S issued at the 13th session of October 2011 (unpublished) Published), Appeal No. 4894 of 79 s issued at the hearing of 7 June 2011 (unpublished), Appeal No. 9203 of 80 s issued at the hearing of 5 May 2011 (unpublished), Appeal No. 36057 of 77 s issued at the hearing of 15 April 2010 (unpublished), Appeal No. 6202 of 79 s issued at the hearing of 21 February 2010 and published in the book of the Technical Office No. 61, page 158, rule No. 24, Appeal No. 11793 of 76 s issued at the hearing of 21 January 2010 (unpublished), Appeal No. 8273 of 78 s issued at the hearing of 28 September 2009 (unpublished), Appeal No. 10457 of 71 s issued at the hearing of 6 January 2009 (unpublished), Appeal No. 12235 of 76 s issued at the hearing of 3 January 2009 (unpublished), Appeal No. 15231 of 74 s issued at the hearing of 18 November 2008 (unpublished).

The Court of Cassation may rule acquittal in accordance with the law.[3846]

It may also grant clemency to the accused in accordance with Article 17 of the Penal Code.[3847]

1-The court overturns the judgment in favor of the accused

The principle is that it is not permissible to express other reasons before the court other than the reasons previously stated on the legally prescribed date; which is sixty days from the date of the judgment in presence or from the date of the expiry of the date of the objection or from the date of the judgment issued in opposition, or within ten days if the judgment was issued with acquittal and the appellant obtained a certificate of non-deposit of the judgment within thirty days from the date of its issuance.[3848]

However, the court may revoke the judgment in favor of the accused on its own initiative if it finds that it is based on a violation of the law or on an error in its application or interpretation, or if the court that issued it was not formed in accordance with the law and does not have jurisdiction to adjudicate the lawsuit, or if a more correct law was issued after the contested judgment that applies to the fact of the lawsuit.[3849]

2- Effect of Cassation of Judgment

It is decided that the details of the reasons for the appeal are required from the point of view of the appeal specifically and a definition of its face since the openness of the dispute so that the person familiar with it can realize at first glance the place of violation of the law or the place of invalidity in which it occurred, and the principle is to abide by the reasons for the appeal, so that the judgment is not overturned except what was related to the aspects on which the cassation is

---

([3846]) Appeal No. 31919 of 73 S issued at the session of March 28, 2010 (unpublished), Appeal No. 577 of 33 S issued at the session of June 24, 1963 and published in the second part of the Technical Office's letter No. 14 page No. 559 rule No. 107.

([3847]) Appeal No. 672 of 31 S issued at the session of November 7, 1961 and published in the third part of the book of the Technical Office No. 12 page No. 895 rule No. 179.

([3848]) Articles 34 and 35 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3849]) Article 35 of the Appeal Cases and Procedures Law before the Court of Cassation, Appeal No. 6452 of 87 S issued at the session of 21 July 2019 (unpublished), Appeal No. 9075 of 85 S issued at the session of 25 November 2017 (unpublished), Appeal No. 1759 of 78 S issued at the session of 14 December 2016 and published in the book of the Technical Office No. 67 page No. 909 rule No. 112, Appeal No. 22632 of 84 S issued at the session of 26 March 2016 (unpublished), Appeal No. 13596 of 84 s issued at the hearing of March 26, 2016 (unpublished), Appeal No. 9032 of 84 s issued at the hearing of March 26, 2016 (unpublished), Appeal No. 19509 of 84 s issued at the hearing of March 26, 2016 (unpublished), Appeal No. 3633 of 84 s issued at the hearing of March 12, 2016 (unpublished), Appeal No. 4314 of 84 s issued at the hearing of February 27, 2016 (unpublished), Appeal No. 10985 of 84 s issued at the hearing of February 27, 2016 (unpublished)), Appeal No. 8562 of 85 S issued at the hearing of June 26, 2015 (unpublished), Appeal No. 26635 of 84 S issued at the hearing of June 11, 2015 (unpublished), Appeal No. 17180 of 3 S issued at the hearing of April 28, 2013 and published in the letter of the Technical Office No. 64 Page 544 Rule No. 76, Appeal No. 12235 of 76 S issued at the hearing of January 3, 2009 (unpublished), Appeal No. 11997 of 67 S issued at the second session of November 2006, published in Technical Office Letter No. 57, page No. 848, rule No. 92, Appeal No. 24138 of 66 S issued at the 7 September 2006 session (unpublished), Appeal No. 22727 of 66 S issued at the 27 July 2006 session (unpublished), Appeal No. 15223 of 66 S issued at the 18 May 2006 session (unpublished), Appeal No. 2115 of 66 S issued at the 2 March 2006 session (unpublished), Appeal No. 2178 of 66 S issued at the 2 March 2006 session (unpublished), Appeal No. 2178 of 66 S issued at the 2 March 2006 session (unpublished), Appeal No. 16374 of 65 S issued at the hearing of 30 September 2004 (unpublished), Appeal No. 1219 of 62 S issued at the hearing of 12 June 2004 (unpublished), Appeal No. 12605 of 66 S issued at the hearing of 6 June 2004 (unpublished), Appeal No. 14296 of 65 S issued at the hearing of 17 May 2004 (unpublished), Appeal No. 5411 of 66 S issued at the hearing of 12 February 2004 (unpublished), Appeal No. 11168 of 65 S issued at the session of January 1, 2004 (unpublished), Appeal No. 62550 of 59 S issued at the session of February 27, 1997 and published in the first part of the Technical Office letter No. 48, page No. 250, rule No. 35, Appeal No. 2892 of 61 S issued at the session of January 16, 1994 and published in the first part of the Technical Office letter No. 45, page No. 107, rule No. 15, Appeal No. 21762 of 60 S issued at the session of July 22, 1992 and published in the first part of the Technical Office letter No. 43, page No. 676, rule No. 101, Appeal No. 14620 of 59 S issued at the session of January 17, 1990 and published in the first part of the technical office book No. 41 page No. 154 rule No. 21, Appeal No. 6992 of 54 S issued at the session of January 9, 1986 and published in the first part of the technical office book No. 37 page No. 41 rule No. 10, Appeal No. 1364 of 53 S issued at the session of October 13, 1983 and published in the first part of the technical office book No. 34 page No. 829 rule No. 164.

based, and the Court of Cassation may not deviate from these reasons and address the errors of the judgment in the law except in the interest of the accused.[3850]

The judgment shall not be overturned except for those who filed the appeal.[3851]

However, if the division is not possible and if the appeal is not submitted by the Public Prosecution and the aspects on which the cassation is based are related to non-appellants of the defendants with him. In this case, the verdict shall be overturned for them as well, even if they did not submit an appeal or their appeal was inadmissible in form or the appeal was overturned. This is a departure from the general principle, which is the relativity of the effect of the appeal. The legislator, in the interest of the proper functioning of justice, considered that the effect of the overturned judgment should extend to non-accused appellants who were parties to the contested judgment if the aspects of the appeal contacted them and the judgment was not overturned for a reason specific to the person who filed the appeal.[3852]

([3850]) Article 42 of the Appeal Cases and Procedures Law before the Court of Cassation, Appeal No. 20535 of 83 S issued at the session of April 2, 2014 and published in the Technical Office's letter No. 65, page No. 207, rule No. 21.

([3851]) Article 42 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3852]) Article No. 42 of the Law on Cases and Procedures of Appeals before the Court of Cassation, Appeal No. 33713 of 86 Q issued on January 19, 2019 (unpublished), Appeal No. 5995 of 85 Q issued on February 12, 2017 (unpublished), Appeal No. 5976 of 82 Q issued on February 6, 2013, published in Technical Office Book No. 64, page 211, Rule No. 22; Appeal No. 1933 of 82 Q issued on January 6, 2013 (unpublished), Appeal No. 4505 of 80 Q issued on February 16, 2012, published in Technical Office Book No. 63, page 212, Rule No. 29; Appeal No. 6868 of 79 Q issued on April 21, 2011 (unpublished), Appeal No. 8288 of 78 Q issued on December 26, 2010 (unpublished), Appeal No. 31919 of 73 Q issued on March 28, 2010 (unpublished), Appeal No. 39909 of 73 Q issued on January 21, 2010 (unpublished), Appeal No. 197 of 72 Q issued on October 3, 2009 (unpublished), Appeal No. 61247 of 76 Q issued on September 27, 2009, published in Technical Office Book No. 60, page 324, Rule No. 43; Appeal No. 45129 of 73 Q issued on July 29, 2009 (unpublished), Appeal No. 6487 of 78 Q issued on May 25, 2009 (unpublished), Appeal No. 9187 of 78 Q issued on May 21, 2009 (unpublished), Appeal No. 7239 of 72 Q issued on April 7, 2009, published in Technical Office Book No. 60, page 185, Rule No. 24; Appeal No. 10563 of 77 Q issued on March 4, 2008 (unpublished), Appeal No. 63528 of 75 Q issued on January 5, 2008 (unpublished), Appeal No. 22474 of 67 Q issued on March 4, 2007, published in Technical Office Book No. 58, page 209, Rule No. 42; Appeal No. 10389 of 67 Q issued on October 19, 2006 (unpublished), Appeal No. 59429 of 75 Q issued on June 12, 2006 (unpublished), Appeal No. 17631 of 75 Q issued on March 26, 2006 (unpublished), Appeal No. 36102 of 75 Q issued on March 12, 2006 (unpublished), Appeal No. 51732 of 73 Q issued on March 6, 2006, published in Technical Office Book No. 57, page 384, Rule No. 42; Appeal No. 1114 of 67 Q issued on February 16, 2006 (unpublished), Appeal No. 19970 of 66 Q issued on February 2, 2006 (unpublished), Appeal No. 26783 of 67 Q issued on January 19, 2006 (unpublished), Appeal No. 17633 of 75 Q issued on July 21, 2005, published in Technical Office Book No. 56, page 412, Rule No. 62; Appeal No. 8467 of 75 Q issued on June 8, 2005 (unpublished), Appeal No. 938 of 68 Q issued on May 26, 2005 (unpublished), Appeal No. 14376 of 65 Q issued on May 5, 2005 (unpublished), Appeal No. 14770 of 72 Q issued on April 7, 2005 (unpublished), Appeal No. 3212 of 66 Q issued on March 3, 2005 (unpublished), Appeal No. 19295 of 65 Q issued on January 3, 2005 (unpublished), Appeal No. 19342 of 65 Q issued on January 3, 2005 (unpublished), Appeal No. 10188 of 65 Q issued on November 17, 2004 (unpublished), Appeal No. 19336 of 66 Q issued on October 4, 2004 (unpublished), Appeal No. 16425 of 65 Q issued on September 27, 2004 (unpublished), Appeal No. 5832 of 66 Q issued on June 3, 2004 (unpublished), Appeal No. 14676 of 65 Q issued on May 19, 2004 (unpublished), Appeal No. 10612 of 70 Q issued on March 4, 2004 (unpublished), Appeal No. 12663 of 65 Q issued on March 4, 2004 (unpublished), Appeal No. 15799 of 65 Q issued on March 4, 2004 (unpublished), Appeal No. 2040 of 68 Q issued on February 23, 2004 (unpublished), Appeal No. 812 of 68 Q issued on January 12, 2004 (unpublished), Appeal No. 8660 of 65 Q issued on December 7, 2003 (unpublished), Appeal No. 22810 of 65 Q issued on November 20, 2003 (unpublished), Appeal No. 20114 of 66 Q issued on November 6, 2003 (unpublished), Appeal No. 8086 of 65 Q issued on October 16, 2003 (unpublished), Appeal No. 8115 of 65 Q issued on October 16, 2003 (unpublished), Appeal No. 19262 of 65 Q issued on October 16, 2003 (unpublished), Appeal No. 7659 of 65 Q issued on October 15, 2003, published in Technical Office Book No. 54, page 975, Rule No. 130; Appeal No. 20740 of 66 Q issued on September 29, 2003 (unpublished), Appeal No. 8107 of 65 Q issued on June 11, 2003, published in Technical Office Book No. 54, page 744, Rule No. 98; Appeal No. 40767 of 72 Q issued on May 7, 2003, published in Technical Office Book No. 54, page 636, Rule No. 80; Appeal No. 10592 of 64 Q issued on April 20, 2003, published in Technical Office Book No. 54, page 577, Rule No. 72; Appeal No. 56 of 68 Q issued on March 10, 2003 (unpublished), Appeal No. 3484 of 64 Q issued on February 6, 2003 (unpublished), Appeal No. 21385 of 63 Q issued on December 19, 2002, published in Technical Office Book No. 53, page 1188, Rule No. 195; Appeal No. 16994 of 63 Q issued on November 21, 2002 (unpublished), Appeal No. 17738 of 63 Q issued on November 21, 2002 (unpublished), Appeal No. 20351 of 69 Q issued on November 21, 2002 (unpublished), Appeal No. 14846 of 63 Q issued on November 7, 2002 (unpublished), Appeal No. 14848 of 63 Q issued on November 7, 2002

(unpublished), Appeal No. 12774 of 63 Q issued on October 17, 2002 (unpublished), Appeal No. 12858 of 63 Q issued on October 17, 2002 (unpublished), Appeal No. 10864 of 63 Q issued on October 3, 2002 (unpublished), Appeal No. 9496 of 63 Q issued on September 26, 2002 (unpublished), Appeal No. 20594 of 69 Q issued on March 11, 2002 (unpublished), Appeal No. 15409 of 62 Q issued on February 7, 2002 (unpublished), Appeal No. 21926 of 70 Q issued on February 7, 2002 (unpublished), Appeal No. 21428 of 71 Q issued on January 14, 2002, published in Technical Office Book No. 53, page 86, Rule No. 15; Appeal No. 9374 of 62 Q issued on January 3, 2002 (unpublished), Appeal No. 10946 of 71 Q issued on December 20, 2001 (unpublished), Appeal No. 16393 of 62 Q issued on December 4, 2001, published in Technical Office Book No. 52, page 948, Rule No. 182; Appeal No. 16393 of 62 Q issued on December 4, 2001 (unpublished), Appeal No. 28947 of 68 Q issued on October 20, 2001, published in Technical Office Book No. 52, page 757, Rule No. 141; Appeal No. 16412 of 68 Q issued on May 14, 2001 (unpublished), Appeal No. 3721 of 70 Q issued on December 3, 2000, published in Technical Office Book No. 51, page 784, Rule No. 156; Appeal No. 10375 of 68 Q issued on November 12, 2000, published in Technical Office Book No. 51, page 717, Rule No. 143; Appeal No. 10809 of 64 Q issued on March 27, 2000, published in Technical Office Book No. 51, page 347, Rule No. 64; Appeal No. 14454 of 64 Q issued on February 21, 2000, published in Technical Office Book No. 51, page 213, Rule No. 39; Appeal No. 2127 of 61 Q issued on December 7, 1999, published in Volume 1 of Technical Office Book No. 50, page 627, Rule No. 141; Appeal No. 548 of 69 Q issued on October 26, 1999, published in Volume 2 of Technical Office Book No. 50, page 1045, Rule No. 205; Appeal No. 2614 of 66 Q issued on July 1, 1999, published in Volume 1 of Technical Office Book No. 50, page 395, Rule No. 93; Appeal No. 16515 of 63 Q issued on June 9, 1999, published in Volume 1 of Technical Office Book No. 50, page 387, Rule No. 91; Appeal No. 8286 of 60 Q issued on June 2, 1999, published in Volume 1 of Technical Office Book No. 50, page 352, Rule No. 83; Appeal No. 2741 of 61 Q issued on May 27, 1998, published in Volume 1 of Technical Office Book No. 49, page 746, Rule No. 98; Appeal No. 7704 of 66 Q issued on April 12, 1998, published in Volume 1 of Technical Office Book No. 49, page 532, Rule No. 69; Appeal No. 7476 of 63 Q issued on March 25, 1998, published in Volume 1 of Technical Office Book No. 49, page 487, Rule No. 63; Appeal No. 2957 of 66 Q issued on February 15, 1998, published in Volume 1 of Technical Office Book No. 49, page 243, Rule No. 36; Appeal No. 10201 of 65 Q issued on July 9, 1997, published in Volume 1 of Technical Office Book No. 48, page 766, Rule No. 117; Appeal No. 49865 of 59 Q issued on February 24, 1997, published in Volume 1 of Technical Office Book No. 48, page 228, Rule No. 31; Appeal No. 23179 of 63 Q issued on October 3, 1995, published in Volume 1 of Technical Office Book No. 46, page 1050, Rule No. 155; Appeal No. 15096 of 62 Q issued on March 7, 1995, published in Volume 1 of Technical Office Book No. 46, page 448, Rule No. 70; Appeal No. 5318 of 63 Q issued on March 7, 1995, published in Volume 1 of Technical Office Book No. 46, page 453, Rule No. 71; Appeal No. 3056 of 63 Q issued on February 12, 1995, published in Volume 1 of Technical Office Book No. 46, page 363, Rule No. 53; Appeal No. 18792 of 64 Q issued on December 4, 1994, published in Volume 1 of Technical Office Book No. 45, page 1072, Rule No. 168; Appeal No. 14844 of 62 Q issued on July 5, 1993, published in Volume 1 of Technical Office Book No. 44, page 658, Rule No. 102; Appeal No. 6788 of 59 Q issued on April 9, 1992, published in Volume 1 of Technical Office Book No. 43, page 371, Rule No. 54, Appeal No. 21699 of 59 Q issued on March 16, 1992, published in Volume 1 of Technical Office Book No. 43, page 304, Rule No. 40; Appeal No. 370 of 60 Q issued on April 11, 1991, published in Volume 1 of Technical Office Book No. 42, page 647, Rule No. 94; Appeal No. 2740 of 59 Q issued on February 24, 1991, published in Volume 1 of Technical Office Book No. 42, page 418, Rule No. 58; Appeal No. 1006 of 59 Q issued on January 29, 1991, published in Volume 1 of Technical Office Book No. 42, page 197, Rule No. 26; Appeal No. 12243 of 59 Q issued on January 22, 1991, published in Volume 1 of Technical Office Book No. 42, page 160, Rule No. 19; Appeal No. 26014 of 59 Q issued on May 3, 1990, published in Volume 1 of Technical Office Book No. 41, page 689, Rule No. 119; Appeal No. 14621 of 59 Q issued on January 17, 1990, published in Volume 1 of Technical Office Book No. 41, page 159, Rule No. 22; Appeal No. 5736 of 58 Q issued on January 5, 1989, published in Volume 1 of Technical Office Book No. 40, page 5, Rule No. 1; Appeal No. 2713 of 58 Q issued on November 10, 1988, published in Volume 1 of Technical Office Book No. 39, page 1036, Rule No. 156; Appeal No. 3906 of 58 Q issued on November 3, 1988, published in Volume 1 of Technical Office Book No. 39, page 1016, Rule No. 154; Appeal No. 2434 of 58 Q issued on June 8, 1988, published in Volume 1 of Technical Office Book No. 39, page 772, Rule No. 116; Appeal No. 6919 of 57 Q issued on March 27, 1988, published in Volume 1 of Technical Office Book No. 39, page 502, Rule No. 73; Appeal No. 3112 of 55 Q issued on January 31, 1988, published in Volume 1 of Technical Office Book No. 39, page 232, Rule No. 29; Appeal No. 635 of 57 Q issued on May 20, 1987, published in Volume 1 of Technical Office Book No. 38, page 704, Rule No. 124; Appeal No. 6649 of 56 Q issued on May 5, 1987, published in Volume 1 of Technical Office Book No. 38, page 659, Rule No. 113; Appeal No. 4071 of 56 Q issued on November 20, 1986, published in Volume 1 of Technical Office Book No. 37, page 943, Rule No. 179; Appeal No. 3287 of 56 Q issued on October 13, 1986, published in Volume 1 of Technical Office Book No. 37, page 747, Rule No. 142; Appeal No. 4421 of 55 Q issued on January 20, 1986, published in Volume 1 of Technical Office Book No. 37, page 105, Rule No. 24; Appeal No. 5790 of 54 Q issued on May 2, 1985, published in Volume 1 of Technical Office Book No. 36, page 597, Rule No. 105; Appeal No. 256 of 55 Q issued on February 25, 1985, published in Volume 1 of Technical Office Book No. 36, page 300, Rule No. 51; Appeal No. 400 of 54 Q issued on December 20, 1984, published in Volume 1 of Technical Office Book No. 35, page 928, Rule No. 206; Appeal No. 3887 of 54 Q issued on December 18, 1984, published in Volume 1 of Technical Office Book No. 35, page 913, Rule No. 202; Appeal No. 2505 of 54 Q issued on December 4, 1984, published in Volume 1 of Technical Office Book No. 35, page 863, Rule No. 192; Appeal No. 5883 of 53 Q issued on November 22, 1984, published in Volume 1 of Technical Office Book No. 35, page 807, Rule No. 182; Appeal No. 6578 of 53 Q issued on March 13, 1984, published in Volume 1 of Technical Office Book No. 35, page 267, Rule No. 55; Appeal No. 2691 of 53 Q issued on December 29, 1983, published in Volume 1 of Technical Office Book No. 34,

According to the foregoing, if the appeal is not submitted by the Public Prosecution, the judgment shall not be overturned except for the person who submitted the appeal, unless the aspects on which the cassation is based are related to other defendants with him, and if the Public Prosecution challenges the judgment by way of cassation, the dispute shall be transferred in relation to the criminal lawsuit in the interest of both parties from the accused and the Public Prosecution, so the Court of Cassation shall contact it - once it has fulfilled its legal conditions - in a way that entitles it to consider it in the interest of the aforementioned parties, and then the Court of Cassation shall have the right - upon the appeal of the Public Prosecution - to overturn the judgment in the interest of the appellant - the Public Prosecution - or in the interest of the accused in cases in which the law authorizes it to overturn it on its own initiative.[3853]

---

page 1121, Rule No. 222; Appeal No. 951 of 53 Q issued on June 2, 1983, published in Volume 1 of Technical Office Book No. 34, page 730, Rule No. 146; Appeal No. 5802 of 52 Q issued on March 16, 1983, published in Volume 1 of Technical Office Book No. 34, page 371, Rule No. 75; Appeal No. 5314 of 52 Q issued on January 18, 1983, published in Volume 1 of Technical Office Book No. 34, page 107, Rule No. 18; Appeal No. 6323 of 52 Q issued on January 4, 1983, published in Volume 1 of Technical Office Book No. 34, page 55, Rule No. 6; Appeal No. 1817 of 51 Q issued on December 1, 1981, published in Volume 1 of Technical Office Book No. 32, page 1009, Rule No. 176; Appeal No. 2416 of 49 Q issued on June 8, 1980, published in Volume 1 of Technical Office Book No. 31, page 717, Rule No. 139; Appeal No. 765 of 49 Q issued on October 22, 1979, published in Volume 1 of Technical Office Book No. 30, page 781, Rule No. 165; Appeal No. 1353 of 47 Q issued on March 12, 1978, published in Volume 1 of Technical Office Book No. 29, page 255, Rule No. 47; Appeal No. 973 of 47 Q issued on January 30, 1978, published in Volume 1 of Technical Office Book No. 29, page 120, Rule No. 21; Appeal No. 950 of 46 Q issued on January 10, 1977, published in Volume 1 of Technical Office Book No. 28, page 57, Rule No. 12; Appeal No. 829 of 46 Q issued on January 3, 1977, published in Volume 1 of Technical Office Book No. 28, page 25, Rule No. 4; Appeal No. 863 of 46 Q issued on December 20, 1976, published in Volume 1 of Technical Office Book No. 27, page 975, Rule No. 219; Appeal No. 1977 of 45 Q issued on March 28, 1976, published in Volume 1 of Technical Office Book No. 27, page 362, Rule No. 77; Appeal No. 1193 of 45 Q issued on November 23, 1975, published in Volume 1 of Technical Office Book No. 26, page 726, Rule No. 160; Appeal No. 900 of 44 Q issued on January 5, 1975, published in Volume 1 of Technical Office Book No. 26, page 1, Rule No. 1; Appeal No. 843 of 44 Q issued on December 15, 1974, published in Volume 1 of Technical Office Book No. 25, page 852, Rule No. 184; Appeal No. 324 of 44 Q issued on April 14, 1974, published in Volume 1 of Technical Office Book No. 25, page 408, Rule No. 87; Appeal No. 600 of 43 Q issued on October 14, 1973, published in Volume 3 of Technical Office Book No. 24, page 829, Rule No. 172; Appeal No. 245 of 42 Q issued on April 24, 1972, published in Volume 2 of Technical Office Book No. 23, page 606, Rule No. 136; Appeal No. 125 of 40 Q issued on March 2, 1970, published in Volume 1 of Technical Office Book No. 21, page 344, Rule No. 86; Appeal No. 1398 of 39 Q issued on October 20, 1969, published in Volume 3 of Technical Office Book No. 20, page 1133, Rule No. 223; Appeal No. 807 of 39 Q issued on October 13, 1969, published in Volume 3 of Technical Office Book No. 20, page 1038, Rule No. 203; Appeal No. 1860 of 38 Q issued on January 27, 1969, published in Volume 1 of Technical Office Book No. 20, page 183, Rule No. 40; Appeal No. 1619 of 38 Q issued on November 25, 1968, published in Volume 3 of Technical Office Book No. 19, page 1022, Rule No. 207; Appeal No. 1868 of 38 Q issued on November 25, 1968, published in Volume 3 of Technical Office Book No. 19, page 1031, Rule No. 209; Appeal No. 1752 of 38 Q issued on October 28, 1968, published in Volume 3 of Technical Office Book No. 19, page 891, Rule No. 176; Appeal No. 873 of 37 Q issued on June 12, 1967, published in Volume 2 of Technical Office Book No. 18, page 797, Rule No. 161; Appeal No. 690 of 37 Q issued on May 22, 1967, published in Volume 2 of Technical Office Book No. 18, page 690, Rule No. 134; Appeal No. 240 of 37 Q issued on April 25, 1967, published in Volume 2 of Technical Office Book No. 18, page 597, Rule No. 115; Appeal No. 4 of 37 Q issued on April 18, 1967, published in Volume 2 of Technical Office Book No. 18, page 544, Rule No. 106; Appeal No. 102 of 37 Q issued on March 13, 1967, published in Volume 1 of Technical Office Book No. 18, page 392, Rule No. 73; Appeal No. 1344 of 36 Q issued on December 12, 1966, published in Volume 3 of Technical Office Book No. 17, page 1232, Rule No. 235; Appeal No. 1785 of 36 Q issued on November 21, 1966, published in Volume 3 of Technical Office Book No. 17, page 1125, Rule No. 211; Appeal No. 1227 of 36 Q issued on November 7, 1966, published in Volume 3 of Technical Office Book No. 17, page 1081, Rule No. 202; Appeal No. 433 of 36 Q issued on May 23, 1966, published in Volume 2 of Technical Office Book No. 17, page 667, Rule No. 121; Appeal No. 1786 of 35 Q issued on February 22, 1966, published in Volume 1 of Technical Office Book No. 17, page 189, Rule No. 34; Appeal No. 2009 of 34 Q issued on May 4, 1965, published in Volume 2 of Technical Office Book No. 16, page 430, Rule No. 87; Appeal No. 1427 of 34 Q issued on November 2, 1964, published in Volume 3 of Technical Office Book No. 15, page 634, Rule No. 126; Appeal No. 2013 of 33 Q issued on February 10, 1964, published in Volume 1 of Technical Office Book No. 15, page 136, Rule No. 28; Appeal No. 638 of 31 Q issued on October 30, 1961, published in Volume 3 of Technical Office Book No. 12, page 852, Rule No. 169..

([3853]) Appeal No. 10625 of 64 S issued at the session of February 9, 2000 and published in the letter of the Technical Office No. 51, page No. 153, rule No. 27.

The cassation of the judgment for the accused requires its cassation for the person responsible for civil rights - even if the judgment is not appealed or his appeal is inadmissible in form - to establish his responsibility for compensation on the basis of the proof of the same incident in which he was convicted.[3854]

Unless the person responsible for civil rights did not appeal the primary judgment and was not a party to the litigation in which the contested judgment was issued, the effect of the cassation of the judgment does not extend to him in this case.[3855]

The cassation of the judgment for the person responsible for civil rights extends its effect to the accused and requires its cassation for him, and if he does not decide to appeal because the face of the appeal is connected to him, which requires - taking into account the proper course of justice - the retrial of the accused for the incident in its criminal part until the trial court reviews the case in full, but this effect does not result in the cassation appeal filed by the plaintiff of the civil right, so the authority of the criminal judgment remains untouched if the prosecution accepts it and does not challenge it within the specified time.[3856]

It is also established that the civil lawsuit filed before the criminal courts is a lawsuit for the criminal lawsuit. If the contested judgment is overturned, the judgment must be overturned for the civil lawsuit as well.[3857]

Also, in cases where the Court of Cassation corrects the contested judgment, if the error in which the judgment was deteriorated relates to the rest of the convicts who did not accept their appeal, the correction of the contested judgment must be extended to them. The reason for the extension of this effect in the cases of cassation or correction of the judgment is the same, as the justice refuses to extend the effect of the cassation of the judgment and does not extend to it in the case of correction, which is taken away from the intention of the street.[3858]

([3854]) Appeal No. 19840 of 67 S issued at the session of January 23, 2006 (unpublished), Appeal No. 3238 of 74 S issued at the session of November 17, 2005, Appeal No. 19534 of 66 S issued at the session of October 5, 2004 (unpublished), Appeal No. 15321 of 61 S issued at the session of December 20, 1999 (unpublished), Appeal No. 5001 of 62 S issued at the session of December 13, 1994 and published in the first part of the Office's letter Technical No. 45 Page No. 1147 Rule No. 181, Appeal No. 3935 of 56 S issued at the session of November 20, 1986 and published in the first part of the Technical Office's letter No. 37 Page No. 938 Rule No. 178, Appeal No. 556 of 46 S issued at the session of October 31, 1976 and published in the first part of the Technical Office's letter No. 27 Page No. 800 Rule No. 183, Appeal No. 1704 of 33 S issued at the session of December 28, 1964 and published in the third part of the Technical Office's letter No. 15 Page No. 877 Rule No. 172, Appeal No. 305 of 34 S issued in the session of October 12, 1964 and published in the third part of the Technical Office's letter No. 15, page No. 568, rule No. 111.

([3855]) Appeal No. 10678 of 67 S issued at the 26th session of March 2000 and published in the letter of the Technical Office No. 51, page No. 343, rule No. 63.

([3856]) Appeal No. 2886 of 68 s issued at the session of July 13, 1999 and published in the second part of the Technical Office book No. 50 page No. 997 rule No. 196, Appeal No. 609 of 50 s issued at the session of February 8, 1983 and published in the first part of the Technical Office book No. 34 page No. 209 rule No. 39, Appeal No. 2101 of 51 s issued at the session of December 15, 1981 and published in the first part of the Technical Office book No. 32 page No. 1095 rule No. 195, Appeal No. 712 of 40 s issued at the session of June 8, 1970 and published in the second part of the Technical Office book No. 21 page No. 855 rule No. 201, Appeal No. 1383 of 38 s issued at the session of February 11, 1969 and published in the first part of the Technical Office book No. 20 page No. 248 rule No. 54.

([3857]) Appeal No. 16077 of 59 S issued at the session of January 17, 1991 and published in the first part of the book of the Technical Office No. 42 page No. 98 rule No. 13.

([3858]) Appeal No. 34835 of 85 S issued at the 6th session of February 2016 (unpublished), Appeal No. 1310 of 82 S issued at the 6th session of February 2014 and published in the Technical Office's letter No. 65, page No. 111, rule No. 7, Appeal No. 18696 of 66 S issued at the 15th session of September 2004 (unpublished), Appeal No. 2015 of 68 S issued at the 23rd session of February 2004 (unpublished), Appeal No. 4184 of 73 s issued at the session of September 29, 2003 and published in the Technical Office letter No. 54 page 884 rule No. 120, Appeal No. 1027 of 64 s issued at the session of March 2, 2003 and published in the Technical Office letter No. 54 page 325 rule No. 34, Appeal No. 3517 of 62 s issued at the session of October 24, 2001 and published in the Technical Office letter No. 52 page 782 rule No. 147, Appeal No. 17106 of 64 s issued at the session of September 25, 1996 and published in the first part of the Technical Office letter No. 47 page 878 rule No. 127, Appeal No. 13071 of 64 s issued at the session of June 12, 1996 and published in the first part of the Technical Office letter

However, this is conditional on the Court of Cassation appointing in its judgment whoever encroaches on the effect of the cassation, because it alone has the discretion of whoever extends the effect of the cassation, because it alone has the assessment of the extent of the contested judgment.[3859]

However, the effect of the cassation of the judgment does not extend to the person against whom a judgment was issued in absentia because it is not a final judgment for him.[3860]

The effect of the cassation of the judgment does not extend to the person against whom the contested judgment was issued in legal presence.[3861]

The effect of the cassation of the judgment extends only to the defendants who had appealed the primary judgment issued against them. Their appeal was after the legal deadline and the court ruled that it was not accepted in form or ruled that it was forfeited and this was confirmed in the appeal objection. The Court of Appeal does not relate to the subject matter of the case unless the appeal is accepted in form)[3862](.

No. 47 page No. 756 rule No. 110, Appeal No. 12099 of 59 s issued at the session of January 9, 1992 and published in the first part of the Technical Office letter No. 43 page No. 110 rule No. 6.

([3859]) [If the face of the appeal on which the revocation of the contested judgment was based for the second appellant is not related to the first appellant, as the exemption from punishment is not a permissibility of the act or erasure of criminal responsibility, but is decided in the interest of the offender in whose act and in his person the elements of criminal responsibility and the entitlement to punishment have been achieved, and all that the excuse exempted from punishment has is the reduction of the punishment of the offender after the stability of his conviction without prejudice to the establishment of the crime in itself or the fact that the offender exempted from punishment is considered responsible for it and deserving of punishment in the first place], the impact of this does not extend to the first appellant], Appeal No. 21620 of 73 BC issued at the session of March 28, 2010 and published in the book of the Technical Office No. 61, page No. 303, rule No. 38

See: Appeal No. 16404 of 64 s issued at the session of 11 December 1996 and published in the first part of the technical office book No. 47 page No. 1308 rule No. 189, Appeal No. 160 of 41 s issued at the session of 16 April 1972 and published in the second part of the technical office book No. 23 page No. 568 rule No. 124.

([3860]) Appeal No. 14764 of 83 S issued at the session of June 5, 2014 and published in the letter of the Technical Office No. 65 page 483 rule No. 57, Appeal No. 9507 of 78 S issued at the session of December 21, 2009 (unpublished), Appeal No. 9187 of 78 S issued at the session of May 21, 2009 (unpublished), Appeal No. 91 of 67 S issued at the session of February 17, 2007 (unpublished), Appeal No. 10612 of 70 S issued at the session of March 4, 2007 (unpublished) 2004 (unpublished), Appeal No. 40767 of 72 S issued at the hearing of 7 May 2003 and published in Technical Office Letter No. 54 Page 636 Rule No. 80, Appeal No. 28947 of 68 S issued at the hearing of 20 October 2001 and published in Technical Office Letter No. 52 Page 757 Rule No. 141, Appeal No. 10375 of 68 S issued at the hearing of 12 November 2000 and published in Technical Office Letter No. 51 Page 717 Rule No. 143, Appeal No. 7704 of 66 S issued at the hearing of 12 April 2000 For the year 1998 and published in the first part of the Technical Office letter No. 49, page No. 532, rule No. 69, Appeal No. 2957 of 66 S issued at the hearing of February 15, 1998 and published in the first part of the Technical Office letter No. 49, page No. 243, rule No. 36, Appeal No. 4035 of 60 S issued at the hearing of January 11, 1997 and published in the first part of the Technical Office letter No. 48, page No. 65, rule No. 9, Appeal No. 43911 of 59 S issued at the 31st session of October 1996 and published in Part I of Technical Office Letter No. 47 Page 1106 Rule No. 159, Appeal No. 5318 of 63 S issued at the 7th session of March 1995 and published in Part I of Technical Office Letter No. 46 Page 453 Rule No. 71, Appeal No. 6919 of 57 S issued at the 27th session of March 1988 and published in Part I of Technical Office Letter No. 39 Page 502 Rule No. 73, Appeal No. 726 of 56 S issued at the 8th session of October 1986 and published In the first part of Technical Office Letter No. 37 Page No. 714 Rule No. 136, Appeal No. 6335 of 55 S issued at the session of June 13, 1985 and published in the first part of Technical Office Letter No. 36 Page No. 782 Rule No. 138, Appeal No. 1657 of 50 S issued at the session of January 14, 1981 and published in the first part of Technical Office Letter No. 32 Page No. 64 Rule No. 8, Appeal No. 843 of 44 S issued at the session of December 15, 1974 and published in the first part of Technical Office Letter No. 25 Page No. 852 Rule No. 184.

([3861]) Appeal No. 1353 for the year 47 issued at the session of March 12, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 255 rule No. 47.

([3862]) Appeal No. 912 of 69 S issued at the session of 22 May 2006 (unpublished), Appeal No. 48513 of 59 S issued at the session of 21 April 2002 and published in the letter of the Technical Office No. 53 page No. 677 Rule No. 112, Appeal No. 7330 of 62 S issued at the session of 6 February 2002 and published in the letter of the Technical Office No. 53 page No. 235 Rule No. 43, Appeal No. 17906 of 61 S issued at the session of 16 From April 1998 and published in the first part of the Technical Office letter No. 49 page No. 585 rule No. 74, Appeal No. 18792 of 64 s issued in the session of December 4, 1994 and published in the first part of the Technical Office letter No. 45 page No. 1072 rule No. 168, Appeal No. 1337 of 58 s issued in the session of March 9, 1989 and published in the first part of the Technical Office letter No. 40 page No. 376 rule

3- Return the case to the court that issued the judgment

If the contested judgment was issued by accepting a legal defense that prevents the proceeding of the lawsuit, or if it was issued before the adjudication of the matter and was based on the prohibition of proceeding in the lawsuit and was overturned by the Court of Cassation, the case is returned to the court that issued it for re-sentencing, formed by other judges.[3863]

Taking into account that in the event that the trial court has erred in its decision of lack of jurisdiction, and this error has prevented it from considering the merits of the case, it is not required that the Court of Repeat be composed of other judges, so it may be considered by the same judges who considered it for the first time unlike other cases of cassation if there is an invalidity in the judgment.[3864]

The Court of Repeat may not rule contrary to what was ruled by the Court of Cassation.[3865]

It is also not permissible for it, in all cases, to rule contrary to what was decided by the General Authority for Criminal Materials at the Court of Cassation.[3866]

The cassation court's correction of the contested judgment assumes that the judgment has adjudicated the subject matter, that is, that the trial court has exhausted its jurisdiction. If it has not been subjected to the examination of the subject matter, the case must be referred to the trial court when the appeal is accepted.

In all cases, the Court of Cassation shall not have the right to refer the case to the trial court if there is no benefit from the referral, as if the criminal case lapsed by prescription after the issuance of the contested judgment or an amnesty was issued for the punishment or the crime or a law that decriminalizes the act.

The original principle is that the cassation of the judgment and the retrial return the lawsuit to the Repeat Court in the state it was in before the issuance of the overturned judgment. That court (the Repeat Court) does not adhere to the provisions of the last judgment regarding the facts of the lawsuit, but rather it must proceed with the proceedings as if they were before it in the first place, and it must hear all the defenses submitted by the litigants, even if they have not previously adhered to them before the first court, unless they have previously adhered to subsidiary defenses and ruled to reject them with a final judgment that has not been challenged. Above all, it has full freedom to assess and adapt the facts and give the legal description that it deems unrestricted in all this by virtue of the cassation or what may be found in its regard. To that end, it may rule in the lawsuit in a way that reassures its conscience, even if it violates that judgment, and without considering this violation as a face of appeal, except if the subject of the violation is in itself fit to be a face of the appeal against the new judgment, and all that is adhered to in this regard is not to harm the appellant from his appeal, and to abide by the ruling

---

No. 61, Appeal No. 1411 of 38 s issued in the session of December 30, 1968 and published in the third part of the Technical Office letter No. 19 Page No. 1121 Rule No. 229.

([3863]) Article 44 of the Law of Cases and Procedures of Appeal before the Court of Cassation, and see: Appeal No. 30763 of 67 s issued at the session of October 20, 2005 (unpublished), Appeal No. 28764 of 67 s issued at the session of May 19, 2005 (unpublished), Appeal No. 28766 of 67 s issued at the session of May 19, 2005 (unpublished), Appeal No. 28767 of 67 s issued at the session of May 19, 2005 (unpublished), Appeal No. 41 of 60 s issued at the session of February 19, 1991 and published in the first part of the Technical Office's book No. 42 page No. 362 rule No. 49.

([3864]) Appeal No. 41 of 60 s issued at the session of February 19, 1991 and published in the first part of the technical office book No. 42 page No. 362 rule No. 49, Appeal No. 7042 of 55 s issued at the session of March 6, 1986 and published in the first part of the technical office book No. 37 page No. 349 rule No. 72.

([3865]) Article 44 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

([3866]) Article 44 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

of the Court of Cassation in relation to that lawsuit, or it is also bound not to rule contrary to what was decided by the General Authority for Criminal Materials at the Court of Cassation.[3867]

If the trial court has acquitted the accused because the act is not punishable by law or forfeiture by the lapse of time and based on the prosecution's appeal, the Court of Cassation considers that the act is punishable by law or that it was not forfeited by the lapse of time and canceled the acquittal and returned the case to the trial court for consideration, this court - the Court of Repeat - may not rule again that the act is not punishable by law because the judgment of the Court of Cassation in this form has the force of the thing ruled.[3868]

The legislator has defined in Article 44 the legal issues that the trial court adheres to what the Court of Cassation has decided in two cases: the first is if the contested judgment was issued to accept a legal defense that prevents the proceeding of the lawsuit and the Court of Cassation overturned it and returned it to the court that issued it to consider the matter, and the second case is: The trial court may not rule in all cases contrary to what the General Authority for Criminal Materials at the Court of Cassation decided,.[3869]

The legal issue in this field means the issue that has been submitted to the Court of Cassation and expressed its opinion intentionally and visually, so that its judgment has acquired the force of the thing in which it is judged so that it refrains from the Court of Repeat when considering the lawsuit to prejudice this authenticity, and the legislator, even if the Supreme Constitutional Court is entrusted with the interpretation of the laws, but this does not confiscate the right of other judicial authorities to interpret the laws and impose their interpretation on the incident presented to them as long as no binding interpretation has been issued by the legislative authority or by the Constitutional Court on the text in question. The Supreme Court, in accordance with the conditions prescribed in its law regarding requests for interpretation, if the Court of Cassation, which is a court that is not overruled by a court and the interpretation of the laws required by its function, has dealt with the interpretation of the law applied in the fact of the lawsuit, it has thus decided a legal issue that has acquired the force of the thing adjudicated in this lawsuit, which was necessary for the Court of Cassation not to re-address this issue in any way after the Court of Cassation ruled on it or discussed the effects of the Court of Cassation's judgment in it because of the prejudice to the authority of its judgment in the lawsuit, and it must be limited Researching issues that do not affect this opposability.[3870]

4-The inadmissibility of appealing the judgments of the Court of Cassation

It is not permissible to appeal against the judgments of the Court of Cassation or the judgments of the Criminal Courts of the Cairo Court of Appeal, sitting in a consultation room issued in contesting the judgments of the Appealed Misdemeanors Court by any means of appeal unless one of the cases of review stipulated in the Criminal Procedure Law is available, whenever the court has overturned the contested judgment and dealt with the consideration of the matter.[3871]

This means that the Court of Cassation and the judgments of the Cairo Criminal Courts, which are held in a consultation room, are final and their judgments are irrevocable, and that the legislator has dispensed with the provision that it is prohibited to challenge the judgments of the

---

([3867]) Appeal No. 2279 of 53 S issued in the session of December 1, 1983 and published in the first part of the book of the Technical Office No. 34 page No. 1030 rule No. 206.

([3868]) Appeal No. 499 of 37 S issued at the session of May 8, 1967 and published in the second part of the book of the Technical Office No. 18 page No. 605 rule No. 116.

([3869]) Appeal No. 16525 of 88 S issued on July 6, 2019 (unpublished).

([3870]) Appeal No. 27375 for the year 73 S issued in the session of July 6, 2003 and published in the book of the Technical Office No. 54 page No. 757 rule No. 101.

([3871]) Article 47 of the Law on Cases and Procedures of Appeal before the Court of Cassation.

Court of Cassation by other ordinary and extraordinary methods of appeal because it is not possible to conceive of the judgments of this court.[3872]

However, the Court of Cassation may revoke a judgment it issued in the event that the judgment in its ruling was based on the non-fulfillment of the legally prescribed appeal procedures and then prove - afterwards - that all those procedures had been fulfilled, but they were not presented in full to the court when it considered the appeal, for reasons not related to the will of the appellant.[3873]

25-1-4 Reconsideration

The request for reconsideration is an unusual way to appeal against final judgments to correct serious errors of fact. The problem of reconsideration lies in reconciling the due respect for final judgments that have the force of res judicata with the general sense of justice that requires the reform of judicial errors in which courts occur.

The appeal for reconsideration is based only on reasons related to the facts and aims to annul the unequivocal judgments that are contrary to justice, and this is based on new elements of proof, not on a reappraisal of the evidence that was previously presented, because of the waste of the principle of res judicata. Rather, the reform of these errors is based on new elements that were not revealed until after the issuance of the unequivocal judgment.

First: Provisions that may be reviewed

It is permissible to request a review of the final sentences issued in the articles of felonies and misdemeanors.[3874]

It is clear from the text of Article 441 of the Code of Criminal Procedure that three conditions are required in the judgment that may be challenged for reconsideration, which are as follows:.

1-The judgment should be final

What is meant is the judgment that has the force of res judicata, that is, the judgment that is not subject to appeal by opposition, appeal, or cassation. It is not permissible to reconsider the judgment if it is permissible to repair similar defects by challenging it by any other means, even if it is by way of cassation.

It is not required that the judgment be issued from the last degree as in the cassation, so it is permitted to reconsider the judgments whose appeal methods have been exhausted by missing their deadlines, or the final judgments issued by the Summary Court.

The Court of Cassation ruled that: “Although the judgment of the Criminal Court in the foregoing felony - in which the accused was convicted for forging the trust receipt and the reports of the challenge to the misdemeanor in question - is considered as new evidence and papers that did not exist at the time of the trial in the case in which the judgment was requested to be reviewed. However, these facts do not prove their effect or the innocence of the applicant, as long as the judgment issued in the aforementioned felony was issued in absentia and is still the subject of

---

([3872]) Appeal No. 31639 of 3Q issued at the session of 21 April 2015 and published in Technical Office Letter No. 66 Page 408 Rule No. 55, Appeal No. 8589 of 81Q issued at the session of 10 January 2015 and published in Technical Office Letter No. 66 Page No. 97 Rule No. 5, Appeal No. 7724 of 79Q issued at the session of 21 November 2012 and published in Technical Office Letter No. 63 Page No. 761 Rule No. 135, Appeal No. 5 of 2010Q issued at the session of 19 March 2012 and published in Technical Office Letter No. 55 Page No. 33 Rule No. 6, Appeal No. 1 of 2011Q issued at the session of 19 March 2012 and published in Technical Office Letter No. 55 Page No. 38 Rule No. 7.

([3873]) Appeal No. 31639 of the third year issued at the session of April 21, 2015 and published in the letter of the Technical Office No. 66 page No. 408 rule No. 55.

([3874]) Article 441 of the Criminal Procedure Code.

the request for re-procedures and has not yet been resolved by a final judgment and before re-procedures. Therefore, verifying the innocence of the applicant based on these facts requires an objective investigation that investigates the relationship between these matters and the innocence of the petitioner narrows it down at the time of this court - the Court of Cassation - and it is appropriate for the court that issued the judgment requested to be reviewed". [3875]

2-The judgment must be issued with a penalty

It is equal that the sentence imposed shall be pecuniary or deprivation of liberty, whatever its duration or type, even if it is covered by the stay of execution.

It is also permitted to appeal for reconsideration, even if the punishment has already been carried out, if it is not carried out due to its statute of limitations, or if a pardon is issued for the punishment.

It is not permitted to appeal against the reconsideration of the judgments issued in the ancillary civil lawsuit.

3-The judgment was issued in a felony or misdemeanor

This means that it is not permissible to appeal to reconsider the judgments issued in the violations, regardless of the penalty imposed, and the violations as they are legally defined as crimes punishable by a fine that does not exceed a maximum amount of one hundred pounds, and the lesson is to describe the incident as it was filed in the criminal case and not the nature of the judgment issued in it.[3876]

Second: Cases that may be reconsidered

The cases in which it is permissible to appeal by reviewing the Code of Criminal Procedure are mentioned exclusively, and it is not permissible to measure them.[3877]

The point in accepting the request for reconsideration is that the conditions of one of its cases are met at the time of its submission.[3878]

It is not enough to reconsider the claim that the court that issued the judgment was wrong in understanding the facts and assessing the evidence that was before it.[3879]

These cases are as follows:

Case 1

If the accused is convicted of murder, then the plaintiff finds his murder alive)[3880](.

This case assumes the issuance of a guilty verdict due to the death of the victim, whether as a result of a premeditated murder, a mistake, or a beating that led to death. The lesson is not to

---

([3875]) Appeal No. 13044 of 85 S issued on September 1, 2016 and published in the Technical Office's letter No. 67, page No. 602, rule No. 72.

([3876]) Appeal No. 13857 of 70 BC issued at the session of November 20, 2000 and published in the letter of the Technical Office No. 51 page No. 761 rule No. 149.

([3877]) Appeal No. 18903 of 63 S issued at the session of September 20, 1995 and published in the first part of the book of the Technical Office No. 46 page No. 930 rule No. 143.

([3878]) Appeal No. 18903 of 63 S issued at the session of September 20, 1995 and published in the first part of the technical office book No. 46 page No. 930 rule No. 143, Appeal No. 613 of 53 S issued at the session of April 5, 1984 and published in the first part of the technical office book No. 35 page No. 385 rule No. 84, Appeal No. 4054 of 31 S issued at the session of January 16, 1962 and published in the first part of the technical office book No. 13 page No. 63 rule No. 16.

([3879]) Appeal No. 1868 of 34 S issued in the session of May 3, 1966 and published in the second part of the book of the Technical Office No. 17 page No. 555 rule No. 100.

([3880]) Article 441 of the Criminal Procedure Code.

adapt the crime, and it is sufficient for the availability of that case that the crime is a felony or a misdemeanor that led to the death of the victim.

In order for the appeal to be accepted for reconsideration in this case, sufficient evidence must be available that the victim was alive at the time of the commission of the crime, even if he died thereafter, as evidenced by the invalidity of the contested judgment.

In this case, not only does the appearance of evidence require the presence of the plaintiff who killed him alive, but he must actually exist alive, out of respect for the authority of criminal judgments, which confirms that the legislator does not accept the potential evidence, but it requires the conclusive evidence in itself in proving the innocence of the convicted person or the loss of evidence of his guilt)[3881](.

Case 2

If a person is sentenced for an incident, then another person is sentenced for the same incident, and there is a contradiction between the two judgments so that the innocence of one of the convicts is inferred.[3882]

The scope of application of this case of reconsideration extends to all cases in which two convictions contradict each other, regardless of the circumstances in which the two contradictory judgments were issued as long as the conditions of this case are met, and the conditions of this case are met whenever the authority of one of the two judgments contradicts or wastes the authority of the other judgment. The basis of the conviction of each of the convict is not consistent with the basis of the conviction of the other, and the judgment of reason and logic does not justify the existence of the two judgments together. The application of this case results in the issuance of two final convictions against two different persons for one incident, from which the innocence of one of the convicts is inferred)[3883](.

The existence of that case requires that two different persons be sentenced, whether by one court or by two different courts, and that the two convictions be issued. This case is not available if the conviction is issued and it is ruled in another case for another defendant for the same incident, by the lapse of the criminal case by prescription, waiver, or death.[3884]

This case also requires that the two judgments be issued against two persons, but if the two judgments are issued against one person, there is no contradiction in the assessment of the facts that provides a petition for review, and if the second judgment is tainted by an error in the

---

([3881]) Appeal No. 1821 of 36 s issued at the session of January 31, 1967 and published in the first part of the Technical Office letter No. 18 page No. 142 rule No. 27, Appeal No. 1868 of 34 s issued at the session of May 3, 1966 and published in the second part of the Technical Office letter No. 17 page No. 555 rule No. 100.

([3882]) Article 441 of the Criminal Procedure Code.

([3883]) Appeal No. 43952 of 75 S issued at the session of November 13, 2005 (unpublished), Appeal No. 23 of 2003 S issued at the session of September 16, 2003 (unpublished), Appeal No. 5098 of 80 S issued at the session of October 20, 2010 and published in the Technical Office letter No. 61, page No. 589, rule No. 71, Appeal No. 23297 of 66 S issued at the session of January 9, 1997 and published in the first part of the Technical Office letter No. 48, page No. 59, rule No. 8, Appeal No. 1321 of 39 S issued at the session of October 13, 1969 and published in the third part of the Technical Office letter No. 20, page No. 1065, rule No. 209.

([3884]) The Court of Cassation ruled that: [The two judgments on which the applicant is based, one of them has ruled to convict him with a final judgment and the other has ruled to convict the accused .... By virtue of a final judgment as the sole perpetrator in August 1988 of the crime of stealing car No. ………………………………………… My angel Giza is a brand .. ... and owned by.. .... The result of each of these two provisions is that one person is the perpetrator and the conviction of each of the two persons carries the innocence of the other, and therefore the contradiction is considered available, and the request for reconsideration is included under the second case stipulated in Article 441 of the Code of Criminal Procedure and must be accepted] Appeal No. 23297 of 66 S issued at the session of January 9, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 59 rule No. 8.

application of the law because it violates the authority of the criminal judgment, this is subject to cassation and is not subject to the request for review.[3885]

The basis for the application of this case is that the incident justifying the reconsideration of the lawsuit is new, that is, outside the context of the judgment that ruled to convict the petitioner - it foretells a contradiction between this judgment and another judgment that ruled to convict another so that the innocence of one of the two convicts can be inferred from it.

As for the facts that were mentioned in the context of one judgment that convicted the petitioner and another and raise a contradiction lawsuit in the context of this judgment, the way to correct them is to appeal the judgment and not to request a review of the lawsuit, as this is an unusual way allowed by law to correct serious errors in the final judgments that can only be corrected by this method.

If the contradiction lawsuit on which the petitioner bases the request for reconsideration of the lawsuit, has been merged into the judgment issued against him, which the petitioner appealed by way of cassation and ruled in this appeal to reject it on the merits. Therefore, the failure of the petitioner to take this lawsuit as a face to appeal against the judgment issued against him cannot be a reason for requesting a reconsideration of the lawsuit, as re-examination of the lawsuit is no more than another appeal against the same judgment, which is not permissible.[3886]

This case is also not available if one of the two judgments convicts the student and the other acquits another accused.[3887]

This situation is also not available if the two rulings acquit the same person, even if one of the rulings has ruled the confiscation and the other has not ruled it, because the seizures have already been confiscated before its issuance, which raises the contradiction.[3888]

It is also not permitted to appeal for reconsideration if only one judgment is issued for the incident, while another admits that he committed it after the judgment is issued, as long as no other conviction is issued, and this case does not apply if there is a contradiction in the reasons for the same judgment.

It is required that the subject matter of the two judgments be one incident, even if their legal descriptions differ, or the penalty imposed differs, and it is not sufficient to say that the condition of the unity of the incident is met if the other incident constitutes a circumstance in the first crime or an element in it.

Provided that the two judgments are issued against two different persons, there is no appeal for reconsideration if the two judgments are issued against one person for the same incident.

It is required that the two convicted persons be independent of each other, that is, they do not have a criminal contribution relationship to the same crime, meaning that they are not original perpetrators or one of them is an actor and the other is an accomplice or partners in one crime.

In both judgments, it is required that they have obtained the force of the res judicata. It is not permissible to appeal by reconsideration if one of the judgments is subject to appeal, whether by ordinary or extraordinary means of appeal.

([3885]) Appeal No. 1821 of 36 S issued at the session of January 31, 1967 and published in the first part of the book of the Technical Office No. 18 page No. 142 rule No. 27.

([3886]) Appeal No. 6852 of 52 S issued on March 28, 1983 and published in the first part of the book of the Technical Office No. 34 page No. 448 rule No. 91.

([3887]) Appeal No. 5828 of 52 S issued at the session of March 30, 1983 and published in the first part of the book of the Technical Office No. 34 page No. 467 rule No. 95.

([3888]) Appeal No. 1321 of 39 S issued at the session of October 13, 1969 and published in the third part of the book of the Technical Office No. 20 page No. 1065 rule No. 209.

It is also required that there be a contradiction between the two provisions, and what is meant by the contradiction is the absolute impossibility of the existence of the two provisions together, and it is required that the contradiction be in the operative part of the two provisions and not in their reasons. It is not sufficient for there to be a contradiction between the reasons for the two provisions as long as this does not go to the operative part, as if the reasons include evidence that the court did not take into account for a particular accused, while it is contradictory and what the ruling concluded about the same fact for the other accused. It is not enough for there to be a contradiction in proving the two provisions for certain sub-issues, if the exclusion of these issues does not affect the operative part, that is in the wise proof of the same fact and its reliance on two different persons at the same time.

The contradiction exists if the court confirms in both judgments that the crime was committed by only one accused, as this requires that the conviction of one of them exonerates the other.

Case 3

If a witness or expert is sentenced to punishment for perjury in accordance with the provisions of Chapter Six of Book Three of the Penal Code, or if he is sentenced to forgery of a paper submitted during the hearing of the lawsuit, and the testimony, expert report, or paper has an impact on the judgment.[3889]

Therefore, the availability of this case is required:

1- A final judgment shall be issued against one of the witnesses or experts in the contested lawsuit for reconsideration, and the translator shall take the expert's judgment in that case, for forgery of the testimony or the report, or the issuance of a final judgment for forgery of a paper submitted during the hearing of the lawsuit, and it is not sufficient for the availability of this case to simply file the lawsuit in these crimes or the issuance of a judgment that does not possess the force of the decreed thing, as long as the forgery has not been proven with certainty by a final judgment.[3890]

It is required for the availability of this case to prove the collapse of one of the evidence influencing the judgment that a guilty verdict is issued against the witness who heard in the case or the expert who submitted a report in it, or to rule the forgery of the paper submitted in the case. The guilty verdict must be for perjury or forgery, it must be final, as this condition can be said that the error of the contested verdict of reconsideration has been definitively proven, and that there is no place for proving the contrary, and therefore it is not sufficient for the availability of this case for the witness to admit his lie, or for the lawsuit to be filed against him without issuing a final judgment in which he dies during its consideration or for a reason such as a statute of limitations, in addition to the fact that the verdict of conviction of the witness or expert or forgery of the paper must be subsequent to the issuance of the contested verdict with a request for reconsideration, and that the testimony, expert's report or the paper have an impact on the verdict)[3891](.

It is not enough for the availability of this case to be dismissed by a witness before another court from what he has previously stated before the trial court without accompanying his dismissal, which resolves the matter itself and cuts in order of its impact on proving the innocence of the

---

([3889]) Article 441 of the Criminal Procedure Code.

([3890]) Appeal No. 45977 for the year 74 S issued at the session of November 21, 2004 and published in the letter of the Technical Office No. 55, page No. 758, rule No. 115.

([3891]) Appeal No. 45977 of 74 s issued at the session of November 21, 2004 (unpublished), Appeal No. 45977 of 74 s issued at the session of November 21, 2004 and published in the Technical Office's letter No. 55, page No. 758, rule No. 115, Appeal No. 18903 of 63 s issued at the session of September 20, 1995 and published in the first part of the Technical Office's letter No. 46, page No. 930, rule No. 143, Appeal No. 613 of 53 s issued at the session of April 5, 1984 and published in the first part of the Technical Office's letter No. 35, page No. 385, rule No. 84.

convicted person, which establishes a fair balance that does not excessive or neglect between the right of the convicted person and the interest of the community, which is harmed by prejudice without a compelling reason of the strength of the criminal matter, which must put an end to a dispute in which the judiciary has finally decided.[3892]

It is decided that the statements of a defendant are on the last as long as they are issued without an oath, they are not considered a certificate in the legal sense until it is true to say that what is done on the certificate is done on it. If the accused, after the court has taken his statements in the conviction of another accused, admits that his statements were not correct, it is not permissible to request the annulment of the conviction judgment on the grounds that the law has allowed the annulment of the judgment by seeking reconsideration if the prosecution witness is judged to have falsely testified in the case.)[3893](.

2. That the forged testimony, experience, or paper has an impact on the judgment, and the judgment does not need to be based on the forged evidence, but it is sufficient to have a clear impact in proving the crime and attributing it to the accused.

If the court did not rely on the forged evidence that it submitted because it was not convinced of it, there is no appeal for reconsideration.[3894]

That case is available if the court relies on forged evidence in addition to other evidence. Evidence in criminal matters is mutually reinforcing and complementary. If one of them falls, it is not possible to identify the effect of false evidence in the formation of the doctrine of the court.

3-The final judgment issued for forgery is required to be issued after the issuance of the contested judgment for reconsideration. If the witness or expert in the crime of forging the testimony or a judgment for forging the paper during the hearing of the case, the judgment shall not be affected by this evidence. If the judgment for forging the evidence was issued at any stage of the criminal litigation, whether before the judgment that was based on this evidence or after the issuance of this judgment and before it acquired the force of the judgment, the means of fixing this procedural error shall be by appealing this judgment, whether by ordinary or extraordinary means of appeal. If this judgment is not appealed despite the availability of this error, and the judgment becomes final, this shall correct all errors of the judgment, even if the matter relates to absolute invalidity related to public order.

Case 4

If the judgment is based on a judgment issued by a civil court or a family court, and this judgment is canceled.[3895]

([3892]) Appeal No. 794 of 2001 issued at the session of October 24, 2001 (unpublished), Appeal No. 45977 of 74 issued at the session of November 21, 2004 and published in the Technical Office's letter No. 55, page No. 758, rule No. 115.

([3893]) Appeal No. 1833 of 10 S issued at the 9th session of December 1940 and published in the letter of the Technical Office No. 5P No. 1 Part No. 1 Page No. 297 Rule No. 163.

([3894]) In this regard, the Court of Cassation ruled that: [The court has the right to deduce its belief from any evidence presented to it, and there is nothing that prevents the trial court from taking the statements of the victim alone when it is satisfied and found in it what convinces it to commit the accused of the crime as long as the assessment of the witness's statements is independent of the trial court and it is not yet obligated to speak in its judgment except for the evidence that has an impact on the formation of its belief, and if it is clear from the judgment that it did not refer to the medical report in its blogs and did not rely on it from the evidence on which it relied in its conviction, then the ruling to falsify this report does not in itself lead to the proof of the innocence of the applicant and does not require the loss of evidence on her conviction or criminal liability as long as it did not have an impact on the judgment and therefore does not stand on its face to request reconsideration] Appeal No. 613 of 53 Q issued at the hearing of 5 April 1984 and published in the first part of the Technical Office's book No. 35 page 385 rule No. 84.

([3895]) Article 441 of the Criminal Procedure Code.

The availability of this case requires that the contested judgment be issued for reconsideration based on another judgment issued by the family courts or the civil court, and then this judgment is canceled. Article 458 of the Code of Criminal Procedure stipulates that: "Judgments issued by the family courts within the limits of their jurisdiction shall have the force of the judgment before the criminal courts in the matters on which the adjudication of the criminal case depends." This means that the criminal judge adheres to these provisions and may not violate them.

Article 457 of the Code of Criminal Procedure also stipulates that: "Judgments issued by civil courts shall not have the force of the thing sentenced before the criminal courts with regard to the occurrence of the crime and its attribution to the perpetrator."

The availability of that case of review requires that the judgment issued by the non-criminal court be canceled after the judgment issued by the criminal court has been relied upon to prove the occurrence of the crime or its attribution to the accused. The judgment issued by the non-criminal court must be final before the judgment issued by the criminal court acquires this description.

Case 5

If facts occur or appear after the judgment or if papers were submitted that were not known at the time of the trial, and these facts or papers would prove the innocence of the convict.[3896]

In order for the appeal to be reviewed in this case, it is required:

A- The emergence of new facts: The facts mean the elements of anecdotal or material evidence, including papers, and the legislator requests in those facts that they be new, in the sense that they are not known to the court before deciding on the lawsuit. The lesson is not the time of their occurrence, it may be available before or after the judgment, but the lesson is that they have not reached the knowledge of the court before the judgment.

The Court of Cassation stipulated that those facts should also be unknown to the accused before the issuance of the judgment. If he knew about them and yet did not adhere to them and did not convey them to the knowledge of the court, he refrained from challenging the judgment by reconsideration based on these facts.[3897]

An example of the new facts is the discovery that the convicted person had a mental impairment at the time of the commission of the crime that denies criminal responsibility for him, or if the accused was imprisoned at the time of the commission of the crime, or stolen items were found in the possession of the victim or a receipt was found for the return of the trust.[3898]

2-The effect of the new facts: It is not enough for this case to have the appearance of new facts that were unknown by the court. Rather, these facts are required to lead to proving the innocence of the convicted person, as if they would deny the occurrence of the crime, attribute it to the accused, remove the illegality of the act, or prove the existence of a reason for refraining from responsibility or punishment. The Court of Cassation has stipulated that in the new facts it is necessary to be conclusive in proving innocence, which establishes a fair balance that is not

---

([3896]) Article 441 of the Code of Criminal Procedure, and see: Appeal No. 1991 of 38 S issued at the session of March 31, 1969 and published in the first part of the book of the Technical Office No. 20 page No. 401 rule No. 87.

([3897]) Appeal No. 16244 of 85 S issued at the 10th session of May 2016 and published in the Technical Office's letter No. 67, page No. 534, rule No. 59, Appeal No. 22551 of 59 S issued at the 20th session of February 1990 and published in the first part of the Technical Office's letter No. 41, page No. 416, rule No. 66.

([3898]) Appeal No. 10237 of 78 s issued at the session of June 2, 2009 and published in the Technical Office letter No. 60, page No. 277, rule No. 37, Appeal No. 11767 of 64 s issued at the session of October 12, 1994 and published in the first part of the Technical Office letter No. 45, page No. 864, rule No. 134, Appeal No. 1522 of 45 s issued at the session of March 28, 1976 and published in the first part of the Technical Office letter No. 27, page No. 353, rule No. 75.

excessive between the right of the convicted person and the interest of society, which is harmed by prejudice without a compelling reason of the strength of the thing decided criminally.[3899]

If what the student raises does not lead to the proof of the student's innocence, this in itself does not constitute a request for reconsideration.[3900]

The explanatory memorandum of the law commenting on the fifth paragraph, which is the basis for the applicant's request, stated that "it stipulated a general picture stipulated in most modern laws, which is the case if facts occurred or appeared after the judgment or if papers were submitted that were not known at the time of the trial, and these facts or papers mentioned would prove the innocence of the convict.

The street derived this article from Article 443 of the French Code of Criminal Investigation, as amended by the law issued on June 8, 1895, which became the subject of Article 622 of the French Code of Criminal Procedure issued by Law No. 31 December 1957.

It is clear from the text of the Egyptian law and from what is stated in its explanatory memorandum and from the comparison between it and the text of the French law that the first four cases mentioned in the aforementioned article 441, which are disciplined cases collected by a specific criterion based on which the new fact justifying the review of the lawsuit is either based on the fact that the innocence of the convict is proven by the presence of the plaintiff who killed him alive or by the contradiction between two judgments so that the innocence of one of the convicts is inferred from it, or the collapse of one of the evidence affecting the conviction, such as the judgment of the witness or expert of the punishment prescribed for perjury or the judgment of forgery of a paper submitted in the lawsuit or the cancellation of the basis on which the judgment was based.

It is noteworthy that the Egyptian law was in the process of determining the cases in which it is permissible to request a review more stringent than the French law. While the first paragraph of Article 441 of the Code of Criminal Procedure stipulates that "the plaintiff must be killed alive" to be considered a reconsideration, the French law authorizes only the appearance of papers that would find sufficient signs of his existence alive. The French text was before the Egyptian legislator at the time of the development of the Code of Criminal Procedure. However, it affected, out of respect for the authority of criminal provisions, not only requires the mere appearance of evidence of the existence of the plaintiff who killed him alive, but also necessitates his existence alive, which confirms that our existing legislation does not accept potential evidence, but rather requires conclusive evidence in itself in proving the innocence of the convicted person or the loss of evidence of his guilt.

Whereas it is unacceptable, and in the light of the foregoing, for the street to tighten in the four cases of Article 441 of the Code of Criminal Procedure to open the door wide in the fifth case, which generally absorbs what it provides.

Rather, it was intended in the light of the examples set out in the explanatory memorandum, which in themselves indicate the innocence of the convicted person or require the loss of evidence of his guilt or criminal liability.

In addition to the policy of legislation and the general rule that guided the street to its elements in the previous paragraphs, it must be a precautionary text in order to remedy what may escape from the images that are in line with them and do not go away from them, in which it may be

---

([3899]) Appeal No. 22551 of 59 S issued at the session of February 20, 1990 and published in the first part of the technical office book No. 41 page No. 416 rule No. 66, Appeal No. 1868 of 34 S issued at the session of May 3, 1966 and published in the second part of the technical office book No. 17 page No. 555 rule No. 100.

([3900]) Appeal No. 22551 of 59 S issued at the session of February 20, 1990 and published in the first part of the book of the Technical Office No. 41 page No. 416 rule No. 66.

impossible to establish evidence in the legally required manner, such as the death or dementia of the witness or the obsolescence of the criminal case before him or other similar cases, which is necessitated by not being satisfied with the abstract justice of a witness or an accused of what he has previously given before the trial court without his justice being accompanied by what is decided by himself The order shall be severed in order of its effect on proving the innocence of the convicted person, which establishes a fair balance between the right of the convicted person and the interest of the community, which is prejudiced by prejudice other than for a compelling reason, which is one of the cases of public order that affects the interest of society, and which requires an end to a dispute in which the judiciary has finally decided, which is recorded in Article 455 of the Code of Criminal Procedure when it stipulates that it is not permissible to refer to the criminal case after the final judgment based on the emergence of new evidence or new circumstances or based on Changing the legal description of the crime, so that the judicial ruling became the title of a truth that is stronger than the truth itself, which is not correct to undermine it by a mere indecisive lawsuit, and it may not be subject to bargaining between individuals.

Saying otherwise is a waste of the time and prestige of the judiciary and brings contradiction to its provisions, as long as the matter remains suspended by the will of the convicts whenever they resolve the renewal of the dispute and re-submit it to the judiciary.

Whereas the foregoing, and the law has stipulated that the facts that appear after the judgment and serve as a reason for the petition must be unknown to the court and the accused during the trial.[3901]

In this case, it is intended that those facts or papers themselves indicate the innocence of the convict or the need to forfeit evidence of his guilt or criminal liability.[3902]

The Court of Cassation ruled that: [The report of the Chief Forensic Physician - as mentioned above - revealed the fact that the victim did not have a permanent disability, which was unknown to the court and the accused during the court and did not appear until after the final judgment in the case, and this fact was decisive in itself in undermining the evidence on which the judgment was relied in proving the existence of the felony of the permanent disability that the applicant condemned and imposed its punishment as the most serious crimes based on it, as well as the impact that the emergence of this fact may have on the assessment of the compensation to which the victim is entitled as a plaintiff of the civil right, this justifies the acceptance of the applicant and the judiciary to cancel the judgment issued in felony No...... For

---

([3901]) Appeal No. 13196 of 76 s issued at the hearing of 16 October 2011 and published in Technical Office Book No. 62 Page 285 Rule No. 47, Appeal No. 11767 of 64 s issued at the hearing of 12 October 1994 and published in Part I of Technical Office Book No. 45 Page 864 Rule No. 134, Appeal No. 1522 of 45 s issued at the hearing of 28 March 1976 and published in Part I of Technical Office Book No. 27 Page 353 Rule No. 75, Appeal No. 637 of 40 s issued at the hearing of 3 May 1970 and published in Part II of Technical Office Book No. 21 Page 646 Rule No. 153, Appeal No. 1821 of 36 s issued at the hearing of 31 January 1967 and published in Part I of Technical Office Book No. 18 Page 142 Rule No. 27, Appeal No. 1868 of 34 s issued at the hearing of 3 May 1966 and published in Part II of Technical Office Book No. 17 Page 555 Rule No. 100.

([3902]) Appeal No. 1267 of 72 S issued at the 6th session of May 2003, Appeal No. 1117 of 84 S issued at the 7th session of March 2015 and published in the letter of the Technical Office No. 66, page No. 284, rule No. 38, Appeal No. 4082 of 82 S issued at the 12th session of January 2013 and published in the letter of the Technical Office No. 64, page No. 86, rule No. 11, Appeal No. 12973 of 66 S issued at the 22nd session of October 1996 and published in part The first part of Technical Office Letter No. 47 Page No. 1080 Rule No. 155, Appeal No. 14669 of 59 S issued at the session of November 12, 1995 and published in the first part of Technical Office Letter No. 46 Page No. 1173 Rule No. 176, Appeal No. 22552 of 59 S issued at the session of April 23, 1990 and published in the first part of Technical Office Letter No. 41 Page No. 653 Rule No. 111, Appeal No. 637 of 40 S issued at the session of May 3, 1970 and published in the second part of Technical Office Letter No. 21 Page No. 646 Rule No. 153.

the year...... With regard to the applicant and the person responsible for civil rights and referring the case to the court that issued the judgment for adjudication].[3903]

It also ruled that the appearance of the evidence of the defendant's mental impairment that he had at the time of committing the crime after the final trial, entails the acceptance of his request for reconsideration, even if this impairment has already been mentioned casually by the defendant, as long as he is sick of mind. The law does not give weight to his actions or accountability for his actions.[3904]

Third: Who has the right to request reconsideration

In the first four cases mentioned above, the right to request reconsideration is for both the Attorney General and the convict or his legal representative if he is incompetent or missing, or for his relatives or spouse after his death.[3905]

This means that it is not permissible for the plaintiff of the civil right or the person responsible for it to request reconsideration. The appeal goes to the judgment issued in the criminal lawsuit, and they are opponents in the civil lawsuit.

The legislator allowed the convict to submit the application himself or through his legal representative if he is incapacitated or missing. In the event of death, this right is transferred to his relatives or spouse, contrary to the general rules governing the lapse of the criminal case. The right to appeal the judgment issued in the criminal case is not transferred to the heirs. However, the legislator allowed the relatives of the deceased convict to appeal if one of the four cases is available. The legislator did not require that the applicant be one of the heirs, but it is sufficient that he be a relative of the convict and did not require a certain degree of kinship.

In the fifth case, the right to request reconsideration shall be to the Attorney General alone, whether on his own initiative or at the request of the concerned parties.[3906]

The convicted person or his legal representative if he is incapacitated or missing, or one of his relatives or spouse after his death, and the legislator took into account that the fifth case of the request for reconsideration is that the new facts have a certain force of proof, so he made the matter within the competence of the Attorney General to ensure the seriousness of the request.

Fourth: Submitting the application

An application for reconsideration may be submitted at any time, and the legislator did not require its submission within a certain period, and the right to submit it shall not be forfeited by the lapse of the period or the execution of the judgment.

In the first four cases of the request for reconsideration, if the applicant is other than the Public Prosecution, he must submit the request to the Attorney General with a petition indicating the judgment to be reconsidered, the face on which it is based, and accompanying it with the supporting documents.[3907]

([3903]) Appeal No. 22552 of 59 S issued at the session of 23 April 1990 and published in the first part of the book of the Technical Office No. 41 page No. 653 rule No. 111.
([3904]) Appeal No. 1522 of 45 S issued on March 28, 1976 and published in the first part of the Technical Office's letter No. 27 page No. 353 rule No. 75.
([3905]) Article 442 of the Criminal Procedure Code.
([3906]) Article 443 of the Criminal Procedure Code.
([3907]) Article 442 of the Criminal Procedure Code.

The Public Prosecutor shall submit the request, whether submitted by him or by others, with the investigations that he has decided to conduct to the Court of Cassation with a report indicating his opinion and the reasons on which it is based.[3908]

The application must be submitted to the court in the three months following its submission.[3909]

However, exceeding this deadline does not result in the inadmissibility of the application because it is an organizational deadline whose violation does not entail any procedural penalty.[3910]

The Attorney General has no discretion in these cases to submit the request to the Court of Cassation. He may not refuse this, but he has discretion in conducting the investigations he deems necessary to clarify the request if he deems it necessary, and he attaches the result of the investigations to the request and the documents.[3911]

In the fifth case, the request is subject to the discretion of the Attorney General. He is not obligated to submit the request to the Court of Cassation, but he may conduct the necessary investigations to ascertain the seriousness of the request. He may reject it if it is found that it is not serious or does not meet the conditions of the fifth case set by the legislator. If he is convinced of its seriousness and considers that it has a place, he shall submit it, with the investigations that he has deemed necessary, to a committee formed by one of the judges of the Court of Cassation and two of the judges of the Court of Appeal, each of whom shall be appointed by the general assembly of the court to which he belongs.

The request must indicate the incident or the paper on which it is based.[3912]

The committee shall decide on the application after reviewing the papers and completing the investigation it deems appropriate and shall order its referral to the Court of Cassation if it deems it acceptable.[3913]

The appeal shall not be accepted in any way against the decision issued by the Public Prosecutor, or the order issued by the aforementioned committee to accept or not accept the request.[3914]

According to the above, the Court of Cassation may contact the request for reconsideration if it is submitted on the basis of any of the five paragraphs of Article 441 of the Code of Criminal Procedure, subject to its submission by the Public Prosecutor to the Court of Cassation within the period specified in the aforementioned article in the first four cases, or if it is submitted to the

---

([3908]) Article 442 of the Criminal Procedure Code.
([3909]) Article 442 of the Criminal Procedure Code.
([3910]) Appeal No. 23297 of 66 S issued at the session of January 9, 1997 and published in the first part of the book of the Technical Office No. 48 page No. 59 rule No. 8.
([3911]) Appeal No. 45977 for the year 74 S issued at the session of November 21, 2004 and published in the letter of the Technical Office No. 55, page No. 758, rule No. 115.
([3912]) Article 443 of the Criminal Procedure Code, Appeal No. 45977 of 74 S issued at the session of 21 November 2004 and published in the Technical Office's letter No. 55, page No. 758, rule No. 115, Appeal No. 18903 of 63 S issued at the session of 20 September 1995 and published in the first part of the Technical Office's letter No. 46, page No. 930, rule No. 143, Appeal No. 168 of 32 S issued at the session of 20 February 1962 and published in the first part of the Technical Office's letter No. 13, page No. 174, rule No. 48.
([3913]) Article 443 of the Criminal Procedure Code.
([3914]) Article No. 443 of the Code of Criminal Procedure, Appeal No. 1377 of 22 S issued at the session of January 13, 1953 and published in the second part of the Technical Office's letter No. 4, page No. 396, rule No. 153.

committee stipulated in Article 443 of the same law, and the committee accepts it and refers it to the court in the fifth case.[3915]

Fifth: Deposit of Guarantee

The Public Prosecutor shall not accept the request for reconsideration from the accused or his substitute in the four aforementioned cases unless the applicant deposits with the court treasury an amount of five pounds as bail, allocated to meet the fine imposed in the event that the request for reconsideration is not accepted, unless he has been exempted from his deposit by a decision of the Judicial Assistance Committee of the Court of Cassation.[3916]

If the applicant does not pay the bail or does not obtain a decision from the Legal Aid Committee to exempt him from it, the non-acceptance of his application shall be ruled.[3917]

Sixth: Request to Suspend the Execution of the Contested Judgment

The request for reconsideration shall not result in the suspension of the execution of the sentence unless it is issued by the death penalty.[3918]

Seventh: Notifying the litigants of the date of the session specified for considering the request

The Public Prosecution shall announce the litigants for the session that is determined to consider the application before the Court of Cassation at least three full days before it is held.[3919]

Eighth: Deciding on the request for reconsideration

The Court of Cassation shall decide on the application after hearing the statements of the Public Prosecution and the litigants, and after conducting what it deems necessary from the investigation itself or by[3920] its delegate.

If the convict dies and the request is not submitted by a relative or spouse, the court shall consider the lawsuit against the person it appoints to defend his memory, and he shall as far as possible be a relative.

In this case, it shall be ruled, if necessary, to erase what affects this memory.[3921]

If the Court of Cassation decides to accept the request, it shall cancel the judgment and acquit the accused if the innocence is apparent. Otherwise, the lawsuit shall be referred to the court that issued the judgment formed by other judges to decide on its subject matter unless it decides to do so itself.[3922]

([3915]) Appeal No. 31639 of 3Q issued at the session of 21 April 2015 and published in the letter of the Technical Office No. 66, page No. 408, rule No. 55, Appeal No. 18903 of 63Q issued at the session of 20 September 1995 and published in the first part of the letter of the Technical Office No. 46, page No. 930, rule No. 143.

([3916]) Article 444 of the Criminal Procedure Code.

([3917]) Appeal No. 4 of 76 s issued at the session of March 18, 2007 and published in the Technical Office's letter No. 58, page No. 253, rule No. 51, Appeal No. 1821 of 36 s issued at the session of January 31, 1967 and published in the first part of the Technical Office's letter No. 18, page No. 142, rule No. 27.

([3918]) Article 448 of the Criminal Procedure Code.

([3919]) Article 445 of the Criminal Procedure Code.

([3920]) Article 446 of the Criminal Procedure Code.

([3921]) Article 447 of the Criminal Procedure Code.

([3922]) Article 446 of the Criminal Procedure Code.

If the Court of Cassation considers that verifying the innocence of the student requires an objective investigation, it may return the case to the court that issued the judgment formed by other judges to decide on its subject matter in the light of new evidence that has emerged.[3923]

However, if it is not possible to retry, as in the case of the death or dementia of the convict or the lapse of the criminal lawsuit by the lapse of the period, the Court of Cassation shall consider the subject matter of the lawsuit and shall not cancel from the judgment except what appears to it to be its error.[3924]

If the Court of Cassation finds, after accepting the request for reconsideration, that the innocence is neither apparent nor probable through the face of the request on which it is based, it shall reject the request. This rejection shall not prevent the committee formed in accordance with Article 443 of the Criminal Procedure Law from accepting the request submitted by the Attorney General.[3925]

If the request for reconsideration is rejected, it may not be renewed based on the same facts on which it was based.[3926]

The applicant for reconsideration - if he is submitted by a person other than the Attorney General - in the first four cases of the application for reconsideration shall be sentenced to a fine not exceeding five pounds if his application is not accepted.[3927]

Every judgment of acquittal issued on the basis of reconsideration, at the expense of the government, must be published in the Official Gazette at the request of the Public Prosecution and in two newspapers appointed by the concerned party.[3928]

The cancellation of the contested judgment results in the forfeiture of the judgment for damages, and the obligation to return what has been implemented without prejudice to the rules of forfeiture of the right by the lapse of the period.[3929]

It is permitted to contest the judgments issued in the subject matter of the lawsuit based on review by a court other than the Court of Cassation in all the ways prescribed in the law.

The accused may not be sentenced to more severe punishment than the penalty previously imposed on him.[3930]

25.2 Within the Framework of International Covenants

Every accused person convicted of committing a criminal act has the right to resort to a higher court to review the conviction and punishment imposed on him.

25-2-1 Right to Appeal

Every accused person convicted of committing a criminal act has the right to resort to a higher court to review the conviction issued against him and the penalty imposed on him)[3931](.

([3923]) Appeal No. 10237 of 78 s issued at the session of June 2, 2009 and published in the letter of the Technical Office No. 60 page No. 277 rule No. 37, Appeal No. 23297 of 66 s issued at the session of January 9, 1997 and published in the first part of the letter of the Technical Office No. 48 page No. 59 rule No. 8.
([3924]) Article 446 of the Criminal Procedure Code.
([3925]) Appeal No. 13196 of 76 S issued at the hearing of 16 October 2011 and published in the letter of the Technical Office No. 62 page No. 285 rule No. 47.
([3926]) Article No. 452 of the Code of Criminal Procedure, Appeal No. 4054 of 31 S issued at the session of January 16, 1962 and published in the first part of the Technical Office's letter No. 13 page No. 63 rule No. 16.
([3927]) Article 449 of the Criminal Procedure Code.
([3928]) Article 450 of the Criminal Procedure Code.
([3929]) Article 451 of the Criminal Procedure Code.
([3930]) Article 453 of the Criminal Procedure Code.

Article 2 of the Seventh Protocol to the European Convention allows a narrower right of appeal.[3932]

The right to appeal is an essential component of a fair trial and aims to ensure that the conviction resulting from unfair errors, whether legal or procedural, or violations of the rights of the accused, does not become final. The UN Human Rights Committee has called on states that resort to military courts or special criminal courts to ensure that these courts respect fair trial guarantees, including the right to appeal.[3933]

The African Commission has found that violations of the African Charter have occurred in cases brought against Mauritania, Nigeria, Sierra Leone and Sudan, when persons, including civilians, have been convicted by special or military courts, whose judgments have no appeal.[3934]

The Committee against Torture has raised concerns about a Chinese law under which those accused of revealing state secrets have no right to appeal their sentence before an independent[3935] court.

The right to review of conviction and sentence by a higher tribunal applies, by most standards, irrespective of the seriousness or characterization of the offence in national law.

The guarantees guaranteed by the International Covenant on Civil and Political Rights are not limited to serious crimes.[3936]

The Human Rights Committee has expressed concerns that persons convicted of minor criminal offences (misdemeanors) in Iceland can appeal to a higher court only if the Supreme Court allows this in exceptional circumstances.[3937]

Under most standards, persons convicted by any court, including customary (traditional) courts, of committing acts that are considered "criminal" crimes under international human rights law must be allowed to exercise their right to appeal their sentences.[3938]

However, under article 2 of the Seventh Protocol to the European Convention, the right of appeal may be limited to what is permitted by law if the criminal act is a "minor offence", provided that the person was initially tried before the highest court of the State, or if the person was convicted following an appeal against his acquittal. In determining whether a criminal act is

---

([3931]) Article 14 (5) of the International Covenant, Article 40 (2) (b) (v) of the Convention on the Rights of the Child, Article 18 (5) of the Migrant Workers Convention, Article 8(2) (h) of the American Convention, Article 16 (7) of the Arab Charter, Article 2(1) of the Seventh Protocol to the European Convention, Section N(10) (a) of the Principles of Fair Trial in Africa, Article 81 (2) of the Rome Statute, Article 24 of the Statute of the Rwanda Tribunal, and Article 25 of the Statute of the Yugoslavia Tribunal; see Article 7(1) (a) of the African Charter.

([3932]) Inter-American Court: Pareto Leyva v. Venezuela, 88 § (2009); Herrera-Ulloa v. Costa Rica, §158 and§163 (2004).

([3933]) Resolution 2005/30 of the Commission on Human Rights, §8.

([3934]) African Commission: Malawi African Society et al. v. Mauritania (91/54 and other resolutions), Annual Report 13 §93 - § 94(2000), Center for Freedom of Expression v. Nigeria (206) / 97) Annual Report 13 12 § (1999), pen International, Constitutional Rights Project, International Rights Organization on behalf of Ken Saro-Wiwa Jr., Civil Liberties Organization v. Nigeria (137) / 94, 139/94, 154/96 and 161/97), Annual Report 12 §91 - § 93(1998), Conscience Forum v. Sierra Leone (223) / 98), Annual Report 14 §15 - §17(2000), Ghazi Suleiman Legal Office v. Sudan (222) / 98 and 229/99) Annual Report 16 53 § (2003).

([3935]) Concluding observations of the Committee against Torture: China, UN Doc . 16 §(2008) CAT/C/CHN/CO/4.

([3936]) Human Rights Committee: General Comment §45 ,32, Tyrone v. Spain, 2/ §7 (2004) UN Doc. CCPR/C/82/D/1073/2002, Salgar de Montego v. Colombia (64) / 1979), (4/ §14 (1982).

Concluding [3937]observations of the Human Rights Committee: Iceland, UN Doc. §14 (2005) CCPR/CO/83/ISL.

[3938]See Human Rights Committee, General Comment §24 ,32, Concluding Observations, Rwanda, §17 (2009) UN Doc. CCPR/C/RWA/CO/3..

a "minor crime", the question of whether the maximum penalty for the crime can amount to deprivation of liberty remains one of the most important measures.[3939]

25-2-2 Reconsideration before a higher court

Convictions and sentences must be reviewed by a higher court. This right ensures that the judiciary examines the case in two stages, at a minimum.

The Human Rights Committee has made it clear that a State has the right of discretion in deciding which Supreme Court will review a case, and how. However, the State does not have the right to exercise diligence in deciding whether national law may provide for such a review.[3940]

In some countries, members of parliament or the government are tried by the highest courts of the land. But the right to appeal is violated, except according to Protocol VII of the European Convention, when a person is convicted by the highest court and there is no higher court to which he can appeal.[3941]

Regulations and laws requiring the convicted person to seek the leave of the higher court to appeal may remain consistent with international standards. The elements of this include the existence of a benchmarking procedure to deal with requests for permission submitted to a higher court, and available directly to the convicted person without depending on the approval of the authorities.[3942]

While the right to appeal does not require, under international law, that States legislate for the existence of more than one instance of appeal, if national legislation provides for more, the convicted person should have an effective opportunity to appeal at every stage.[3943]

25-2-3 Can the right to appeal be exercised in practice?

The duty of the State to guarantee the right to appeal requires not only the enactment of legislation allowing the review of the judgment by a higher court, but also the adoption of measures to ensure that this right can be sought and exercised in practice.[3944]

This requires, inter alia, a reasonable time to file an appeal, an opportunity to be informed of the facts of the trial hearings, the merits of the judgments (issued at first instance and any subsequent appeals), and the judgments issued from the appeal stage, within a reasonable period of time.

The requirement to limit the periods allocated to the appeal application would hinder the effective exercise of the right to appeal.[3945]

While providing the convicted person with the opportunity to be informed of the merits of the judgment, and the record of the proceedings of the trial sessions, remains of great importance in

---

([3939]) European Court: Zeisevs v. Latvia (65022) / 01), (2007) 55- § §53, Galstyan v. Armenia (26986) / 03), 124 § (2007), Goribka v. Ukraine (61406) / 00), §53- §55 (2005).

[3940]See Human Rights Committee, General Comment 32 §45.

([3941]) Human Rights Committee: General Comment §45 ,32; see Human Rights Committee: Gelazauskas v. Lithuania, 1998 / - 1/ §7 (2003) UN Doc. CCPR/C/77/D/836 6/7, Tyrone v. Spain, 2002/4/ §7 (2004) UN Doc. CCPR/C/82/D/1073; Barreto Leyva v. Venezuela, Inter-American Court § 588- § 591(2009).

([3942]) Human Rights Committee: Lumley v. Jamaica, UN Doc 3/ §7 (1999) CCPR/C/65/D/662/1995, Minin v. The Netherlands, UN Doc 3/ §8 (2010) CCPR/C/99/D/1797/2008; European Court: Galstian v. Armenia (26986/ 03), §125- § 127(2007), Goribka v. Ukraine (61406/ 00), §57- §62 (2005).

([3943]) Human Rights Committee: General Comment 32 §45, Henry v. Jamaica, . 4/ §8 (1991) UN Doc. CCPR/C/43/D/230/1987.

([3944]) Herrera-Ulloa v. Costa Rica, Inter-American Court §164 (2004).

[3945]See Concluding Observations of the Human Rights Committee: Barbados, UN Doc. §7 (2007) CCPR/C/BRB/CO/3.

order to be able to prepare his appeal and present it to the appellate body. Moreover, if the law allows an appeal to more than one court, the defense must, within a reasonable period of time, be able to see the merits of the judgments for each stage of the appeal.[3946]

Undue delay in allowing the appeal to proceed, or in issuing the appeal decision, would constitute a violation of the right to appeal.[3947]

The consequences of delays in the proceedings are not limited to the rights of the accused, but also affect the rights of the victims, including their right to an effective remedy and reparation. In a domestic violence case in which a man was convicted of killing his wife's mother, the European Court criticized the delay in the appeal procedures that led to the non-decision of the appeal after more than six months, despite the man's confession of his guilt.[3948]

25-2-4 Correct Review

Review before a higher court must be a proper review of the issues involved in the case.

The Supreme Court must be competent to review, whether in the sufficiency of evidence or in the legal aspects.[3949]

The Supreme Court should review the allegations raised against the convicted person in detail, examine the evidence presented at the trial and relied upon in the appeal, and rule on the sufficiency of the evidence on which the conviction was based.[3950]

Reviews conducted by some courts of cassation and conclusion, and limited to legal matters, may not be sufficient to fulfill this guarantee.[3951]

The Human Rights Committee concluded that limiting judicial review to legal aspects did not meet the requirements of the International Covenant on Civil and Political Rights for an adequate assessment of evidence and the conduct of[3952] trial proceedings.

Where the higher court limited its review to the question of whether the trial judge's evaluation of the evidence met the legal requirements, without reconsidering the sufficiency of this evidence (as he declared that he was not entitled to review the evidence), the Human Rights Committee concluded that the review did not meet the requirements of the International Covenant on Civil and Political Rights (ICCPR).[3953]

The African Commission found that a violation occurred when the Court of Appeal upheld the judgment of the judge of the Court of First Instance following the review of the case without considering the legal aspects and the facts, the Commission confirmed that the court that

---

([3946]) Human Rights Committee: General Comment 32 §49, Minin v. The Netherlands, 2/ §8 (2010) UN Doc. CCPR/C/99/D/1797/2008, Lumley v. Jamaica, 5/ §7 (1999) UN Doc. CCPR/C/65/D/662/1995, Henry v. Jamaica, 4/ §8 (1991) UN Doc. CCPR/C/43/D/230/1987, Little v. Jamaica, 5/ §8 (1991) UN Doc. CCPR/C/43/D/283/1988; Hadji Anastasio v. Greece (12945) / 87), European Court §29- § 37(1992).

([3947]) Human Rights Committee: General Comment §49 ,32, Thomas v. Jamaica, 5/ §9 (1999) UN Doc. CCPR/C/65/D/662/1995, Mwamba v. Zambia, . 6/ §6 (2010) UN Doc. CCPR/C/98/D/1520/2006.

([3948]) Opuz v. Turkey (33401) / 02), European Court (2009) §150- §151..

Section N (10[3949]) (a)(1) of the Principles of Fair Trial in Africa.

Human Rights Committee General Comment 32, §48.

([3950]) General Comment 32 of the Human Rights Committee, §48.

([3951]) Herrera-Ulloa v. Costa Rica, Inter-American Court (2004) §165- §167.

([3952]) Commission on Human Rights: Domukovsky et al. v. Georgia, UN Doc. CCPR/C/62/D/623/1995, 1995 / CCPR/C/62/D/624, 1995 / CCPR/C/62/D/626, 1995/1998 (CCPR/C/62/D/627) 11/ §18; see Human Rights Committee: Saidov v. Tajikistan / CCPR/5/ §6 (2004) C/81/D/964/2001, Gómez Vázquez v. Spain, UN Doc 1/ §11 (2000) CCPR/C/69/D/701/1996; see also Special Rapporteur on human rights and counter-terrorism: Spain, UN Doc. A/HRC/10/3/Add. 2 §16- §17 (2008), 30 and 57; Gelazauskas v. Lithuania, Human Rights Commission, 1998/6/7-1/ §7 (2003) UN Doc. CCPR/C/77/D/836...

([3953]) Carpintero Ocalis v. Spain, Commission on Human Rights, UN Doc . 3/11-2/ §11 (2009) CCPR/C/96/D/1364/2005.

considered the appeal had to review objectively and impartially the legal aspects and facts presented to it, both.[3954]

The American Commission said that the courts of appeal, the guardian of justice, must examine not only the grounds on which the appeal is based, but also whether the procedures required by law have been taken into account at all stages of the proceedings by the judicial bodies.[3955]

The Human Rights Committee found a violation when the Court of Appeal dismissed the appeal filed by an individual against his conviction without giving reasons or issuing a written version of the verdict.[3956]

25-2-5 Guarantees of a fair trial during appeals

The stages of appeal must witness the full observance of all fair trial rights; they are a component of criminal proceedings.[3957]

These include the right to adequate time and facilities for the preparation of an appeal petition, the right to counsel, the right to equality of arms between the defense and the prosecution (including notification of each other's submissions), the right to a hearing by a competent, independent, impartial and duly constituted court, and the right to a hearing and reasoning within a reasonable time.[3958]

The court conducting the review must be competent, independent, impartial and established by law.[3959]

As the principles of fair trial in Africa make clear, the fact that the Appellate Body includes a judge who participated in the consideration of the case in the lower court, or in the decision made by it, compromises its impartiality.[3960]

The right to appeal shall be violated if the Supreme Review Body is an executive body and not a court formed by law.[3961]

The general rule is that appeal proceedings are held openly and in public, and are attended by the parties to the dispute. This is an additional safeguard of justice in the interest of the accused, and is of great importance for maintaining public confidence in the justice system. However, holding the appeal hearing behind closed doors or in the absence of the accused does not always incriminate the proceedings or reduce their integrity as a whole.[3962]

According to the European Court, the lack of publicity of the appeal hearing does not necessarily constitute a violation, if, for example, the first trial hearings were held in public.[3963]

[3954](Malawi African Society et al. v. Mauritania (54) / 91, 61/91, 98/93, 167/97 to 196/97 and 210/98), African Commission, Annual Report 13 §94 (2000).

([3955]) Case 9850 (Argentina), American Commission (1990) at 74-76, s. 3 §18.

George [3956]Winston Reed v. Jamaica, Human Rights Commission, UN Doc . 3/ §14 (1994) 1989/CCPR/C/51/D/355.

([3957]) Belzec v. Poland (23103/ 93), ECt (i) §37 (1998).

([3958]) See General Comment 32 of the Human Rights Committee, §13 and§49; European Court: Hadji Anastasio v. Greece (12945) / 87), European Court §31- §37 (1992), Bilziuk v. Poland (23103) / 93), European Court §37 (1998) (3), Sakhnovsky v. Russia (21272) / 03 Grand Chamber §94- §109 (2010).

([3959]) Inter-European Court: Castello Petruzzi et al. v. Peru §161 (1999) ,(1999/52), Herrera-Ulloa v. Costa Rica, Inter-American Court §69- § 175(2004); Report on Terrorism of the Inter-American Commission, (2002) § 3/d §239.

Section A (5[3960]) (d) (iv) of the Principles of Fair Trial in Africa.

([3961]) African Commission: Media Rights Agenda v. Nigeria (224) / 98) African Commission, Annual Report 14, 46 § (2000); Civil Rights Organization v. Nigeria (151) / 96) African Commission, Annual Report 13, 22 § (1999).

([3962]) General Comment 32 of the Human Rights Committee, §28; Thiers et al. v. San Marino (24954/ 94, 24971/ 94, 24972/ 94), European Court §92- §95 (2000).

([3963]) Putin v. Norway (16206) / 90), European Court §39 (1996)..

When considering appeals in the absence of the accused, the court examined the role of the prosecution, the cases that were considered, the effects on the accused's presentation of his case and on the protection of the interests of the defense, and the importance of the matters being decided.[3964]

Where the appeal considers questions of both law and fact, it usually requires that the hearing be public and the accused be present, especially if the appeal is in the process of making a decision of guilt or innocence.[3965]

The right to have counsel assigned to represent the accused on appeal may be subject to the same conditions that govern this right in the Trial Chamber. It must be considered in the interests of justice.

Factors relevant to the determination of whether the interests of justice require the assignment of counsel at the appeal stage include the maximum possible penalty and the complexity of the case, proceedings or legal matters.

The Principles of Legal Aid state that anyone charged with a criminal offence punishable by imprisonment or the death penalty is entitled to legal aid at all stages of criminal prosecution, including the stages of appeal. Moreover, a lawyer should be appointed when the interest of justice so requires, regardless of financial means.[3966]

The European Court ruled that the failure to appoint a lawyer at the final appeal stage of a sentence imposed on an accused to five years' imprisonment constituted a violation of the rights of the accused, since the accused was unable to approach the court with the required competence, in relation to legal matters, without the assistance of a lawyer.[3967]

The Human Rights Committee, in a case in which the sentenced person was not informed of the date of the appeal hearing or assigned a lawyer to represent them at the appeal stage, and did not attend the hearing despite their request to attend the appeal, considered that the rights of the appellant had been violated.[3968]

If the lawyer intends to waive the appeal or not to present his arguments before the Court of Appeal, the accused should be informed of this and given the opportunity to seek another lawyer to represent them.[3969]

The European Court held that the right of the accused to appeal was violated as the Court of Cassation decided to reject his appeal on the legal deficiencies of his trial, based on his escape. The said court also concluded that the right to legal aid had been violated because the Court of Appeal refused to allow the lawyer of the defendant of his choice to represent him before it when he decided not to appear himself before the court.[3970]

([3964]) European Court: Golubev v. Russia (26260) / 02), Decision (Inadmissibility) (2006) pp. 6-8, Belsiuk v. Poland (23103/ 93), European Court (. (ii) §37 (1998.

([3965]) European Court: Ekbatani v. Sweden (10563/ 83), 32 § (1988), Thiers et al. v. San Marino (24954/ 94, 24971 / 94, 24972/ 94), European Court §92- §102 (2000), Hamatov v. Azerbaijan, (9852/ 03, 13413 / 04), §140- §152 (2007).

([3966]) Principle 3 and see Guidelines 5 and 6 of the Principles of Legal Aid.

([3967]) Maxwell v. United Kingdom (18949) / 91), European Court §40- §41 (1994); see Bonner v. United Kingdom (18711) / 91), (1994) 44- § §43, Bakeli v. Germany (8398) / 78), §30- §41 (1983).

Lamly [3968]v. Jamaica, Human Rights Commission, / UN Doc. CCPR . 4/ §7 (1999) C/65/D/662/1995.

Sooklal [3969]v. Trinidad and Tobago, Commission on Human Rights, UN Doc . 10/ §4 (2001) CCPR/C/73/D/928/2000.

([3970]) Poitrimole v. France (14032) / 88), European Court (1993) §34- §39.

The right of access to assigned counsel, particularly in cases carrying the death penalty, extends to all stages of appeal. It also applies to requests for review based on legal arguments, although these procedures are not considered part of the appeal process.[3971]

25-2-6 Retrial based on discovery of new facts

Many countries, and international criminal tribunals, provide the opportunity to reopen criminal case files following a final verdict, if new facts are discovered that warrant reconsideration. This is not part of the appeal process.

In general, either the accused or the prosecution can request the reopening of the case due to the discovery of previously unknown reasons despite the due diligence of the summoning party, which could have been decisive in the course of the case.[3972]

Among additional evidence, the Appeals Chambers of the Rwanda and Yugoslavia Criminal Tribunals have acknowledged an incident that was examined during the trial and new information that was not considered in the context of the trial (whether or not it existed previously

The courts explained that what is decisive in this regard is whether the information is new, and whether it constitutes a decisive factor in the decision reached in the case.[3973]

The purpose of this procedure is to preserve the interest of justice and avoid aggravating the failure of justice.[3974]

It should provide legal assistance to persons seeking to be retried on the basis of such facts.[3975]

25-2-7 Reopening case files based on data reached by international human rights bodies

In order to ensure effective redress and reparation for violations of fair trial rights, as required by international standards, procedures should be established at the national level to ensure that cases can be reopened where a court or human rights body concludes that the rights of the accused have been violated.[3976]

The case should be reopened where the sentence handed down by the national court is found to have violated international human rights, such as the right to freedom of expression or to freedom of religion. The case should also be reopened when there is a risk that the fairness of the proceedings has been undermined by violations of the rights of the accused. Such cases include violations of the right to be tried by an independent and impartial tribunal; the right to adequate time and facilities for the preparation of the defense; and the right to legal assistance.

La [3971]Fendi v. Trinidad and Tobago, Commission on Human Rights, UN Doc 8/ §5 (1997) CCPR/C/61/D/554/1993; see Currie v. Jamaica, Commission on Human Rights, 1989/4/ §13 (1994) UN Doc. CCPR/C/50/D/377..

([3972]) Article 84/1 of the Rome Statute, Article 25 of the Statute of the Rwanda Tribunal, and Article 26 of the Statute of the Yugoslavia Tribunal.

Barayagwiza [3973]v. Prosecutor (ICTR-97-19-AR72), ICTR Appeals Chamber, Decision on Prosecutor's Application for Review or Reconsideration (31) March 2000) §41- §42; Prosecutor v. Dasko Tadić, (IT-94-1-R), ICTY Appeals Chamber, Decision on Application for Review (30) July 2002) §19- §20.

([3974]) Article 4(2) of the Seventh Protocol to the European Convention.

Guideline [3975]55 §11 (b) of the Principles of Legal Aid.

([3976]) Article 2(3) of the International Covenant, article 25 of the American Convention, article 7 of the African Charter, article 23 of the Arab Charter, and article 13 of the European Convention; see the basic principles of reparation, in particular principle 19.

It also includes cases where statements were extracted from the accused as a result of torture or other ill-treatment, and later adopted into evidence by the court.[3977]

Chapter Twenty-Six: Enforcement of Judgments

26.1 Under Egyptian Law

26.1.1 Executory Provisions

Sentences to a custodial sentence

It is not permitted to impose the penalties prescribed by law for any crime except by virtue of a judgment issued by a competent court.[3978]

The judgments issued by the criminal courts shall not be executed except when they have become final unless the law stipulates otherwise.[3979]

The intention of the judgment being final is not to be subject to objection or appeal, even if it is subject to cassation appeal.[3980]

The execution of the judgments issued in the criminal case at the request of the Public Prosecution shall be in accordance with the provisions of the Criminal Procedure Law

As for the judgments issued in the civil lawsuit, their implementation shall be at the request of the civil rights plaintiff in accordance with what is stipulated in the Civil and Commercial Procedures Law.[3981]

This means that the execution of the judgments issued in the criminal case is the responsibility of the Public Prosecution alone. If it decides to suspend its execution and orders it, there is no censorship[3982] or punishment.

Accordingly, it is decided that the judicial officer may arrest the person against whom an enforceable sentence of a custodial sentence has been issued, in preparation for presenting him to the Public Prosecution as the authority responsible for the implementation of criminal judgments per the provisions of Articles 461 and 462 of the Code of Criminal Procedure.[3983]

Human [3977]Rights Committee, Polay Campos v. Peru, UN Doc §10 (1998) CCPR/C/61/D/577/1994, Semey v. Spain, UN Doc 3/ §9 (2003) CCPR/C/78/D/986/2001; Castello Petruzzi et al. v. Peru, Inter-American Court § 217- §221(1999) and 226 (13); Joseph Thomas v. Jamaica (12). 183 American Commission, Report 127/01 153 § (2001) (1); European Court: Okonch and Gonzalez v. Turkey (42775) / 98), 32 § (2003), Ginchil v. Turkey (53431) / 99), 27 § (2003), Somogyi v. Italy §86 (2004) ,(01/67972), Stoichkov v. Bulgaria (9808) / 02), (2005) §81; Recommendation No. 2 (R)2000 of the Council of Europe; International Court of Justice: LaGran Case (Germany v. United States of America), 125 § (2001), Avena and Other Mexican Nationals (Mexico v. United States of America), §131, § 138, § 140 and§ 143 (2004).

([3978]) Article 459 of the Criminal Procedure Code.

([3979]) Article 460 of the Criminal Procedure Law.

([3980]) Appeal No. 14203 of 74 S issued at the session of 19 December 2012 and published in the letter of the Technical Office No. 56 page No. 5, Appeal No. 7370 of 79 S issued at the session of 2 October 2011 and published in the letter of the Technical Office No. 62 page No. 271 rule No. 44.

([3981]) Article 461 of the Criminal Procedure Code.

([3982]) Appeal No. 1748 of 36 S issued at the session of January 31, 1967 and published in the first part of the book of the Technical Office No. 18, page No. 133, rule No. 25.

([3983]) Appeal No. 9405 of 80 S issued at the session of July 27, 2011.unpublished), Appeal No. 1078 of 80 S issued at the session of September 28, 2010.unpublished), Appeal No. 1985 of 78 S issued at the session of June 2, 2009.unpublished).

The Public Prosecution shall take the initiative to implement the enforceable judgments issued in the criminal case. It may, when necessary, use military force directly.[3984]

The law did not prescribe the implementation of the Public Prosecution of the provisions in a special form such as the issuance of a written order or the writing of a request to arrest the convict or the like.[3985]

As we have seen above, the legislator stipulated that the execution of the criminal judgment must be final and not subject to appeal by ordinary means of appeal, but it excluded the judgments issued for fine and expenses, so that these judgments are enforceable immediately, even with their appeal.

The legislator also exempted from the requirement that the executed judgment be final, the judgments issued for imprisonment in theft, or the judgments issued against an accused who is returning or has no fixed place of residence in Egypt, as well as in other cases if the judgment is issued for imprisonment, unless the accused provides a guarantee that if he does not appeal the judgment, he does not flee from its implementation upon the expiry of the appeal dates, and that if he appeals, he attends the session and does not flee from the implementation of the judgment issued. Every judgment issued for the punishment of imprisonment in these cases specifies the amount for which the bail must be submitted.

If the accused is remanded in custody, the court may order the provisional execution of the sentence.

The court may order a temporary stay of execution in the judgments issued for compensation to the civil rights plaintiff, even with an appeal.[3986]

The judgment shall be enforceable - even if it is subject to appeal - as long as it is issued by imprisonment in theft.[3987]

Accordingly, the judgments that must be implemented, even with the occurrence of their appeal, are the judgments in the presence and judgments issued in the opposition, as well as the judgments in absentia in which the date of the opposition has passed or the opposition has been ruled as if it had not been. As for the judgment that is subject to objection or that has been filed against an objection that has not yet been adjudicated, it is not enforceable. In the sense of the violation, this means that the judgment in absentia may not be executed if the date of the opposition has not started or has not yet expired, and it may not be implemented as well if it has been appealed against the opposition, and it remains suspended until the opposition is adjudicated.[3988]

If the punishment of imprisonment is carried out, all ancillary punishments imposed shall also be carried out, without the need to draw the attention of the defense. The ancillary punishments shall be applied with the original punishment when its provision is meted out.[3989]

([3984]) Article 462 of the Criminal Procedure Code.

([3985]) Appeal No. 897 of 27 S issued at the session of November 11, 1957 and published in the third part of the book of the Technical Office No. 8 page No. 884 rule No. 240.

([3986]) Article 463 of the Criminal Procedure Code.

([3987]) Appeal No. 4409 of 83 S issued on November 6, 2013.unpublished).

([3988]) Appeal No. 14203 of 74 S issued at the session of 19 December 2012 and published in the letter of the Technical Office No. 56 page No. 5, Appeal No. 2491 of 79 S issued at the session of 28 March 2011.unpublished), Appeal No. 7370 of 79 S issued at the session of 2 October 2011 and published in the letter of the Technical Office No. 62 page No. 271 rule No. 44.

([3989]) Article No. 464 of the Code of Criminal Procedure, Appeal No. 2612 of 50 S issued at the session of April 6, 1981 and published in the first part of the book of the Technical Office No. 32, page No. 334, rule No. 59.

Judgement of acquittal

The remanded accused shall be released immediately if the judgment is issued for acquittal, or if another penalty does not require imprisonment to be carried out, or if he orders a stay of execution of the sentence in the judgment, or if the accused has served the period of the sentenced sentence in remand detention.[3990]

Stay of Execution

The principle in criminal judgments is that they must be implemented.[3991]

However, the legislator suspended the execution of the judgments during the date set for the appeal and during the hearing of the appeal filed in that period.[3992]

Whereas an appeal by way of cassation does not entail a stay of execution unless the judgment is issued with the death penalty.[3993]

According to the above, the lapse of the appeal is a mandatory penalty imposed on the fugitive appellant if he does not apply for its implementation before the day of the hearing that was set for the consideration of the appeal, considering that the appeal by way of cassation only responds to a final judgment, and that the report thereon does not entail, in accordance with Article 469 of the Code of Criminal Procedure, the suspension of the execution of the sentence of restriction of liberty imposed by the applicable sentences - which applies a fortiori to the appeal of the death sentence as it is a more severe punishment aimed at ending the life of the convicted person and depriving him of his liberty Certainly before execution - which is the same meaning learned from what was stated by the legislator in Article 471 of the Code of Criminal Procedure to instruct the Public Prosecution when the death sentence became final to place the convict in prison until the execution of the death sentence, it does not change that the legislator excluded the cases in which the death sentence was imposed, so Article 469 imposed a moratorium on the execution of the death penalty by cassation appeal, as this means that the legislator intended to postpone the execution of the death itself until the cassation order is settled in the appeal of the convict or the presentation of the Public Prosecution and the completion of its procedures, which requires that The person sentenced to death is under execution, whether he was imprisoned before the sentence or arrested after it, as the consideration of his appeal requires that he be under execution in one of the prisons prepared for that and to say otherwise for a conversation that walks away from him in the street. The legislator did not mean in any way to differ between those sentenced to death and others sentenced to a custodial sentence, so they may appeal in cassation - while they are at large - without the accused putting himself under execution and decides to forfeit the appeal of those sentenced to custodial penalties if they do not apply for execution.[3994]

([3990]) Article 465 of the Criminal Procedure Code.

([3991]) Appeal No. 629 of 29 S issued at the session of May 18, 1959 and published in the second part of the Technical Office's book No. 10 page No. 540 rule No. 119.

([3992]) Article 466 of the Criminal Procedure Code.

([3993]) Article 469 of the Criminal Procedure Code.

([3994]) Appeal No. 8528 of 88 S issued at the session of May 12, 2019.unpublished), Appeal No. 20562 of 83 S issued at the session of May 25, 2014 and published in the Technical Office's letter No. 65, page No. 469, rule No. 54, Appeal No. 3027 of 80 S issued at the session of October 4, 2011 and published in the Technical Office's letter No. 62, page No. 283, rule No. 46, Appeal No. 2152 of 80 S issued at the session of March 1, 2011.unpublished), Appeal No. 25172 of 66 S Issued at the hearing of 21 September 2006.unpublished), Appeal No. 17358 of 66 S issued at the hearing of 18 May 2006.unpublished), Appeal No. 36102 of 75 S issued at the hearing of 12 March 2006.unpublished), Appeal No. 6099 of 66 S issued at the hearing of 2 March 2006.unpublished), Appeal No. 12323 of 69 S issued at the hearing of 22 September 2005.unpublished), Appeal No. 12533 of 66 S issued at the hearing of 19 May 2005.unpublished), Appeal No. 12533 of 66 S issued at the hearing of 19 May 2005.unpublished), No. 31624 of 69 S issued at the hearing of March 17, 2005.unpublished), Appeal No. 3146 of 66 S issued at the hearing of March 3, 2005.unpublished), Appeal No. 958 of 66 S issued at the hearing of February 17, 2005.unpublished),

The law does not justify delaying the implementation of the final judgments to any extent other than on the pretext that the convicts find a way to appeal against the nullity, which makes it imperative to say that the street undoubtedly intended to make the methods of appeal granted to the accused mentioned in the law exclusively a limit to which the judgments must stop in order to ensure the proper functioning of justice and stability of the final conditions that the word of the judiciary ended.[3995]

Execution of judgments in absentia

The default judgment may be executed if the convicted person does not object to it within the time limit prescribed for the objection, which is within the ten days following his notification of the default judgment contrary to the time limit of the legal period, or from the day he learns that the notification has taken place if the announcement of the judgment has not been made to his person.

The court may, when ruling on the guarantees to the civil rights plaintiff, order temporary enforcement with the provision of a bail, even if the objection or appeal occurs in respect of all or part of the judgment amount, and it may exempt the convict from bail.[3996]

If the time limit for the objection is still valid or if the convicted person has objected to this judgment and his objection has not yet been decided, then this judgment - according to the concept of the violation - is not enforceable. However, the court may, at the request of the Public Prosecution, order the arrest and detention of the convicted person in absentia, even if the time limit for the objection is still open or with the opposition and not being decided if the absentia judgment was issued for a period of imprisonment of one month or more and the accused did not have a place of residence in Egypt or if a provisional detention order has been issued.[3997]

In the sense of the violation, this means that the default judgment may not be implemented if the deadline for the opposition has not yet begun or expired, and that it may not be implemented if it is challenged by the opposition, and it remains suspended until the opposition is adjudicated. The street has limited the implementation of the default judgment to the penalty in the event that the deadline for appealing it expires by the opposition without appealing it.[3998]

Appeal No. 24161 of 65 S issued at the hearing of February 3, 2005.unpublished), Appeal No. 5402 of 65 S issued at the hearing of April 20, 2004 and published in the book of the Technical Office No. 55, page No. 427, rule No. 56, Appeal No. 19805 of 65 S issued at the hearing of May 17, 2004.unpublished), Appeal No. 17214 of 65 S issued at the hearing of April 15, 2004.unpublished), Appeal No. 21836 of 65 S issued at the hearing of March 15, 2004.unpublished), Appeal No. 40508 of 72 S issued at the hearing of January 1, 2004.unpublished), Appeal No. 9374 of 65 S issued at the hearing of November 6, 2003.unpublished), Appeal No. 20680 of 65 S issued at the hearing of November 5, 2003.unpublished) 2003.unpublished), Appeal No. 15820 of 63 S issued at the hearing of October 17, 2002.unpublished), Appeal No. 13640 of 63 S issued at the hearing of October 3, 2002.unpublished), Appeal No. 20398 of 65 S issued at the hearing of October 3, 2002.unpublished), Appeal No. 27940 of 64 S issued at the hearing of March 21, 2002.unpublished), Appeal No. 13648 of 64 S issued at the hearing of October 15, 2000, published in Technical Office Letter No. 51, page No. 628, rule No. 123, Appeal No. 12471 of 60 S issued in the session of October 18, 1998, published in Part I of Technical Office Letter No. 49, page No. 1103, rule No. 149, Appeal No. 3280 of 57 S issued in the session of December 25, 1988, published in Part II of Technical Office Letter No. 39, page No. 1364, rule No. 206, Appeal No. 2691 of 54 S issued in the session of November 12, 1985, published in Part I of Technical Office Letter No. 36, page No. 1005, rule No. 183, Appeal No. 6 of 45 s issued at the session of March 24, 1975 and published in the first part of the Technical Office letter No. 26 page No. 255 rule No. 59, Appeal No. 2059 of 37 s issued at the session of March 26, 1968 and published in the first part of the Technical Office letter No. 19 page No. 377 rule No. 72.

([3995]) Appeal No. 188 of 30 S issued at the hearing of April 26, 1960 and published in the second part of the book of the Technical Office No. 11 page No. 380 rule No. 77.

([3996]) Articles 398 and 467 of the Criminal Procedure Code.

([3997]) Appeal No. 10956 of 85 S issued at the session of April 11, 2017.unpublished).

([3998]) Appeal No. 7370 of 79 S issued at the 2nd session of October 2011 and published in the Technical Office's letter No. 62, page No. 271, rule No. 44, Appeal No. 2491 of 79 S issued at the 28th session of March 2011.unpublished), Appeal No. 4728

A dispute had arisen between the circuits of the Court of Cassation, and this was raised by the fact that some of those judgments allowed arrest under the default judgment away from the defendant's declaration or enforceability, based on the fact that the procedures are conducted on the apparent judgment and not on what may be revealed afterwards from the fact. The second believes that the judgment must be enforceable so that the arrest of the defendant is valid. Whereas, Article 460 of the Criminal Procedure Law stipulates that "the judgments issued by the criminal courts shall not be executed unless they become final unless the law stipulates otherwise." The meaning of the fact that the judgment is final in the application of the aforementioned article is that it shall not be subject to objection or appeal, even if it is subject to cassation. The exception mentioned in the inability of this article refers to the cases of expedited enforcement mentioned in Article 463 of the aforementioned law, which states: "The judgments issued for fines and expenses shall be immediately enforceable, even with the occurrence of their appeal, as well as the judgments issued for imprisonment for theft or against an accused returnee or who has no fixed place of residence in Egypt......" The judgments that the advanced text refers to their implementation, even with the occurrence of their appeal, are the judgments in presence and the judgments issued in opposition, as well as the judgments in absentia in which the date of the objection has expired or the opposition has been ruled as if it were not. The judgment that is subject to objection or in respect of which an objection has been filed that has not yet been adjudicated is not enforceable, and Article 467 of this Law stipulates in its first paragraph. However, "the default judgment may be executed if the convicted person does not object to it within the time limit set out in the first paragraph of Article 398." In the sense of the violation, this means that the default judgment may not be executed if the date of the objection has not yet begun or has not yet expired, and it may not be executed if it is challenged by the opposition, and its implementation remains suspended until the opposition is decided. The street has limited the implementation of the default judgment to the penalty in the event that the deadline for appealing it has expired by the opposition without appealing it, and it has added to that Also, Article 468 of the Code of Criminal Procedure, in its first paragraph, states that "the court may, when sentencing in absentia to imprisonment for a period of one month or more if the accused does not have a specific place of residence in Egypt or if a provisional detention order is issued against him, order the arrest and detention of him at the request of the Public Prosecution." The street has introduced an exception to the original stipulating that the default judgment may not be executed during the time of the opposition and during its consideration, so it is permissible to implement it during this in two cases if the accused does not have a specific place of residence in Egypt or if a provisional detention order is issued against him. The first condition is that the judgment was issued with imprisonment for a period of one month or more, and the second is to order the court to implement it at the request of the Public Prosecution. This means that the default judgment in each of the two cases shall be executed as soon as it is issued, even if the date of the opposition has not yet expired or it is still pending before the competent court. The reason for the exception is the likelihood of the street to support the judgment, in addition to the fact that the suspension of its implementation - according to the general principle - may make it impossible to implement it if it is supported in the opposition because there is no place of residence for the accused in Egypt or because of the seriousness that the order foresees his pretrial detention. The street accordingly decided to implement it temporarily. Article 468 of the law referred to in its second paragraph added that "the accused shall be detained upon arrest in implementation of this order until he is sentenced to the opposition that he raises, or the prescribed deadline expires, and in no case may remain in detention for a period exceeding the sentenced period."

---

of 78 S issued at the 10th session of May 2009.unpublished), Appeal No. 13719 of 67 S issued at the 11th session of December 2006.unpublished).

Whereas, the first judgments issued by some criminal circuits violated this consideration and allowed the arrest of the accused under the default judgment, even if it was not enforceable, it became a duty to withdraw it.[3999]

The court may, when ruling in absentia for a period of one month or more, if the accused does not have a specific place of residence in Egypt, or if a provisional detention order is issued against him, order, at the request of the Public Prosecution, his arrest and detention.

The accused shall be detained upon his arrest in implementation of this order until he rules on the objection he raises, or the time limit prescribed for it lapses. It is not permitted in any case to remain in detention for a period exceeding the period ruled. All of this is unless the court to which the opposition is submitted sees his release before adjudicating it.[4000]

The Public Prosecution, which is the competent authority responsible for the implementation of the judgments issued by the criminal courts of the penalty, does not initiate their implementation unless they are final judgments that are "enforceable", and it is the one that is not subject to appeal by opposition or appeal - even if it is subject to cassation - whether to miss their deadlines or to decide on them. Exceptions to this are the cases of obligatory execution and temporary permissive execution stipulated in articles 463 and 468 of the Criminal Procedure Law.

This means that the court may, at the request of the Public Prosecution, order the arrest and detention of the convicted person in absentia, even if the date of the opposition is still open or with the opposition occurring and not being adjudicated if the default judgment was issued for a period of one month or more and the accused did not have a place of residence in Egypt or a pre-trial detention order was issued. Thus, the street introduced an exception to the original ruling that the default judgment may not be executed during the time of the opposition and during its consideration, so it allowed its implementation during this in two cases, and this means that the default judgment in each of these two cases shall be executed as soon as it is issued, even if the date of the opposition has not yet expired, or it is still pending before the competent court.[4001]

The reason for this exception is that the street is likely to support the judgment in addition to the fact that the suspension of its implementation - according to the general principle - may make it impossible to implement it if it is supported in the opposition because there is no place of residence for the accused in Egypt, or because of its seriousness, which is indicated by the order to remand him in custody, so the street decided accordingly to implement it temporarily.[4002]

([3999]) Appeal No. 14203 of 74 S issued at the session of 19 December 2012 and published in the letter of the Technical Office No. 56 page No. 5.

([4000]) Article 468 of the Criminal Procedure Code.

([4001]) Appeal No. 10956 of 85 S issued at the 11th session of April 2017.unpublished), Appeal No. 1817 of 82 S issued at the 6th session of March 2013.unpublished), Appeal No. 2491 of 79 S issued at the 28th session of March 2011.unpublished), Appeal No. 4728 of 78 S issued at the 10th session of May 2009.unpublished), Appeal No. 13719 of 67 S issued at the 11th session of December 2006.

([4002]) Appeal No. 7370 of 79 S issued on October 2, 2011 and published in the book of the Technical Office No. 62 page No. 271 rule No. 44.

26.1.2 Execution of the Death Penalty

Duration of the execution of the judgment

When the death sentence becomes final, the lawsuit papers must be submitted immediately to the President of the Republic through the Minister of Justice, and the sentence shall be executed if there is no order for pardon or commutation of the sentence within fourteen days.[4003]

The death penalty may not be carried out on public holidays or holidays related to the religion of the convict.[4004]

Imprisonment of death row inmate

The person sentenced to death shall be placed in prison on the basis of an order issued by the Public Prosecution on the form decided by the Minister of Justice until the sentence is executed.[4005]

Relatives of the person sentenced to death may meet with him on the day appointed for the execution of the sentence, provided that this is far from the place of execution.

If the religion of the convict forces him to confess or other religious obligations before death, the necessary facilities must be made to enable one of the clerics to meet him.[4006]

Place of Execution of the Death Penalty

The death penalty shall be carried out inside the prison, or in another concealed place, upon a written request from the Attorney General indicating that the procedures prescribed by law have been fulfilled.[4007]

Procedures for the Execution of the Death Penal

The execution of the death penalty must be carried out in the presence of one of the deputy prosecutors, the prison warden, the prison doctor, or another doctor delegated by the Public Prosecution. It is not permitted for other than those mentioned to attend the execution except with special permission from the Public Prosecution. The convicted defendant must always be authorized to attend.

The verdict of the death sentence and the charge for which the convict was sentenced must be read at the place of execution with the hearing of the attendees. If the convicted person wishes to make statements, the deputy public prosecutor shall draw up a report of them.

Upon completion of the implementation, the Deputy Attorney General shall draw up a record of this, in which the doctor's certificate of death and the hour of its occurrence shall be recorded.[4008]

The government shall, at its expense, bury the body of a person sentenced to death, unless he has relatives who request to do so, and the burial must be without ceremony.[4009]

moratorium on the death penalty

The execution of the death penalty for pregnant women shall be suspended until two months after[4010] its delivery.

(4003) Article 470 of the Criminal Procedure Code.
(4004) Article 475 of the Criminal Procedure Code.
(4005) Article 471 of the Code of Criminal Procedure, and see: Appeal No. 8528 of 88 S issued on May 12, 2019.unpublished).
(4006) Article 472 of the Criminal Procedure Code.
(4007) Articles 470 and 473 of the Criminal Procedure Code.
(4008) Article 474 of the Criminal Procedure Code.
(4009) Article 477 of the Criminal Procedure Code.

26.1.3 Enforcement of custodial sentences

Places of enforcement of custodial sentences

Sentences issued for custodial sentences shall be executed in the prisons prepared for this purpose by virtue of an order issued by the Public Prosecution on the form decided by the Minister of Justice.[4011]

Any person sentenced to simple imprisonment for a period not exceeding six months may, in lieu of the execution of the custodial sentence, request his employment outside the prison, unless the judgment stipulates that he shall be deprived of this option.[4012]

Calculation of sentence and release of inmate

The period of the custodial sentence starts from the day of the arrest of the convict based on the enforceable judgment, taking into account its reduction by the period of pretrial detention and the period of arrest.[4013]

The day on which the execution begins shall be calculated from the sentence period, and the convict shall be released on the day following the day of the end of the sentence at the time specified for the release of the inmates. If the sentence of imprisonment imposed on the accused is twenty-four hours, its execution shall end on the day following his arrest at the time specified for the release of the inmates.[4014]

The period of detention is also deducted from the sentenced period. Article 482 of the Code of Criminal Procedure provides for a general and absolute response to such a restriction, and therefore it is not permissible to say it. In addition, this statement involves a distinction that is unpalatable or acceptable in legal logic. As long as the nature of pretrial detention and detention combine with the nature of the sentenced punishment in that they are all restricted and deprived of freedom, and have continued without interval, this distinction has no face at all.[4015]

If the accused is acquitted of the crime for which he was remanded in custody, the period of imprisonment shall be deducted from the period sentenced in any other crime that he may have committed or investigated during remand in custody.[4016]

If the defendant is sentenced to multiple custodial sentences, the period of pre-trial detention shall be deducted from the lighter penalty first.[4017]

This means that the period of pretrial detention, arrest and detention must be deducted from the period of the custodial sentence, and that if a person is acquitted in the crime for which he was held in pretrial detention, the period of pretrial detention must be deducted from the period for which he was sentenced in any other crime, provided that the latter was committed during pretrial detention or was investigated with him during it.[4018]

([4010]) Article 476 of the Criminal Procedure Code.
([4011]) Article 478 of the Criminal Procedure Code.
([4012]) Article 479 of the Criminal Procedure Code.
([4013]) Article 482 of the Criminal Procedure Code.
([4014]) Article 480 and 481 of the Criminal Procedure Code.
([4015]) Administrative Judicial Court, Judgement No. 39027 of 62 S issued at the session of November 11, 2008, page No. 53, Judgement No. 34582 of 60 S issued at the session of February 27, 2007, page No. 452.
([4016]) Article 483 of the Criminal Procedure Code.
([4017]) Article 484 of the Criminal Procedure Code.
([4018]) Administrative Court, First Circuit, Judgement No. 54214 of 62 Q issued at the 26th session of May 2009.unpublished), Judgement No. 11329 of 61 Q issued at the 10th session of March 2009.unpublished), Judgement No. 15045 of 56 Q issued at the 13th session of July 2004.unpublished), Judgement No. 4473 of 55 Q issued at the 26th session of November 2002.unpublished).

In cases other than those specified in the law, the convicted inmate may not be released before he completes the period of[4019] punishment.

Postponement of the execution of the custodial sentence

If the convict of a custodial sentence is pregnant in the sixth month of pregnancy, the execution may be postponed until she gives birth and a period of two months has elapsed since the delivery. If the execution is seen on the convict or it appears during the execution that she is pregnant, she must be treated in the reform center as a pretrial detainee until she gives birth and a period of two months has elapsed since the delivery.[4020]

The execution of the sentence may also be postponed if the convict of a custodial sentence suffers from a disease that threatens his life by itself or because of[4021] the execution.

The postponement of the execution of the sentence shall be within the competence of the Public Prosecution, and it has nothing to do with the adjudication of the sentence because it is outside its jurisdiction as it is subsequent to the pronouncement of the sentence.[4022]

If the convict suffers from a mental disorder, the execution of the sentence shall be postponed until he is acquitted. The Public Prosecution may order his placement in one of the psychiatric shops, in which case the period he spends in this place shall be deducted from the period of the sentence imposed.[4023]

In addition, if the man and his wife are sentenced to imprisonment for a period not exceeding one year, even for different crimes, and they have not been imprisoned before, the execution of the punishment on one of them may be postponed until the other is released. That is, if they are sponsoring a child who has not exceeded fifteen full years, and they have a known place of residence in Egypt.[4024]

In all cases where it is permissible to postpone the execution of the sentence against the convicted person, the Public Prosecution may request him to provide a guarantee that he does not flee from execution upon the disappearance of the reason for the postponement, and the amount of the guarantee is estimated in the order issued for postponement, and it may also stipulate for postponing the execution the precautions it deems necessary to prevent the convicted person from escaping.[4025]

26-1-4 Implementation of financial penalties and physical coercion

Collection and Distribution of Judgment Amounts

When settling the amounts due to the government for the fine, what must be returned, compensation and expenses, the Public Prosecution must, before execution, notify the convict of the amount of these amounts, unless they are estimated in the judgment. The amounts due to the government may be collected by the methods prescribed in the Civil and Commercial

---

([4019]) Article 490 of the Criminal Procedure Code.
([4020]) Article 485 of the Criminal Procedure Code.
([4021]) Article 486 of the Code of Criminal Procedure, and see: Appeal No. 5402 of 65 S issued at the session of April 20, 2004 and published in the Technical Office's letter No. 55, page No. 427, rule No. 56, Appeal No. 11521 of 59 S issued at the session of June 7, 1992 and published in the first part of the Technical Office's letter No. 43, page No. 600, rule No. 89, Appeal No. 2059 of 37 S issued at the session of March 26, 1968 and published in the first part of the Technical Office's letter No. 19, page No. 377, rule No. 72.
([4022]) Appeal No. 27551 of 72 S issued in the session of January 15, 2008 and published in the letter of the Technical Office No. 59, page No. 61, rule No. 9.
([4023]) Article 487 of the Criminal Procedure Code.
([4024]) Article 488 of the Criminal Procedure Code.
([4025]) Article 489 of the Criminal Procedure Code.

Procedures Law or by the administrative methods prescribed for the collection of princely funds.[4026]

If the fine, what must be returned, and the compensation and expenses are ruled together, and the convict's funds do not meet all of this, what is obtained from them must be distributed among the rights-holders in the following order:

Expenses due to the government.

Amounts due to the civil plaintiff.

Fine and what the government deserves in terms of restitution and compensation.[4027]

If a person is remanded in custody and is sentenced only to a fine, it must be reduced upon execution by five pounds for each day of the aforementioned imprisonment. If he is sentenced to imprisonment and a fine together, and the period he spent in pretrial detention exceeds the period of the sentenced detention, the fine shall be reduced by the said amount for each day of the aforementioned increase.[4028]

The judge of the summary court in the jurisdiction where the enforcement is taking place may grant the accused, in exceptional cases, at his request and after taking the opinion of the Public Prosecution, a deadline to pay the amounts due to the government, or to authorize him to pay them in installments, provided that the period does not exceed nine months. An order accepting or rejecting an application may not be challenged.

If the accused is late in paying an installment, the rest of the installments shall be settled. The judge may refer to the order issued by them, if there is a reason for that.[4029]

Physical Coercion

If the accused does not pay the amounts due to the government, the Public Prosecution shall issue an order of physical coercion. Physical coercion may be used to collect the amounts arising from the crime decided for the government against the perpetrator of the crime. Such coercion shall be by simple imprisonment and its duration shall be estimated as one day for every five pounds or less.

However, in the articles of violations, the period of coercion shall not exceed seven days for fines or seven days for expenses, refunds and compensation.

In the articles of misdemeanors and felonies, the period of coercion shall not exceed three months for fines and three months for expenses, refunds and compensation.[4030]

Therefore, the Court of Cassation ruled that in every judgment issued for the fine penalty, its amount must be determined in Egyptian currency, and this does not change that the fine imposed must be a relative fine or that the money on which the crime was committed must be foreign exchange allowed to be traded in the country, as the value of the fine must be estimated at the value of that foreign exchange in Egyptian currency at the date of the crime.[4031]

([4026]) Articles No. 505, 506 of the Code of Criminal Procedure, and see: Appeal No. 276 of 59 S issued at the session of January 28, 1993 and published in the first part of the book of the Technical Office No. 44 page No. 355 rule No. 65.

([4027]) Article 508 of the Criminal Procedure Code.

([4028]) Article 509 of the Criminal Procedure Code.

([4029]) Article 510 of the Criminal Procedure Code.

([4030]) Articles 507, 511 of the Criminal Procedure Code.

([4031]) Appeal No. 3717 of 65 S issued in the session of February 1, 1999 and published in the first part of the book of the Technical Office No. 50 page No. 84 rule No. 17.

However, it is required for execution by physical coercion that the convicted person has reached the age of fifteen years at the time of committing the crime and that the judgment is not issued with a stay of execution.[4032]

Physical coercion may be postponed in cases where the implementation of custodial sentences may be postponed.[4033]

In the event of multiple judgments, and all of them were issued in violations, misdemeanors, or felonies, the execution shall be based on the total amounts adjudicated. In this case, the period of coercion may not exceed twice the maximum in misdemeanors and felonies, nor more than twenty-one days in violations.

However, if the crimes are of different types, the maximum limit prescribed for each of them shall be observed.

In any case, the period of coercion may not exceed six months for fines and six months for expenses, reimbursements and compensation.[4034]

If the sentenced crimes are different, the amounts paid or obtained by execution on the property of the convicted person shall be deducted first from the amounts sentenced in felonies, then in misdemeanors, and then in violations.[4035]

The execution of physical coercion shall be by an order issued by the Public Prosecution on the form decided by the Minister of Justice and shall commence at any time after the accused has been notified, and after he has served all the periods of custodial sentences imposed.[4036]

Physical coercion ends when the amount corresponding to the period spent by the convict in coercion is equal to the amount originally required, after deducting what the convict has paid or obtained from him by execution on his property.[4037]

However, the debt of the convict is not discharged from the expenses, what must be returned, and compensation by the implementation of physical coercion against him, and he is not discharged from the fine except by considering five pounds for each day. However, the misdemeanor court in whose jurisdiction the convict's place of residence is located may, if he does not implement the judgment issued to the non-government for compensation after warning him to pay, and in the event that it proves that he is able to pay, and orders him not to comply, to sentence him to physical coercion. The period of such coercion may not exceed three months, and nothing shall be deducted from the compensation for coercion in this case, and the lawsuit shall be filed by the convict in the usual ways.[4038]

The convict may request at any time from the Public Prosecution, before the issuance of the physical coercion order, to replace him with a manual or industrial work he performs. In that case, the convict shall work in this work free of charge for one of the government bodies or municipalities for a period of time equal to the period of coercion that should have been carried out on him. The types of works in which the convict may be employed and the administrative bodies that decide these works shall be determined by a decision issued by the competent minister.

([4032]) Article 512 of the Criminal Procedure Code.
([4033]) Article 513 of the Criminal Procedure Code, see above: postponement of the implementation of custodial sentences.
([4034]) Article 514 of the Criminal Procedure Code.
([4035]) Article 515 of the Criminal Procedure Code.
([4036]) Articles 505, 516 of the Criminal Procedure Code.
([4037]) Article 517 of the Criminal Procedure Code.
([4038]) Articles 518, 519 of the Criminal Procedure Code.

It is not permitted to employ the convict outside the city in which he resides or his subordinate centre. It shall be taken into account in the work that he is required daily to be able to complete within six hours according to the condition of his structure.

The amounts due to the government shall be deducted from the fine, what must be returned, compensation and expenses for the work of the convict, considering five pounds for each day.[4039]

If the convict does not attend the place prepared for his occupation, is absent from his occupation, or does not complete the work imposed on him daily without an excuse that the administration authorities deem acceptable, he shall be sent to prison for execution under the physical coercion that was due to be carried out on him, and the days during which he has completed the work imposed on him shall be deducted from his period.

It must be carried out by physical coercion on the convict who chose work instead of coercion, if there is no work for which his occupation is beneficial.[4040]

26-1-5 Difficulty in implementation

The court competent to consider problems of implementation

Forms of execution shall be submitted by the convicted person to the Criminal Court in the judgment issued by it, and to the Court of Appeal Misdemeanors, otherwise, and jurisdiction shall be held for the court that is locally competent to consider the lawsuit in question in the implementation of the judgment issued therein.[4041]

Forms of execution are not considered an obituary of the judgment, but rather an obituary of the execution itself. Therefore, the jurisdiction of the ordinary judiciary to consider and decide on that problem requires that the judgment in question be issued by one of the courts of that authority. This means that the courts of the ordinary judiciary do not have jurisdiction to consider problems over judgments issued by state security courts or military courts.[4042]

This also means that the problem court may not address in its judiciary to invoke justifications for suspending the execution of the sentenced sentence based on matters related to the subject matter of the lawsuit, because it has thus exceeded its jurisdiction and wasted the authority of the judgment in which it was challenged.[4043]

However, in the event that a dispute arises from a non-accused regarding the funds required to be executed in the event that financial judgments are executed on the funds of the convicted

---

([4039]) Articles 520, 521, 523 of the Criminal Procedure Code.

([4040]) Article 522 of the Criminal Procedure Law.

([4041]) Article 524 of the Criminal Procedure Code.

([4042]) Appeal No. 2663 of 79 s issued at the session of February 13, 2016 and published in the letter of the Technical Office No. 67 page No. 216 rule No. 25, Appeal No. 9287 of 78 s issued at the session of November 4, 2015 and published in the letter of the Technical Office No. 66 page No. 725 rule No. 111, Appeal No. 22925 of 77 s issued at the session of May 16, 2010.unpublished), Appeal No. 15849 of 62 s issued at the session of May 2, 2010.unpublished) 2001 and published in Technical Office Letter No. 52 Page No. 472 Rule No. 82, Appeal No. 6811 of 58 S issued at the session of 29 April 1990 and published in Part I of Technical Office Letter No. 41 Page No. 659 Rule No. 112, Appeal No. 3256 of 55 S issued at the session of 3 October 1985 and published in Part I of Technical Office Letter No. 36 Page No. 820 Rule No. 145, Appeal No. 2405 of 50 S issued at the session of 25 March 1981 and published in Part I of Technical Office Letter No. 32 Page No. 283 Rule number 49.

([4043]) Appeal No. 1639 of 48 s issued at the session of January 28, 1979 and published in the first part of the Technical Office letter No. 30 page No. 179 rule No. 34, Appeal No. 1454 of 36 s issued at the session of March 14, 1967 and published in the first part of the Technical Office letter No. 18 page No. 422 rule No. 79.

person, the matter shall be referred to the civil court in accordance with what is stipulated in the Code of Procedure.[4044]

This means that the jurisdiction to consider the problem in the implementation of criminal judgments is held either by the criminal court or by the civil court, as the case may be, under the conditions prescribed by law.[4045]

The judgments that the civil court has the competence to consider the problems in their implementation shall mean the judgments issued by fine or what must be returned or compensation and expenses that are intended to be collected by execution on the funds of the convict by civil means in accordance with the provisions of the Code of Procedure. If a dispute arises from a person other than the accused regarding the funds to be seized, the matter shall be submitted to the civil court in accordance with what is prescribed in the Code of Procedure. As for the criminal judgments issued by closing, removing, demolishing, confiscating, returning the thing to its origin, publishing the judgment, or withdrawing the license, they do not fall within the scope of financial judgments within the meaning of Article 527 of the Code of Criminal Procedure, they do not impose a monetary penalty, but rather they are judgments of criminal penalties intended to erase the appearance caused by the crime and implement the judgment issued by it. The jurisdiction to consider the problem in the implementation of those judgments of the criminal court that issued the judgment, as the problem relates to the judgment itself in terms of its content or enforceability.[4046]

Therefore, it is stipulated in the forms that its cause must have occurred after the issuance of this judgment, but if its cause occurred before its issuance, it shall have been included in the defenses in the lawsuit and it became impossible for the convict to challenge it, whether he has paid it in the lawsuit or he has not paid it.[4047]

Procedures for Consideration of Problems

The dispute shall be submitted to the court by the Public Prosecution as a matter of urgency, and the concerned parties shall be notified of the session specified for its consideration, and the court shall decide on it in the consultation room after hearing the Public Prosecution and the concerned parties. The court may conduct investigations that it deems necessary, and in all cases it may order a stay of execution until the dispute is resolved.

The Public Prosecution may, when necessary and before submitting the dispute to the Court, temporarily suspend the execution of the judgment.

If there is a dispute in the personality of the convict, it shall be decided in the manner and conditions prescribed in the consideration of the problems.[4048]

([4044]) Article 527 of the Criminal Procedure Code.

([4045]) Appeal No. 1076 of 35 S issued at the session of December 21, 1965 and published in the third part of the book of the Technical Office No. 16 page No. 950 rule No. 181.

([4046]) Appeal No. 492 of 79 S issued at the session of April 20, 2011 and published in the Technical Office's letter No. 62, page No. 548, rule No. 92, Appeal No. 98 of 22 S issued at the session of June 14, 1956 and published in the second part of the Technical Office's letter No. 7, page No. 718, rule No. 100.

([4047]) Appeal No. 168 of 32 S issued at the session of February 20, 1962 and published in the first part of the book of the Technical Office No. 13 page No. 174 rule No. 48.

([4048]) Articles 525, 526 of the Criminal Procedure Code.

26-1-6 Forfeiture of the penalty by the lapse of time and the death of the convict

Lapse of Punishment

First: The duration of the sentence

The penalty imposed for a felony shall be forfeited by the lapse of twenty Gregorian years, except for the death penalty, which shall be forfeited by the lapse of thirty years.

The penalty imposed for a misdemeanor shall be forfeited by the lapse of five years.

The penalty imposed for a violation shall be forfeited by the lapse of two years.[4049]

It is clear from this that as long as the lawsuit has been filed before the Criminal Court for an incident that is considered a felony by law, the judgment issued in absentia must be subject to the period of forfeiture prescribed for the penalty in the felony articles, which is twenty years, regardless of whether the penalty imposed is a felony or a misdemeanor penalty.[4050]

The period of forfeiture of the penalty begins from the time the judgment becomes final, unless the penalty is sentenced in absentia by the criminal court in a felony. The period starts from the day the judgment is issued.[4051]

This means that the period of forfeiture of the penalty begins from the date the contested judgment becomes final. This is because the criminal lawsuit expires only with the judgment in which the methods of appeal are exhausted. Therefore, it is inconceivable that the period of limitation of the penalty begins before the expiry of the criminal lawsuit with the issuance of a final judgment in it.[4052]

Second: The interruption of the period of forfeiture of

The period of arrest of the convict shall be interrupted by a penalty restricting freedom and by every enforcement action taken against him or that comes to his knowledge. The period shall also be interrupted in matters other than violations, if the convict commits in its course a crime of the type for which he is convicted or similar to it.[4053]

([4049]) Article 528 of the Criminal Procedure Code.

([4050]) Appeal No. 3678 of 74 S issued at the 6th session of March 2013 and published in the Technical Office letter No. 64, page No. 322, rule No. 38, Appeal No. 13608 of 75 S issued at the 11th session of October 2012 and published in the Technical Office letter No. 63, page No. 496, rule No. 84, Appeal No. 47899 of 74 S issued at the 18th session of September 2012 and published in the Technical Office letter No. 63, page No. 389, rule No. 64, Appeal No. 10334 of 80 s issued at the session of March 1, 2012 and published in the Technical Office letter No. 63, page No. 230, rule No. 34, appeal No. 19242 of 72 s issued at the session of February 14, 2010 and published in the Technical Office letter No. 61, page No. 125, rule No. 17, appeal No. 22509 of 65 s issued at the session of January 18, 1998 and published in the first part of the Technical Office letter No. 49, page No. 100, rule No. 15, appeal No. 8325 of 60 s issued at the session of February 8, 1993 and published in the first part of the letter Technical Office No. 44 Page 166 Rule No. 19, Appeal No. 6019 of 59 S issued at the session of April 4, 1991 and published in the first part of the Technical Office's letter No. 42 Page 585 Rule No. 85, Appeal No. 1046 of 42 S issued at the session of April 22, 1973 and published in the second part of the Technical Office's letter No. 24 Page 538 Rule No. 111, Appeal No. 807 of 23 S issued at the session of July 9, 1953 and published in the third part of the Technical Office's letter No. 4 Page 1160 Rule No. 389.

([4051]) Article 529 of the Criminal Procedure Code.

([4052]) Appeal No. 21103 of 67 s issued at the session of March 20, 2007 and published in the letter of the Technical Office No. 58 page No. 256 rule No. 52, Appeal No. 62597 of 59 s issued at the session of March 4, 1997 and published in the first part of the letter of the Technical Office No. 48 page No. 276 rule No. 39.

([4053]) Articles No. 530, 531 of the Code of Criminal Procedure, and see: Appeal No. 12548 of 72 S issued at the session of December 3, 2009 and published in the letter of the Technical Office No. 60, page No. 513, rule No. 66.

Third: Suspension of the validity of the period of forfeiture of the penalty

The validity of the period shall be suspended by any impediment that prevents the commencement of enforcement, whether legal or material, and the presence of the convict abroad shall be considered an impediment that stops the validity of the period.[4054]

Fourth: The impact of the forfeiture of the penalty

It is not permitted for a person sentenced to death, life imprisonment, or aggravated death in a felony of murder, attempted murder, or beating resulting in death to reside after the lapse of his sentence by the lapse of the period in the district or governorate in which the crime was committed, unless he is licensed in that director or governor. If he violates this, he shall be sentenced to imprisonment for a period not exceeding one year.

The director or the governor may order the revocation of the licence if he deems it necessary.

The convict shall be assigned to take for him, within a period of ten days, a place of residence outside the directorate general or the governorate. If the convict violates this, he shall be punished by the preceding punishment.

In all the aforementioned cases, the Minister of Interior may designate a place of residence for the convict. This shall be followed by the provisions on police surveillance.[4055]

The effect of this omission is limited to the fact that it only prevents the execution of that penalty and the sentence remains considered to be valid as a basis for the availability of the aggravating circumstance, unless the convict is rehabilitated as a judge or by law.[4056]

The provisions prescribed for the lapse of the period in the Civil Code shall be followed with regard to compensation, what must be refunded, and the expenses awarded. However, it is not permissible to implement by physical coercion after the lapse of the prescribed period for forfeiture of the penalty.[4057]

Death of the convict

If the convict dies after a final judgment, financial penalties, compensation, refunds and expenses in his estate shall be implemented.[4058]

Chapter Twenty-Seven: The Right to Compensation for Mistake in the Administration of Justice

27-1 Within the Framework of Egyptian Law

The fifth paragraph of Article 54 of the Constitution stipulates that: «... The law shall regulate the provisions of pretrial detention, its duration, its causes, and the cases of entitlement to compensation that the state is obligated to pay for pretrial detention, or for the execution of a sentence for which a final judgment has been issued to annul the sentence executed under it...".

(4054) Article 532 of the Criminal Procedure Code.
(4055) Article 533 of the Criminal Procedure Code.
(4056) Arab Republic of Egypt - Court of Cassation - Criminal
[Appeal No. 1396 - of the year 36 - Date of the session 19/12/1966 - Technical Office 17 Part No. 3 - Page No. 1264 - Rule No. 242] - [Reject].
(4057) Article 534 of the Criminal Procedure Code.
(4058) Article 535 of the Criminal Procedure Code.

The Code of Criminal Procedure also stipulates that: "The Public Prosecution shall publish every final judgment acquitting the person previously detained on remand, as well as every order issued that there is no reason to file a criminal case before him in two widely circulated daily newspapers at the expense of the government. In both cases, the publication shall be at the request of the Public Prosecution, the accused or one of his heirs and with the approval of the Public Prosecution in the event that an order is issued that there is no reason to file a lawsuit.

The state shall ensure the right to the principle of material compensation for pretrial detention in the two cases referred to in the previous paragraph in accordance with the rules and procedures issued by a special law[4059].

The Constitution and the law urged the state to work to ensure the right to the principle of material compensation for pretrial detention in the event of a final judgment acquitting the person previously held in pretrial detention, as well as compensation for pretrial detention in the event of an order not to file a criminal case against the accused. However, the Code of Criminal Procedure only published the judgment or order in two widely circulated daily newspapers at the expense of the government at the request of the Public Prosecution, the accused, or one of his heirs. The Code of Criminal Procedure referred to the definition of rules and procedures that approve the principle of compensation to a special law, but so far that law has not been issued.

In an old judgment of the Court of Cassation, which recognized the right to compensation for the detention of a person without guilt and without a legitimate justification, it ruled that if the administrative officers, in order to prevent the commission of crimes, were to take the necessary measures and means, they must refrain from means that restrict the freedom of individuals, unless there is a legitimate justification required by the circumstances. The legitimate justification is considered available when the employee is performing his job and what he has done or performed is inevitably necessary to carry out its tasks of preventing serious harm that threatens the system and security, as this measure is the only means to prevent this harm. The Court of Cassation has the right to control the existence of this ground and its non-existence.[4060]

The Supreme Administrative Court ruled that it is not permissible to compensate for the actions of the judicial authority as a general principle except in cases that reach the severity of the defect in the judicial ruling that it is non-existent. However, if the judgment was issued by a properly constituted body, it is not permissible to compensate for it as a judicial act, even if this judgment involved a violation in the application of the law that the Supreme Court showed when considering the appeal against this judgment. Egyptian law does not allow requesting compensation except through a litigation lawsuit, which is a personal lawsuit directed primarily to the judge who issued the judgment if it is proven that he committed a serious professional error in the judgment that led to harming the plaintiff.[4061]

It is clear from this judgment that the court has limited the right to compensation for the actions of the judicial authority in a specific case, namely, that the seriousness of the defect in the judicial judgment is non-existent, and in application of this, if the judgment is issued by a properly constituted body, it is not permissible to compensate for it.

It is also clear from the previous judgment that it is not permissible to claim compensation in the event of annulment of the judgment after appealing against it if that judgment involves a violation of the application of the law.

([4059]) Article 312 bis of the Criminal Procedure Law.
([4060]) Appeal No. 18 of 3S issued at the session of March 22, 1934 and published in the first part of the first book of the set of legal rules, page No. 335, rule No. 170.
([4061]) Supreme Administrative Court, Appeal No. 11884 of 48 K issued on December 12, 2009 and published in the book of the Technical Office No. 55 page No. 158 rule No. 15.

As for the decisions issued by the Public Prosecution restricting the freedom of the accused, such as the decisions issued to ban travel, the Administrative Court recognized its jurisdiction to consider at the time of the implementation of those decisions, as the court ruled that as long as no law was issued regulating the cases, conditions and procedures through which the Public Prosecution exercises the powers to ban travel, its exercise of this power is based on the fact that it is an authentic division of the divisions of the executive authority, and then - when exercising this power - it is an administrative authority whose work is subject to legitimacy control, and is not in the exercise of its jurisdiction regulated by the laws issued by the legislative authority, and accordingly the statement of the administration authority that we are in the process of an act of the judicial authority, is outside the control of the legitimacy judge, has no basis.[4062]

Whereas the Constitution has made the right to movement one of the natural rights and personal freedoms that it has protected, and granted it immunity from attack, it has permitted the restriction of this freedom if this is necessitated by the need to investigate and maintain the security of society, and the ban on movement was issued by the competent court or by the Public Prosecution.[4063]

27-1-1 Rehabilitation

Rehabilitation is intended to erase the criminal effects of the conviction so that the convict takes his status in society as any citizen who has not been convicted of a criminal sentence. The rehabilitation system aims to mitigate the social effects of criminal judgments, in which the record of precedents may stand as an obstacle against the convict in making his normal way to earn his pension. Therefore, the law requires rehabilitation to erase all criminal effects of the judgment, and rehabilitation is the right of the convict if its conditions are met.[4064]

First: Rehabilitation at the request of the convict

Rehabilitation is the right of the convict if his conditions are met. It is permitted to rehabilitate every convict in a felony or misdemeanor, and a judgment to that effect shall be issued by the criminal court to which the convict's place of residence belongs, at his request. This means that the request for judicial rehabilitation is entrusted with the status of the convicted person in a felony or misdemeanor, regardless of the sentence imposed, whether it is a felony or a misdemeanor, and it does not matter whether it is a punishment restricting freedom or just a financial penalty, as well as it does not matter what type of felony or misdemeanor. All felonies and misdemeanors are equal in this regard.[4065]

1. Cases in which rehabilitation is possible

It is permitted to rehabilitate every convict in a felony or misdemeanor, and the judgment to that effect shall be issued by the criminal court to which the convict's place of residence belongs, at his request.[4066]

2. Conditions for rehabilitation

To be rehabilitated:

([4062]) Administrative Court of Justice, Judgement No. 593 of 55 S issued at the session of March 13, 2001 (unpublished).
([4063]) Administrative Court of Justice, Judgement No. 593 of 55 S issued at the session of March 13, 2001 (unpublished).
([4064]) Appeal No. 20914 of 83 S issued at the 6th session of January 2016 and published in the letter of the Technical Office No. 67, page No. 47, rule No. 5, Appeal No. 54557 of 73 S issued at the 14th session of June 2010 (unpublished).
([4065]) Appeal No. 20914 of 83 S issued at the 6th session of January 2016 and published in the letter of the Technical Office No. 67, page No. 47, rule No. 5, Appeal No. 54557 of 73 S issued at the 14th session of June 2010 (unpublished).
([4066]) Article 536 of the Criminal Procedure Code.

First: The penalty must have been fully implemented, pardoned or forfeited by the passage of the period.

Second: A period of six years has elapsed from the date of the execution of the penalty or the issuance of a pardon if it is a felony penalty, or three years if it is a misdemeanor penalty. These periods are doubled in the two cases of ruling for recidivism and forfeiture of the penalty by the passage of the period

The period starts from the day on which the probation period ends, if the convict has been placed under police supervision after the expiry of the original sentence.

If the convict has been released under condition, the period shall not start except from the date scheduled for the expiry of the sentence or from the date on which the release under condition becomes final.[4067]

The request for judicial rehabilitation is based on the status of the convicted person in a felony or misdemeanor, regardless of the sentence imposed, whether it is a felony or misdemeanor penalty, and it does not matter whether it is a punishment restricting freedom or just a financial penalty, as well as it does not matter what type of felony or misdemeanor. All felonies and misdemeanors are equally in this regard, and it is decided that the lesson in the availability of the conditions for rehabilitation of the sentenced punishment is whether it is a felony or misdemeanor penalty regardless of the description of the crime for which the punishment was imposed.[4068]

Third: The convict shall pay all fines, restitution, compensation or expenses imposed on him. The court may waive this if the convict proves that he is in no condition to pay.

If the convicted person is not present with the compensation, restitution, or expenses, or refuses to accept them, the convicted person shall deposit them in accordance with what is prescribed in the Civil and Commercial Procedures Law. It is permitted for him to recover it if five years have elapsed and the convict has not requested it.

If the convict has been sentenced jointly, it is sufficient for him to pay the amount of what belongs to him personally in the debt. Where necessary, the court shall determine the share to be paid by him)[4069]

Fourth: In the event of a verdict for a crime of bankruptcy, the applicant must prove that he has obtained a judgment for his commercial rehabilitation.[4070]

Fifth: If the student has been issued several judgments, he shall not be rehabilitated unless the previous conditions are met for each of them, taking into account in the calculation of the period to be attributed to the latest judgments.[4071]

([4067]) Articles Nos. 537 and 538 of the Code of Criminal Procedure, and see: Appeal No. 1219 of 51 s issued at the session of 21 November 1981 and published in the first part of the Technical Office's letter No. 32, page No. 951, rule No. 164, Appeal No. 553 of 41 s issued at the session of 14 November 1971 and published in the third part of the Technical Office's letter No. 22, page No. 643, rule No. 155, Appeal No. 915 of 39 s issued at the session of 17 November 1969 and published in the third part of the Technical Office's letter No. 20, page No. 1277, rule No. 259.

([4068]) Appeal No. 20914 of 83 S issued at the session of January 6, 2016 and published in the letter of the Technical Office No. 67, page No. 47, rule No. 5.

([4069]) Article 539 of the Criminal Procedure Code.

([4070]) Article 540 of the Criminal Procedure Code.

([4071]) Article 541 of the Criminal Procedure Code.

3- Submitting a request for rehabilitation

The application for rehabilitation shall be submitted with a petition to the Public Prosecution, and it must include the data necessary to identify the personality of the applicant, and indicate in it the date of the judgment issued against him and the places where he has resided since then.[4072]

4-The Public Prosecution conducts an investigation on the request

The Public Prosecution shall conduct an investigation into the application to ascertain the date of the student's residence in each place from the time of his sentence and the duration of that residence, and to determine his behavior and means of subsistence. In general, it shall investigate all the information it deems necessary and include the investigation in the application and submit it to the court in the three months following its submission of a report in which its opinion is recorded. The reasons on which it is based shall be indicated, and the application shall be accompanied by:

(1) A copy of the judgment issued to the student.

(2) A certificate of his antecedents.

(3) A report on his behavior while in prison[4073]

5- Procedures for considering and ruling on the application

The court shall consider and decide on the application in the counseling chamber. It may hear the statements of the Public Prosecution and the applicant, and it may complete all the information it deems necessary.

The student's notice of attendance shall be at least eight days before the session.

An appeal against the judgment shall not be accepted except by way of cassation for an error in the application of the law or its interpretation. The conditions and dates prescribed for appeal by way of cassation shall be followed in the appeal.

The court shall rule on rehabilitation, if its conditions are met, and if it considers that the student's behavior since the issuance of the judgment calls for confidence in evaluating himself.[4074]

The Public Prosecution sends a copy of the rehabilitated judgment to the court from which the sentence was issued to mark it on its sidelines, and orders that it be marked in the register of precedents.[4075]

It is not permissible to rehabilitate the convict except once.[4076]

([4072]) Article 542 of the Criminal Procedure Law.
([4073]) Article 543 of the Criminal Procedure Code.
([4074]) Article 545 of the Criminal Procedure Law
The Court of Cassation ruled that: [It is established that although the trial court may rely in its doctrine on investigations as being supportive of the evidence it has provided, it is not suitable alone to be evidence in itself or a specific presumption of the fact to be proven in the judgment. Whereas, it was evident from the minutes of the hearing of the request for rehabilitation that the appellant's defense argued that the appellant works in a company and that he is of good conduct, and it was evident from the contested judgment that he limited his statement of the facts of the request for rehabilitation and evidence of the lack of conditions for rehabilitation to what he received from the statement of Major ...... That his investigations indicated that "the accused is in contact with the outlaws and that he is of bad conduct in the region" without indicating the content of the rehabilitation request or presenting the defense of the existing appellant that he works in a company and that he is of good conduct and verifies the fulfillment of the conditions specified by the law or not, and the verdict of the investigations was taken as basic evidence to reject the rehabilitation request, then the minor of the statement is corrupt inference, and he must revoke it and return without the need to discuss the rest of the other aspects of the appeal] Appeal No. 10306 of 79 BC issued at the session of 16 January 2010 and published in the letter of the Technical Office No. 61, page No. 32, rule No. 4.
([4075]) Article 546 of the Criminal Procedure Code.

In the event that the request for rehabilitation is rejected due to the conduct of the convict, it may not be renewed until after the lapse of two years. In other cases, it may be renewed when the necessary conditions are met.[4077]

6. Revocation of the rehabilitative judgment

The judgment issued for rehabilitation may be annulled in the following cases:

First: If it appears that the convicted person has been issued other judgments of which the court was not aware;

Second: Or if he is sentenced after rehabilitation for a crime that occurred before him.

The judgment in this case shall be issued by the court that ruled for rehabilitation at the request of the Public Prosecution.[4078]

Second: De jure rehabilitation

Rehabilitation by Force of Law

Consideration shall be restored by virtue of the law if the convicted person does not, within the following periods, receive a sentence in a felony or misdemeanor for which a record is kept with the precedents:

(i) In the case of a person sentenced to a felony or misdemeanour penalty for the crime of theft, concealment of stolen objects, fraud, breach of trust, forgery, or attempt in these crimes and in the crimes stipulated in articles 355, 356, 367, and 368 of the Penal Code, when the punishment has been carried out, pardoned, or forfeited by the lapse of a period of twelve years.

(Second) For the convict of a misdemeanor penalty in other than what has been mentioned when the sentence has been carried out or pardoned for six years, unless the judgment has considered the convict to be a recidivist or the punishment has lapsed by the lapse of the period, the period shall be twelve years.[4079]

([4076]) Article 547 of the Criminal Procedure Code.
([4077]) Article 548 of the Criminal Procedure Code.
([4078]) Article 549 of the Criminal Procedure Code.
([4079]) Article 550 of the Criminal Procedure Code
Article 355 of the Penal Code stipulates that: "Whoever wilfully kills an animal from riding, dragging, carrying or from any type of livestock or causes it great harm shall be punished by imprisonment with labor. (ii) Any person who has poisoned any of the animals mentioned in the preceding paragraph or any fish found in a river, canal, creek, swamp or basin. The offenders may be kept under police observation for at least one year and at most two years. Any attempt to commit the aforementioned crimes shall be punishable by imprisonment with labor for a period not exceeding one year or a fine not exceeding two hundred Egyptian pounds. "
Article 356 stipulates that: "If the crimes stipulated in the preceding article are committed at night, the penalty shall be rigorous imprisonment or imprisonment from three to seven years."
Article 367 of the Penal Code also stipulates that: “Imprisonment with labor shall be punished by:
(i) Whoever cuts or destroys an unharvested plant or a tree that grows a plant, planted, or other plant.
(ii) Whoever destroys a sown cover or broadcasts in a cover of hashish or a harmful plant.
(iii) Whoever uproots one or more trees or any other plants or cuts or peels them to kill them and whoever damages a bait in a tree.
It is permissible to keep the two sides under police observation for a period of at least one year and at most two years. "
Article 368 of the Penal Code stipulates that: "If the crimes stipulated in the first and second paragraphs of the previous article are committed at night by at least three persons or by one or two persons and at least one of them is carrying a weapon, the penalty shall be rigorous imprisonment or imprisonment from three to seven years."
See: Appeal No. 1884 of 40 S issued at the 8th session of March 1971 and published in the first part of the Technical Office's letter No. 22 page No. 225 rule No. 55, Appeal No. 2003 of 38 S issued at the 30th session of December 1968 and published in the third part of the Technical Office's letter No. 19 page No. 1144 rule No. 235, Appeal No. 1679 of 28 S issued at the 17th session of February 1959 and published in the first part of the Technical Office's letter No. 10 page No. 209 rule No. 46.

If the convict has been sentenced to several judgments, he shall not be rehabilitated by virtue of the law unless the conditions prescribed for rehabilitation are met for each of them, taking into account in the calculation of the period its attribution to the most recent judgments.[4080]

The period specified for the removal of the effect of the judgment and its rehabilitation shall not be interrupted except by the issuance of a subsequent judgment and not by mere indictment.[4081]

The origin in the calculation of the advanced period is from the date of the expiry of the penalty in the precedent and the attribution of its end to the date of the judgment in the incident subject of the trial and there is no lesson in this regard on the date of the issuance of the judgment of the penalty in the precedent.[4082]

Third: The Impact of Rehabilitation

The rehabilitation results in the erasure of the conviction for the future and the removal of all the consequent incapacity and deprivation of rights and other criminal effects.[4083]

While the decision to rehabilitate entails the erasure of the conviction for the future and the removal of all the consequent lack of capacity, deprivation of rights and other criminal effects, it cannot entail the erasure of the crime in itself because what actually happened has become a reality, and the reality is indelible, and if its effects can be removed by act or law, its meanings and connotations may remain to be predicted.[4084]

However, rehabilitation may not be invoked against third parties with regard to the rights that result from a conviction, especially with regard to restitution and compensation.[4085]

27.2 Within the Framework of International Covenants

Anyone convicted as a result of a miscarriage of justice has the right to reparation.

27-2-1 Right to Compensation for Judicial Errors

Under international standards, victims of a failure of justice are compensated for the harm they have suffered in special circumstances.[4086]

([4080]) Article 551 of the Code of Criminal Procedure, Appeal No. 2003 of 38 S issued at the session of December 30, 1968 and published in the third part of the Technical Office's letter No. 19 page No. 1144 rule No. 235.

([4081]) Arab Republic of Egypt - Court of Cassation - Criminal

[Appeal No. 65 - of the year 43 - Date of the session 11/3/1973 - Technical Office 24 Part No. 1 - Page No. 315 - Rule No. 68] - [Cassation and correction of the civil lawsuit]

Arab Republic of Egypt - Court of Cassation - Criminal

[Appeal No. 348 - of the year 42 - Date of the session 4/6/1972 - Technical Office 23 Part No. 2 - Page No. 873 - Rule No. 196] - [Reject].

([4082]) Arab Republic of Egypt - Court of Cassation - Criminal

[Appeal No. 1719 - of the year 50 - Date of the session 25/1/1981 - Technical Office 32 Part No. 1 - Page No. 71 - Rule No. 10] - [Cassation of the judgment and referral].

([4083]) Article No. 552 of the Criminal Procedure Code, Appeal No. 1719 of 50 S issued at the session of January 25, 1981 and published in the first part of the Technical Office's book No. 32, page No. 71, rule No. 10, Appeal No. 682 of 43 S issued at the session of October 22, 1973 and published in the third part of the Technical Office's book No. 24, page No. 879, rule No. 182, Appeal No. 65 of 43 S issued at the session of March 11, 1973 and published in the first part of the Technical Office's book No. 24, page No. 315, rule No. 68, Appeal No. 348 of 42 S issued at the session of June 4, 1972 and published in the second part of the Technical Office's book No. 23, page No. 873, rule No. 196.

([4084]) Appeal No. 2 of 39 s issued at the session of October 13, 1969 and published in the third part of the technical office book No. 20 page No. 999 rule No. 2, Appeal No. 10 of 30 s issued at the session of January 23, 1961 and published in the first part of the technical office book No. 12 page No. 9 rule No. 1.

([4085]) Article 553 of the Criminal Procedure Code.

([4086]) Article 14 (6) of the International Covenant, Article 18 (6) of the Migrant Workers Convention, Article 10 of the American Convention, Article 3 of Protocol 7 to the European Convention, Section N(10) (c) of the Principles of Fair Trial in Africa, and Article 85 (2) of the Rome Statute.

This right is separate from the right to compensation for unlawful detention, as well as the right to reparation for violations of other human rights, including fair trial rights

With the exception of Article 10 of the American Convention, international standards use similar language.

Legal aid should be provided to individuals seeking compensation on these grounds if they do not have a lawyer of their choice or cannot afford to pay for a lawyer.[4087]

27-2-2 Who are the persons eligible to receive compensation for a miscarriage of justice?

In order to be eligible to receive compensation for a failure of justice, a person must meet the following conditions:[4088].

Have been convicted of a criminal offense by a final decision. Including minor misdemeanors

A conviction is considered final when there is no longer any scope for judicial review or appeal, either due to the exhaustion of all remedies, or as a result of the lapse of time limits;[4089]

that they have been punished as a result of his conviction. The punishment may be a sentence of imprisonment or any other type of punishment. The legitimate detention spent by the accused prior to the trial does not constitute among the penalties;[4090]

under all criteria except the American Convention), have been pardoned or have had a conviction overturned on the basis of new, or newly discovered facts, showing that an error in the administration of justice has occurred, provided that the failure to discover information in a timely manner was not due in whole or in part to the accused.

The State bears the burden of proving that this is due to the accused himself.[4091]

The European Court has held that where the basis for the annulment of the final judgment is a re-evaluation of the evidence, and not the appearance or discovery of new evidence following the issuance of the final judgment, the requirement to pay compensation does not apply to the case.[4092]

The Human Rights Committee has clarified that article 14 of the International Covenant does not require the payment of compensation if a person is granted a special amnesty on humanitarian or other grounds, including fairness, without being related to a failure of justice.[4093]

Moreover, the Committee pointed out that compensation is not due if the basis for revoking the conviction is based on the fact that the person's trial lacked justice, not on the discovery of new facts showing that a failure of justice has occurred.[4094]

Article 10 of the American Convention does not require that a failure of justice be based on the appearance of new facts or the discovery of facts that were not known.

Guideline [4087]11 §55 (b) of the Principles of Legal Aid.

([4088]) Article 14 (6) of the International Covenant, Article 18 (6) of the Migrant Workers Convention, Article 3 of Protocol 7 to the European Convention, and Section N(10) (c) of the Principles of Fair Trial in Africa.

[4089]See, e.g., Explanatory Report to Protocol 7 to the European Convention, §22; Irving v. Australia, Human Rights Commission, / UN Doc. CCPR . 4/8-3/ §8 (2002) C/74/D/880/1999.

([4090]) W. J. H. v The Nedtherlands Human Rights Committee, UN Doc 3/ §6 § (1992) CCPR/C/45/D/408/1990 and 4/3.

([4091]) General Comment 32 of the Human Rights Committee, §53.

([4092]) Matveyev v. Russia (26601/ 02), European Court (2008) §39 - §45.

([4093]) General Comment 32 of the Human Rights Committee, §53.

[4094]Irving v. Australia, Human Rights Commission, / UN Doc. CCPR . 4/8-3/ §8 (2002) C/74/D/880/1999.

Most international standards do not oblige the state to pay any compensation if the charge is dropped, if the court of first instance acquits the accused, or if a higher court acquits him on appeal. Due to the absence of a final conviction.[4095]

However, some national judicial systems require compensation to be paid to victims in such circumstances.

In addition, the Arab Charter guarantees the right to compensation to any person who is proven innocent on the basis of a final judgment. The Rome Statute grants the International Criminal Court the right to diligence in granting compensation when it finds that a gross and apparent failure of justice has occurred, following the acquittal of the accused in accordance with a final judgment or a stay of the trial proceedings based on an error in the administration of justice.[4096]

The International Covenant on Civil and Political Rights, the Migrant Workers Convention, the American Convention and the European Convention do not require the court to find a person innocent - only that a failure of justice has occurred.[4097]

States should enact laws that provide compensation to victims of a failure of justice.[4098]

Such laws should normally regulate the procedure for awarding compensation and may determine the amount to be paid. However, States are not exempt from the duty to pay reparations for miscarriages of justice if there are no laws or procedures regulating this.

The European Court concluded that compensation should be paid to those who have suffered injustice for non-material damages, including suffering, anxiety and discomfort, in addition to material losses.[4099]

If the failure of justice results from a violation of human rights, reparation for the harm suffered by the person requires other forms of redress, including rehabilitation, rehabilitation, satisfaction and guarantees of non-repetition.[4100]

Chapter Twenty-Eight: Rights to a Fair Trial during a State of Emergency

28.1 Within the framework of international covenants

Some human rights are absolute, and may never be restricted, in any way. However, under the terms of some international human rights treaties, certain fair trial rights may be temporarily relaxed (suspended) in some urgent emergencies.

(4095) Human Rights Committee: General Comment W. J. H. v The, §53 ,32 Nedtherlands, Commission on Human Rights, 1990 / UN Doc. CCPR/C/45/D/408 . 3/ §6 (1992).

(4096) Principle 19 (2) of the Arab Charter, and Article 85 (3) of the Rome Statute.

(4097) See Hammern v. Norway (30287) / 96), European Court (2003) §49- §47, and accompanying opinion, Dumont v. Canada, Human Rights Committee, . 24-1/ §22 §(2010) UN Doc. CCPR/C/98/D/1467/2006.

(4098) General Comment 32 of the Human Rights Committee, §52.

(4099) Boghossian and Baghdasarian v. Armenia (22999) / 06), European Court, §49- §52 (2012).

(4100) Principles 18-23 of the Basic Principles on Reparation for Injuries, see General Comment 31 of the Human Rights Committee, §16.

However, there are many fair trial rights that cannot be derogated from, even temporarily, in states of emergency, although some human rights treaties do not explicitly exclude these rights from derogation.

28-2-1 Fair trial rights during states of emergency

Certain human rights guaranteed in international human rights treaties, such as the right not to be subjected to torture or other ill-treatment, may not be suspended under any circumstances, or at any time.

However, the International Covenant on Human Rights, the American Convention, the Arab Charter and the European Convention allow States to mitigate their commitment to certain human rights guarantees (cessation or restriction) in precisely defined cases, provided that such mitigation does not exceed the period required by the situation.[4101]

Each of these agreements sets out contexts in which the suspension of rights is permitted, a range of rights that are not subject to derogation, and procedural conditions for such derogation.

While the International Covenant, the American Convention, the Arab Charter or the European Convention do not explicitly list all fair trial rights among the non-derogable rights, the Human Rights Committee and the jurisprudence of the Inter-American Court have made it clear that a large number of fair trial guarantees are non-derogable.

For example, the Human Rights Committee has clarified that respect for the rule of law and the principle of legality require that the basic requirements of a fair trial must be respected at all times.[4102]

Moreover, the Human Rights Committee has affirmed that procedures in all cases in which death sentences may be imposed, including during states of emergency, must be consistent with the provisions of the International Covenant, including articles 14 and 15 of the Covenant.[4103]

Since derogation measures may not be inconsistent with the State's other obligations under international law, they must be consistent with the State's (other) treaty obligations, the provisions of international humanitarian law and the rules of customary international law.

The African Charter and some specialized human rights treaties - including the Convention on the Rights of the Child, CEDAW, the Convention against Torture, the Convention on Enforced Disappearances, the Convention on the Elimination of Racial Discrimination and the Migrant Workers Convention - do not allow any derogation from any of the guarantees they provide, in any circumstances.[4104]

All these treaties enshrine guarantees related to the rights of suspects, accused or convicted in criminal cases.[4105]

([4101]) Advisory Opinion 87 / OC-8of the Inter-American Court, (1987) §18; Juan Carlos Abella v. Argentina (11). 37), American Commission (1997) §168 - §170

Human Rights Committee General Comment 29, §3- §4.

([4102]) General Comment 29 of the Human Rights Committee, §16.

([4103]) General Comment 29 of the Human Rights Committee, §15.

African [4104]Commission: Article 19 v. Eritrea, (275) / 2003), Annual Report 22 87 § § (2007) and 98, National Commission on Human Rights and Freedoms v. Chad (74) / 92), §21 (1995), Goode v. Botswana (313) / 05), Annual Report 29 §175 (2010).

([4105]) Furthermore, the following provisions of the Protocols to the European Convention contain non-derogable provisions: article 4(3) of Protocol 7 (non-derogability of the prohibition on double jeopardy); article 3 of Protocol 6 (non-derogability of the provisions of the Protocol relating to the abolition of the death penalty); and article 2 of Protocol 13 (non-derogability of the prohibition on the death penalty in all circumstances).

A wide range of non-treaty international human rights standards also guarantee fair trial rights, notably the Universal Declaration, the Basic Principles on the Independence of the Judiciary, and the Standard Minimum Rules. It does not recognize the possibility of resorting to lower standards in times of emergency.

The principles of fair trial in Africa expressly state that "it shall not be invoked… under any circumstances, whatever its nature, to justify any impairment of the right to a fair trial".[4106]

States often infringe on fair trial rights in times of national crisis. The proclamation of a state of emergency remains, generally and exceptionally, the prerogative of the executive, which often has the power to proclaim the emergency and the consequent orders and regulations, sometimes without returning to the usual assets and means.

New criminal laws are often enacted, bringing with them new restrictions on the rights to freedom of expression, assembly and association. While powers of arrest and detention are also often expanded, periods of detention in the custody of the authority are extended for longer periods, special courts are established and summary procedures become the dominant feature of trials.[4107]

28-2-2 Non-observance of rights

The International Covenant on Civil and Political Rights, the American Convention, the Arab Charter and the European Convention define the contexts in which rights may be restricted or suspended, the range of varying rights, none of which may be expressly restricted under the treaty, and the procedural conditions for derogation.[4108]

These provisions allow States to derogate from certain safeguards in narrow circumstances, provided that the situation so requires, and to the extent required by the concrete situation.[4109]

Such mitigating measures shall not extinguish such rights in consequence of the order. Moreover, any right or aspect of that right that is not specifically suspended shall remain in force.[4110]

Measures restricting the right shall not discriminate between persons on the basis of race, color, sex, language, religion or social origin[4111].

Although the provision on restriction of rights in the European Convention does not contain a clause on non-discrimination explicitly, the European Court confirmed that the United Kingdom's decision to restrict rights in a way that it concluded was related to national security and not to immigration measures discriminated against foreign nationals, and therefore lacked proportionality since citizens are equal to non-citizens in being a source of threat in the concrete case.[4112]

([4106]) Section R of the Principles of the Right to a Fair Trial in Africa.

[4107]See, for example, Opinion No. 23/2008 of the Working Group on Enforced Disappearances (Rastanawi v. Syrian Arab Republic), 2010 (UN Doc. A/HRC/13/Add. 1) pp. 25- §17- §12 ,27; see Concluding Observations of the Committee against Torture: Peru, 44 / UN Doc. A/53 (1998) pp. 21 - §202 ,22, Cameroon, UN Doc. CAT/C/CAM/CO/4 §25 (2010); Special Rapporteur on Torture, Sri Lanka, UN Doc (2009) A/HRC/7/3/Add. 6 §41 - §46,§84,§91 - §92,§94.

([4108]) Article 4 of the International Covenant, Article 27 of the American Convention, Article 4 of the Arab Charter, and Article 15 of the European Convention.

([4109]) General Comment 29 of the Human Rights Committee, §3- §4.

([4110]) General Comment 29 of the Human Rights Committee, §4.

([4111]) Article 4(1) of the International Covenant, Article 27 (1) of the American Convention, and Article 4(1) of the Arab Charter.

Human Rights Committee General Comment 29, §8.

[4112](A et al. v. United Kingdom, (3455) / 05), Grand Chamber of the European Court § 186- §190 (2009).

A State, when declaring a state of emergency, remains bound by the rule of law, including those obligations in international law that may not be derogated from, or that it has not derogated from.[4113]

Any temporary restrictions on rights must be consistent with the State's other obligations under international treaties and customary law, including the provisions of international humanitarian law.[4114]

In order to ensure respect for the rule of law and human rights, both the declaration of a state of emergency and emergency measures shall be subject to judicial supervision. Such supervision should ensure that the emergency declaration, measures and methods of implementation are consistent with national and international law.[4115]

The purpose of any restriction of rights should be to restore normalcy in which human rights are fully respected. However, governments often ignore the strict limits that domestic and international laws restrict by declaring a state of emergency, procedural formalities and the permissible scope of emergency powers, depriving people of their rights, including those related to a fair trial, under the guise of allegations of threats to national security.[4116]

The procedural conditions for restricting rights and those related to content.described below) aim to determine the scope, extent and content of restrictions that may be imposed on rights in states of emergency.[4117]

First: Procedural Requirements

Provisions of human rights treaties that permit derogation include important procedural requirements.

The requirement that a state of emergency be officially declared ensures that the public in the state is notified of the intention of the government and is intended to ensure the principle of legality and the rule of law, and to prevent arbitrariness.[4118]

The State that decides to restrict rights must notify other States parties to the relevant treaty (through the depositary of the treaty) of the restriction decision, and this must include information on the restriction measures imposed.[4119]

The Human Rights Committee, the Inter-American Court, the Inter-American Commission, the Arab Commission for Human Rights and the European Court, charged with reviewing the implementation of the International Covenant, the American Convention, the Arab Charter and

---

General [4113]Comment 29 of the Human Rights Committee, § §2 and 9; Advisory Opinion OC-8/87 of the Inter-American Court, 24 § (1987); see Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Court of Justice (2004), including §89 - §113, in particular 106; see Concluding Observations of the Human Rights Committee: Israel, / UN Doc. CCPR/C/ISR. §3 (2010) CO/3.

([4114]) Article 4(1) of the International Covenant, Article 27 (1) of the American Convention, Article 4(1) of the Arab Charter, and Article 15 (1) of the European Convention.

Special [4115]Rapporteur on Emergencies, / UN Doc. E/CN. 4 §151 (1997) Sub. 2/1997/19; Special Rapporteur on the independence of judges and lawyers, 271 / §16- §19 (2008) UN Doc. A/613; see Principle B(5) of the Paris Standard on Minimum Rules for Human Rights in a State of Emergency.

([4116]) General Comment 29 of the Human Rights Committee, §1 and§3; Special Rapporteur on the independence of judges and lawyers, 207/2007) UN Doc. A/62) §34 - §35; Inter-American Court, Advisory Opinion No. 87-OC-8(1987), §20.

([4117]) General Comment 29 of the Human Rights Committee, §5.

([4118]) Article 4(1) of the International Covenant, and Article 4(1) of the Arab Charter.

See Principles 42 and 42 of the Syracuse Principles.

([4119]) Article 4(3) of the International Covenant, Article 27 (3) of the American Convention, Article 4(3) of the Arab Charter, and Article 15 (3) of the European Convention.

Human Rights Committee General Comment 29, §17.

the European Convention, respectively, review the necessity and proportionality of the restriction decision and the interim measures adopted.[4120]

Second: Fulfilling international obligations

Any temporary restrictions imposed on the rights recognized in the International Covenant, the American Convention, the Arab Charter and the European Convention must be consistent with the other obligations of the State concerned under international law, including international humanitarian law and customary international law.[4121]

This means that:

obligations imposed by other non-derogable or non-derogable human rights treaties must be respected;

Non-derogable obligations under customary human rights law, including fair trial obligations, must take precedence over any treaty provision allowing for derogation of rights;

When the provisions of international humanitarian law apply - that is, during international armed conflicts, occupation and non-international armed conflicts - the fair trial guarantees guaranteed by law also remain in force.[4122]

28-2-3 Is there an emergency?

International law does not permit the declaration of a state of emergency unless the nation is exposed to a serious exceptional threat, such as the use of force from within or without in a manner that threatens its existence or territorial integrity.

Each treaty permitting derogation of rights establishes the context of derogation of rights. The International Covenant, the Arab Charter and the European Convention allow derogation from rights in times of public emergency that threaten the life of the nation.[4123]

The European Convention links the permissibility of restricting rights, in addition, to “times of war” specifically.[4124]

The American Convention allows the State party to take measures that limit its obligations under the Convention “in times of war, public danger, or other emergency situations that threaten the independence or security of the State”.[4125]

The European Court has clarified that the phrase “a public emergency that threatens the life of the nation” refers to “a state of crisis or an exceptional emergency affecting the entire population and posing a threat to the governing life of the society that constitutes the state”.[4126]

The European Court said that countries have a "wide margin of appreciation" while deciding whether there is an emergency that threatens the life of the nation.[4127]

[4120]See General Comment 29 of the Human Rights Committee, § § 17 and 2-6; European Court: Ireland v. United Kingdom (5310) / 71), (Lawless, §207 (1978) §40 (1961) ,(57/332) v Ireland)No. 3; see Greek case: Denmark, Norway, Sweden and the Netherlands v. Greece (3321 / 67 , 3322/67, 3323/67, 67/3344), European Commission Decision §43- §46 (1969).

([4121]) Article 4(1) of the International Covenant, Article 27 (1) of the American Convention, Article 4(1) of the Arab Charter, and Article 15 (1) of the European Convention.

([4122]) Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Court of Justice (2004), including §89- §113, in particular §106.

([4123]) Article 4(1) of the International Covenant, Article 4(1) of the Arab Charter, and Article 15 of the European Convention.

([4124]) Article 15 of the European Convention.

([4125]) Article 27 (1) of the American Convention.

([4126]) European Court: 57/332 Lawless v Ireland)No. 3), (1961) Law, §28, A et al. v. United Kingdom (2455) / 05), Grand Chamber §176 (2009); see Principle 39 of the Syracuse Principles.

However, the European Court, like the Human Rights Committee and the Inter-American Court and Commission, assesses for itself whether a declaration of a state of emergency makes sense, and whether restriction measures are necessary and proportionate.

While the European Commission declared that a state of public emergency, in order to permit the restriction of rights, must be actual or imminent; its effects must cover the entire nation; pose a definite threat to the continuity of life governing society; and be so exceptional as to render the natural measures and restrictions permitted by the European Convention manifestly ineffective.[4128]

Many countries have declared states of emergency to respond to violence, sometimes in the face of acts of violence described as “terrorism.” It is noteworthy that the human rights courts, including the European Court and the Inter-American Court, did not object to the characterization of such situations as emergencies in Northern Ireland, Turkey or Peru; but they concluded in cases filed, for example, against Turkey and Peru that the restriction measures taken did not meet the requirement of necessity and proportionality, strictly, to address the emergency.[4129]

The Council of Europe Guidelines on Human Rights and Counter-Terrorism, adopted following the 11 September 2001 attacks on the United States and reflecting the case law of the European Court, include the possibility of mitigating the obligations imposed by the European Convention and the elements of such mitigation, when acts of terrorism occur “in the event of war or other public emergency that threatens the life of the nation”.[4130]

However, the Parliamentary Assembly of the Council of Europe called on member states of the Council not to restrict their obligations in the European Convention in the context of their fight against terrorism.[4131]

The only member state of the Council of Europe that did so following the attacks on the United States of America in 2001 is the United Kingdom.[4132]

An emergency, by definition, is a temporary legal response to a threat.[4133]

Any permanent emergency is a verbal anomaly. Unfortunately, the state of emergency sometimes becomes a permanent state eventually, as it is never lifted, is repeatedly renewed, or its special measures are enshrined in laws after the end of the state of emergency.[4134]

Rather than focusing on the temporary nature of the restriction measures per se, the European Court has always focused on the proportionality of these measures, subjecting them to regular

---

([4127]) European Court: Ireland v. United Kingdom (5310) / 71), (1978) §207, Brannigan and McBride v. United Kingdom (14553/ 89 and 14554 / 89), §43 (1993), A et al. v. United Kingdom, (3455) / 05, Grand Chamber. §173 (2005).

([4128]) Greek case: Denmark, Norway, Sweden and the Netherlands v. Greece (67/3321 , 67/3322 , 67/3323, 67/3344), European Commission Decision (1969) §113.

([4129]) Brannigan and McBride v. United Kingdom (14553 / 89 and 14554/ 89), European Court §41- §47 (1993).

Aksoy v. Turkey (21987/ 93), European Court § §68-70 (1996).

Castillo Petruzzi et al. v. Peru, Inter-European Court (1999) §109

Aksoy v. Turkey (21987) / 93), European Court (- §71 § (1996) 84; Castello Petrozzi et al. v. Peru, Inter-European Court (1999) §110 - §112.

([4130]) Guideline 15 of the Council of Europe Guidelines on Human Rights and Counter-Terrorism.

Resolution [4131]1271 of the Parliamentary Assembly of the Council of Europe, §9 and§12 (5) (2002).

([4132]) See A et al. v. United Kingdom, (3455) / 05), Grand Chamber of the European Court §180 (2009).

([4133]) General Comment 29 of the Human Rights Committee, §2; Resolution 65/211 of the United Nations General Assembly, §5.

Concluding [4134]observations of the Human Rights Committee: Syria, / UN Doc. CCPR §6 (2005) CO/84/SYR; see A et al. v. United Kingdom, (3455) / 05, Grand Chamber of the European Court §178 (2009).

review, in terms of their scope, duration and mechanisms, to assess the necessity of their continuation.[4135]

28.2.4 Necessity and proportionality

Any suspension of rights to a fair trial, and the measures adopted (suspension measures), must be a compelling reason for the case.[4136]

This principle of proportionality requires that obligations be mitigated to a reasonable extent in light of the exigencies of the emergency arising from a threat to the life of the nation. It also entails reconsidering the necessity of this easing at regular intervals, by the legislative and executive authorities, with the aim of ending the restrictions imposed as soon as possible.[4137]

Temporary restriction of rights and accompanying measures must not include any discrimination, or lead to discrimination, on grounds such as race, color, sex, language, religion or social origin.[4138]

The degree of interference with the restriction of rights and the scope of any measure of restriction (both in terms of the geographical area to which it applies and in terms of the duration of its application) must be "reasonably proportional to what is actually necessary to respond to an emergency that threatens the life of the nation".[4139]

The requirement of proportionality may require the imposition of a state of emergency to be limited to a specific part of the country.[4140]

The Inter-American Court has emphasized that any action that exceeds the required limit specifically required by the situation is not considered legitimate, regardless of the existence of the state of emergency.[4141]

The European Court pointed out that, in order for a restriction measure to be considered necessary and lawful, it must be clear that the use of any other less severe measures, such as permissible restrictions on the rights enshrined in the Convention, cannot protect public safety, public health or public order. Moreover, this measure should be more likely to contribute to solving the problem. The court reviews the nature of the rights that are adversely affected by the restriction of rights, as well as the circumstances that led to the declaration of the state of emergency and its duration.[4142]

[4135](A et al. v. United Kingdom, (3455) / 05), Grand Chamber of the European Court §178 (2009).

([4136]) Article 4(1) of the International Covenant, Article 27 (1) of the American Convention, Article 4(1) of the Arab Charter, and Article 15 (1) of the European Convention.

Human Rights Committee General Comment 32, §6.

Concluding [4137]observations of the Human Rights Committee: Algeria, UN Doc §14 (2007) CCPR/C/DZA/CO/3, Israel, / UN Doc. CCPR/C/ISR §7 (2010) CO/3; Guideline 15 (3) of the Council of Europe Guidelines on Human Rights and Counter-Terrorism (2002); Report - CDL AD(2010)022, Council of Europe Venice Commission on Counter-Terrorism and Human Rights, §17.

([4138]) Article 4(1) of the International Covenant, Article 27 (1) of the American Convention, and Article 4(1) of the Arab Charter.

Human Rights Committee General Comment 32, §8.

([4139]) M. Nowak, The International Covenant on Civil and Political Rights: A Commentary on the Provisions of the Covenant, Second Revised Edition, Engel, 2005, pp. 97- §27- §25 ,98; Human Rights Committee General Comment 29, §4; see A et al. v. United Kingdom, (3455) / 05, Grand Chamber of the European Court (2009) §184; Concluding Observations of the Human Rights Committee: Israel, UN Doc. §7 (2010) CCPR/C/ISR/CO/3.

([4140]) Sakik et al. v. Turkey (23878) / 94), European Court (1997) §36 - §39.

([4141]) Advisory Opinion 87/OC-8of the Inter-American Court, §38 (1987).

([4142]) See European Court:) 57/332) Lawless v Ireland)No. 3), (1961) Law, §36- §35, A et al. v. United Kingdom (2455) / 05), Grand Chamber 173 § § (2009), 176, 178 and 182 - 184; Joint Report of the UN Mechanisms on Guantánamo Bay Detainees, / UN Doc. E. §13 (2006) CN. 4/2006/120.

The European Court also considered that the adoption of a measure to restrict fair trial rights allowing detention for seven days before the detainee is brought before a judge, justified by the UK government on the basis of the "priority need to bring terrorists to justice", may guarantee sufficient safeguards to protect against ill-treatment. These guarantees included allowing the detained person to contact a lawyer within 48 hours, being examined by a doctor, the right to challenge the legality of the detention, to notify a third person of the detention, and to review the legislation under which the measure was approved periodically.[4143]

However, the European Court considered the guarantees contained in the measures restricting rights in Turkey to be insufficient in the face of ill-treatment. In one case I examined, an individual was detained for at least 14 days on terrorism-related charges without being brought before a judge. The man, who was tortured, was held incommunicado without a realistic possibility of being brought before a court to challenge the legality of his detention.[4144]

The European Court also said that other measures to restrict rights taken in the UK had been disproportionate and discriminatory. The measures allowed the indefinite detention of foreign nationals without trial if the executive issued warrants against them suspected of being terrorists and posing a threat to national security, without applying these measures to citizens of the United Kingdom.[4145]

28-2-5 Rights that may never be restricted

The International Covenant on Civil Rights, the American Convention and the European Convention each contain a variety of non-derogable rights.[4146](.

In addition to the non-derogable rights explicitly included in these treaties, the Human Rights Committee and the Inter-American Court have made it clear that there are other non-derogable rights and obligations under human rights law, including some fair trial rights and their accompanying rights.[4147]

The Human Rights Committee has stressed that respect for the rule of law and the principle of legality require that the basic requirements of a fair trial must be respected at all times, including during states of emergency.[4148]

The following fair trial rights, and their concomitant rights, are recognized and specifically defined as non-derogable under human rights law, as the treaty itself or the responsible authority referred to indicates. This is an area of international human rights law that is constantly evolving, and therefore this regulation should not be considered exhaustive or closed. (The regulation does not include several rights guaranteed by international humanitarian law)

The prohibition on torture or other cruel, inhuman or degrading treatment or punishment.[4149]

([4143]) Brannigan and McBride v. United Kingdom (14553 / 89 and 14554 / 89), EC 55 § § (1993) and 61-66. (In this case, Amnesty International made a third-party contribution to the court, arguing that the remaining safeguards were insufficient to protect detainees from torture or ill-treatment in the first 48 hours of incommunicado detention.).

([4144]) Aksoy v. Turkey (21987) / 93), European Court (1996) §84- §83; see European Court: Demir et al. v. Turkey, (21380) / 93 , §45- §44 (1998) (93/21383, 93/21381 and 49 - 58), Shin v. Turkey §29- §27 (2003) ,(98/41478).

[4145](A et al. v. United Kingdom, (3455) / 05), Grand Chamber of the European Court §176- §190(2009).

([4146]) Article 4(2) of the International Covenant, Article 6 of the Second Optional Protocol to the International Covenant, Article 27 (2) of the American Convention, Article 4(2) of the Arab Charter, Article 15 (2) of the European Convention, Article 4(3) of Protocol 7 to the European Convention, and Article 2 of Protocol 13 to the European Convention.

([4147]) General Comment 29 of the Human Rights Committee, §15; Inter-American Court: Advisory Opinion 87/1987 (OC-8), Advisory Opinion 87 / OC-9 . (1987).

Human [4148]Rights Committee General Comment 29, §16; Human Rights Committee General Comment 32, §6.

([4149]) Article 4(2) of the International Covenant, Article 2(2) of the Convention against Torture, Article 27 (2) of the American Convention, Article 4(2) of the Arab Charter, and Article 15 (2) of the European Convention.

This includes the prohibition on the use of evidence obtained as a result of such treatment in judicial proceedings, with the exception of proceedings against alleged perpetrators of torture or other ill-treatment.[4150]

Prolonged incommunicado detention and corporal punishment are both in violation of the prohibition on torture and other ill-treatment and are therefore prohibited at all times.[4151]

The right of persons deprived of their liberty to humane treatment.[4152]

The prohibition on enforced disappearance.[4153]

Prohibition on arbitrary arrest or detention, including detention that is not recognized.[4154]

The right to recognition before the law (ensuring the right to seek justice before the courts.[4155]

The right to seek a challenge to the legality of detention before a court.[4156]

Although this right is not among the non-derogable rights listed in Article 15 of the European Convention, the European Court has pointed out in its decisions in cases considered in the context of states of emergency that it is an important safeguard against ill-treatment, and that procedural guarantees must be provided to the detained person, including sufficient information to make an effective appeal against the allegations raised against him.[4157]

The right of a person to have his case examined by an independent, impartial and competent court.[4158]

The Human Rights Committee has clarified that only a court of law may try and convict a person on a criminal charge, even in states of emergency.[4159]

([4150]) General Comment 32 of the Human Rights Committee, §6.

Working [4151]Group on Enforced Disappearances, UN Doc §76 (2004) E/CN. 4/2005/6; see The Treatment ,Rodley and Pollard Oxford University, 3rd edition ,of Prisoners under
International Law . pp486-488, 492-493 ,2009 ,Press
Among other documents, see Special Rapporteur on Torture:UN Doc §28- §18 (2005) UN Doc. A/60/316، §37 (2009) A/HRC/10-44.

([4152]) Article 27 (2) of the American Convention, and Article 4(2) of the Arab Charter.
Human Rights Committee General Comment 29, §13 (a).

([4153]) Article 1(2) of the Convention on Enforced Disappearances, and Article 10 of the American Convention on Enforced Disappearances.
Joint Study of UN Mechanisms on Secret Detention, . UN Doc. A/HRC/13/42(2010) §50.

([4154]) General Comment 29 of the Human Rights Committee, §11, General Comment 24 §8; deliberation No. 9 of the Working Group on Enforced Disappearances, UN Doc . (2012) A/HRC/22/44.

([4155]) Article 4(2) of the International Covenant, Article 27 (2) of the American Convention, and Article 4(2) of the Arab Charter.

([4156]) Article 27 (2) of the American Convention, Article 10 of the American Convention on Enforced Disappearances, and Article 4(2) of the Arab Charter; see section M(5) (e) of the Principles of Fair Trial in Africa.
General Comment 29 of the Human Rights Committee, §16; Inter-American Court: Advisory Opinion 87 / §42 § (1987) ,OC-8, 27 and 29, Neira Alegreia et al. v. Peru, §84- §77 (1995) and 91 (2), Castello Petruzzi et al. v. Peru, §88- §184 (1999); Subcommittee on Prevention: Honduras, §282 UN Doc. CAT/OP/HND/1 (b); see A et al. v. United Kingdom (05/2455), Grand Chamber of the European Court § 217- §216 (2009); see also Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/74 §68- §67 (2008) and 82 (a).

([4157]) European Court: Brannigan and McBride v. United Kingdom (89/14553 and 14554/ 89), §55- §56 (1993) and 62-64, Aksoy v. Turkey §82- §84 (1996) ,(93/21987).
A et al. v. United Kingdom (2455) / 05), Grand Chamber of the European Court § 186- §190 (2009).

([4158]) Article 4(2) of the Arab Charter; see Article 27 (2) of the American Convention.
Human Rights Committee: General Comment 32 §19, González del Río v. Peru, 1987 / §5 (1992) UN Doc. CCPR/C/46/D/263 (1); Inter-American Court: Advisory Opinion 87 / §27- §30 (1987) ,OC-8, Reverón Trujillo v. Venezuela, 68 § (2009).

([4159]) General Comment 29 of the Human Rights Committee, §16.

Article 13 of the Arab Charter, which does not allow for the restriction of fair trial rights, guarantees trial before independent, impartial and competent courts with "adequate guarantees."

The right to a public trial, in all cases, except in exceptional cases required by the interests of justice.[4160]

It is required that the definition of crimes and penalties be clear and precise; the prohibition of retroactive application of criminal laws (including the imposition of a heavier penalty than that applicable at the time of the crime); and the right to benefit from a lighter penalty.[4161]

The duty to separate persons detained pending trial from those who have been convicted, and to treat them according to their status as unconvicted persons.[4162]

The right to the presumption of innocence)[4163](.

The right to legal aid for those who do not have sufficient financial resources.[4164]

Prohibition of collective punishment.[4165]

The principle that the primary purpose of punishment in which one is deprived of his freedom is reform and rehabilitation.[4166]

Prohibition to prosecute a person for the same crime twice.[4167]

Judicial guarantees, such as subpoenas and interim measures of protection, aimed at protecting non-derogable rights.[4168]

The Inter-American Court has made it clear that judicial decisions on reparations necessary to protect non-derogable rights "vary according to the rights at stake." However, judges must, in all cases, be independent and impartial and have the authority to rule on the legality of emergency measures.[4169]

The principles of established procedures should also be applied.[4170]

The right to effective judicial remedies for violations of other human rights.[4171]

The Human Rights Committee has made it clear that this right is implicit in the totality of the provisions of the International Covenant, and that States must provide effective and accessible

---

([4160]) Article 4(2) of the Arab Charter.
([4161]) Article 4(2) of the International Covenant; Article 27 (2) of the American Convention, Article 4(2) of the Arab Charter, and Article 15 (2) of the European Convention.
General Comment 29 of the Human Rights Committee, §7; Scopola v. Italy (No. 2) (10249) / 03), Grand Chamber of the European Court §109- §108 (2009, (recognized as included in Article 7 of the European Convention).
([4162]) Article 27 (2) of the American Convention, and Article 4(2) of the Arab Charter.
([4163]) Human Rights Committee: General Comment 29 §16, General Comment 32 §8.
([4164]) Article 4(2) of the Arab Charter.
([4165]) Article 27 (2) of the American Convention.
Human Rights Committee General Comment 29, §11.
([4166]) Article 27 (2) of the American Convention.
([4167]) Article 4(2) of the Arab Charter, and Article 4(3) of Protocol 7 to the European Convention.
([4168]) Article 27 (2) of the American Convention; see Article 10 of the American Convention on Enforced Disappearances, and Article 4(2) of the Arab Charter; see Section M(5) (e) of the Principles of Fair Trial in Africa.
Human Rights Committee: General Comment §16 ,29, General Comment §6 ,32; Inter-American Court: Advisory Opinion §41- §23 (1987) ,87/OC-9.
([4169]) Inter-American Court: Advisory Opinion 87/1987) ,OC-8) . §30- §28.
([4170]) Inter-American Court: Advisory Opinion 87/1987) ,OC-9) §39- §38 and 41 (3).
([4171]) General Comment 29 of the Human Rights Committee, §14; Advisory Opinion 87/OC-9 of the Inter-American Court, §23- §41 (1987).

remedies to persons who claim that their rights - either non-derogable or derogated from in the light of a derogation measure - have been violated.[4172]

Such remedies should provide an opportunity for national courts to examine allegations regarding the legality of emergency measures and alleged violations of the rights of individuals that have resulted from the implementation of such measures.

With regard to the right of persons who have been arrested or detained to be brought promptly before a judge, the Human Rights Committee has indicated that it is non-derogable.[4173]

The jurisprudence of the European Court suggests that it may be permissible to delay slightly in bringing a detained person before a court during states of emergency, but this delay should not be prolonged. The court rules that there must be sufficient safeguards against abuse, such as the right to contact a lawyer, to see a doctor, to contact the family, and the right to obtain a subpoena before a judge.[4174]

The right of individuals who are proven innocent by a final decision to compensation.[4175]

First: Non-derogable rights in death penalty cases

The right to life and related guarantees, and the prohibition of torture and other ill-treatment, are non-derogable.[4176]

The non-derogability of the right to life means that proceedings against persons accused of capital offences must strictly adhere to international standards, including during states of emergency. The Human Rights Committee has declared that actions taken in the context of capital cases, including during states of emergency, must be consistent with the provisions of the International Covenant, including articles 14 and 15.[4177]

Imposition of the death penalty following proceedings that do not meet the requirements of international standards is a violation of the right to life.[4178]

Furthermore:

States parties to Protocol 13 to the European Convention may not impose the death penalty at any time, including during states of emergency.[4179]

States parties to the Second Protocol to the International Covenant, the Protocol to the American Convention on Human Rights, or Protocol 6 to the European Convention may not impose the death penalty in states of emergency - except in times of war - where the death

---

([4172]) General Comment 29 of the Human Rights Committee, §14; see Concluding Observations of the Human Rights Committee: Gabon, (2000) UN Doc. CCPR/CO/70/GAB) §10.

([4173]) Commission on Human Rights: 40 / UN Doc. A/49, Vol. 1, (1994) Supplement 11, p. §2 ,119 (also quoted in footnote 9 to the Human Rights Committee's General Comment 29); see Concluding Observations of the Human Rights Committee: Israel, §7 (2010) UN Doc. CCPR/C/ISR/CO/3, Thailand, / UN Doc. CCPR/CO/84. §13 (2000) THA.

([4174]) European Court: Brannigan and McBride v. United Kingdom (89/14553 and 14554/ 89), §61- §66 (1993), Aksoy v. Turkey §83- §84 (1996) ,(93/21987).

([4175]) Article 4(2) of the Arab Charter.

([4176]) Article 4(2) of the International Covenant, Article 27 (2) of the American Convention, Article 4(2) of the Arab Charter, and Article 15 (2) of the European Convention.

([4177]) General Comment 29 of the Human Rights Committee, §16 §and 15.

See [4178]Articles 4(2) and 6(2) of the International Covenant, and Article 27 (2) of the American Convention.

Human Rights Committee: General Comment §15 ,29, General Comment 32, §6; Öcalan v. Turkey (46221/ 99), Grand Chamber of the European Court (2005) §166- §165; see Al-Saadoun and Al-Mafdhi v. United Kingdom (61498/ 08), European Court §120- §115 (2010).

([4179]) Article 2 of Protocol 13 to the European Convention.

penalty may be imposed only after conviction for a serious crime of a military nature, based on impartial procedures.[4180]

The death penalty may never be imposed on a person who was not yet 18 years old at the time of the offence. Under the American Convention, punishment may not be imposed on a person over the age of seventy and such prohibitions may not be restricted in any way.[4181]

It is also not permissible to restrict the ban on the execution of pregnant women.[4182]

Second: International Humanitarian Law

Fair trial rights are guaranteed under international humanitarian law. At a minimum, these rights are non-derogable in international human rights law as "other obligations under international law" in situations to which they apply: i.e. during international armed conflicts, occupation, and internal (non-international) armed conflicts.[4183]

The Human Rights Committee has confirmed that it does not find any justification for restricting the elements of the right to a fair trial explicitly guaranteed in international humanitarian law during other states of emergency.[4184]

([4180]) Article 6(2) of the Second Optional Protocol to the International Covenant, article 2 of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, and articles 2 and 3 of Protocol 6 to the European Convention.

For the exception to apply, States parties to Protocol II to the ICCPR and to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty must have registered a reservation or made a reservation declaration to the treaty (respectively) at the time of ratification or accession.

([4181]) Article 4(2) of the International Covenant, Article 37 (a) of the Convention on the Rights of the Child, and Article 27 (2) of the American Convention.

Human Rights Committee General Comment 24, §8; Michael Dominguez v. United States (12). 285), U.S. Commission, Report 62 / §84 and§85 ,02.

([4182]) Article 4(2) of the International Covenant, and Article 27 (2) of the American Convention.

([4183]) Article 4(1) of the International Covenant, Article 27 (1) of the American Convention, Article 4/1 of the Arab Charter, and Article 15 (1)of the European Convention.

([4184]) General Comment 29 of the Human Rights Committee, §16.

Conclusion

In the previous guide, we presented the guarantees of a fair trial and explained the rights of the accused in the pre-trial stage, as well as his rights during the trial. We enumerated those rights and their constitutional and legal basis, as well as the sources of that right in international charters. Through this guide, we hope to help judges adhere to fair trial standards that guarantee the accused all the guarantees stipulated in the Constitution and Egyptian law.

We also hope that the Egyptian legislator will review the legislation regulating the criminal trial, in order to take into account the rights granted by the international covenants to the accused, so that our hope, which is justice, will be realized, with what it means of not being biased in the trial of any human being for any matter, as it is a basic social rule for the continuation of human life with each other, as it is the reason for the coexistence of all human beings with different sects in one society.