Law Enforcement Manual – Part II – Public Prosecution and Investigative Judges

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Executive Summary

The Public Prosecution is an original division of the judiciary, which is the representative of society and represents the public interest. It seeks to achieve the requirements of the law. The legislator empowered its members, among other things, with the authority to investigate and initiate public proceedings. The members of the Public Prosecution play an effective role in criminal proceedings, starting with prosecution, investigating crimes, supervising the legality of investigations, and supervising the implementation of court decisions, as representatives of the public interest.

This guide outlines the structure of the Public Prosecution, the appointment process for its members, and the functions and powers of the Public Prosecution. We then provide a detailed description of the specific competencies of its members. The guide covers the authority of the Public Prosecution in initiating criminal cases, conducting investigations, inspecting, and seizing items related to the crime, hearing witnesses, issuing arrest warrants, ordering detention, as well as the procedures for interrogation and confrontation, alongside the rights and safeguards of the accused during these processes. It also addresses the authority to impose travel bans and restrictions on the accused, and the handling of cases. In the third section, the guide explores the regulatory framework governing the Public Prosecution, including supervision, inspection of its operations, and the discipline of its members, with a comparative analysis between Egyptian law and international conventions and treaties.

Part One: Organization and Competences of the Public Prosecution

1 - 1 Definition of the Public Prosecution

The Public Prosecution is a fundamental branch of the judiciary, acting as the representative of society and safeguarding the public interest, with the aim of fulfilling the requirements of the law. The legislature has granted its members, among other powers, the authority to investigate and initiate public lawsuits. ([1])

1-2 Organization of the Public Prosecution

1 - 2 - 1 Formation of the Public Prosecution

The Public Prosecution - in accordance with the Judicial Authority Law - consists of two independent bodies, the first of which is competent to carry out the work of the Public Prosecution before the Court of Cassation only, and the second of which is responsible for carrying out the work of the Public Prosecution before all courts except the Court of Cassation.

First: The Public Prosecution before the Court of Cassation

An independent public prosecution shall be established before the Court of Cassation to perform the function of the public prosecution before the Court of Cassation. It shall have the right, at the request of the court, to attend the deliberations of the civil and commercial chambers and personal status without its representative having a counted vote in the deliberations.

It shall be composed of a director chosen from among at least cassation or appeal judges or public defenders, assisted by a sufficient number of members of the rank of at least a class A prosecutor.

The Supreme Judicial Council shall set a regulation for inspecting the members of this prosecution issued by a decision by the Minister of Justice.

The assignment of both the director and the members shall be for a renewable period of one year by a decision of the Supreme Judicial Council based on the nomination of the President of the Court of Cassation ([2]).

([1]) Appeal No. 1551 of 30 S issued at the session of January 9, 1961, and published in the first part of the book of the Technical Office No. 12 Page No. 58 Rule No. 7.

([2]) Article 24 of the Judicial Authority Law, Appeal No. 16960 of 68 s issued at the session of October 17, 2005 (unpublished), Appeal No. 23303 of 65 s issued at the session of February 22, 2004 (unpublished), Appeal No. 13201 of 65 s issued at the session of January 22, 2004 (unpublished), Appeal No. 9483 of 68 s issued at the session of April 4, 2002 (unpublished), Appeal No. 25463 of 67 s issued

Second: The Public Prosecution before all courts except the Court of Cassation

The Public Prosecution consists of the Public Prosecutor, the Assistant Public Prosecutors, the Senior Public Attorneys, the Public Attorneys, the Chief Prosecutors, their agents, assistants, and staff. In the event of the Public Prosecutor's absence, vacancy of the position, or any obstruction to his duties, the oldest assistant Public Prosecutor will replace him and conduct all his competencies.

([3]).

The Public Prosecutor is the head of the Public Prosecution, and his headquarters is in Cairo. He alone represents the Social Authority in initiating criminal cases and following their progress until a final judgment is issued. His authority in this regard generally includes powers of investigation and prosecution and extends across the entire territory of the Republic and all crimes committed within it, of any kind. As the representative of the public, he may exercise his powers personally or delegate—except for those powers assigned to him individually—to other prosecutors legally entrusted with assisting him in initiating cases on his behalf and supervising the affairs of the Public Prosecution with his direct judicial and administrative oversight over its members, forming an inseparable body in practice. ([4])

The Attorney General shall be subordinate to a number of assistant attorneys general, each of whom shall supervise the work of the appellate prosecution in addition to the competences delegated by the Attorney General. The assistant attorneys general shall choose from among the vice presidents of the Court of Cassation or the presidents of the Court of Appeal.

The Technical Office is attached to the Public Prosecutor's Office and is headed by a public defender at least assisted by a sufficient number of members. The Public Prosecutor's Office is also attached to a number of specialized departments, one of which is responsible for judicial inspection at the Public Prosecution and is competent to inspect and follow up on the work of the Public Prosecution, and another is responsible for the Prosecution Department and is competent to monitor the work of criminal registry staff at the Public Prosecutions. Each of these departments is headed by a public defender at least assisted by a sufficient number of members.

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at the session of April 4, 2002 (unpublished), Appeal No. 13603 of 63 s issued at the session of October 3, 2002 and published in the Technical Office's letter No. 53 page 932 rule No. 155, Appeal No. 13832 of 63 s issued at the session of May 25, 1999 and published in the first part of the Technical Office's letter No. 50 page 329 rule No. 76, Appeal No. 21247 of 63 s issued at the session of February 10, 1999 (unpublished).

([3]) Article 23 of the Judicial Authority Law.

([4]) Appeal No. 1739 of 35 S issued at the hearing of November 15, 1965, and published in the third part of the book of the Technical Office No. 16 page No. 865 rule No. 166.

Each court of appeal has a prosecution headed by a member of the rank of senior public defender assisted by a number of prosecutors.

Each court of first instance has a college prosecution headed by a public defender and assisted by a sufficient number of prosecutors. The college prosecution is subject to the supervision of the chief public defender of the appellate prosecution within whose jurisdiction the college prosecution is located.

Each magistrate court has a magistrate's prosecution managed by a member of the prosecution, with a rank of chief prosecutor at most or an assistant prosecutor at least and assisted by a sufficient number of members commensurate with the scope of the spatial jurisdiction of the magistrate's prosecution. The magistrate's prosecutions are subject to the supervision of the general advocate of the total prosecution within whose jurisdiction the magistrate's prosecution falls.

This is in addition to a number of prosecutors specialized in investigating and acting on a specific type of criminal sect or a specific type of crime, namely:

(1) The Juvenile Prosecution in Cairo and the Juvenile Prosecution in Alexandria:

Each of them shall investigate and dispose of crimes committed by juveniles within its jurisdiction.

(2) Traffic Prosecution:

The crimes of misdemeanors and violations mentioned in the Traffic Law and its executive regulations are subject to specialization, and the prosecution function is performed by the police officers assigned to it by a decision of the Minister of Justice at the request of the Attorney General. The judicial instructions of the Public Prosecution limited the representation of the Traffic Prosecution to members of the Public Prosecution only, without the judicial officers of the Traffic Officers.

(3) Supreme State Security Prosecution:

It is competent to investigate and act in crimes that occur in Greater Cairo (Cairo, Giza, and the urban part of Qalyubia Governorate). It is also competent to act in crimes that occur throughout the Republic in relation to all felonies and misdemeanors affecting the security and safety of the State, whether from the outside or from the inside, such as crimes that lead to prejudice to the independence, unity or territorial integrity of the country, espionage in favor of a foreign country, revealing the secrets of the defense of the country, attempting to overthrow the regime by force, crimes of achieving or manufacturing explosives without a license, bribery, crimes related to religions, infringement of national unity, and strike crimes.

(4) Cairo Financial and Commercial Affairs Prosecution:

It is competent to investigate and act in crimes related to the Customs Law and the import and export laws that fall within the jurisdiction of the Cairo Governorate. Its jurisdiction extends to all other governorates of the Republic - with the exception of the Governorate of Alexandria, which has a similar prosecution - with regard to foreign exchange crimes and currency counterfeiting.

(5) Public Funds Prosecution:

It is competent to investigate and act in crimes of embezzlement of public funds, profiteering from public office, and treachery, and its territorial jurisdiction extends to the rest of the Republic.

(6) Anti-Tax Evasion Prosecution:

It is competent to investigate and dispose of crimes related to tax laws that are located in the Cairo and Giza governorates, and it is competent to dispose of the aforementioned crimes that are committed throughout the Republic.

(7) Suspicion Crimes Prosecution:

It is competent to investigate and act in the crimes of homelessness, suspicion, and violation of the situation under police supervision, which is located in the Cairo and Giza governorates.

1 - 2 - 2 Appointment of members of the Public Prosecution

The Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, provided that:

1. Persons selected for prosecutorial positions shall be persons of integrity and ability with appropriate training and qualifications, and States shall ensure that:

(A) the inclusion in the criteria for the selection of members of the Department of Public Prosecutions of safeguards against their appointment on the basis of bias or favoritism, excluding any discrimination against persons based on race, color, sex, language, religion, political or other opinion, national and social origin, ethnic origin, property, birth, economic situation or any other status, except that the requirement that a candidate for the position of member of the Department of Public Prosecutions shall not be deemed to be a national of the country concerned shall not be considered discrimination;

(B) Ensuring appropriate learning and training for prosecutors, and should educate them on the ideals and ethical duties of their functions, the constitutional and legal protection of the rights of suspects and victims, and human rights and fundamental freedoms recognized by national and international law ([5]).

([5]) Guidelines on the Role of Prosecutors, paras 1, 2.

First: Appointment of the Attorney General

The Attorney General shall be appointed by a decision of the President of the Republic from among three nominated by the Supreme Judicial Council from among the Vice-Presidents of the Court of Cassation, the Presidents of the Courts of Appeal, and the Assistant Attorneys General, for a period of four years or for the remaining period until he reaches retirement age, whichever is earlier, and for one time throughout his term of office. The names of the candidates shall be communicated to the President of the Republic at least thirty days before the end of the term of office of the Attorney General. In the event that the nominees are not nominated before the expiry of the thirty-day period, or the nomination of a number less than three, or the nomination of those who do not meet the prescribed controls, the President of the Republic shall appoint the Attorney General from among the office holders of the Vice-Presidents of the Court of Cassation, the Presidents of the Courts of Appeal, and the Assistant Attorneys General. The Attorney General may request his return to work in the judiciary, in which case his seniority among his colleagues shall be determined according to what it was when he was appointed as Attorney General while retaining his salaries and allowances in a personal capacity ([6].

([6]) Article 119 of the Judicial Authority Law.

The Court of Cassation ruled that the prosecution's initiation of investigations and the referral of the appellant's public attorney to the Criminal Court derives from the law and not from the public prosecutor: [**Whereas the contested judgment was submitted to defend the appellant against the invalidity of the public prosecutor's occupation of his position and the absence of the status of his subordinates and put him in saying "... Whereas the Interim President of the Republic issued a Constitutional Declaration on..... It included the determination of the procedures for amending the stalled Constitution and stipulated in Article 24 that the President of the Republic shall manage the affairs of the country and appoint civil and military personnel. Whereas, Article 119 of the Judicial Authority Law No. 46 of 1972, as amended, made the appointment of the Attorney General by the President of the Republic from among the Vice-Presidents of the Courts of Appeal, the advisers of the Court of Cassation or at least the first public attorneys and this position was vacated by the resignation of the Attorney General, so the Judicial Council began its competence to nominate the current Attorney General, who was at the time of his appointment as President of the Court of Appeal... It was issued by a decision of the interim President of the Republic as the actual authority in the country, and therefore the decision to appoint him is valid and came in accordance with the law and issued by the competent person to appoint him, and the referral order accordingly was valid and not tainted by nullity on what the accused decided in his defense, and the plea of nullity of the decision to appoint the public prosecutor is based on nothing of the law or reality that should be rejected... What the accused raises from the absence of the capacity of the subordinates of the Public Prosecutor was responded to by what is legally established that the competence of the members of the Public Prosecution to investigate is an original competence that they do not derive from the Public Prosecutor, but they derive from the law directly, considering that the Public Prosecution, in its capacity as an investigating authority, replaced the investigating judge for considerations estimated by the street under Article 199 criminal procedures, and this is dictated by the nature of the investigation procedures as one of the judicial procedures that it is not envisaged that any decision or order will be issued based on a power of attorney or proxy, but rather that the person who issued it must have issued it in his name and on his own initiative. This is in addition to the validity of the decision issued to appoint the Attorney General - based on the foregoing statement - and the validity of the gradual dependence of the members of the Public Prosecution in technical and administrative terms. Therefore, the defense of the accused in this regard is a defense that is prima facie of nullity and should be rejected.**

" What was stated in the judgment as above was sufficient, reasonable, and correct in law enough to subtract this plea, the appellant's prohibition in this regard is not valid. Moreover, since the Public Defender is the judicial 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 and both the Public Prosecutor who initiated the investigation and the Public Defender who referred the appellant to the Criminal Court - in the current case - derive their jurisdiction from the law and not from the Public Prosecutor - as mentioned above - which is the conclusion of the contested judgment, the acts and procedures initiated by either of them remain valid and effective unless it is decided to cancel or amend them from the legally competent authority] ([7].

([7]) Appeal No. 18637 of 84 S issued at the hearing of April 14, 2015, and published in the book of the Technical Office No. 66, page No. 360, rule No. 51.

The Court of Cassation also ruled that the Public Prosecutor is the representative of the social body, and his mandate in general, includes the authority to investigate and indict and extends to the entire territory of the Republic, and to all crimes committed in it of any kind, and he has the right to exercise his jurisdiction himself or to entrust, with the exception of the competencies that have been entrusted to him individually, to other prosecutors who are legally entrusted with assisting him to initiate it on his behalf, and he also has the judicial and administrative presidency over the members of the prosecution, This means that the Attorney General has the right to assign one of the members of the Public Prosecution who work in any prosecution, whether it is assigned to a specific type of crime, partial, total, or one of the prosecution offices of appeal, to investigate 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: [**The Public Prosecution, as a representative of the community and its representative, is exclusively competent to initiate the criminal case, which it alone is entrusted with initiating, and that the Attorney General alone is the agent of the social body, and he is the original in the exercise of these competencies and his mandate in general includes The powers of investigation and accusation extend to the entire territory of the Republic and to all crimes committed therein. In this capacity, and as the agent of the group, he may exercise his powers in person or entrust - except for the powers that have been assigned to him individually - to other prosecutors who are legally entrusted with assisting him to carry them out on his behalf, and that the law has granted the deputy The public prosecutor has the right to assign a member of the Public Prosecution who works in his office or in any prosecution, whether it is specialized in a specific type of crime, partial, total, or one of the appellate prosecution offices, to achieve any case or conduct any judicial work that falls within his mandate, even if it is not within the specific or geographical limitation of 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 position of the first public defender - after the promulgation of Law No. 138 of 1981 - has become only a job grade and each of them carries out their competencies subject to the supervision of the public prosecutor. In addition, by virtue of the presidential hierarchy, those who occupy a higher degree have direct competences Authorized to his subordinates in his area of competence and there is nothing in the law that prevents him from assuming the management of any college 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 be**

assigned to carry out the work of the first chief public defender of the Court of Appeal with his consent] ([8].

Second: Appointment of the Assistant Attorney General

The appointment of the Assistant Attorney General shall be by a decision of the President of the Republic after the approval of the Supreme Judicial Council if the appointment does not involve promotion, and if it involves promotion, or if it is not a member of the judiciary and the Public Prosecution, it shall be with the approval of the Council ([9].

Third: Appointment of the First Public Defender

The appointment of the first public defender shall be by a decision of the President of the Republic after the approval of the Supreme Judicial Council, and he may be assigned to carry out the work of the first public defender of the Court of Appeal with his consent and while retaining the financial treatment prescribed for his position ([10].

Fourth: Appointment of the Public Defender

A person who fulfils the conditions for appointment as a judge of the Courts of Appeal, except for the age requirement stipulated in the second paragraph of Article 38 of the Judicial Authority Law, shall be appointed to the position of Public Defender, provided that the age shall not be less than thirty-eight years at least for appointment as a judge of the Courts of Appeal, and thus the legislator shall have authorized the appointment as a public defender for a person under thirty-eight years of age as long as he meets the rest of the conditions required for appointment as a judge of the Courts of Appeal.

The date of appointment or promotion shall be deemed from the date of approval or taking the opinion of the Supreme Judicial Council ([11].

([8]) 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.
([9]) Article 119 of the Judicial Authority Law.
([10]) Article 119 of the Judicial Authority Law.
([11]) Article 119 of the Judicial Authority Law.

Appointment to the position of public defender shall be by promotion from the position immediately preceding it in the judiciary or the prosecution, in which former judges of the courts of appeal and those who have previously held a similar position under the law are appointed, advisers to the State Council and the State Cases Authority and agents working on behalf of the administrative, lawyers who have worked before the Court of Cassation for five consecutive years, professors of law colleges and professors of law in the universities of the Arab Republic of Egypt who have spent a period of at least three years as a professor ([12]).

Fifth: Appointment of the Deputy Attorney General

The appointment to the post of Deputy Attorney General and in other positions shall be from among the prosecutors by way of promotion from the immediately preceding grade or from among the judiciary, provided that it is permissible to appoint directly to the post of Deputy Attorney General the technical staff of the State Cases Authority and their counterparts in the State Council and the Administrative Prosecution and the assistants in the law departments of the universities of the Arab Republic of Egypt whenever each of them spends at least three years in his job or work and is in a grade similar to the degree of Deputy Attorney General or receives a salary within the limits of this grade, and lawyers working before the courts of first instance for a period of at least one year ([1]).

Article 118 of the Judicial Authority Law stipulates that among the public prosecution attorneys, there must be a percentage of active lawyers, with the condition that the percentage of lawyers engaged in the legal profession appointed to the position of deputy public prosecutor and below shall not be less than a quarter. The importance of diversifying the expertise of prosecutors and equipping them with a percentage of those engaged in legal work across various fields is evident. Furthermore, no one other than the prosecution assistants may be directly appointed to an assistant position unless they pass an examination, the terms and conditions of which shall be determined by a decision of the Minister of Justice after approval from the Supreme Judicial Council. This appointment is contingent upon being listed in the register of those working before the courts of first instance if they are lawyers, or having spent two consecutive years engaged in legal work if they are counterparts.

([12]) Articles 40, 41 of the Judicial Authority Law.

If the person who passes the examination is a member of the legal departments of the government, public bodies or establishments, or the economic units subordinate to them, his grade shall be transferred upon his appointment to the Public Prosecution with the financial approval included in the budget of the entity in which he worked to the budget of the Ministry of Justice.

The percentage of appointment of lawyers engaged in the legal profession shall not be less than one quarter in the position of Deputy Attorney General and below. [13]

The Judicial Authority Law stipulates that those appointed to the Public Prosecution (1) shall have the nationality of the Arab Republic of Egypt and full civil capacity; (2) shall not be less than nineteen years of age if appointed as an assistant to the Public Prosecution, and for twenty-one years if the appointment is an assistant to the Public Prosecution; (3) shall have a law degree from one of the law faculties of the universities of the Arab Republic of Egypt or an equivalent foreign certificate and in the latter case shall pass the equivalence exam in accordance with the relevant laws and regulations; (4) shall not have been sentenced by the courts or disciplinary boards for a dishonorable order, even if he has been rehabilitated; ([14]5) shall have a good reputation).

([13]) Articles 116, 118 of the Judicial Authority Law.
([14]) Articles 38 and 116 of the Judicial Authority Law.

The Court of Cassation ruled that: [The decision - in the judiciary of the Court of Cassation - that it is sufficient for those who are directly appointed to the position of prosecution assistant, **to be a lawyer registered in the schedule of employees before the courts of first instance or a counterpart who has practiced legal work for at least two years, and to pass the examination as a revealing condition of validity for appointment - which is verified from the date of registration in the schedule of employees before the courts for lawyers, and from the date of expiry of two years from the commencement of legal work for counterparts with the conditions required by law to be met by those who hold one of the public positions, which may not be dissolved or diminished and for which the management authority does not have a discretionary authority, and it was required that those who appoint an assistant to the prosecution of non-prosecution assistants must have previously carried out certain work as described above. Whereas the appellant had maintained in his defense that the contested judgment had overlooked the provision of Articles 116 and 120 of the successive laws of the judicial authority, which clearly indicate that whoever appoints an assistant to the Public Prosecution must be a lawyer or a counterpart who has worked for two consecutive years in a legal work and that passing the exam is a condition revealing the validity of the appointment, the effect of which is due to the date of fulfilling the conditions - as was done by the Court of Cassation - which was achieved for the appellant from the issuance of the decision to appoint him and this decision is immune from cancellation, which reveals the availability of these conditions for the work he previously occupied, including the work of researchers of the Central Agency for Organization and Administration**] **(**[15].

([15]) Requests of the Judges, Application No. 41 of 78 s issued at the session of March 24, 2009, and published in the book of the Technical Office No. 60, page No. 72, rule No. 11.

The wisdom of the legislator to perform the exam is to enable the administration to choose the most suitable elements for appointment as a prosecution assistant. It is sufficient for those who are directly appointed without the prosecution assistants in the aforementioned position to be a lawyer registered in the schedule of workers before the courts of first instance or a counterpart who has practiced legal work for at least two years. Passing the exam is a revealing condition for the validity of the appointment that is achieved from the date of registration in the schedule of workers before the courts of first instance for lawyers and from the date of expiry of two years from the start of legal work for counterparts ([16]).

According to the third paragraph of Article 116 of the Judicial Authority Law, when members of the legal departments of the government, public bodies or institutions, or economic units affiliated with them pass the examination, their rank will be transferred upon their appointment to the Public Prosecution, along with the financial approval included in the budget of the entity in which they worked to the budget of the Ministry of Justice. Their appointment to the judicial authority does not result in their retaining any financial rights they received from their previous employer against the Ministry of Justice.

([16]) Application No. 222 of 46 s, application No. 517 of 47 s, and application No. 64 of 48, issued at the session of 28 June 1979 and published in the first part of the book of the Technical Office No. 30 page No. 65 rule No. 22, application No. 230 of 46 s issued at the session of 21 June 1979 and published in the first part of the book of the Technical Office No. 30 page No. 51 rule No. 18.

([17])

Failure to meet any of the conditions of eligibility to assume judicial functions is considered an obstacle to appointment or continued service in that position: [**It is recognized that failure to meet one of the conditions of authority to assume judicial functions prevents appointment to or stay in those functions and among those conditions specified in Articles 38 and 116 of the Judicial Authority Law No. 46 of 72, that the candidate for appointment to the post of assistant of the Public Prosecution Mahmoud has a good reputation and falls under this condition of ethical behavior with the most accurate and broadest inspection, as the candidate must be on a straightforward and deviant creation that affects his work in his job and affects his career and reputation so that he is not worthy of respect among citizens, and the good biography and reputation require staying away from everything that offends and brings citizens' discontent and contempt. This condition was stated in general without specifying the reasons that result in losing it, so that the legislator allows the area of good reputation to be assessed by the administration within the scope of its responsibility for preparing the prosecution member who is responsible for the administration of justice among people, and the reputation of the prosecution member can be affected by his personal or moral conduct or by conditions surrounding him that can have Its impact on his future work as a judicial man, and the level of good reputation varies according to the difference in the job, its seriousness and responsibilities.**

([17]) Application No. 149 of 67 s issued in the session of February 1, 2000, and published in the first part of the Technical Office book No. 51 page No. 53 rule No. 4, Application No. 199 of 64 s issued in the session of September 22, 1998, and published in the first part of the Technical Office book No. 49 page No. 49 rule No. 10.

What the administration may tolerate for certain jobs, which may be stricter in relation to other jobs, such as the judiciary, is because the importance and danger of these jobs require a special level of good reputation. The administrative authority may investigate by all its means the availability of the conditions of eligibility in candidates. If it is firmly proven that one of the candidates has failed to meet a condition of eligibility for the job, he shall be excluded from candidacy. Even if he has been appointed and it is proven that he was missing a condition before his appointment or lost it afterward, the administrative authority may exclude him from his job in the manner prescribed by law, all after scrutiny and examination to ensure that the right is upheld without arbitrariness or injustice, in a way that maintains justice.

It was evident from the investigations of Complaint No. 398 of 1994, which limited the year of judicial inspection, that the candidate omitted, in his family data form when he was nominated for the position of assistant public prosecutor, a statement related to his family members. This omission was regarding the imposition of a custodial sentence on his uncle for murder in 1942. It was proven from the candidate's file that the name of the aforementioned uncle was not mentioned, revealing behavior that was flawed and dangerous by not including one of the required family details. This allowed him to achieve his goal, which was to join the Public Prosecution. Had full and truthful information about all members of his family been presented to the Supreme Judicial Council, it would have prevented him from being appointed. This indicates that his behavior was not correct, as a judicial officer must be truthful in word and honest in speech, refraining from lying.

This omission deprived the candidate of the elements of eligibility to work as a member of the Public Prosecution. His claim that he did not know this fact because he came from a rural community and could not imagine being isolated from news about his family does not justify the omission. Therefore, the decision to dismiss him without following the disciplinary procedures for losing the condition of good reputation is justified and free from illegality, and the request should be rejected. (1)

Appointment in one of the judicial functions is authorized by the administration in accordance with its discretion, guided by the principle of legitimacy, guided by what it deems to be in the public interest by choosing the fittest in all aspects required by the nature of the judicial function. The assessment of this authority is the content of the discretion. The administration may determine the elements of the authority and the means of detection if it wants in its absolute discretion, so it may rely on the general appreciation, investigation of reputation, social status, and personal interview of all candidates for appointment. It may rely on all or some of them or take another way that it deems more conducive to achieving the public interest. Whatever those elements are, the origin of the administrative decision is to make it valid by assuming that it is correct and based on a valid reason that it is carried and issued in the public interest. If the administration is held to disclose the reason, there is no way to make it disclose it and the student has the burden of proving that the decision was not intended for the public interest. With regard to this dispute, he cannot extract evidence by balancing the candidates for appointment, as the behavior of this path does not reveal the true purpose of the decision as long as the assessment of the employee's eligibility upon appointment is stable in the conscience of the administration and as long as there is no binding officer to limit the features of this authority, there is no way to discuss or argue about the validity of what the administration has based its conviction on. If the student does not provide evidence that there are personal purposes targeted by the decision and does not claim that it is a goal for other than the public interest, it is not contrary to the law or tainted with abuse of power)18(.

(18) Application No. 14 of 65 s issued at the session of June 4, 1996, and published in the first part of the Technical Office's letter No. 47, page No. 35, rule No. 7.

Sixth: Taking the Oath

Before assuming their duties, members of the Public Prosecution shall take the legal oath as follows:

"**I swear by Almighty God to judge between people fairly and to respect the laws**" ([19].

The Attorney General shall be sworn in before the President of the Republic, and the other members of the Department of Public Prosecutions shall be sworn in before the Minister of Justice in the presence of the Attorney General.

The oath shall not be repeated upon promotion or upon transfer between the judiciary and the Public Prosecution.

Seventh: Determining the place of residence of prosecutors

The place of residence of the members of the prosecution and their transfer outside the total prosecution to which they belong shall be determined by a decision by the Minister of Justice upon the proposal of the Attorney General and after the approval of the Supreme Judicial Council. The Attorney General has the right to transfer the members of the prosecution in the circuit of the court in which they are appointed, and he has the right to assign them outside this circuit for a period not exceeding six months.

He may, if necessary, delegate one of the chief prosecutors to carry out the work of a public defender of the public prosecution for a period not exceeding four months, renewable once. In this case, the delegated chief prosecutor shall have all the competences legally vested in the public defender.

The Public Defender shall have the right to appoint a member of his department to perform the work of another member of that department when necessary ([20].

([19]) Article 120 of the Judicial Authority Law.
([20]) Article 121 of the Judicial Authority Law.

It is decided that the Public Prosecutor may assign, if necessary, one of the Chief Prosecutors to carry out the work of the Attorney General of the Public Prosecution for a period not exceeding four months, renewable for one time. In this case, the delegated Chief Prosecutor shall have all the competences legally vested in the Attorney General. The assignment of the Attorney General to one of the members of the Public Prosecution in his department to carry out the work of another member of that department is permissible when necessary, and it was sufficient in the matter of assignment to prove that he obtained the lawsuit papers ([21].

If the Public Defender has the right to assign a member of the prosecution in his department to carry out the work of another member of that department, when necessary, it is sufficient in this assignment to be verbal when necessary, provided that this verbal assignment has evidence of its occurrence in the case papers ([22].

The law has granted the Attorney General the full right to assign a member of the Public Prosecution who works in any prosecution, whether it is specialized in a specific type of crime, partial, total, or one of the appellate prosecution offices, to investigate any case or conduct any judicial work within his jurisdiction - even if it is not within the qualitative or geographical limitation of the competence of that member ([23].

([21]) Appeal No. 241 of 60 S issued at the hearing of March 6, 1991, and published in the book of the Technical Office No. 42 Part No. 1 Page No. 451 Rule No. 64.
([22]) Appeal No. 64031 of 76 S issued on June 14, 2009 (unpublished).
([23]) Appeal No. 7588 of 53 S issued on March 28, 1985, and published in the first part of the book of the Technical Office No. 36 page No. 460 rule No. 78.

The Court of Cassation ruled that: [**The head of the prosecution has the right to assign a member of the prosecution in his department to carry out the work of another member of that department when necessary. This assignment is sufficient to be made orally, when necessary, provided that this oral assignment has evidence that it occurred in the case papers. This is because the member of the prosecution who is investigating in this case is conducting it in his name and not in the name of his delegate. Since the contested judgment has been proven in his blogs - in response to the appellant's plea - that the assistant to the prosecution has proven that he issued the search warrant on the basis of an assignment by the head of the prosecution - this is sufficient to prove that the assignment has taken place, and the search warrant is considered valid issued by those who have legal authority to issue it**][24].

The Court of Cassation ruled that the absence of the assignment book does not negate its occurrence, nor does it negate the state of necessity that required it as long as the assignment is fixed in the search warrant ([25].

Eighth: The order of seniority of the members of the Public Prosecution

The appointment to the post of deputy public prosecutor and in other positions shall be from among the prosecutors by way of promotion from the immediately preceding grade or from among the judges, provided that it is permitted to appoint directly to the post of deputy public prosecutor the technical staff of the State Cases Authority and their counterparts in the State Council and the Administrative Prosecution and the assistants in the law departments of the universities of the Arab Republic of Egypt whenever each of them has spent at least three years in his job or work and was in a grade similar to the degree of deputy public prosecutor or receives a salary within the limits of this grade, and lawyers working before the courts of first instance for a period of at least one year. Deputy attorneys general of the excellent category or heads of prosecution of categories (b) and (a) who meet the conditions set out in Articles 39 and 41, as the case may be, may be[26] appointed directly.

([24]) Appeal No. 1410 of 53 S issued at the session of October 23, 1983, and published in the first part of the book of the Technical Office No. 34 page No. 851 rule No. 168.
([25]) Appeal No. 1194 of 46 S issued at the hearing of March 6, 1977, and published in the first part of the book of the Technical Office No. 28 page No. 334 rule No. 71.
([26]) Article 117 of the Judicial Authority Law.

The seniority of the members of the Public Prosecution shall be determined according to the date of the presidential decision issued for their appointment or promotion unless specified by this decision from another date with the approval of the Supreme Judicial Council. If two or more members are appointed or promoted in one decision, seniority shall be among them according to their rank in the decision ([27].

Determining the seniority of assistants before the student appointed as an assistant to the prosecution before them is not wrong as long as they meet the conditions of appointment to this degree before being promoted to it, it does not change that one of the assistants of the prosecution is next to him in graduation: [**The legislator's desire to perform the exam is to enable the administration to choose the most suitable elements for appointment to the position of assistant to the prosecution, it is sufficient for those who are directly appointed other than the assistants of the prosecution in the aforementioned position to be a lawyer registered in the schedule of workers before the courts of first instance or a counterpart who has practiced legal work for at least two years, and passing the exam is a revealing condition for appointment that verifies from the date of registration in the schedule of workers before the courts of first instance for lawyers and from the date of expiry of two years from the start of legal work for counterparts, as it was established from the papers that the assistants of the prosecution covered by the decision... By appointment, those who made them predecessors to the student in seniority have fulfilled the conditions of validity for appointment to the position of prosecution assistant - on the aforementioned basis - before the student is promoted to the aforementioned position, the decision, as placing them in seniority before him, is not contrary to the law or tainted by abuse of power, even if it is among them who is next to the student in graduation, because the student has started his judicial work by working as an assistant to the prosecution, his seniority in the position of assistant to the prosecution is determined according to the date of the Republican decision issued to promote it pursuant to Article 1/50 of the Judicial Authority Law, regardless of the date of obtaining the legal qualification or the quality of the work he practiced before being appointed as an assistant to the prosecution]** [28]

([27]) Articles 50 and 124 of the Judicial Authority Law.
([28]) Applications No. 222 of 46 s, 517 of 47 s, 64 of 48 s issued at the session of 28 June 1979 and published in the first part of the book of the Technical Office No. 30 page No. 65 rule No. 22.

A lawyer or counterpart fulfilling the legal conditions and passing the prescribed exam is a revealing condition for the validity of the appointment, so the date of appointment is bounced back to the date of fulfilling the conditions: [Article 3/116 of the Judicial Authority Law No. 46 of 1972 stipulates that " no one may be appointed directly other than the assistants of the prosecution in the position of assistant prosecutor except after the performance of an examination whose terms and conditions shall **be determined by a decision of the Minister of Justice after the approval of the Supreme Council of Judicial Authorities, provided that he is restricted to the schedule of workers before the courts of first instance, if he is a lawyer or He must have spent two consecutive years engaged in legal work if he is one of the counterparts." The wisdom of the street in taking the exam is that it enables a management body to choose the most suitable elements for appointment to the position of assistant to the prosecution. It is sufficient for those who are directly appointed without the assistants of the prosecution in the aforementioned position to be a lawyer registered in the schedule of workers before the courts of first instance or a counterpart who practiced legal work for at least two years. Passing the exam is a revealing condition for the validity of the appointment that is achieved from the date of registration in the schedule of workers before the courts of first instance for lawyers and from the date of expiry of two years from the start of legal work for counterparts. Whereas it is established from the papers that the assistants of the prosecution covered by the contested Republican decision to appoint have fulfilled the conditions of validity for appointment to the position of assistant of the prosecution - on the basis of the aforementioned - before the student is promoted to the aforementioned position, the decision, as it placed them in seniority before him, is not contrary to the law or tainted by abuse of power**[29] (.

(29) Application No. 230 of 46 S issued at the session of 21 June 1979 and published in the first part of the book of the Technical Office No. 30 page No. 51 rule No. 18.

The regulatory rules set by the Ministry to determine the seniority of those appointed from outside the judicial bodies must be observed for all: [**According to the text of Article 116 of the Judicial Authority Law No. 46 of 1972, the Ministry of Justice has discretionary power to determine the seniority of those appointed from outside the judicial bodies, but when it sets regulatory rules to determine this seniority, it must be observed for all. Whereas it was established from the memorandum submitted to the Supreme Council of Judicial Bodies to approve the appointment of prosecution assistants covered by the contested decision that their seniority was arranged according to the priority of the conditions of the authority to appoint each of them to the position of prosecution assistant and when the authority was equal, the seniority was determined according to the rules for the precedence of the role of graduation and the degree of appreciation in it, respectively, and then finally the oldest, provided that this does not result in them not preceding their colleagues in the Public Prosecution - and it was proven from the student's service file that he graduated from the Faculty of Law in May 1966 and was appointed to the Public Authority for Social Insurance by the decision of its Director General and received work on 5/1/1/1977 in the Cases and Investigations Unit and was conducting investigations and preparing legal memoranda in the defense of the Authority in cases and following up the progress of these cases, the student has begun to work Legal in 1967/1/5 and met the conditions of validity in the position of prosecution assistant in accordance with Article 116 of the Judicial Authority Law in 1969/1/5, and since it was established that the Ministry of Justice determined the date of fulfilling the conditions of validity for appointment in 1972/1/5, it violated the law and the rules it followed for the rest of his colleagues.** (30)

The Judicial Authority Law No. 46 of 1972 stipulated in the third paragraph of Article 116 of it among the conditions that must be met by those who are directly appointed other than the assistants of the prosecution in the position of assistant, and this text has nothing to do with determining the seniority of those appointed in this position, and since the law did not provide special rules for determining the seniority of those directly appointed in the positions of assistants of the prosecution, this is left to the administration to exercise within the limits of the public interest, or if it does not commit to determining their seniority in the order of their success in the examination they took. Whereas the Ministry of Justice has committed in its conduct a general regulatory rule in the public interest to determine the seniority of the prosecution assistants covered by the contested decision from the date of their appointment to

(30) Application No. 227 of 46 S issued at the session of 8 June 1978 and published in the first part of the book of the Technical Office No. 29 page No. 49 rule No. 15.

the positions they held before the appointment, the contested decision shall not have violated the law or been tainted by abuse of power.)31(.

1 - 3 Competences of the Public Prosecution

The Public Prosecution is the custodian of the criminal case, and it represents the general interests of society. Therefore, the Public Prosecution has jurisdiction in criminal matters and another in other matters.

1 - 3 - 1 The competence of the Public Prosecution in criminal matters

The main competence of the Public Prosecution is to initiate and initiate criminal proceedings. Accordingly, the first paragraph of Article 1 of the Criminal Procedure Law states: "**The Public Prosecution shall have exclusive jurisdiction to initiate and initiate criminal proceedings and shall not be brought by others except in the cases specified in the law**." (32).

The principle established under Article 1 of the Code of Criminal Procedure is that the Public Prosecution is exclusively competent to initiate and conduct criminal proceedings in accordance with the law and that its jurisdiction in this regard is absolute and is not subject to any restriction except with the exception of the text of the street (33).

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(31) Application No. 209 of 46 S issued at the session of March 16, 1978 and published in the first part of the book of the Technical Office No. 29 page No. 21 rule No. 7.

(32) Paragraph 1 of Article 1 of the Criminal Procedure Law.

(33) Appeal No. 35068 of 84 S issued at the 27th session of December 2016 and published in the letter of the Technical Office No. 67, page No. 951, rule No. 119, Appeal No. 21602 of 84 S issued at the 22nd session of March 2015 and published in the letter of the Technical Office No. 66, page No. 319, rule No. 45, Appeal No. 2898 of 84 S issued at the 25th session of November 2014 and published in the letter of the Technical Office No. 65, page No. 859, rule No. 114, Appeal No. 27237 of 76 S issued at the 9th session of May 2013 and published in Technical Office Letter No. 64, page No. 586, rule No. 83, Appeal No. 39618 of 72 S issued at the 16th session of January 2003 and published in Technical Office Letter No. 54, page No. 112, rule No. 11, Appeal No. 30771 of 71 S issued at the 2nd session of November 2002 and published in Technical Office Letter No. 53, page No. 1030, rule No. 172, Appeal No. 15146 of 71 S issued at the 20th session of December 2001 and published in Technical Office Letter No. 52, page No. 982 Rule No. 190, Appeal No. 21073 of 63 S issued at the session of 22 November 1995 and published in Part I of Technical Office Letter No. 46 Page 1248 Rule No. 187, Appeal No. 7698 of 62 S issued at the session of 12 July 1993 and published in Part I of Technical Office Letter No. 44 Page 667 Rule No. 105, Appeal No. 5396 of 59 S issued at the session of 21 April 1993 and published in Part I of Technical Office Letter No. 44 Page No. 418 Rule No. 58, Appeal No. 3045 of 58 S issued at the hearing of October 16, 1988 and published in the first part of the Technical Office's letter No. 39 page No. 914 Rule No. 137, Appeal No. 1339 of 55 S issued at the hearing of May 27, 1985 and published in the first part of the Technical Office's letter No. 36 page No. 716 Rule No. 126, Appeal No. 2358 of 54 S issued at the hearing of January 24, 1985 and published in the first part of the Technical Office's letter No. 36 page No. 117 Rule No. 16, Appeal No. 6041 of 53 S issued at the session of February 9, 1984 and published in the first part of the Technical Office letter No. 35, page No. 131, rule No. 26, Appeal No. 2640 of 53 S issued at the session of December 27, 1983 and published in the first part of the Technical Office letter No. 34, page No. 1094, rule No. 218, Appeal No. 502 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. 732, rule No. 167, Appeal No. 1104 of 45 S issued at the 26th session of October 1975 and published in the first part of the Technical Office letter No. 26 page No. 630 rule No. 141, Appeal No. 1008 of 43 S issued at the 10th session of December 1973 and published in the third part of the Technical Office letter No. 24 page No. 1201 rule No. 244, Appeal No. 226 of 43 S issued at the 29th session of April 1973 and published in the second part of the Technical Office letter No. 24 page No. 559 rule No. 115, Appeal No. 1502 of 42 S issued in the session of February 12, 1973 and published in the first part of the Technical Office book No. 24 Page 192 Rule No. 41, Appeal No. 998 of 40 S issued in the session of October 18, 1970 and published in the third part of the Technical Office book No. 21 Page 985 Rule No. 234, Appeal No. 50 of 39 S issued in the session of April 28, 1969 and published in the second part of the Technical Office book No. 20 Page 565 Rule No. 117, Appeal No. 1290 of 36 S issued in the session of March 7, 1967 and published in the first part of the Technical Office book No. 18 Page 334 Rule No. 68.

The Public Prosecution, in its capacity as a representative of the community, is exclusively competent to initiate criminal proceedings - except in the cases specified in the law - and is solely entrusted with its exercise ([34].

The competence of the Public Prosecution in the criminal case shall be in line with the stages and procedures of this case and shall be as follows:

(1) Preliminary Investigation Stage (Gathering Inferences):

Judicial officers shall search for crimes and their perpetrators and collect the evidence necessary for the investigation of the lawsuit. They are subordinate to the Public Prosecution and subject to its supervision until their work comes in application of the law in its proper manner and without exceeding the powers of the seizure function. Therefore, the Public Prosecutor may request the administrative authority to which the seizure officer belongs to consider his matter if there is a violation of his duties or a failure to perform his work. The Public Prosecutor may also request the filing of the disciplinary lawsuit against the violating judicial officer, and this does not prevent the filing of the criminal lawsuit against him as well[35].

(2) Preliminary Investigation Stage (Collection of Evidence):

The law entrusted the Public Prosecution with the authority to investigate - in accordance with the provisions prescribed for the investigating judge - with the procedures granted by this authority, such as arrest, search, and pretrial detention, with the aim of reaching the truth of the criminal incident and attributing it to a specific accused, and the evidence proving it against him and assessing the sufficiency of the evidence to refer him to trial, or its inadequacy in a way that requires the issuance of an order not to file a lawsuit, if its conditions are met ([36].

The law also authorized the Public Prosecution to issue criminal orders in violations and misdemeanors in which the law does not require a sentence of imprisonment or a fine of more than a thousand pounds, and in which no inclusion or response and expenses were requested ([37].

(3) Final Investigation (Trial) Phase:

([34]) Appeal No. 34946 of 84 s issued at the 8th session of May 2016 and published in Technical Office Letter No. 67, page No. 495, rule No. 57, Appeal No. 43799 of 77 s issued at the 17th session of January 2009 and published in Technical Office Letter No. 60, page No. 52, rule No. 7, Appeal No. 13196 of 76 s issued at the 18th session of May 2006 and published in Technical Office Letter No. 57, page No. 636, rule No. 69, Appeal No. 50721 of 75 s issued at the 13th session of February 2006 and published in Technical Office Letter No. 57, page No. 209, rule No. 27, Appeal No. 30639 of 72 s issued at the 23rd session of April 2003 and published in Technical Office Letter No. 54, page No. 583, rule No. 74.

([35]) Articles 21 and 22 of the Criminal Procedure Code.

([36]) Article 199 of the Criminal Procedure Law.

([37]) Article 325 bis of the Criminal Procedure Law.

The presence of the Public Prosecution in the criminal trial sessions is obligatory, and its failure to attend results in the invalidity of the judgment, considering that it is part of the formation of the criminal courts.

The Public Prosecution is the sole authority responsible for initiating the criminal lawsuit, which includes following up on the lawsuit, submitting applications, presenting defenses, refuting evidence of proof or denial, and even issuing the judgment in the lawsuit. The issuance of the judgment in the lawsuit in accordance with what the Public Prosecution requested does not preclude its right to appeal against it, whether in favor of the accused or against him, and then proceeding with the appeal until the verdict becomes absolutely final and unappealable in any case.

(4) Implementation Phase:

The Public Prosecution shall supervise the procedures and places of enforcement of judgments issued in criminal cases ([38]).

When the Public Prosecution carries out its jurisdiction to initiate criminal proceedings, it carries out it as it is authorized by society. Therefore, it adheres to the limits of this mandate, and this has several effects, which are summarized as follows:

A) The Public Prosecution may not waive the criminal case or reconcile with the accused in exchange for compensation to the victim or a donation to a charity ([39]).

B) If the criminal case is filed, the Public Prosecution does not have the right to waive it or withdraw it from the court, even if it finds its establishment in error, as it then has only the right to plead in favor of the accused, leaving the court free to assess the matter and issue a judgment in the case: [**It is established that once the criminal case is filed, the court is obliged to decide on it in the light of the availability or non-availability of the elements of the crime that it invokes, based on the various evidence and elements presented before it in the formation of its belief, without being bound by civil provisions or suspending its judiciary from issuing judgments regarding the dispute before it.**] [40]

C) It is not permissible for the Public Prosecution to waive its right to appeal the judgment, whether before the expiry of its deadlines or after deciding on it. The issuance of the judgment

([38]) Article 27 of the Judicial Authority Law.
([39]) Mr. Ali Zaki Al-Arabi, Basic Principles of Criminal Procedure, Part I, 1951, p. 20.
([40]) Appeal No. 6465 of 55 S issued at the session of May 11, 1988 and published in the first part of the technical office book No. 39 page No. 685 rule No. 102, Appeal No. 2356 of 31 S issued at the session of May 7, 1962 and published in the second part of the technical office book No. 13 page No. 449 rule No. 113.

in conformity with the requests of the Public Prosecution does not preclude the possibility of deciding to appeal against it based on other arguments. The Court of Cassation ruled that: [**Since the Public Prosecution is in the field of interest or capacity in the appeal, it is a fair opponent with a special legal status that represents the public interest and seeks to achieve the requirements of the law in terms of the criminal case, it may, in this capacity, appeal judgments, even if it does not have a special interest in the appeal, but the interest of the convicts.** (41)

D) It is not permissible for the Public Prosecution to refrain from executing the judgment - even if it is contrary to its requests - or for the court to exempt him from executing it. The judgment was issued in the interest of society and not in the special interest of the Public Prosecution. (42)

1 - 3 - 2 Competence of the members of the Public Prosecution

Preamble

The members of the Public Prosecution are graded in ascending ranks that are superior to each other in the form of a pyramid headed by the President General of the Members of the Public Prosecution, who is the Attorney General, and his base is the members of the Public Prosecution of the lowest grades, who are the assistants of the Public Prosecution, in the following order:

Attorney General

Assistant Attorneys General

Senior Public Solicitors

Advocates General

Chief Prosecutors

Prosecutors

Public Prosecution Assistants

Auxiliaries of the Public Prosecution

The competence of each of these members is as follows:

(41) Appeal No. 24574 of 62 S issued at the session of April 22, 1998 and published in the first part of the book of the Technical Office No. 49 page No. 603 rule No. 78.
(42) Dr. Mahmoud Najib Hosni, Explanation of the Code of Criminal Procedure, p. 81.

First: The Attorney General

The Public Prosecutor is the head of the Public Prosecution, and he is the sole agent of the social body in initiating and proceeding with the criminal case. In this way, he has all the competences of the members of the Public Prosecution, and he has special powers that distinguish him from other members of the Public Prosecution, which are intended to enable him to supervise them and correct omissions or fix the error that may occur from one of them, and they are called the personal competencies of the Public Prosecutor, and therefore it is not permissible for other members to exercise them except by special power of attorney from him ([43]).

These competencies are many, the most important of which are:

1) The Attorney General may file an appeal against the judgments issued in misdemeanors and violations within thirty days from the time of issuance of the judgment, while the other members are scheduled for ten days only[44].

2) The Public Prosecutor may cancel the order issued by the Public Prosecution not to file a criminal case within the period of three months following its issuance unless a decision has been issued by the Criminal Court or by the Court of Appeal of Misdemeanors sitting in a consultation room - as the case may be - rejecting the appeal filed against this order ([45]).

3) The Attorney General may request a review of the final sentences issued in accordance with Articles 443 and 442 of the Code of Criminal[46] Procedure.

5) The Attorney General may request the lifting of the immunity of the judge or the member of the prosecution to take investigation procedures with him or file a criminal case against him in felonies and misdemeanors ([47]).

([43]) The Court of Cassation ruled that the special power of attorney does not take the place of a letter sent by the Attorney General or the Attorney General to a member of the Public Prosecution approving the filing of the appeal: [When it is established from the papers that the person who decided to challenge the order issued by the Indictment Chamber that there is no face to file a public lawsuit before the accused is the Chief Prosecutor, and that although it was stated in the appeal report that he decided on a power of attorney from the Attorney General, it is stated in the latter's letter to the Chief Prosecutor that he did not provide for the power of attorney of the Public Prosecution, but limited himself to indicating his approval of the report by cassation, which is not considered a power of attorney by him to appeal, whenever it is, the appeal shall be inadmissible in form for its issuance by those who do not legally own the report] Appeal No. 33 of the year 24 Q issued at the hearing of March 1, 1954 and published in the second part of the Technical Office's book No. 5, page 387, rule No. 128.

It also ruled that: [Appeal by cassation against the order issued by the indictment chamber that there is no face to file the lawsuit may not be in accordance with Article 193 of the Code of Criminal Procedure except for the Attorney General, and in accordance with Article 30 of Law No. 56 of 1959 on the Judicial Authority - for the Attorney General in his jurisdiction or from a special agent for him, and since the letter issued by the Attorney General to the Chief Prosecutor approving the filing of the appeal does not take the place of the special power of attorney required by law to use the right of appeal, the appeal is inadmissible in form] Appeal No. 236 of 31 BC issued at the session of 9 May 1961 and published in the second part of the Technical Office's letter No. 12 page No. 559 rule No. 105.

([44]) The second paragraph of Article 406 of the Criminal Procedure Code.

([45]) Article 211 of the Criminal Procedure Code.

([46]) Articles 442, 443 of the Criminal Procedure Code.

([47]) Article 96 of the Judicial Authority Law.

4) The Attorney General (in conjunction with the Attorney General and the Chief Prosecutor) may file a criminal case against an employee, public employee, or one of the judicial officers for a felony or misdemeanor committed by him during the performance of his job or because of it, with the exception of the crime of refraining from executing an enforceable judgment or a judicial or administrative order, as it is subject to general rules, and then it may be moved by other members of the Public Prosecution ([48]).

Second: Assistant Attorney General

In the event of the absence of the Attorney General or the vacancy of his position or the occurrence of an impediment to him, he shall be replaced by the most senior assistant deputies, and he shall have all his competences ([49]).

The Senior Assistant Attorney General shall replace the Attorney General in the event of his absence, the vacancy of his position, or the occurrence of an impediment thereto, and he shall have all his competences ([50]).

The Assistant Attorneys General shall directly assist and assist the Attorney General in the career progression of the members of the Public Prosecution. Each of them shall supervise the work of the Public Prosecution in the Department of Appeals Prosecution specified by the Attorney General by a decision issued by him.

This Decision shall determine the acts delegated by the Attorney General to the Assistant Attorney General.

The Assistant Attorney General shall supervise and supervise all judicial and administrative members working in his sphere of competence.

Therefore, the Senior Public Defender and the Public Defenders in the Public Prosecutions of the Assistant Attorney General are obligated to provide him with complete copies of the judicial and administrative inspection reports and copies of the follow-up statements of the work issued by the Public Prosecutions to determine the true picture of the progress of work, and to follow up what is done, so that he corrects the errors that occur and takes what he deems necessary in this regard.

([48]) The third paragraph of Article 63 of the Criminal Procedure Law.
([49]) Article 23 of the Judicial Authority Law.
([50]) Appeal No. 39618 of 72 S issued at the session of January 16, 2003 and published in the letter of the Technical Office No. 54 page No. 112 rule No. 11.

Third: The First Public Defender

The first public defender heads the appellate prosecution - supervised by the assistant public prosecutor in the appellate chamber - and has all the powers vested in the public prosecutor in his spatial jurisdiction, including the autonomous competences of the public prosecutor. The first public defender has the right to supervise and supervise all members of the prosecution in his sphere of competence.

The Senior Solicitor General shall be under the direct supervision of the Assistant Solicitor General and shall, of course, also be subject to the supervision and control of the Solicitor General.

The function of the first public defender is similar to that of the public defender in terms of jurisdiction, but it is a higher job grade, as it is equivalent to that of the Vice-President of the Court of Appeal. Therefore, the public defender is subject to the supervision of the first public defender in his work.

The First Public Defender at the Court of Appeal in his jurisdiction under the supervision of the Attorney General shall have all the competences of the Attorney General stipulated in the laws. He may supervise the work of the total and partial prosecutions affiliated to him, which fall within his jurisdiction, and verify the extent to which the members of the prosecution and its employees are keen to perform the duties of their office ([51]).

The First Public Defender at the Court of Appeal shall conduct a surprise inspection of the work of the total and partial prosecution offices affiliated with him and shall prepare a report on the result of this inspection, including the status of work of that prosecution and the extent of the keenness of its employees to perform their duties and the cases that were disposed of during the inspection, as well as the rest, with clarification of the reasons for this. Copies of these reports shall be sent to the judicial inspection at the Public Prosecution ([52]).

The First Advocate General of the Department of Public Prosecutions shall conduct a surprise inspection of the work of at least four partial prosecutions per month in order to monitor the proper functioning of them, identify their deficiencies, and warn of their consequences.

He shall send to the Judicial Inspection Department, and to the first public defender at the competent Court of Appeal, adequate reports on the result of this inspection indicating the status of the acting work and the extent of the activity of the members of the prosecution in the

([51]) Article 1773 of the Judicial Instructions of the Public Prosecution.
([52]) Article 1774 of the Judicial Instructions of the Public Prosecution.

performance of their work. A copy of it shall also be sent to the competent prosecution dealt with by the inspection to avoid errors, deficiencies or deficiencies revealed by the inspection ([53].

Fourth: The Attorney General

The circuit of each court of first instance shall be a college prosecution managed by a public defender and subject to his supervision and supervision and all other members of the college prosecution and summary prosecution that fall within the territorial jurisdiction of the college prosecution.

The Public Defender has a number of competences, foremost of which is his competence to refer the case in criminal matters to the court, as Article 214/2 of the Code of Criminal Procedure stipulates that: «... **The case in criminal matters shall be referred by the Public Defender or his representative to the Criminal Court by a charge report showing 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 a list of the statements of his witnesses and evidence shall be attached to it, and the Public Defender shall automatically assign a lawyer to each accused of a felony who has been ordered to refer him to the Criminal Court if he has not been assigned a lawyer to defend him**...» ([54].

The Attorney General is also competent - and participates in this with the Attorney General and the Chief Prosecutor - to file a criminal lawsuit against an employee, public servant, or an officer for a crime committed by him during the performance of his job or because of it ([55].

The Public Defender may, within ten days from the date of issuance of the criminal order, order its amendment or cancellation, save the papers and report in the lawsuit that there is no need to file them or submit them to the competent court and proceed with the criminal lawsuit in the normal ways ([56].

The Attorney General has the right to delegate a member of his department to perform the work of another member of that department when necessary ([57].

([53]) Article 1775 of the Judicial Instructions of the Public Prosecution.
([54]) The second paragraph of Article 214 of the Criminal Procedure Code.
([55]) The third paragraph of Article 63 of the Criminal Procedure Law.
([56]) Article 325 bis of the Criminal Procedure Law.
([57]) The third paragraph of Article 121 of the Judicial Authority Law.

The Public Defender or his representative may issue the order without face to file a lawsuit in the articles of felonies ([58]).

Fifth: The Chief Prosecutor

The function of the chief prosecutor is to manage a general prosecution or a partial prosecution. The chief prosecutor has all the ordinary competences of the public prosecutor, but the chief prosecutor does not exercise any of the personal or exceptional competences of the public prosecutor except with his authorization.

The Chief Prosecutor has the authority to administratively supervise his prosecutors ([59]).

The Chief Prosecutor - jointly with the Attorney General and the Attorney General - may file a criminal lawsuit against an employee, public servant, or an officer for a crime committed by him during the performance of his job or because of it ([60]).

He may cancel the criminal order issued by the Public Prosecutor ([61]).

The Chief Prosecutor shall have 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 ([62]).

The Chief Prosecutor has the authority of the Court of Appeal for Misdemeanors, sitting in the Consultation Chamber, to extend the period of preventive detention in the investigation of the crimes stipulated in the first section of Part Two referred to, provided that the period of detention does not exceed fifteen days each time ([63]).

The Chief Prosecutor shall have the powers of the investigating judge in the investigation of the felonies stipulated in Part Three of Book Two of the Penal Code, except for the periods of pretrial detention ([64]).

One of the heads of the Public Prosecution selected by the First Attorney General shall be a deputy head of the Regional Council for Mental Health whose scope of work includes one or more neighboring governorates ([65]).

([58]) Article 209 of the Criminal Procedure Law.
([59]) Article 125 of the Judicial Authority Law.
([60]) Article 63 of the Criminal Procedure Law.
([61]) Article 325 bis of the Criminal Procedure Law.
([62]) Article 206 bis of the Criminal Procedure Law.
([63]) Article 206 bis of the Criminal Procedure Law.
([64]) Article 206 bis of the Criminal Procedure Law.
([65]) Article 8 of Law No. 71 of 2009 regarding the issuance of the Psychiatric Patient Care Law.

Sixth: The Attorney General of the Excellent Class and the Attorney General and the Assistant Attorney General

They all have the right to carry out the work of the prosecution and all ordinary competences without the subjective competences of the Attorney General except with special authorization from him.

The prosecutor of the excellent category, the ordinary prosecutor, or the assistant prosecutor may assume the administration of the partial prosecution, in which case he shall have the administrative chairmanship over those of the prosecutors who work under his chairmanship, although the administration of the partial prosecution in practice is almost limited to the chief prosecutors or their agents of the excellent category at least.

Super Attorneys are distinguished from ordinary attorneys by issuing a criminal order and representing the prosecution before the Court of Cassation.

The principle is that once a member of the Public Prosecution is appointed, his agency to the Attorney General shall be the general principle according to the Attorney General's Agency, which allows, when necessary, the use of any member of them by order outside the scope of the department specified for his residence, and that the law has granted the Attorney General - by applying that fundamental rule - the full right to assign one of the 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 qualitative or geographical limitation of the competence of that member - provided that the period necessary to complete the investigation or the work entrusted to the managing member does not exceed four months ([66]).

Seventh: Prosecution Assistants

The assistant of the prosecution did not depart from being a member of the Public Prosecution but has a specific jurisdiction consistent with his recent commitment to the work of the prosecution.

([66]) Appeal No. 43799 of 77 S issued at the session of January 17, 2009 and published in the letter of the Technical Office No. 60, page No. 52, rule No. 7, appeal No. 31343 of 77 S issued at the session of February 3, 2008 and published in the letter of the Technical Office No. 59, page No. 100, rule No. 17, 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, appeal No. 1339 of 55 S issued at the session of May 27, 1985 and published in the first part of the letter of the Technical Office No. 36, page No. 716, rule No. 126.

The Court of Cassation ruled that: [**The assistant prosecutor is one of the members of the Public Prosecution, and they are all judicial officers. If he conducts the investigation in the same spatial jurisdiction, he cannot challenge his report with nullity.**] **(**[67].

The legislator has authorized the assistant prosecutor to perform the function of prosecution before the courts except for the Court of Cassation ([68].

The legislator also granted him the status of judicial police officer under the provision of Article 23 of the Criminal Procedure Law, when it stipulated that: "The members **of the Public Prosecution and its assistants shall be among the judicial police officers in their areas of competence. "**, and therefore the record that he writes shall have the value of the record of evidence collection.)69(.

The assistant to the prosecution does not have the right to initiate the preliminary investigation until it is assigned by one of its superiors. The assistant to the prosecution may be assigned to investigate an entire case, and the investigation conducted by the assistant to the prosecution has the character of a preliminary investigation, and it does not differ in terms of its impact and value from the investigation conducted by other members of the prosecution ([70].

The Court of Cassation ruled that: [**The street has made the investigation carried out by the assistant prosecutor of the investigation of the judicial investigation carried out by other members of the prosecution, so the distinction between the investigation carried out by the assistant prosecutor and the investigation of other members of the prosecution has been eliminated and the investigation procedures carried out by the assistant prosecutor of the investigation does not differ in terms of its impact and value from the investigation carried out by other members of the prosecution within the limits of their competence.]** [71])

([67]) Appeal No. 341 of 26 S issued at the session of April 30, 1956 and published in the second part of the book of the Technical Office No. 7 page No. 688 rule No. 193.
([68]) Article 23 of the Judicial Authority Law.
([69]) Article 23 of the Criminal Procedure Law.
([70]) Article 22 of the Judicial Authority Law.
([71]) Appeal No. 324 of 40 S issued at the session of 11 May 1970 and published in the second part of the book of the Technical Office No. 21 page No. 696 rule No. 164, Appeal No. 1000 of 28 S issued at the session of 25 November 1958 and published in the third part of the book of the Technical Office No. 9 page No. 986 rule No. 239.

1 - 3 - 3 The competence of the Public Prosecution in non-criminal matters

3.3.1.1 The competences of the Public Prosecution regarding psychiatric patients

Presenting cases of compulsory admission of psychiatric patients in a mental health facility to the Public Prosecution

It is permitted for a doctor who is not specialized in psychiatry in one of the mental health facilities stipulated in the Psychiatric Patient Care Law, in the legally prescribed cases, to enter a patient without his will to assess his condition for a period not exceeding forty-eight hours, based on a written request submitted to the facility by any of the following persons:

1-A relative of the patient up to the second degree.

2- One of the police station officers.

3-The social worker in the region.

4-The competent health inspector.

5- Consul of the country to which the foreign patient belongs.

6- A psychiatrist who does not work in that facility and is not related to the patient or the facility manager up to the second degree.

The order shall be submitted to the Public Prosecution within a period not exceeding twenty-four hours to take the necessary action ([72].

In non-urgent cases in which it is not possible to bring the patient by normal means, the aforementioned persons shall **inform the Public Prosecution to assign a psychiatrist** to examine the patient's condition and decide whether his condition requires compulsory admission to the facility and present this to the Public Prosecution, which may order his transfer to a public mental health facility for treatment if the psychiatrist decides that the patient needs this, or transfer him to a private facility if the patient or his family wishes to do so based on a request submitted to the Public Prosecution.

The doctor assigned by the Public Prosecution shall be registered with the competent Regional Council for Mental Health, as the case may be, and shall not be related to the patient or the

([72]) Article 14 of Law No. 71 of 2009 regarding the issuance of the Psychiatric Patient Care Law.

director of the facility up to the third degree and shall not be a worker in the facility in which the patient is treated ([73].

Grievance against seizure decisions or mandatory treatment

The patient, his lawyer, or his family may file a grievance against the decisions of detention or compulsory treatment with the Regional Council for Mental Health. In this case, the Council may delegate an expert from outside the facility to examine the psychological state of the patient. The Council shall decide on the grievance within a maximum period of two weeks from the date of its submission.

The patient, his lawyer, or his family may file a grievance directly against these decisions to the National Council for Mental Health, and the Council shall decide on the grievance within a maximum period of two weeks from the date of its submission.

In all cases, any interested party may file a grievance against the compulsory entry decision or continue or cancel it without being bound by any period to the Appellate Misdemeanor Court sitting in the Counseling Chamber. This court shall have exclusive jurisdiction to contest the decisions issued by the Regional Council for Mental Health or the National Council for Mental Health referred to in the preceding two paragraphs, after taking the opinion of the Regional Council or the National Council for Mental Health and the Public Prosecution ([74].

Notify the Public Prosecution in the event of the escape of the patient subject to the compulsory admission or treatment system.

If the patient subject to the compulsory admission or treatment system escapes, the facility management shall inform the police or the Public Prosecution to search for him and return him to the facility to complete the compulsory treatment procedures ([75].

Notify the Public Prosecution in the event of the death of the psychiatric patient.

In the event of the death of a patient subject to compulsory admission or treatment procedures, the management of the facility shall notify the competent prosecution, the patient's family, and the Regional Council for Mental Health within twenty-four hours from the date of death, as well as sending a detailed report to the Regional Council for Mental Health accompanied by a

([73]) Article 17 of Law No. 71 of 2009 regarding the issuance of the Psychiatric Patient Care Law.
([74]) Article No. 20 of Law No. 71 of 2009 regarding the issuance of the Psychiatric Patient Care Law.
([75]) Article 21 of Law No. 71 of 2009 regarding the issuance of the Psychiatric Patient Care Law.

complete file of the deceased patient, including all examinations, research and treatment methods used)[76](.

1 - 3 - 4 The competence of the Public Prosecution regarding the organization of lists of terrorist entities and terrorists

First: Definitions

1. Terrorist entity

Terrorist entity means associations, organizations, groups, gangs, cells, companies, federations, etc., or other groups of whatever nature or legal or factual form. Whenever it is practiced or its purpose is to advocate by any means inside or outside the country to harm individuals, cause terror among them, endanger their lives, freedoms, rights or security, harm the environment, natural resources, monuments, communications, land, air or sea transport, money or other assets, buildings, public or private property, occupy or seize them, prevent or obstruct the public authorities, judicial authorities or bodies, the interests of the government, local units, places of worship, hospitals, scientific institutions and institutes or other public facilities, diplomatic and consular missions, regional and international organizations and bodies in Egypt from carrying out their work or practicing all or some of their activities, resist them, disrupt public or private transport, prevent their functioning, obstruct them or endanger them by any means or purpose These include calling by any means for disturbing public order, endangering the safety, interests, or security of society, disrupting the provisions of the constitution or laws, preventing a state institution or a public authority from carrying out its work, attacking the personal freedom of the citizen or other public freedoms and rights guaranteed by the constitution and the law, or harming national unity, social peace, or national security. This applies to the aforementioned entities and persons whenever they practice, target, or have the purpose of carrying out any of these acts, even if they are not directed to the Arab Republic of Egypt. (77)

2. Terrorist

Any natural person who commits, attempts to commit, incites, threatens, or plans, inside or outside the country, a terrorist crime by any means whatsoever, even individually, or contributes to this crime within the framework of a joint criminal enterprise, or assumes leadership, command, management, establishment,

(76) Article 35 of Law No. 71 of 2009 regarding the issuance of the Psychiatric Patient Care Law.
(77) Article 1 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.

or membership in any terrorist entity, or finances it, or contributes to its activity with knowledge of it.([78])

3. Funds or other assets

All financial assets and economic resources, including oil and other natural resources, property of any kind, whether tangible or intangible, movable or immovable, regardless of the means of obtaining them, documents, legal instruments, national or foreign currencies, securities or commercial instruments, and instruments evidencing all of the foregoing in any form, including digital or electronic form, and all rights related to any of them, including bank credit, traveler's checks, bank checks, and documentary credits, as well as any interest, profits, or other sources of income resulting from or generated by such funds or assets,)[79] or any other assets used or likely to be used to obtain financing, products, or services (

4. Financing

Collecting, receiving, possessing, supplying, transporting, or providing funds, weapons, ammunition, explosives, missions, machines, data, information, materials, or others, directly or indirectly, by any means whatsoever, with the intention of using them, in whole or in part, in the commission of any terrorist crime or knowing that they will be used for that purpose, or to provide a safe haven for one or more terrorists, or for those who finance them in any of the aforementioned ways. ([80])

5. Freezing of funds

The temporary ban it imposes on the transfer, movement, exchange, transfer, or disposal of funds, based on the decision issued by the competent department of the Cairo Court of Appeal ([81]).

Second: Preparation of Terrorist Entity Lists and Terrorist Lists

The Public Prosecution shall prepare a list called the (List of Terrorist Entities), to which terrorist entities shall be listed that the competent department of the Cairo Court of Appeal decides to

([78]) Article 1 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
([79]) Article 1 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
([80]) Article 1 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
([81]) Article 1 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.

include on the list, and those that issue final criminal judgments in regard to them by assigning this description to them.

The Public Prosecution also prepares another list called the "Terrorist List", on which the names of terrorists are listed, if the aforementioned department decides to include them on it, as well as if a final criminal judgment is issued in regard to any of them to give this description to him.

The same provisions prescribed with regard to the list of terrorist entities shall apply to this list.)82(.

Third: Consideration of Listing Requests for Terrorist Entities and Terrorists

One or more criminal chambers of the Cairo Court of Appeal, to be determined annually by the General Assembly of the Court and held in the Chamber of Counsel, shall be competent to consider applications for inclusion on the lists of terrorist entities and terrorists.

The request for listing shall be submitted by the Attorney General to the competent department, accompanied by the investigations, documents, or information supporting this request.

The request for listing for entities and persons whose actions are not directed to the Arab Republic of Egypt shall be based on a request submitted to the Attorney General by the Ministry of Foreign Affairs in coordination with the Ministry of Justice, or from state security entities to the Attorney General.

The competent department shall decide on the listing application by a reasoned decision within seven days from the date of submitting the application to it, completing the necessary documents ([83].

Fourth: Duration of Listing of Terrorist Entities and Terrorists

The listing shall be on either list for a period not exceeding five years.

If the listing period lapses without issuing a final judgment to give a criminal description to the listed entity or the terrorist, the public prosecution shall resubmit to the aforementioned department to consider extending the listing for another period, otherwise the name of the entity or natural person must be removed from the list from the date of the lapse of that period.

([82]) Article 2 of Law No. 8 of 2015 on Regulating Lists of Terrorist Entities and Terrorists.
([83]) Article No. 3 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 11 of 2017.

During the listing period, the public prosecutor may, in light of the justifications he provides, request the competent department of the Cairo Court of Appeal to remove the name of the entity or natural person listed on either list. (84)

Fifth: Publishing the decision of inclusion in the Egyptian facts

The listing decision shall be published on either of the two lists, the decision of its duration, and the decision to remove the name from either of them in the Egyptian facts, free of charge. (85)

Sixth: Appealing the decision issued regarding listing on any of the lists of terrorist entities and terrorists

Stakeholders and the Public Prosecution may appeal the decision issued regarding listing to either of the aforementioned lists within sixty days from the date of publication of the decision before the Criminal Department of the Court of Cassation 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 expenses. (86)

Seventh: Effects of Listing on Terrorist Entities or Terrorist List

The force of law shall have the following effects on the publication of the listing decision, and throughout its duration, unless the department stipulated in Article (3) of this law decides otherwise:

First - For terrorist entities:

1- Banning the terrorist entity and stopping its activities.

2-Closing the places allocated to him and banning his meetings.

3- Prohibiting the financing or collection of funds or objects for the entity, whether directly or indirectly.

4. Freezing funds or other assets owned by the entity or its members, whether wholly or in the form of an interest in common property, the proceeds generated from them, or controlled

(84) Article 4 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 11 of 2017.
(85) Article 5 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 2 of 2020.
(86) Article 6 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.

directly or indirectly by the entity, and funds or other assets of persons and entities operating through it.

5- Prohibiting joining, advocating for, promoting, or raising the slogans of the entity.

Second - With regard to terrorists:

1- Listing on the travel ban and arrival anticipation lists or preventing a foreigner from entering the country.

2- Withdrawing or revoking a passport or preventing the issuance or renewal of a new passport.

3- Loss of the requirement of good reputation and conduct necessary to assume public, parliamentary or local positions and positions.

4- Non-appointment or contracting in public office, public sector companies, or the public business sector, depending on the situation.

5- Suspension from work with payment of half the wage.

6- Freezing the funds or other assets owned by the terrorist, whether in whole or in the form of a share in common property, the proceeds generated from them, or which are directly or indirectly controlled by him, and the funds or other assets of the persons and entities operating through them.

7- Prohibition of practicing all civil or advocacy activities under any name.

8- Prohibiting the financing or collection of funds or objects for the terrorist, whether directly or indirectly, and prohibiting the receipt or transfer of funds as well as other similar financial services.

9- Suspension of membership in professional syndicates, boards of directors of companies, associations, and institutions, any entity in which the state or citizens contribute a share, and the boards of directors of clubs, sports federations, and any entity dedicated to public benefit.

In all cases, the rights of those other than good faith shall be taken into account when implementing the effects of the publication of listing decisions issued in accordance with the provisions of this article.

All authorities, bodies, and agencies of the state shall, within the limits of their competence, implement and enforce the aforementioned effects, and shall inform the concerned authorities at home and abroad to implement the effects of the listing on either list.

1. For Terrorist Entities

The force of law shall have the following effects on the publication of the listing decision, and throughout its duration, unless the competent department of the Cairo Court of Appeal decides otherwise:

1- Banning the terrorist entity and stopping its activities.

2-Closing the places allocated to him and banning his meetings.

3- Prohibiting the financing or collection of funds or objects for the entity, whether directly or indirectly.

4. Freezing funds or other assets owned by the entity or its members, whether wholly or in the form of an interest in common property, the proceeds generated from them, or controlled directly or indirectly by the entity, as well as the funds or other assets of persons and entities operating through it.

5- Prohibiting joining, advocating for, promoting, or raising the slogans of the entity.)87(.

2. For terrorists

1- Listing on the travel ban and arrival anticipation lists or preventing a foreigner from entering the country.

2- Withdrawing or revoking a passport or preventing the issuance or renewal of a new passport.

3- Loss of the requirement of good reputation and conduct necessary to assume public, parliamentary or local positions and positions.

4- Non-appointment or contracting in public office, public sector companies, or the public business sector, depending on the situation.

5- Suspension from work with payment of half the wage.

6- Freezing the funds or other assets owned by the terrorist, whether in whole or in the form of a share in common property, the proceeds generated from them, or which are directly or indirectly controlled by him, and the funds or other assets of the persons and entities operating through them.

7- Prohibition of practicing all civil or advocacy activities under any name.

(87) Article 7 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.

8- Prohibiting the financing or collection of funds or objects for the terrorist, whether directly or indirectly, and prohibiting the receipt or transfer of funds as well as other similar financial services.

9- Suspension of membership in professional syndicates, boards of directors of companies, associations, and institutions, any entity in which the state or citizens contribute a share, and the boards of directors of clubs, sports federations, and any entity dedicated to public benefit.)88(.

3. For bona fide third parties

In all cases, the rights of those other than good faith shall be taken into account when implementing the effects of the publication of listing decisions ([89]).

4- With regard to the authorities, bodies, and organs of the State

All authorities, bodies, and agencies of the State shall, within the limits of their competence, implement and enforce the aforementioned effects, and inform the concerned authorities at home and abroad to implement the effects of the listing on either list ([90]).

Eighth: Management of Frozen Funds and Assets

In cases where the nature of the frozen funds or other assets requires the appointment of those who manage them, the court decision must determine who manages these funds or other assets after taking the opinion of the Public Prosecution.

Whoever is appointed to the administration shall receive the frozen funds or other assets and take the initiative to inventory them in the presence of those concerned, a representative of the Public Prosecution, or an expert appointed by the court. Whoever is appointed to the administration is obligated to preserve the funds or other assets and to manage them well, and to return them with their received proceeds in accordance with the provisions stipulated in the Civil Law regarding agency in the work of administration, deposit, and custody, in the manner regulated by a decision issued by the Minister of Justice.)91(.

([88]) Article 7 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
([89]) Article 7 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
([90]) Article 7 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
([91]) Article 8 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.

Ninth: Seizure of funds and assets derived from the activities of any terrorist or terrorist entity, whether included or not on the lists of terrorist entities

If there is serious information or evidence of the existence of fixed or movable funds derived from the activities of any terrorist or terrorist entity, whether included or not on the lists of terrorist entities and terrorists, or used to finance it in any way or to finance its affiliates or associates, the Attorney General may order the seizure of these funds or other assets and prevent their owners or possessors from disposing of them.

The seizure order and the prohibition from disposing of it shall be submitted to the competent department of the Cairo Court of Appeal within one month from the date of its issuance, to consider its endorsement, cancellation, or amendment. (92)

Tenth: Cooperation with foreign judicial authorities and agencies in the field of combating terrorism

The Egyptian judicial authorities and agencies concerned with terrorism affairs shall cooperate - each within the limits of its competence and in coordination with them - with their foreign counterparts in the field of combating the activities of terrorist entities and terrorists, through the exchange of information, assistance, letters rogatory, extradition of persons and objects, recovery of funds or other assets, transfer of convicts, notification of the concerned countries and organizations of the decisions referred to in this law, and other forms of judicial and information cooperation, all in accordance with the rules established by international agreements in force in the Arab Republic of Egypt, or in accordance with the principle of reciprocity.

In the case of requests for international cooperation with another State in activating the procedures established in accordance with the mechanisms for freezing funds or other assets, as much information as possible concerning the identification of the listed persons or entities and the information supporting the request for listing shall be provided. (93)

1 - 4 Characteristics of the Public Prosecution

1 - 4 - 1 Gradual Dependency

Gradual subordination means that a member of the Public Prosecution, in the exercise of his duties, is subject to a presidential authority, due to the right of the superior to direct and control

(92) Article 8 bis of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.
(93) Article 9 of Law No. 8 of 2015 regarding the organization of lists of terrorist entities and terrorists, as amended by Law No. 14 of 2020.

the actions of his subordinates, and the consequent accountability of the subordinate in the event that he violates the orders issued to him by his superior.

While judges are independent in their work and are not subject to presidential powers in their performance of it, without supervision or guidance from anyone, the members of the Public Prosecution follow their superiors and the Attorney General, and they all report to the Minister of Justice. The Minister has the right to supervise and supervise all members of the Public Prosecution, and the public lawyers in the courts have the right to supervise and supervise the members of the Public Prosecution in their courts ([94].

However, the presidency of the Minister of Justice for the members of the Public Prosecution is different from the presidency of the Attorney General, and the presidency of the Attorney General differs from other presidencies of the Public Prosecution, on the following details:

First: Presidency of the Minister of Justice

The Minister of Justice is the supreme administrative head of the Public Prosecution, and thus his chairmanship of the members of the Public Prosecution is a purely administrative presidency and he has the authority to supervise and control their work, so that their violation of his orders does not have any judicial effect ([95].

If the lawsuit is filed or the judgment is appealed by a member of the prosecution in violation of his order not to file it or not to appeal the judgment, the court shall accept the lawsuit or appeal, and it is not permitted for it not to accept either of them based on the violation of the order issued by the Minister of Justice.

The Attorney General shall also institute disciplinary proceedings upon the proposal of the Minister of Justice ([96].

Second: The Presidency of the Attorney General

The Public Prosecutor shall have an administrative presidency, and he shall also have a judicial presidency, and in this capacity, the violation of his orders shall result in the invalidity of the procedure that occurred in violation of the order issued by him, as the Public Prosecutor is the principal in the initiation of the criminal case, and the members of the Public Prosecution when they carry out their work as an accusatory authority, but they carry out it as agents of the Public Prosecutor, and thus they derive from it their representative capacity. If one of them violates

([94]) Article 125 of the Judicial Authority Law.
([95]) See Appeal No. 1739 of 35 BC issued at the session of November 15, 1965 and published in the third part of the Technical Office's letter No. 16, page No. 865, rule No. 166.
([96]) Article 129 of the Judicial Authority Law.

the order issued to him by the Public Prosecutor, he shall be outside the limits of the authorization granted to him by the Public Prosecutor, which loses his representative capacity and makes his behavior null and void, in addition to the exposure of the violating member to disciplinary accountability.

However, when prosecutors carry out their work as an investigative authority, they do not act as agents for anyone, but rather on the basis of the provision of the law that authorized them to carry out an exception and replaced the investigative judges for reasons determined by the legislator. Therefore, prosecutors must within the limits of that authority, which they derive their right to exercise directly from the law and not from the Attorney General. Therefore, the action of prosecutors in connection with an investigation procedure - such as an arrest warrant, pretrial detention, search warrant, etc. - is legally valid and productive of its impact, even if it is contrary to the order issued to them by the Attorney General in relation to any of these procedures. The Court of Cassation ruled: [**If the Public Prosecution is an integral unit, and each of its members represents the Attorney General, and the work issued by each member is considered as if it was issued by him, this is only true for the Public Prosecution as an accusatory authority, but the Prosecution as an investigative authority does not approve it, because it was granted this authority to make an exception and replaced the investigative judge because of street considerations. 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 learned from the provisions of the law in their entirety, and it is what is dictated by the nature of the investigation procedures as one of the purely judicial acts in which no decision or order is imagined to be issued based on a power of attorney or proxy, but - as is the case in judgments - its source must have been issued by him personally and on his own initiative**] **(**[97].

Once the investigation is completed, the capacity of the prosecution member as an investigating authority ends and his capacity as an accusatory authority begins, in which case he shall be bound by the directives of the Attorney General. If he acts in the papers contrary to these directives, his act shall be void because he is outside the scope of his agency from the Attorney General.

([97]) Appeal No. 1466 of 12 S issued at the session of June 22, 1942, and published in the first part of the set of legal rules No. 5 page No. 681 rule No. 432.

Third: Presidency except for the Attorney General

With the exception of the Attorney General, such as the Assistant Attorney General, the First Attorney General, or other superiors over the members of the Public Prosecution, it is a purely administrative presidency and they do not have any judicial leadership, and it does not change the matter that the First Attorney General enjoys all the competences of the Attorney General within the scope of his work. This is only for subjective or exceptional competencies, and the Attorney General remains the one asset from which all members of the Public Prosecution, including the Attorney General himself, derive their agency in the conduct of the lawsuit. If the Attorney General orders the Attorney General to dispose of the papers by issuing an order not to file the lawsuit, the latter refers them to the competent court, there is no reason to say that the offending member's behavior is invalid, even if this requires administrative accountability if justified.

Noting that it is decided that the Chief Prosecutor has the authority to revoke criminal orders issued by one of the attorneys general of the premium class.

1 - 4 - 2 Non-segmentation of the Public Prosecution

Indivisibility means that the Public Prosecution represents one unit, its members are one body inseparable from its cells ([98]).

Hence, the work issued by one of the members of the Public Prosecution - taking into account the rules related to qualitative and regional jurisdiction - does not belong to the one who issued it alone, but to the entire Public Prosecution, and this results in the validity of the replacement of another member by one of the members of the Public Prosecution, as one of them may start the investigation and talk to him a second, act in it a third, plead in the fourth session, challenge the judgment a fifth and so on.

This is in contrast to the judge who must be the judge in the case who initiated the final investigation proceedings and heard the pleading, it is not permissible to participate in the deliberation and issuance of the judgment other than the judges who heard the pleading, otherwise the judgment is invalid ([99]).

([98]) See Appeal No. 1739 of 35 BC issued at the session of November 15, 1965 and published in the third part of the Technical Office's letter No. 16, page No. 865, rule No. 166.
([99]) Article 167 of the Code of Procedure.

1 - 4 - 3 Independence of the Public Prosecution

Whereas the Public Prosecution is the custodian of the criminal lawsuit and the guardian of the protection of public interests in society, and therefore it was necessary for it to have full freedom in its work and independence from others, whether in the administration or the judiciary.

The independence of the Public Prosecution is without prejudice to the fact that most of the judicial officers are police officers, as the members of the judicial police - including the police - are subordinate to the Public Prosecution, so the Public Prosecution is the one who manages the work of the judicial police and has the role of a subordinate who has no place to be followed.

This is confirmed by Article 22 of the Code of Criminal Procedure, which 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. He may request the filing of a disciplinary lawsuit against him, and all of this does not prevent the filing of a criminal lawsuit.

On the other hand, the Public Prosecution is independent of the judiciary in its work and is not subject to its control or supervision. The manifestations of this independence are as follows:

1) The courts may not order the Public Prosecution to conduct an investigation into a lawsuit pending before it, or to file a lawsuit against a person, noting that exceptions to this are cases in which the law allows the courts to file a criminal lawsuit, such as the right to address and the right to initiate criminal proceedings in the crimes of hearings. The court may not refer the lawsuit to the Public Prosecution after it has entered its possession, but if it is not possible to achieve evidence before it, it may delegate one of its members or another judge to investigate it, because by referring the lawsuit from the investigating authority to the ruling judges, the jurisdiction of the investigating authority has ceased and its jurisdiction has been emptied ([100]).

The Court of Cassation also ruled that: [It is decided that the court may not refer the case to the investigating authority after it has entered its possession, but if evidence cannot be achieved before it, it may delegate one of its members or another judge to investigate it according to the text of Article 294 of the Criminal Procedure Law, because by referring the case from the investigating authority to the judgment judge, the mandate of the said authority

([100]) Article No. 294 of the Code of Criminal Procedure and see: Appeal No. 887 of 37 S issued on October 2, 1967 and published in the third part of the Technical Office's letter No. 18, page No. 891, rule No. 178.

is gone and its jurisdiction has been emptied, and then the evidence derived from the supplementary investigation carried out by the Public Prosecution based on the court's assignment During the course of the trial, a nullity related to the public order for its violation of the judicial organization is not immune to the consent of the accused or the defender of this procedure, and the court had responded to the defense to his request to complete the investigation by verifying whether the accused is the intention of the accusation or not, which shows the seriousness of this request, it should have carried out this procedure by itself or by its members. If it failed to take this action legally, the contested judgment, which was based on that false evidence, is null and void and involves a breach the right of defense.] (101)

2) The courts may not censure the Public Prosecution, as the judiciary of the Public Prosecution does not have any authority that allows it to be directly censured or disgraced because of the way it works in the performance of its function, but if it deems it suspicious in this way, it may only turn to the Public Prosecutor who directly supervises the men of the Public Prosecution, provided that the directive is confidential and takes care of the sanctity due to the Public Prosecution.

The Court of Cassation ruled that: [**It is established that the courts do not have any authority over the Public Prosecution that allows it to blame, shame, or harm it directly because of its performance of its function or exercise of its powers, and that although the judiciary sees it as a suspicion in this way, it can only turn to its direct supervisor, the Attorney General, or to the Supreme President, the Supreme Judicial Council, provided that this directive is in a secret manner in order to take care of the sanctity due to it that it does not condone its dignity in front of the public.**] **(**(102)

It also ruled that: [**The prosecution is an independent authority by virtue of its function and the secretariat of the public lawsuit in which it is entrusted is inviolable. The courts do not have any authority to directly blame or shame it because of the way it works in the performance of its function, but if the judiciary sees it as a suspicion in this way, it can only go directly to the supervisor of the prosecutors, who is the Attorney General or to the Supreme President of the Prosecution, who is the Minister of Haqqaniyah, provided that this trend is**

(101) Appeal No. 20863 of 72 s issued at the session of November 9, 2009 and published in Technical Office Book No. 60 Page 429 Rule No. 58, Appeal No. 3746 of 67 s issued at the session of February 4, 1999 and published in Part I of Technical Office Book No. 50 Page 104 Rule No. 20, Appeal No. 18 of 60 s issued at the session of October 22, 1990 and published in Part I of Technical Office Book No. 41 Page 929 Rule No. 162, Appeal No. 2185 of 55 s issued at the session of October 29, 1987 and published in Part II of Technical Office Book No. 38 Page 901 Rule No. 165, Appeal No. 887 of 37 s issued at the session of October 2, 1967 and published in Part III of Technical Office Book No. 891 Rule No. 178, Appeal No. 293 of 31 s issued at the session of May 16, 1961 and published in Part II of Technical Office Book No. 12 Page 581 Rule No. 110.

(102) Appeal No. 3217 of 88 S issued on November 4, 2018 (unpublished).

confidential in order to take care of the sanctity due to it from not turning a blind eye to its dignity in front of the public. It is not for the criminal court to throw the prosecution in its judgment that it "overcharged the accusation" and that it "also overcharged its agent for the accused arbitrarily." (103)

The Court of Cassation ruled that: [**The Public Prosecution is one of the important systems in the Egyptian state. The Constitution referred to it in its speech on the judicial authority, which - in accordance with the detailed laws in force - is an original division of the executive authority that was allocated to initiate public lawsuits on behalf of that authority and gave it the sole right to dispose of it under the supervision and administrative control of the Minister of Al-Haqqaniyah. By virtue of that function, it is completely independent of the judiciary. Although Egyptian laws have made it a judicial authority in the investigation, this right does not affect the origin of the principle of its independence from the judiciary and its lack of administrative dependence on it in the performance of the affairs of its function.**

The independence of the prosecution from the judiciary and the competence vested in it by law shall result in: (First) It shall have complete freedom to express its views before the courts in the public lawsuit, without the courts having any right to limit that freedom except as required by the law and the rights of defense, and it does not reflect accurate logic. (Second) The judiciary of the prosecution does not have any authority that allows it to be blamed or defective directly because of the way it works in the performance of its function, but if it sees a suspicion in this way, it may only turn to the public prosecutor who directly supervises the prosecutors or to the Minister of Haqqaniyah, who is the supreme head of the prosecution, provided that this direction is confidentially in care of the sanctity due to the Public Prosecution] **(**(104).

3) It is not permissible for a member of the prosecution who has carried out any of the work of the prosecution in a particular case to sit in it, otherwise his judgment is null and void, so as not to be affected by his previous opinion on the subject of the lawsuit. In application of this, he ruled that if the member of the prosecution issued a search warrant against a person accused of obtaining a drug and assigned the officer of the seizure to investigate him and then participated in issuing the judgment against him, this judgment was null and void: [**It is not valid for the judge who has previously embarked on the lawsuit to rule on it, even in another**

(103) Appeal No. 1691 of 2 S. Issued at the hearing of May 16, 1932 and published in the first part of the set of legal rules No. 2 page No. 547 rule No. 351.
(104) Appeal No. 1444 of 2S issued at the session of March 31, 1932 and published in the first part of the set of legal rules No. 2 page No. 492 rule No. 342.

capacity, a procedure of preliminary investigations or accusation. If one of the members of the criminal court that issued the judgment - since he was head of the Public Prosecution - has participated in one of the preliminary investigation procedures in the case, this judgment is flawed and must be overturned] ([105])

However, the opposite is not true, as a member of the prosecution who has previously considered the lawsuit as a judge may proceed with it - after moving from the judiciary to the prosecution - as a member of the prosecution.

1 - 4 - 4 Non-liability of the Public Prosecution

The nature of the work of the prosecution requires providing freedom and reassurance to its members so that they are not afraid to issue appropriate decisions in their work. Therefore, the rule is that the members of the prosecution are not responsible for the results of their judicial work, in accordance with the general rules of civil liability. Therefore, the accused who has been acquitted may not refer for compensation to the member of the prosecution who initiated the case against him, or who ordered his arrest or detention on remand.

First: Litigation against members of the Public Prosecution

Notwithstanding the foregoing, the law permits the litigation of members of the Public Prosecution in the following cases:

(1) If the judge or member of the prosecution in their work committed fraud, deception, treachery, or serious professional error.

(2) If the judge refuses to respond to a petition submitted to him or to adjudicate a case valid for judgment, after being twice warned by a record with a time limit of twenty-four hours for orders on petitions, three days for judgments in partial, summary, and commercial cases, and eight days in other cases.

It is not permitted to file a lawsuit for litigation in this case before the lapse of eight days from the last warning.

(3) In other cases where the law provides for the responsibility of the judge and the award of compensation ([106]).

([105]) Appeal No. 1674 of 18 S issued at the session of December 20, 1948 and published in the first part of the set of legal rules No. 7 page No. 693 rule No. 732.
([106]) Article 494 of Law No. 13 of 1968 - Concerning the Issuance of the Civil and Commercial Procedures Law.

The litigation lawsuit shall be filed with a report in the clerk's office of the Court of Appeal to which the member of the prosecution is affiliated, signed by the applicant or his representative in this regard by a special power of attorney, and the applicant shall, upon the report, deposit five hundred pounds as a guarantee.

The report must include a statement of the aspects of the litigation and its evidence, and the supporting papers must be deposited with it.

The lawsuit shall be submitted to one of the circuits of the Court of Appeal by order of its president after the copy of the report is notified to the member of the prosecution and it shall be considered in the counseling chamber at the first session held after eight days following the notification. The clerk's office shall notify the student of the session ([107]).

The court shall rule on the relevance and admissibility of the litigation aspects of the lawsuit after hearing the applicant or his agent, the litigating member of the prosecution, and the statements of the Public Prosecution if it intervenes in the lawsuit ([108]).

If it is ruled that the litigation is admissible and the litigant is one of the members of the Public Prosecution, the judgment shall determine a session to consider the subject of the litigation in a public hearing before another circuit of the Court of Appeal and shall be ruled upon after hearing the student, the litigant member of the Public Prosecution, and the statements of the Public Prosecution if it intervenes in the lawsuit ([109]).

The member of the prosecution shall be unfit to commence the lawsuit from the date of the ruling that the litigation may be accepted ([110]).

If the court rules that the litigation is not permissible or rejected, it shall sentence the applicant to a fine of no less than four hundred pounds and no more than four thousand pounds and to confiscate the guarantee with compensation if it has a face. If it rules that the litigation is valid, it shall rule against the litigating member of the prosecution to invalidate his action, compensation, and expenses.

However, the court shall not rule the nullity of the judgment issued in favor of a litigant other than the plaintiff in the litigation lawsuit until after he is notified to make his statements. In this

([107]) Article 495 of the Civil and Commercial Procedures Law.
([108]) Article 496 of the Civil and Commercial Procedures Law.
([109]) Article 497 of the Civil and Commercial Procedures Law.
([110]) Article 498 of the Civil and Commercial Procedures Law.

case, the court may rule on the original lawsuit if it deems it valid for judgment, after hearing the statements of the litigants ([111]).

It is not permissible to appeal the judgment issued in the litigation case except by way of cassation ([112]).

However, if a member of the prosecution commits a felony or a misdemeanor, he shall be criminally liable in accordance with the rules stipulated in articles 95 and 96 of the Judicial Authority Law.

Second: The Reply of the Prosecutors

The law permitted the dismissal of judges in the cases specified in the first paragraph of Article 248 of the Criminal Procedure Code, while the response of members of the Public Prosecution was not permitted in the immediately following paragraph of the aforementioned article, when it stipulated that: "**neither members of the Public Prosecution nor judicial officers may be dismissed**." ([113]).

The explanatory memorandum justified this by stating that what is done by the member of the Public Prosecution, or the judicial officer is not considered a judgment in itself, and the inadmissibility of dismissing the members of the Public Prosecution is based on two reasons:

First: The member of the Public Prosecution is considered an original litigant in the criminal lawsuit, and therefore it is not permissible for the litigant to dismiss his opponent in the lawsuit.

Second: The opinion of the Public Prosecution does not bind the judge but is subject to the discretion of the court.

1 - 5 Specialized Prosecutions

1 - 5 – 1 General Provisions in Specialized Prosecutions

Prosecutions may be established to investigate and dispose of certain types of crimes, and the establishment of these prosecutions shall be issued by a decision of the Minister of Justice or the Attorney General ([114]), and the Attorney General may confer comprehensive jurisdiction on the Republic for members of specialized prosecutions in crimes falling within the jurisdiction of these prosecutions ([115]).

([111]) Article 499 of the Civil and Commercial Procedures Law.
([112]) Article 500 of the Civil and Commercial Procedures Law.
([113]) Article 248 of the Criminal Procedure Code.
([114]) Article 1584 of the Judicial Instructions of the Public Prosecution.
([115]) Article 1585 of the Judicial Instructions of the Public Prosecution.

Decisions issued to establish specialized prosecutions, and to determine the crimes that they investigate and dispose of, are regulatory decisions that do not deprive the ordinary prosecutions of their general jurisdiction for the aforementioned crimes ([116]).

1 - 5 – 2 Supreme State Security Prosecution

A prosecution called the "State Security Prosecution" shall be established in the Public Prosecutor's Office, consisting of a chief prosecutor and a sufficient number of members ([117]), a specialized prosecution whose establishment and determination of the crimes to be investigated and disposed of were issued by the decision of the Minister of Justice on March 8, 1953 and subsequent decisions amending its jurisdiction, and it is attached to the Public Prosecutor's Office ([118]).

This prosecution is exclusively competent to act in the following crimes that occur throughout the Egyptian country:

1- Crimes stipulated in Parts I, II, II bis, III and XI

And the fourteenth of the second book of the Penal Code, which are felonies and misdemeanors harmful to the security of the government from the outside, and from the inside, crimes of explosives and bribery, and misdemeanors related to religions that occur through newspapers and others.

2- Felonies by which an order is issued or referred to the Supreme State Security Courts by the President of the Republic in accordance with the provisions of Law No. 162 of 1958 on the State of Emergency as amended by Law No. 37 of 1972.

3. Crimes committed by means of newspapers or other means of publication if the victim is a public official, a person of public prosecution capacity, or a person in charge of a public service.

4-The crimes stipulated in Articles 124, 124a, 124b, 124c, 374, 374bis, and 375 of the Penal Code, which are the crimes of striking, instigating, and encouraging work, as well as assaulting the right and freedom of work and stopping it in the interests of public benefit.

5-The crimes stipulated in Law No. 14 of 1923, as amended by Decree-Law No. 28 of 1929, determining the provisions for public meetings and demonstrations on public roads.

([116]) Article 1586 of the Judicial Instructions of the Public Prosecution.
([117]) Article 1 of the 1953 decision of the Minister of Justice regarding the establishment of the State Security Prosecution.
([118]) Article 1586 of the Judicial Instructions of the Public Prosecution.

6- Crimes stipulated in Law No. 58 of 1949 regarding the maintenance of order in educational institutes.

7-The crimes stipulated in Law No. 40 of 1977 on the Political Parties System, as amended by Law No. 36 of 1979.

8- Crimes related to the aforementioned crimes.

9- Crimes that occur in violation of Decree-Law No. 95 of 1945, as amended by Law No. 109 of 1980 on Supply Affairs, and Decree-Law No. 163 of 1950, as amended by Law No. 108 of 1980 on Compulsory Pricing and Determination of Profits and Decisions Implementing Them, if the penalty prescribed for these crimes is more severe than imprisonment. ([119])

This prosecution shall also investigate these crimes in the district of Cairo Governorate and Bandar Giza, and it may investigate what happens in other entities. Members of the prosecution in these other entities shall investigate these crimes in their areas of competence and notify the State Security Prosecution as soon as they are notified of them ([120]), and the Technical Office of the Attorney General must be notified in all cases of the aforementioned cases, as soon as they are reported ([121]).

The Public Prosecutor may exclude from the jurisdiction of the Supreme State Security Prosecution the investigation or disposal of crimes issued by it or referred to the Supreme State Security Courts – by order of the President of the Republic – if the interest of labor requires the continuation of the jurisdiction of the public property prosecutions or ordinary prosecutions to investigate and dispose of them, without prejudice to the fact that they are state security crimes ([122]).

The ordinary prosecution offices shall send the investigations they conduct into the crimes set forth in Article 1589 of these instructions immediately after their completion, and after preparing them for disposal, to the Supreme State Security Prosecution for disposal, whether they will be referred to the State Security Courts or to the ordinary courts ([123]).

The Public Prosecution shall also send the investigations it conducts into the Supreme State Security crimes by disposing of some of their facts to this prosecution, not to separate any of

([119]) Article 2 of the 1953 decision of the Minister of Justice regarding the establishment of the State Security Prosecution, and Article 1588 of the Judicial Instructions of the Public Prosecution.
([120]) Article 3 of the 1953 decision of the Minister of Justice regarding the establishment of the State Security Prosecution, and Article 1589 of the Judicial Instructions of the Public Prosecution
([121]) Article 1591 of the Judicial Instructions of the Public Prosecution
([122]) Article 1592 of the Judicial Instructions of the Public Prosecution
([123]) Article 1594 of the Judicial Instructions of the Public Prosecution

their facts or dispose of them separately until the Supreme State Security Prosecution expresses its opinion on the assessment of association and the appropriateness of referring the facts related to what it is competent to dispose of to the Supreme State Security Court ([124]).

Public lawyers and heads of public prosecutions shall send cases of supreme state security felonies in which acquittal has been ruled - at least partially - to the Supreme State Security Prosecution, immediately after the judgment, to assess the appropriateness of contesting them by way of cassation ([125]).

The Attorney General of the State Security Prosecution shall, in accordance with the Attorney General's Resolution No. 2070 issued on 7/10/1992, have direct jurisdiction to order access to or obtain any data or information related to computers, deposits, trusts, or safes stipulated in Articles 1 and 2 of Law Decree No. 205 of 1990 regarding the confidentiality of accounts in banks or transactions related to them if necessary to uncover the truth in one of the crimes stipulated in Section One of Chapter Two of the Penal[126] Code.

A schedule for the registration of state security felonies shall be established in each prosecution, and registration shall be made in accordance with the procedures set forth in Article 43 of the written, financial, and administrative instructions issued in 1979. [(127)]

Prosecutors must expedite the disposal of cases submitted to the State Security Courts and initiate the completion of the investigation into any matter that requires it and refer them to the nearest sessions with a request to adjudicate them expeditiously ([128]).

The judgments of the Supreme State Security Court shall be final and may not be appealed except by way of cassation and review ([129]).

1 - 5 – 3 Supreme Prosecution of Funds and Public Prosecutions of Funds

The Public Funds Prosecution at the Public Prosecutor's Office, and the Public Funds Prosecutions affiliated with the Appeals Prosecutions - except for the Cairo Appeals Prosecution - specialized prosecution offices established by Attorney General's Decision No. 45 dated November 16, 1968, and reconstituted and its jurisdiction was determined by its subsequent decisions ([130]).

([124]) Article 1595 of the Judicial Instructions of the Public Prosecution
([125]) Article 1596 of the Judicial Instructions of the Public Prosecution
([126]) Article 1597 bis of the Judicial Instructions of the Public Prosecution
([127]) Article 1598 of the Judicial Instructions of the Public Prosecution
([128]) Article 1599 of the Judicial Instructions of the Public Prosecution
([129]) Article 1600 of the Judicial Instructions of the Public Prosecution
([130]) Article 1601 of the Judicial Instructions of the Public Prosecution

The Supreme Public Funds Prosecution is competent to investigate and dispose of the crimes of "embezzlement, aggression, and treachery "stipulated in Title IV of Book II of the Penal Code and related crimes throughout the Republic ([131]).

The competence of the Supreme Public Funds Prosecution shall extend throughout the Republic to:

(A) Investigating and disposing of cases of public funds in which public officials are accused in the provisions of Article 119 bis of the Penal Code, if one of them is a holder of the highest degree and above or its equivalent enabled private cadres or if he receives a salary or remuneration that falls within the limits of these degrees, former ministers, members of the People's Assembly and the Shura Council, heads of boards of directors of companies, and members of the diplomatic and consular corps, as well as cases in which the value of the property subject of the crime exceeds one million Egyptian pounds or its equivalent.

(B) Investigate and dispose of cases of public funds that fall within the jurisdiction of the Cairo Appeals Prosecution Department in accordance with the rules stipulated in Article 2.

(C) The final disposition of cases in which public officials are accused under the provisions of Article 119 bis of the Penal Code if one of them holds the rank of general manager or its equivalent from private cadres or receives a salary or remuneration that falls within the limits of this grade, heads of the local popular sphere in the governorates, and members of the boards of directors of companies.

(D) Investigating any case of public funds that it deems to be of special importance, whether with regard to its subject matter or those it relates to, and it may also require any case from it to review it and take what it deems appropriate.

(E) Following up the cases of public funds that are investigated in all prosecution offices and inspecting them suddenly and preparing a report thereon to be sent to the Judicial Inspection Department of the Public Prosecution and copies of it to the Technical Office of the Attorney General ([132]).

([131]) Article 1602 of the Judicial Instructions of the Public Prosecution
([132]) Article 1603 of the Judicial Instructions of the Public Prosecution

The prosecution offices of public funds shall undertake the prosecution offices of appeal within the limits of their spatial competence as follows:

(A) Investigate the cases of public funds referred to in clause (c) of the previous article, provided that after its investigation, it sends them through the First Public Defender of the Appeal Prosecution to the Supreme Public Funds Prosecution with an opinion.

(B) Final disposition except for the above issues of public funds.

(C) Investigating any case of public funds that it deems important and requesting any case from it for review and taking what it deems appropriate without prejudice to the right of the Supreme Public Funds Prosecution to do so.

(D) Following up the cases of public funds that are investigated in the prosecution offices and inspecting them in those prosecution offices in a surprise inspection, and preparing a report thereon to be sent to the Judicial Inspection Department. A copy of it shall also be sent to each of the First Public Funds Prosecution of the Appeal Prosecution and the Competent Public Prosecution to take the necessary action in regard to what is stated in it, provided that four prosecution offices are inspected at least every month ([133]).

Prosecutors must take the initiative to investigate the crimes of public funds reported to them, regardless of the degree of the accused's employment or the value of the money subject of the crime.

The competent Public Funds Prosecution must be notified immediately if it is found that the investigation of the case is within its competence or is of importance, and it must continue to investigate it in the event that it is not requested.

The case shall be sent immediately after the completion of its investigation, accompanied by an opinion to the total prosecution, which must send it to the Public Funds Prosecution of the competent Appeals Prosecution or to the Supreme Public Funds Prosecution - as the case may be - through the First Attorney General of the Appeals Prosecution ([134]).

The First Advocate General of the Appeals Prosecution shall follow up the cases of public funds that are investigated or disposed of in the prosecution offices that fall within his jurisdiction,

([133]) Article 1604 of the Judicial Instructions of the Public Prosecution
([134]) Article 1605 of the Judicial Instructions of the Public Prosecution

conduct a surprise inspection of them, and prepare a report thereon to be sent to the Judicial Inspection Department and a copy thereof to the Technical Office of the Attorney General ([135]).

It is also competent to consider grievances against decisions issued in those cases.

The competent public funds prosecution offices shall follow up the cases of public funds that they have referred and may assign one of its members to plead in[136] the matter.

The Public Prosecutions shall send the cases of the public funds adjudicated as soon as they are received to the Public Funds Prosecution to seek the opinion of the First Public Defender of the Prosecution of Appeal in challenging the cassation of any of the cases of public funds or approving the cases in which the acquittal is adjudicated ([137]).

The opinion of the Assistant Attorney General or the Senior Attorney General of the competent Appeals Prosecution must be consulted in the cases that require this in accordance with the provisions contained in these instructions ([138]).

The Supreme Public Funds Prosecution may request any case of public funds to be reviewed and taken what it deems appropriate, and it may undertake the investigation of any case of public funds throughout the Republic ([139]).

The opinion of the Attorney General must be consulted in cases that require this, in accordance with the provisions in this regard in the judicial instructions of the Public Prosecution ([140]).

The Prosecutions shall send to the Supreme Public Funds Prosecution a weekly and monthly statement from the status of the notifications and the register of public funds indicating the cases received by those Prosecutions and the disposition made in each case, and a copy of this statement shall be sent to the competent Appeals Prosecution and to the Judicial Inspection Department acting ([141]).

The Public Funds Prosecution shall send to the Technical Office of the Attorney General a copy of the monthly and weekly statements it receives from the prosecution offices, as well as a detailed weekly statement of all notifications and notifications it receives directly or received through the general and partial prosecution offices affiliated with the Cairo Appeal, and a monthly statement of what is done in the cases subject of these notifications, which shall be

([135]) Article 1606 of the Judicial Instructions of the Public Prosecution
([136]) Article 1607 of the Judicial Instructions of the Public Prosecution
([137]) Article 1608 of the Judicial Instructions of the Public Prosecution
([138]) Article 1609 of the Judicial Instructions of the Public Prosecution
([139]) Article 1610 of the Judicial Instructions of the Public Prosecution
([140]) Article 1611 of the Judicial Instructions of the Public Prosecution
([141]) Article 1612 of the Judicial Instructions of the Public Prosecution

drawn up from the basis of its records, similar to the monthly statement received from the prosecution offices ([142]).

The Public Funds Prosecution of the Supreme Court and all Public Prosecutions shall keep the Technical Office of the Attorney General informed of the investigation, its developments, and results in relation to the aforementioned cases.

It must also provide him - after the completion of the investigation of each important case - with a comprehensive memorandum in six copies - including the facts, the value of the embezzled money, a summary of the technical or administrative report, and a statement of the opinion on the action that the prosecution intends to take, indicating the methods used in committing the accident and the reasons that facilitated its occurrence, the deficiencies in the work systems and the means to prevent the recurrence of similar incidents and to avoid the deficiency in the work that helped to cause the crime or led to its inaction ([143]).

The lawsuit shall be filed in the crimes of embezzlement of public property, aggression against it, treachery and other crimes stipulated in Chapter Four of Book Two of the Penal Code stipulated in Chapter Four of Book Two of the Penal Code and related crimes, directly from the Public Prosecution to the Supreme State Security Courts for consideration and expeditious adjudication, pursuant to Article Three of Law No. 105 of 1980 establishing the State Security Courts ([144]).

In the investigation of felonies within its jurisdiction - in addition to the competences prescribed for it - the prosecution shall have the powers of the investigating judge ([145]).

The termination of the service of the public official and his equivalent or the loss of his status shall not preclude the application of special provisions for crimes of public funds whenever the work occurs during the service or the availability of the capacity ([146]).

The death of the accused before or after the referral of the criminal case to the court in the crimes of public property stipulated in Articles 112, 113, first and second paragraphs, and 113 bis, first paragraph, 114, and 115 of the Penal Code, shall not prevent the court from restitution in force in the funds of each of them to the extent that he benefited.

([142]) Article 1613 of the Judicial Instructions of the Public Prosecution
([143]) Article 1614 of the Judicial Instructions of the Public Prosecution
([144]) Article 1617 of the Judicial Instructions of the Public Prosecution
([145]) Article 1618 of the Judicial Instructions of the Public Prosecution
([146]) Article 1620 of the Judicial Instructions of the Public Prosecution

The court must assign a lawyer to defend those who are asked to respond if they do not appoint someone to defend them ([147].

He works in the Supreme Public Funds Prosecution and Public Funds Prosecutions with the books and records set forth in Articles 53 to 60 of the written, financial, and administrative instructions issued in 1979 ([148].

1 - 5 – 4 Financial and Commercial Affairs Prosecution

Given the increase in financial and commercial activity in the country in recent years and the consequent complexity of financial and commercial transactions, as well as the opportunities this creates for those who disregard the law to tamper with national savings and public credit, it has become necessary to address this by assigning those responsible for investigating these crimes and handling their cases, along with cases that are incompatible with their nature, such as corporate, tax, and customs smuggling cases. In this context, the Alexandria Public Prosecution was established as a prosecution called the "Financial and Commercial Affairs Prosecution," which will be based in the building of the Alexandria Court of First Instance. [149] This prosecution is responsible for investigating crimes related to companies, banks, stock exchange operations, financial affairs, money smuggling, taxes, and customs smuggling within the jurisdiction of Alexandria Governorate. It is also responsible for handling cases related to these crimes. [150]

The Financial and Commercial Affairs Prosecution at the Public Prosecutor's Office is competent with the following:

(I) Investigating and disposing of cases related to crimes of graft throughout the Republic that fall within the competence of the Public Prosecution in accordance with Law No. 62 of 1975.

(II) Investigating and disposing of cases related to customs smuggling crimes that fall within the jurisdiction of the Cairo Court of First Instance.

(iii) Disposition of cases related to counterfeit and forged coinage offenses throughout the Republic.

([147]) Article 1621 of the Judicial Instructions of the Public Prosecution
([148]) Article 1622 of the Judicial Instructions of the Public Prosecution
([149]) Article No. 1 of the decision of the Minister of Justice No. 17 of 1958 regarding the establishment of a prosecution for financial and commercial affairs at the Alexandria Public Prosecution, and Article No. 1624 of the judicial instructions of the Public Prosecution.
([150]) Article 2 of the decision of the Minister of Justice No. 17 of 1958 regarding the establishment of a prosecution for financial and commercial affairs at the Alexandria Public Prosecution.

(iv) Disposing of cases related to corporate and banking crimes, stock exchange operations, listing affairs, and smuggling of funds located throughout the Republic, except for what falls within the jurisdiction of the Alexandria Court of First Instance.

The said prosecution shall investigate the crimes referred to in clauses (iii) and ([151]iv).

Prosecutions must send cases related to crimes of illicit gain to the Financial and Commercial Affairs Prosecution of the Public Prosecutor's Office as soon as they are received, to investigate and dispose of them ([152]).

The prosecution offices, each within its jurisdiction, shall investigate cases related to the crimes of coins, forgeries, and forgeries. They shall notify the said prosecution of their investigation of these cases and send them to it as soon as they are completed to dispose of them ([153]).

Prosecutions - other than those within the jurisdiction of the Alexandria Court of First Instance - shall notify the aforementioned Prosecution of the cases it investigates related to corporate crimes, banks, stock exchange operations, cash affairs, smuggling of funds, and sending them to it as soon as they are completed to act ([154]).

The prosecution offices within the jurisdiction of the Cairo Court of First Instance shall send the cases that may be received related to the customs smuggling crimes that occur in the jurisdiction of that court to the aforementioned prosecution office to investigate and dispose of them ([155]).

The Financial and Commercial Affairs Prosecution in Alexandria is competent to dispose of cases related to corporate crimes, banks, stock exchange operations, cash affairs, money smuggling, and customs smuggling that are located in the circuit of Alexandria Court of First Instance.

It is also competent to investigate these crimes that occur in the Governorate of Alexandria, and it shall have the right to investigate the crimes that occur in the Governorate of Matrouh. ([156])

The Marsa Matrouh Prosecution must notify the Financial and Commercial Affairs Prosecution in Alexandria of the crimes referred to in the previous article and send its investigations immediately after their completion to that Prosecution to act ([157]).

([151]) Article 1625 of the Judicial Instructions of the Public Prosecution
([152]) Article 1626 of the Judicial Instructions of the Public Prosecution
([153]) Article 1627 of the Judicial Instructions of the Public Prosecution
([154]) Article 1628 of the Judicial Instructions of the Public Prosecution
([155]) Article 1629 of the Judicial Instructions of the Public Prosecution
([156]) Article 1630 of the Judicial Instructions of the Public Prosecution
([157]) Article 1631 of the Judicial Instructions of the Public Prosecution

The Department of Financial and Commercial Affairs at the Public Prosecutor's Office in Alexandria is working with similar schedules and books to other prosecution offices, as well as the books and tables stipulated in Article 73 of the written, financial and administrative instructions issued in 1979, except for the tax import inventory book, which specializes in cases in which the Anti-Smuggling Tax Prosecution is concerned ([158]).

1 - 5– 5 Anti-Tax Evasion Prosecution

A prosecution called the "Anti-Tax Evasion Prosecution" shall be established in the Attorney General's Office, and it shall consist of a chief prosecutor and a sufficient number of members ([159]), which is a specialized prosecution - established in the Attorney General's Office, by Resolution No. 3496 issued by the Minister of Justice on October 30, 1979 ([160]).

This prosecution is exclusively competent to deal with crimes committed throughout the Republic related to tax laws and in particular - crimes stipulated in the laws and regulations implementing them ([161]).

This prosecution undertakes the investigation of those crimes that occur in the district of Cairo Governorate and Giza City - and it may undertake the investigation of those crimes that occur in any other entity, and the members of the prosecution in other entities shall investigate these crimes in their areas of competence, with notification of the Anti-Tax Evasion Prosecution immediately upon being notified of them ([162]).

The Public Prosecutions shall send the cases of tax crimes received from the competent Public Prosecutions to the Anti-Tax Evasion Prosecution - accompanied by an opinion - immediately after the completion of their investigation ([163]).

If one of the aforementioned crimes is indivisibly linked to another crime - it may be taken over by the Anti-Tax Evasion Prosecution ([164]).

The Anti-Tax Evasion Prosecution shall work with similar schedules and books to other prosecution offices to the extent consistent with the nature of its competence, as well as with

([158]) Article 1632 of the Judicial Instructions of the Public Prosecution
([159]) Article 1 of the Minister of Justice Resolution No. 3496 of 1979 regarding the establishment of the Anti-Tax Evasion Prosecution.
([160]) Article 1633 of the Judicial Instructions of the Public Prosecution
([161]) Article No. 2 of the Minister of Justice Resolution No. 3496 of 1979 regarding the establishment of the Anti-Tax Evasion Prosecution, and Article No. 1634 of the Judicial Instructions of the Public Prosecution.
([162]) Article 3 of the Minister of Justice Resolution No. 3496 of 1979 regarding the establishment of the Anti-Tax Evasion Prosecution, and Article 1635 of the Judicial Instructions of the Public Prosecution
([163]) Article 4 of the Minister of Justice Resolution No. 3496 of 1979 regarding the establishment of the Anti-Tax Evasion Prosecution, and Article 1637 of the Judicial Instructions of the Public Prosecution
([164]) Article No. 5 of the Minister of Justice Resolution No. 3496 of 1979 regarding the establishment of the Anti-Tax Evasion Prosecution, and Article No. 1638 of the Judicial Instructions of the Public Prosecution.

the books and tables stipulated in Article (73) of the written, financial and administrative instructions issued in 1995 ([165]).

1 - 5 – 6 Child Prosecution

Child Prosecution Specialized Prosecutions established by the Minister of Justice Resolution No. 3513 issued on August 6, 1996, and subsequent decisions ([166]).

The child prosecution offices shall undertake the work of the Public Prosecution before the child courts established in[167] the governorates.

1 - 5 – 7 Traffic Prosecution

Traffic Prosecutions are specialized prosecutions, which are competent to investigate and dispose of misdemeanors and violations stipulated in the Traffic Law No. 66 of 1973 ([168]).

1 - 5 – 8 Accident Prosecution

The Accident Prosecution shall be established at the headquarters of each of the Public Prosecutions in the governorates of Cairo, Giza, and Alexandria by a decision of the competent Public Defender, in order to receive notifications of accidents and investigate the following crimes:

1- Crimes of bringing and trafficking in narcotic drugs, and inspired by other drug crimes, whether in view of the size of the seizures, the circumstances of the incident, or the personality of the accused.

2- Crimes involving suspicion of terrorism, the achievement of explosives and the disruption of transportation unless the Supreme State Security Prosecution deems it necessary to start its investigation with its knowledge.

3- Fire crimes in one of the means of production.

4- Crimes of theft by coercion.

5-Kidnapping and rape crimes.

6- Intentional homicide.

([165]) Article 1638 bis of the Judicial Instructions of the Public Prosecution
([166]) Article 1651 of the Judicial Instructions of the Public Prosecution
([167]) Article 1652 of the Judicial Instructions of the Public Prosecution
([168]) Article 1660 of the Judicial Instructions of the Public Prosecution

7- Notifications and reports that the Attorney General of the Public Prosecution deems important to entrust their investigation to the Accident Prosecution ([169]).

The Attorney General of the Public Prosecution shall coordinate the work between the accidents and the partial prosecutions affiliated to him in order to prevent the occurrence of a negative or positive conflict between them in the jurisdiction. He shall also take into account the circumstances of some of the partial prosecutions far from the headquarters of the Public Prosecution, so he entrusts each of them with its department of the accidents of the Assistant Attorney General or the Attorney General to receive notifications of the accidents that occur in its department whenever this facilitates the speed of moving to the place of their occurrence and completing its investigation better. [170]

Prosecutors assigned to carry out the work of accident prosecutions shall take the initiative to move to achieve the incidents they are notified of immediately after being notified of them, conduct the necessary inspection, take the procedures they deem necessary, and prepare them to act, while following the provisions of these instructions in this regard.

They must also monitor the registration of these cases in the schedules and books of the Accident Prosecution and notify the locally competent partial prosecution offices to mark their schedules and notify them of the action ([171]).

The Attorney General of the Public Prosecution shall directly supervise the investigation conducted by the members of the Accident Prosecution and take whatever he deems appropriate to expedite the completion of the investigations ([172]).

([169]) Article 1676 bis of the Judicial Instructions of the Public Prosecution
([170]) Article 1676 bis (a) of the Judicial Instructions of the Public Prosecution
([171]) Article 1676 bis (b) of the Judicial Instructions of the Public Prosecution
([172]) Article 1676 bis (c) of the Judicial Instructions of the Public Prosecution

Part Two: Powers of the Public Prosecution in the Conduct of Criminal Proceedings

2 - 1 The competent authorities of the investigation

2 - 1 - 1 Investigation by the investigating judge

The legislator considered that there are certain circumstances that may require placing the investigation in the hands of an entity other than the Public Prosecution, or placing it in a more neutral and secure hand, such as if the accused is a member of the Public Prosecution or a judge, or if a certain position has been taken by the Public Prosecution in the case that reveals its inclinations, or if the circumstances of the case require reassurance that the investigator will not be subject to any external influence, no matter how serious, or if the investigation requires specialized expertise due to 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 for investigating the crime belongs to another court.

If the request is submitted by the accused or the plaintiff of civil rights, the investigation must not concern an employee, 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, the civil plaintiff, 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 lawsuit enters the possession of the investigating judge.

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 ([173]).

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 the reasons that require such an assignment. If the Public Defender agrees, he shall submit a written request to the President of the Court of First Instance to assign one of the judges of the Court to proceed with the investigation, specifying in the request the incident or facts to be investigated and the details of the accused, if known. ([174])

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 ([175]).

([173]) Article 67 of the Criminal Procedure Law.
([174]) Article 629 of the Judicial Instructions of the Public Prosecution.
([175]) Article 630 of the Judicial Instructions of the Public Prosecution.

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 ([176]).

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 case, the delegated judge shall be the only competent to conduct the investigation from the time he initiates it. Article 65 of the Code of Criminal Procedure 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 the only competent to conduct the investigation from the time he initiates it."**

It is clear from the wording of Article 65 "...**to achieve a certain crime or crimes of a certain type**..." that in this assignment, it is not required that the crime to be investigated be a felony, but it is equal that it be a misdemeanor or felony, taking into account that some cases may require 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 ([177]).

Whenever the lawsuit is referred to the investigating judge, he is exclusively competent to investigate it ([178]).

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 he was assigned to

([176]) Article 632 of the Judicial Instructions of the Public Prosecution.
([177]) Article 631 of the Judicial Instructions of the Public Prosecution.
([178]) 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).

investigate, without extending it to other facts, unless those facts are inseparably linked to the act entrusted to his investigation ([179]).

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 ([180]).

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 ([181]).

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 ([182]).

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 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 ([183]).

It is permitted to change the judge delegated to the investigation if there is an impediment that prevents him from continuing the investigation ([184]).

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[185] shall be deposited.

([179]) 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.
([180]) Article 637 bis of the Judicial Instructions of the Public Prosecution.
([181]) See Appeal No. 31111 of 84 issued on November 7, 2015 and published in the letter of the Technical Office No. 66 page No. 729 rule No. 112.
([182]) Article 633 of the Judicial Instructions of the Public Prosecution.
([183]) Article 634 of the Judicial Instructions of the Public Prosecution.
([184]) Article 636 of the Judicial Instructions of the Public Prosecution.
([185]) Article 639 of the Judicial Instructions of the Public Prosecution.

2 - 1 - 2 Investigation by the Public Prosecution

With the exception of the crimes that the investigating judge is competent to investigate in accordance with the provisions of Article 64, the Public Prosecution shall initiate an investigation into misdemeanors and felonies in accordance with the provisions prescribed for the investigating judge, taking into account the provisions for investigation by the Public Prosecution ([186]).

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 ([187]).

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 ([188]).

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 is no different in its impact from the investigation carried out by other colleagues**] ([189]).

([186]) Article 199 of the Criminal Procedure Law.
([187]) Article 122 of the Judicial Instructions of the Public Prosecution.
([188]) Article 241 of the Judicial Instructions of the Public Prosecution.
([189]) 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. 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.

First: Investigative Cases

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 identities of the accused or the victims of them, or other circumstances they assess ([190]).

The public attorneys of the public prosecution shall undertake the investigation of felonies and misdemeanors that are of special importance, and they may, when necessary, 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 prosecution alone ([191]).

Prosecutors must 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 ([192]).

Prosecutors must also 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 jobs ([193]).

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 ([194]).

Prosecutors themselves shall investigate all incidents that occur in prisons, except for 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 staff of the reform center. Prosecutors must investigate them themselves on the day specified for this without delay, and it is better to move

([190]) Article 123 of the Judicial Instructions of the Public Prosecution.
([191]) Article 124 of the Judicial Instructions of the Public Prosecution.
([192]) Article 124 bis of the Judicial Instructions of the Public Prosecution.
([193]) Article 125 of the Judicial Instructions of the Public Prosecution.
([194]) Article 126 of the Judicial Instructions of the Public Prosecution.

to the reform center for investigation, especially if the matter calls for asking a number of its employees or inmates ([195]).

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 identities of the perpetrators, following up their cases before the judiciary, and challenging the judgments issued in them that are contrary to the law ([196]).

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 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 ([197]).

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 ([198]).

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 ([199]).

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 ([200]).

Prosecutors must expedite the investigation of cases involving government employees and the public business sector and resolve them quickly, in order to avoid prolonging their suspension

([195]) Article 128 of the Judicial Instructions of the Public Prosecution.
([196]) Article 129 of the Judicial Instructions of the Public Prosecution.
([197]) Article 130 of the Judicial Instructions of the Public Prosecution.
([198]) Article 131 of the Judicial Instructions of the Public Prosecution.
([199]) Article 132 of the Judicial Instructions of the Public Prosecution.
([200]) Article 134 of the Judicial Instructions of the Public Prosecution.

or leaving them unresolved for a long time, in the interest of the public good and to prevent the disruption of the operations of the entities they belong to. ([201])

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 ([202]).

Prosecutors must personally investigate the crimes of forgery in official papers ([203]).

Prosecutors shall personally investigate incidents of aggression against public funds as soon as they are reported to them ([204]).

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 ([205]).

Prosecutors must initiate an investigation into the crimes of embezzlement of incompetent and misallocated funds and act swiftly if the embezzled funds are not returned within a period specified for the accused, not exceeding fifteen days. ([206])

Murders of newborns that bring shame require the same attention as other murders. Prosecutors should initiate their own investigation and not leave it to the police ([207]).

In cases of sudden death that occur after the deceased has been injected or after undergoing 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 conducting an investigation into

([201]) Article 135 of the Judicial Instructions of the Public Prosecution.
([202]) Article 136 of the Judicial Instructions of the Public Prosecution.
([203]) Article 139 of the Judicial Instructions of the Public Prosecution.
([204]) Article 140 of the Judicial Instructions of the Public Prosecution.
([205]) Article 140 bis of the Judicial Instructions of the Public Prosecution.
([206]) Article 141 of the Judicial Instructions of the Public Prosecution.
([207]) Article 142 of the Judicial Instructions of the Public Prosecution.

the incident with their knowledge, and they must carry out this investigation immediately after being notified of the accident ([208]).

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 ([209]).

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 ([210]).

Second: 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 ([211]).

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 the prosecution of these crimes within their areas of competence as soon as they are notified of them to take what it deems

([208]) Article 143 of the Judicial Instructions of the Public Prosecution.
([209]) Article 144 of the Judicial Instructions of the Public Prosecution.
([210]) Article 145 of the Judicial Instructions of the Public Prosecution.
([211]) Article 172 of the Judicial Instructions of the Public Prosecution.

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 ([212]).

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)213(.

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 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 included in the investigation, the type of crime and the motive for it, if 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 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 to the Attorney General of the Public Prosecution, as well as to the Director of the Judicial Inspection Department of the Public Prosecution ([214]).

If there are important matters in the investigation after sending the report, it shall be accompanied by a supplementary report ([215]).

When the final disposition of the case notified is made, it shall be written to the party to which the notification was sent ([216]).

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 ([217]).

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

([212]) Article 173 of the Judicial Instructions of the Public Prosecution.
([213]) Article 174 of the Judicial Instructions of the Public Prosecution.
([214]) Article 175 of the Judicial Instructions of the Public Prosecution.
([215]) Article 176 of the Judicial Instructions of the Public Prosecution.
([216]) Article 177 of the Judicial Instructions of the Public Prosecution.
([217]) Article 178 of the Judicial Instructions of the Public Prosecution.

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 at the Egyptian universities to the dean of the college they follow, for the students at the religious institutes to the sheikh of the institute, and for the students of the Emiri schools to the principals of their schools ([218]).

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. ([219])

Third: 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. ([220])

Provided that each prosecution shall be allocated a sufficient number of prosecutors and their employees to work daily during the evening period ([221]).

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 ([222]).

2 - 1 - 3 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

([218]) Article 179 of the Judicial Instructions of the Public Prosecution.
([219]) Article 180 of the Judicial Instructions of the Public Prosecution.
([220]) Article 198 of the Judicial Instructions of the Public Prosecution.
([221]) Article 199 of the Judicial Instructions of the Public Prosecution.
([222]) Article 200 of the Judicial Instructions of the Public Prosecution.

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. ([223])

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 offenses, 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:

(A) perform their functions impartially, avoiding all political, social, religious, racial, cultural, sexual or any other type of discrimination.

(B) 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.

(C) maintain the confidentiality of matters entrusted to them unless the performance of their duty or the interests of justice require otherwise.

(D) 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.

([223]) Guidelines on the Role of Prosecutors, paragraphs 3-7.

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.

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 ([224].

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 are his desired goal and goal ([225].

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 ([226].

Objectivity, impartiality, and fairness are essential elements of interrogation in investigations, requiring that interrogation officers have a broad perspective, 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 aimed at obtaining confessions or coercion, and the risk of obtaining false statements or incorrect 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 ([227].

Guidelines [224]on the Role of Prosecutors, paras.
([225]) Article 147 of the Judicial Instructions of the Public Prosecution.
([226]) Article 148 of the Judicial Instructions of the Public Prosecution.
([227]) (A/71/298, 5 August 2016, 50), see European Code of Police Ethics.

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 ([228]).

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 ([229]).

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 ([230]).

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 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 ([231]).

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 ([232]).

The investigator must be quick to think and must be strong in memory in order to be able to link the various events, up to the truth [233].

The prosecutor must be quick to act, without prejudice to justice, in order to stabilize the positions of the litigants ([234]).

([228]) Article 149 of the Judicial Instructions of the Public Prosecution.
([229]) Article 150 of the Judicial Instructions of the Public Prosecution.
([230]) Article 151 of the Judicial Instructions of the Public Prosecution.
([231]) Article 152 of the Judicial Instructions of the Public Prosecution.
([232]) Article 153 of the Judicial Instructions of the Public Prosecution.
([233]) Article 154 of the Judicial Instructions of the Public Prosecution.
([234]) Article 157 of the Judicial Instructions of the Public Prosecution.

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 ([235]).

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 ([236]).

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 ([237]).

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 ([238]).

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 ([239]).

2 - 1 - 4 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 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 ([240]).

([235]) Article 158 of the Judicial Instructions of the Public Prosecution.
([236]) Article 159 of the Judicial Instructions of the Public Prosecution.
([237]) Article 165 of the Judicial Instructions of the Public Prosecution.
([238]) Article 166 of the Judicial Instructions of the Public Prosecution.
([239]) Guidelines on the Role of Prosecutors, paragraph 20.
([240]) (A/71/298, 5 August 2016, 41), (E/CN.4/813), e.g., 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).

The Special Rapporteur on torture also considers 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 allowed every 24 hours. Except in compelling circumstances, no interrogation should be conducted at night ([241]).

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 ([242]).

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 ([243]).

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 ([244]).

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 ([245]).

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

([241]) (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).
([242]) Article 66 of the Criminal Procedure Law.
([243]) Article 155 of the Judicial Instructions of the Public Prosecution.
([244]) Article 156 of the Judicial Instructions of the Public Prosecution.
([245]) Article 164 of the Judicial Instructions of the Public Prosecution.

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 ([246]).

2 - 1 - 5 Administrative supervision of the investigation

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 ([247]).

2 - 1 - 6 Investigating 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 it is considered 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. [248]

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.

([246]) Article 258 of the Judicial Instructions of the Public Prosecution.
([247]) Article 74 of the Criminal Procedure Law.
([248]) Article 251 of the Judicial Instructions of the Public Prosecution.

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[249] deems appropriate.

Prosecutors must pay full attention to complaints related to labor laws, investigate them, resolve them, and determine the earliest possible session to consider their cases so that they can be adjudicated in a manner that achieves the desired purpose ([250]).

2 - 1 - 7 Notifying the Public Prosecution of other entities of 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 ([251]).

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 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" ([252]).

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 in order to carry out its mission in a meaningful and timely manner ([253]).

([249]) Article 254 of the Judicial Instructions of the Public Prosecution.
([250]) Article 256 of the Judicial Instructions of the Public Prosecution.
([251]) Article 244 of the Judicial Instructions of the Public Prosecution.
([252]) Article 255 of the Judicial Instructions of the Public Prosecution.
([253]) Article 261 of the Judicial Instructions of the Public Prosecution.

A member of the Public Prosecution who initiates an investigation into a railway accident must notify the Public Authority for Railway Affairs to provide any information that may help clarify the matters required for the investigation. He shall request that the administrative investigations conducted by the Public Authority for Railway Affairs be used in the investigation, and he may seek clarification from those who conducted these investigations regarding 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[254] finally decided.

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. ([255])

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. ([256])

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. ([257])

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 ([258]).

([254]) Article 268 of the Judicial Instructions of the Public Prosecution.
([255]) Article 277 of the Judicial Instructions of the Public Prosecution.
([256]) Article 285 of the Judicial Instructions of the Public Prosecution.
([257]) Article 286 of the Judicial Instructions of the Public Prosecution.
([258]) Article 289 of the Judicial Instructions of the Public Prosecution.

2 - 1 - 8 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 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 ([259]).

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 ([260]).

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 attorney or the head of the general prosecution to authorize the transfer ([261]).

([259]) Article 263 of the Judicial Instructions of the Public Prosecution.
([260]) Article 264 of the Judicial Instructions of the Public Prosecution.
([261]) Article 265 of the Judicial Instructions of the Public Prosecution.

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 ([262]).

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 ([263]).

2 - 2 Search and seizure of objects related to the crime

2 - 2 - 1 General provisions in inspection

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 ([264]).

2 - 2 - 2 Conditions to be met at the place of inspection

The first condition: It must be specific or identifiable.

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 anyone who may be with him or in his place or residence at the time of the search, without specifying his name and surname—based on the assessment of his

([262]) Article 266 of the Judicial Instructions of the Public Prosecution.
([263]) Article 267 of the Judicial Instructions of the Public Prosecution.
([264]) 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.

involvement in the crime or his connection to the incident for which the search warrant was issued—is legally valid. The inspection carried out in implementation of this order does not violate the law. Furthermore, there is nothing wrong with the absence of the person when the search is conducted by any of those mentioned in the investigation report as having contributed to the crime or being connected to it.

)[265](

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 in which this particular house has been appointed, it is true 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 ([266].

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 the 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[(267)].

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)[268](.

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 ([269].

([265]) 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.

([266]) 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.

([267]) 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.

([268]) 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.

([269]) 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

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 ([270].

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. [271]

Whenever a search warrant is issued without specifying a specific dwelling for the accused, it includes every dwelling for him, regardless of its multiplicity ([272].

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 ([273].

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.

([270]) 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.

([271]) 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.

([272]) 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.

([273]) 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.

The second condition: To be legal.

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 ([274]).

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 ([275]).

As recognized by all international human rights instruments, Article 9 of the American Declaration of the Rights and Duties of Man states: "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.

(B) A person has the right to independence in the matters of their private life, including their home, family, money, and communications. It is not permissible to spy on them, censor them, or harm their reputation, and they must be protected from any arbitrary interference.

([274]) Article 96 of the Criminal Procedure Law.
([275]) Articles 57 and 58 of the 2014 Constitution.

(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.

2) 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 order, the prevention of penal offenses, the protection of health or morals, or the protection of the rights and freedoms of others.”

The Court of Cassation ruled that: [**The inviolability of the dwelling derives from the inviolability of its owner's private life. The meaning of the dwelling is defined in light of its connection to the private life of its owner. It refers to any place where a person resides permanently or temporarily, as long as it is under their possession, even for a limited time. This connection makes it a repository for their secrets, and the person has the right to prevent others from entering it except with their permission. A police officer or public authority may only enter it in cases specified by law and in the manner outlined within 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 enforcement 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 occurred to this entry shall be invalid.**

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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 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 public authority men to enter it except in the cases indicated in the law]** (277)

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.]** (278)

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 (279).

2 - 2 - 3 Controls for issuing an inspection permit

First: Formal conditions of the search warrant

The law did not require a specific form for the inspection permit, nor did it require stipulating the scope of its implementation within the spatial jurisdiction of its source. All that the law requires in this regard is that the permit be clear and specific regarding the identification of the persons and places to be inspected, as well as that its source has the appropriate spatial jurisdiction to issue it, and that it is written in hand and signed by its issuer. (280)

(276) 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.
(277) 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.
(278) 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.
(279) Article 341 of the Judicial Instructions of the Public Prosecution.
(280) 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.

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 ([281].

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 ([282].

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 ([283].

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 ([284].

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 ([285].

The law did not require the mention of spatial jurisdiction coupled with the name of the prosecutor who issued the permission to search ([286].

([281]) 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.

([282]) 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.

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

([284]) 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.

([285]) 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).

([286]) 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 ([287]).

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 ([288]).

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 ([289]).

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[290].

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 ([291]).

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 ([292]).

([287]) 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.

([288]) 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.

([289]) 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.

([290]) 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.

([291]) 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.

([292]) 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.

Second: Causation of the search warrant

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 ([293]).

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 ([294]).

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, 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. It is not necessary for the officer 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 ([295]).

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 ([296]).

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

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

([294]) 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.

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

([296]) 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.

incident is a violation, this does not result in the invalidity of the inspection that was carried out correctly ([297]).

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 ([298]).

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 ([299]).

([297]) 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.

([298]) 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. They should not be taken 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 should be 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 investigating 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 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.

([299]) Appeal No. 10349 of the 88th Judicial Year, issued in the session of February 6, 2021 (unpublished); Appeal No. 12222 of the 88th Judicial Year, issued in the session of January 2, 2021 (unpublished); Appeal No. 12220 of the 88th Judicial Year, issued in the session of January 2, 2021 (unpublished); Appeal No. 9735 of the 86th Judicial Year, issued in the session of October 12, 2016, published in the Technical Office Book No. 67, page 686, Rule No. 88; Appeal No. 17575 of the 83rd Judicial Year, issued in the session of April 5, 2014 (unpublished); Appeal No. 7979 of the 82nd Judicial Year, issued in the session of October 13, 2013, published in the Technical Office Book No. 64, page 835, Rule No. 124; Appeal No. 11753 of the 82nd Judicial Year, issued in the session of May 14, 2013, published in the Technical Office Book No. 64, page 622, Rule No. 87; Appeal No. 81514 of the 76th Judicial Year, issued in the session of January 20, 2013, published in the Technical Office Book No. 64, page 143, Rule No. 15; Appeal No. 5172 of the 82nd Judicial Year, issued in the session of January 6, 2013, published in the Technical Office Book No. 64, page 45, Rule No. 5; Appeal No. 4364 of the 82nd Judicial Year, issued in the session of December 23, 2012, published in the Technical Office Book No. 63, page 864, Rule No. 157; Appeal No. 64838 of the 75th Judicial Year, issued in the session of November 25, 2012, published in the Technical Office Book No. 63, page 784, Rule No. 141; Appeal No. 3225 of the 81st Judicial Year, issued in the session of November 20, 2012, published in the Technical Office Book No. 63, page 742, Rule No. 132; Appeal No. 22180 of the 75th Judicial Year, issued in the session of November 8, 2012, published in the Technical Office Book No. 63, page 635, Rule No. 114; Appeal No. 67204 of the 74th Judicial Year, issued in the session of November 5, 2012, published in the Technical Office Book No. 63, page 607, Rule No. 109; Appeal No. 2798 of the 81st Judicial Year, issued in the session of October 8, 2012, published in the Technical Office Book No. 63, page 457, Rule No. 77; Appeal No. 26849 of the 75th Judicial Year, issued in the session of July 17, 2012, published in the Technical Office Book No. 63, page 356, Rule No. 58; Appeal No. 8033 of the 81st Judicial Year, issued in the session of July 17,

2012, published in the Technical Office Book No. 63, page 364, Rule No. 59; Appeal No. 1653 of the 78th Judicial Year, issued in the session of July 5, 2012, published in the Technical Office Book No. 63, page 351, Rule No. 57; Appeal No. 232 of the 81st Judicial Year, issued in the session of February 7, 2012, published in the Technical Office Book No. 63, page 186, Rule No. 24; Appeal No. 3746 of the 80th Judicial Year, issued in the session of January 2, 2012, published in the Technical Office Book No. 63, page 41, Rule No. 4; Appeal No. 760 of the 81st Judicial Year, issued in the session of November 3, 2011, published in the Technical Office Book No. 62, page 356, Rule No. 60; Appeal No. 5264 of the 80th Judicial Year, issued in the session of September 18, 2011, published in the Technical Office Book No. 62, page 232, Rule No. 41; Appeal No. 76 of the 80th Judicial Year, issued in the session of July 28, 2011 (unpublished); Appeal No. 3955 of the 80th Judicial Year, issued in the session of March 6, 2011, published in the Technical Office Book No. 62, page 142, Rule No. 22; Appeal No. 85053 of the 76th Judicial Year, issued in the session of December 20, 2010, published in the Technical Office Book No. 61, page 709, Rule No. 93; Appeal No. 11083 of the 79th Judicial Year, issued in the session of December 2, 2010 (unpublished); Appeal No. 33146 of the 73rd Judicial Year, issued in the session of March 4, 2010, published in the Technical Office Book No. 61, page 197, Rule No. 26; Appeal No. 55384 of the 73rd Judicial Year, issued in the session of February 15, 2010, published in the Technical Office Book No. 61, page 129, Rule No. 18; Appeal No. 51172 of the 72nd Judicial Year, issued in the session of December 20, 2009, published in the Technical Office Book No. 60, page 572, Rule No. 74; Appeal No. 32605 of the Appeal No. 72 of the 72nd Judicial Year, issued in the session of December 3, 2009, published in the Technical Office Book No. 60, page 518, Rule No. 67; Appeal No. 23336 of the 77th Judicial Year, issued in the session of April 9, 2009, published in the Technical Office Book No. 60, page 211, Rule No. 27; Appeal No. 38814 of the 74th Judicial Year, issued in the session of March 18, 2009, published in the Technical Office Book No. 60, page 158, Rule No. 21; Appeal No. 17367 of the 77th Judicial Year, issued in the session of March 17, 2009, published in the Technical Office Book No. 60, page 147, Rule No. 20; Appeal No. 20475 of the 71st Judicial Year, issued in the session of November 3, 2008, published in the Technical Office Book No. 59, page 457, Rule No. 85; Appeal No. 48513 of the 73rd Judicial Year, issued in the session of September 7, 2008 (unpublished); Appeal No. 34430 of the 71st Judicial Year, issued in the session of March 23, 2008, published in the Technical Office Book No. 59, page 226, Rule No. 37; Appeal No. 70653 of the 76th Judicial Year, issued in the session of March 23, 2008, published in the Technical Office Book No. 59, page 234, Rule No. 38; Appeal No. 10892 of the 72nd Judicial Year, issued in the session of November 18, 2007, published in the Technical Office Book No. 58, page 755, Rule No. 141; Appeal No. 593 of the 70th Judicial Year, issued in the session of October 21, 2007, published in the Technical Office Book No. 58, page 655, Rule No. 126; Appeal No. 3099 of the 70th Judicial Year, issued in the session of October 16, 2007, published in the Technical Office Book No. 58, page 620, Rule No. 118; Appeal No. 22263 of the 69th Judicial Year, issued in the session of October 10, 2007, published in the Technical Office Book No. 58, page 600, Rule No. 115; Appeal No. 9314 of the 70th Judicial Year, issued in the session of September 13, 2007, published in the Technical Office Book No. 58, page 501, Rule No. 101; Appeal No. 52653 of the 76th Judicial Year, issued in the session of February 20, 2007 (unpublished); Appeal No. 6450 of the 70th Judicial Year, issued in the session of December 17, 2006, published in the Technical Office Book No. 57, page 971, Rule No. 115; Appeal No. 3535 of the 70th Judicial Year, issued in the session of December 7, 2006, published in the Technical Office Book No. 57, page 951, Rule No. 111; Appeal No. 16505 of the 67th Judicial Year, issued in the session of November 22, 2006 (unpublished); Appeal No. 8267 of the 71st Judicial Year, issued in the session of November 16, 2005, published in the Technical Office Book No. 56, page 578, Rule No. 90; Appeal No. 19775 of the 74th Judicial Year, issued in the session of April 4, 2005, published in the Technical Office Book No. 56, page 245, Rule No. 36; Appeal No. 19455 of the 74th Judicial Year, issued in the session of January 3, 2005, published in the Technical Office Book No. 56, page 41, Rule No. 3; Appeal No. 14550 of the 69th Judicial Year, issued in the session of May 15, 2004, published in the Technical Office Book No. 55, page 503, Rule No. 70; Appeal No. 11023 of the 73rd Judicial Year, issued in the session of April 17, 2004, published in the Technical Office Book No. 55, page 410, Rule No. 55; Appeal No. 38328 of the 73rd Judicial Year, issued in the session of April 1, 2004, published in the Technical Office Book No. 55, page 287, Rule No. 42; Appeal No. 18812 of the 64th Judicial Year, issued in the session of December 1, 2003, published in the Technical Office Book No. 54, page 1123, Rule No. 153; Appeal No. 4184 of the 73rd Judicial Year, issued in the session of September 29, 2003, published in the Technical Office Book No. 54, page 884, Rule No. 120; Appeal No. 13264 of the 69th Judicial Year, issued in the session of March 24, 2003, published in the Technical Office Book No. 54, page 499, Rule No. 57; Appeal No. 23631 of the 69th Judicial Year, issued in the session of March 6, 2003, published in the Technical Office Book No. 54, page 393, Rule No. 41; Appeal No. 42490 of the 72nd Judicial Year, issued in the session of March 5, 2003, published in the Technical Office Book No. 54, page 333, Rule No. 35; Appeal No. 1027 of the 64th Judicial Year, issued in the session of March 2, 2003, published in the Technical Office Book No. 54, page 325, Rule No. 34; Appeal No. 26585 of the 68th Judicial Year, issued in the session of March 5, 2002, published in the Technical Office Book No. 53, page 366, Rule No. 65; Appeal No. 29735 of the 68th Judicial Year, issued in the session of May 8, 2001, published in the Technical Office Book No. 52, page 483, Rule No. 85; Appeal No. 16359 of the 68th Judicial Year, issued in the session of February 4, 2001, published in the Technical Office Book No. 52, page 198, Rule No. 34; Appeal No. 21459 of the 67th Judicial Year, issued in the session of November 9, 1999, published in the first part of the Technical Office Book No. 50, page 559, Rule No. 126; Appeal No. 13425 of the 67th Judicial Year, issued in the session of June 7, 1999, published in the first part of the Technical Office Book No. 50, page 384, Rule No. 90; Appeal No. 11286 of the 67th Judicial Year, issued in the session of May 10, 1999, published in the first part of the Technical Office Book No. 50, page 290, Rule No. 68; Appeal No. 14870 of the 66th Judicial Year, issued in the session of November 17, 1998, published in the first part of the Technical Office Book No. 49, page 1306, Rule No. 186; Appeal No. 12539 of the 65th Judicial Year, issued in the session of December 8, 1997, published in the first part of the Technical Office Book No. 48, page 1376, Rule No. 210; Appeal No. 11075 of the 65th Judicial Year, issued in the session of September 2, 1997, published in the first part of the Technical Office Book No. 48, page 842, Rule No. 128; Appeal No. 10967 of the 65th Judicial Year, issued in the session of July 31, 1997, published in the first part of the Technical Office Book No. 48, page 825, Rule No. 126; Appeal No. 28209 of the 64th Judicial Year, issued in the session of January 12, 1997, published in the first part of the Technical Office Book No. 48, page 79, Rule No. 12; Appeal No. 26297 of the 64th Judicial Year, issued in the session of December 22, 1996, published in the first part of the Technical Office Book No. 47, page 1392, Rule No. 200; Appeal No. 24137 of the 64th Judicial Year, issued in the session of December 3, 1996, published in the first part of

Although the Constitution and the law did not require a specific amount of reasoning or a particular form for the search order, members of the prosecution must ensure that the order is drafted with a solid rationale, based on comprehensive reasons for the incident supported by

the Technical Office Book No. 47, page 1263, Rule No. 184; Appeal No. 10105 of the 64th Judicial Year, issued in the session of April 21, 1996, published in the Appeal No. 28967 of the 59th Judicial Year, issued in the session of October 3, 1990, published in the first part of the Technical Office Book No. 42, page 223, Rule No. 31; Appeal No. 4399 of the 59th Judicial Year, issued in the session of November 16, 1989, published in the first part of the Technical Office Book No. 40, page 988, Rule No. 160; Appeal No. 823 of the 59th Judicial Year, issued in the session of November 12, 1989, published in the first part of the Technical Office Book No. 40, page 922, Rule No. 153; Appeal No. 1877 of the 59th Judicial Year, issued in the session of October 19, 1989, published in the first part of the Technical Office Book No. 40, page 792, Rule No. 132; Appeal No. 5791 of the 58th Judicial Year, issued in the session of January 11, 1989, published in the first part of the Technical Office Book No. 40, page 56, Rule No. 6; Appeal No. 3557 of the 57th Judicial Year, issued in the session of November 11, 1987, published in the second part of the Technical Office Book No. 38, page 943, Rule No. 173; Appeal No. 225 of the 57th Judicial Year, issued in the session of April 21, 1987, published in the first part of the Technical Office Book No. 38, page 626, Rule No. 106; Appeal No. 5900 of the 56th Judicial Year, issued in the session of February 11, 1987, published in the first part of the Technical Office Book No. 38, page 246, Rule No. 37; Appeal No. 671 of the 56th Judicial Year, issued in the session of June 4, 1986, published in the first part of the Technical Office Book No. 37, page 630, Rule No. 120; Appeal No. 1339 of the 55th Judicial Year, issued in the session of May 27, 1985, published in the first part of the Technical Office Book No. 36, page 716, Rule No. 126; Appeal No. 7217 of the 54th Judicial Year, issued in the session of March 17, 1985, published in the first part of the Technical Office Book No. 36, page 409, Rule No. 70; Appeal No. 1011 of the 54th Judicial Year, issued in the session of November 26, 1984, published in the first part of the Technical Office Book No. 35, page 829, Rule No. 187; Appeal No. 1433 of the 51st Judicial Year, issued in the session of October 20, 1981, published in the first part of the Technical Office Book No. 32, page 728, Rule No. 128; Appeal No. 438 of the 48th Judicial Year, issued in the session of October 29, 1978, published in the first part of the Technical Office Book No. 29, page 738, Rule No. 148; Appeal No. 685 of the 47th Judicial Year, issued in the session of November 27, 1977, published in the first part of the Technical Office Book No. 28, page 987, Rule No. 202; Appeal No. 656 of the 47th Judicial Year, issued in the session of November 7, 1977, published in the first part of the Technical Office Book No. 28, page 930, Rule No. 193; Appeal No. 49 of the 46th Judicial Year, issued in the session of October 3, 1976, published in the first part of the Technical Office Book No. 27, page 681, Rule No. 153; Appeal No. 1106 of the 45th Judicial Year, issued in the session of November 16, 1975, published in the first part of the Technical Office Book No. 26, page 688, Rule No. 151; Appeal No. 811 of the 45th Judicial Year, issued in the session of May 26, 1975, published in the first part of the Technical Office Book No. 26, page 458, Rule No. 107; Appeal No. 200 of the 45th Judicial Year, issued in the session of March 24, 1975, published in the first part of the Technical Office Book No. 26, page 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 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.

the evidence in the case files, as well as the nature of the crime and its legal characterization. The order should clarify the presence of the crime or crimes that justify the legal search of homes, and provide a general overview of the circumstances and any location that would support the conviction and reassure the authority about the existence of the crime and the seriousness of the accusation contained in the order. (300)

The Public Prosecution may, after investigations submitted by the police, order the search of a specific person and anyone who 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 be searched to be named specifically or to be in a state of flagrante delicto before the execution of the permission and the occurrence of the search. (301)

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 (302).

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 (303).

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(300) Article 320 of the Judicial Instructions of the Public Prosecution.
(301) Article 321 of the Judicial Instructions of the Public Prosecution.
(302) Appeal No. 42442 of 85 S issued at the 25th session of November 2017 (unpublished).
(303) 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.

If he pleads before the trial court the invalidity of the search due to the lack of seriousness of the investigations, the court is obligated to respond to that plea in a reasonable manner. ([304])

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.

([304]) 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 pleaded 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 trader and carries out his activity in a licensed place and has a tax card. 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 ward off the accusation from itself for fear of punishment." This phrase is completely deficient, as 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 permission of the investigation authority, although it established its conviction on the evidence resulting from the implementation of this permission, the judgment is defective and corrupt inference, which necessitates its reversal and referral.] Appeal No. 1660 for the year 47 issued in the session of 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 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 sufficient 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 signed 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 invalidity of the search due to the lack of seriousness of the investigations, or if the response of the trial court to the plea of the invalidity of the search is absurd and unreasonable ([305].

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 lawsuit 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 investigating authority, but it did not do so, its judgment is above its deficiency in causation of corruption in the 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.

([305]) 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, 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 nullity of this procedure, the court must present this substantive plea and say its word in it with justifiable reasons, and if that, and the contested judgment did not offer at all to push the appellant the nullity of the search warrant because of the seriousness of the investigations on which it was based, despite the fact that it based its 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 82Q issued at the hearing of October 1, 2012 and published in the Technical Office's letter 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 took place on his house by saying that the permission issued by the Public Prosecution for the search has exhausted its effectiveness by searching him once, and thus the search that took place after that took place 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 ruling 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

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

The search must be related to a crime that has already occurred. It is not permissible to conduct a search to seize a future crime, even if the investigations indicate that it will inevitably occur ([306]).

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 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 adequacy 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 pleaded the invalidity of this procedure, 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 S issued at the session of September 29, 2009 (unpublished).

([306]) 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 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

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 ([307]).

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 may not be legally issued except to seize a crime of " 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 would transport a quantity of the drug out of the city, then the judgment condemns the appellant without showing whether his and his colleague's achievement of the drug was prior to the issuance of the search warrant or not, is tainted by the inadequacy and error in the application of the law]. Appeal No. 3156 of 31Q issued at the session of January 1, 1962 and published in the first part of the Technical Office's letter No. 13 page No. 20 Rule No. 5.

([307]) 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 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

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 ([308]).

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.

([308]) 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 was already in possession or 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 have its meaning . Whereas, it was clear from the records of the judgment that the crime that the appellant condemned had 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 in it before the Court of Cassation]. Appeal No. 27661 of 72 BC issued at the 22nd session of December 2003 (Unpublished) and 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 had issued

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 ([309].

it had found in his investigation of the first accused to have reached 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 Court of Appeal No. 2360 of 54 BC issued at the session of April 9, 1985 and published in part First of Technical Office Letter 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 or 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.

([309]) 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 had 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 Islam 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 possessed by the trial court, 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 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

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. (310)

2 - 2 - 4 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 (311).

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 (312).

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 (313).

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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.

(310) 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.

(311) Article 315 of the Judicial Instructions of the Public Prosecution.

(312) Article 317 of the Judicial Instructions of the Public Prosecution.

(313) Article 318 of the Judicial Instructions of the Public Prosecution.

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 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 the writing is not required in the assignment order issued by the original delegate because the person conducting the inspection in this case conducts it in the name of the Public Prosecution that orders it, not in the name of the person to whom it is assigned, 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 the persons concerned with the inspection, and specify a reasonable period for him, which can be renewed upon its expiry without execution, and the order shall be appended with the signature of the person who issued it)314(.

Assignment of 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 something occurs that warrants 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 (315).

It is not permissible for anyone other than the appointed judicial officer in the search warrant to implement it, even if the authorized officer has assigned him to do so, as long as this assignment has been made without permission (316).

If the assignment does not specify the name of the officer authorized to search, any competent judicial officer may execute it (317).

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 (318).

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 (319).

(314) Article 319 of the Judicial Instructions of the Public Prosecution.
(315) Article 322 of the Judicial Instructions of the Public Prosecution.
(316) Article 323 of the Judicial Instructions of the Public Prosecution.
(317) Article 324 of the Judicial Instructions of the Public Prosecution.
(318) Article 332 of the Judicial Instructions of the Public Prosecution.
(319) Article 333 of the Judicial Instructions of the Public Prosecution.

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 said ship if there is no naval command in the port ([320]).

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 ([321]).

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 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 ([322]).

Special provisions in inspecting the headquarters of some trade unions.

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 ([323]).

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 the President of the Journalists Syndicate, the President of the subordinate syndicate, or their representative ([324]).

([320]) Article 334 of the Judicial Instructions of the Public Prosecution.
([321]) Article 335 of the Judicial Instructions of the Public Prosecution.
([322]) Article 336 of the Judicial Instructions of the Public Prosecution.
([323]) Article 224 of Law No. 17 of 1983 regarding the issuance of the Advocacy Law.
([324]) Article 70 of Law No. 76 of 1970 regarding the establishment of the Journalists Syndicate.

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 and void. ([325])

2 - 2 - 5 Seizure of objects 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 ([326]).

2 - 2 - 6 Orders to seize letters and correspondence, monitor power or wireless conversations, and make recordings

Technological development has enabled security services to have at their disposal a wide range of electronic devices and tools (such as surveillance cameras, listening and recording equipment, means of intercepting electronic messages, internet monitoring, etc.). These devices can be used in a dual manner. They may serve as effective tools for maintaining security and order, preventing and detecting crime, if employed and used in accordance with legal controls. However, they can also pose a threat to a wide range of fundamental rights of individuals, foremost among them 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 bear special responsibility to use these means in accordance with the conditions and guarantees set out by law, the most important of which is obtaining prior consent from a judicial authority in each case of monitoring individuals using 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, 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 arbitrarily deprive citizens of them ([327]).

([325]) Article 14 of Law No. 40 of 1977 on the System of Political Parties, as amended by Law No. 144 of 1980.
([326]) Articles 99 and 284 of the Criminal Procedure Code.
([327]) See Article 57 of the Constitution.

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 discriminate 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 ability to penetrate has 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 have been viewed and collected by 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 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] **(**[328)].

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**[329].

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which states: **"The right to respect the private and family life.**

1. Everyone has the right to respect for his private and family life and the inviolability of his home and correspondence.

2. 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 of others. ([330])

([328]) 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.
([329]) Article 12 of the Universal Declaration of Human Rights.
([330]) Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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 honor and reputation.**

2. Everyone has the right to the protection of the law against such exposure or[331] **prejudice**.

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.**

2. No one shall be subjected to arbitrary or arbitrary interference with his private life, family, home or correspondence, nor to unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks [332].

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 honor or reputation.**

2-The child has the right to be protected by law from such exposure or[333] **prejudice**.

The Arab Charter on Human Rights, which stipulates that: "**Private life is inviolable, harming it is a crime, and this private life includes the privacy of the family, the inviolability of the home, the confidentiality of correspondence and other means of private communication" (**[334].

The violation of the privacy of messages occurs in two ways: either by the message not reaching the intended recipient, 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 ([335].

The right to the inviolability of correspondence includes the following principles:

1-The addressee may not publish the contents of the message relating to the private life of the sender without his consent.

([331]) Article 17 of the International Covenant on Civil and Political Rights.
([332]) Article 11 of the American Convention on Human Rights.
([333]) Article 16 of the Convention on the Rights of the Child.
([334]) Article 17 of the Arab Charter on Human Rights.
([335]) A.H. Robertson; 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.

2. A sender who registers a communication concerning the private life of the addressee may publish its contents only with his consent.

3. 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.

4- 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, but it is an exception to that 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 others, despite the fact that it is an illegal act, based on the fact that this is only an accompaniment to the general origin of man, which is innocence. (336)

First: Guarantees of Correspondence Control

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:

1- This procedure aims to reveal the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months.

(336) 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.

2. The seizure must be based on a reasoned order.

3-The period allowed to be exact shall not exceed thirty days, renewable for another similar period or periods.

Article 95 of 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 periods.[337]

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 the inside side, crimes of explosives, crimes of embezzlement of public money, aggression against it and treachery ([338]).

([337]) Article 95 of the Code of Criminal Procedure amended by Law No. 37 of 1972, amended by Law No. 107 of 1962.

([338]) 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

As for the Public Prosecution, it shall abide by the guarantees to which the investigating judge is committed, in addition to the following guarantees:

1- Obtaining in advance a reasoned order to do so from the magistrate after reviewing the papers, and the magistrate shall also have the competence to renew that order for another similar period or periods, at the request of the Public Prosecution.

2-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, Article 206 of the Code of Criminal Procedure stipulates that: "**The Public Prosecution may not 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 all letters, telegrams, newspapers, publications, and parcels at post offices, and all telegrams at telegraph offices, monitor wire and wireless conversations, and record conversations that took place in a private place whenever this is beneficial for revealing the truth in a felony or 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 periods.

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 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 sent. [339]

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).

([339]) 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.

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..." and in Article 45 that "the private life of citizens is protected by law and that postal and telegraphic correspondence, telephone conversations and other means of communication are inviolable and their confidentiality is guaranteed and may not be confiscated, accessed or censored except by a reasoned judicial order for a specific period and in accordance with the provisions of the law." The legislator also stated in the Procedures Law that in accordance with the provisions of the Constitution, additional restrictions are required for the authorization of surveillance and registrations other than the restrictions on search warranty stipulated in Articles 95, 95 bis, 206 of it. These restrictions, some of which are objective and some of which are formal, namely that the crime attributed to the accused is a felony or misdemeanor punishable by imprisonment for a period of more than 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 similar period or other 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 guilt 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**] (340).

(340) 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

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 ([341]).

The Court of Cassation ruled that although the legislator had 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 ([342]).

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 ([343]).

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prosecution on the same date in implementation of it, which included a statement of the recordings 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 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].

([341]) Appeal No. 2238 of 80 S issued on May 5, 2011 (unpublished).

([342]) 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).

([343]) 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

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 ([344]).

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 revealing the truth, which is the purpose for which the permission was granted and this does not exceed the scope of the authorization. [345]

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 ([346]).

The Public Prosecution may assign one of the judicial control officers to implement the telephone surveillance permit ([347]).

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 defamation 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

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 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.

([344]) Appeal No. 1938 of 81 S issued at the session of 19 November 2011 (unpublished).

([345]) Appeal No. 1938 of 81 S issued at the session of 19 November 2011 (unpublished).

([346]) Appeal No. 18485 of 74 S issued on January 6, 2005 (unpublished).

([347]) 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.

crime, to place the aforementioned telephone device under surveillance for the period specified by him ([348]).

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 plaintiff of civil rights 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.**] ([349])

Second: Prohibition of seizure of papers and documents delivered by the accused to his defender

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 ([350]).

Third: Reviewing letters, letters, and other seized papers

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 ([351]).

([348]) Article 95 bis of the Criminal Procedure Law added by Law No. 98 of 1955.
([349]) 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.
([350]) Article 96 of the Criminal Procedure Law.
([351]) Article 97 of the Criminal Procedure Law, as amended by Law No. 37 of 1972.

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 ([352]).

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 ([353]).

2 - 2 - 7 Disposal of Seizures

First: The Order to Refund Seizures

It is permitted to order the return of the items seized during the investigation, even if this is before the judgment, unless they are necessary to proceed with the lawsuit or are subject to confiscation ([354]).

The Public Prosecution disposes of seized items pending cases falls within the scope of its judicial function and is not considered an administrative decision, and therefore the challenge to the Public Prosecution's disposal of seized items falls outside the jurisdiction of the administrative judiciary ([355]).

As for the Public Prosecution's refusal to return seizures after the issuance of the judgment against the accused and that judgment did not include the judgment of confiscation, there is no exception to its jurisdiction under the Code of Criminal Procedure and it is only a full-fledged

([352]) Article 100 of the Code of Criminal Procedure as amended by Law No. 107 of 1962.

([353]) 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 nullity 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 reliance 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].

([354]) 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.

([355]) Administrative Court of Justice, Case No. 34655 of 62 S issued at the session of March 17, 2009, page No. 443.

administrative decision issued by the Public Prosecution, which the Court of Administrative Justice is competent to consider the appeal ([356].

The seized items shall be returned to those who were in their possession at the time of their seizure ([357].

It is equal to the possession with the intention of ownership or if it is a physical possession for the account of others ([358].

If the seizures are among the objects on which the crime occurred or obtained from it, they shall be returned to the person who lost possession of the crime, unless the person with whom they were seized has the right to detain them under the law ([359].

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 license ([360].

The recusal order shall be issued by the Public Prosecution, the investigating judge, or the appellate misdemeanor court sitting in the counseling chamber. The court may order recusal during the hearing of the lawsuit ([361].

([356]) 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.

([357]) Article 102 of the Criminal Procedure Code.

([358]) 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.

([359]) 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.

([360]) It ruled that [confiscation is a duty that requires that the thing 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 license. 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.

([361]) Article 103 of the Criminal Procedure Law.

The restitution order does not prevent those concerned from claiming before the civil courts their rights, but it is not permissible for the accused or the plaintiff of civil rights if the restitution order was issued by the court at the request of either of them against the other ([362].

The court or the appellate misdemeanor court sitting in the counseling chamber may order the referral of litigants to litigation before the civil courts if it deems it necessary, in which case the seized items may be placed under guard, or other precautionary measures may be taken regarding them ([363].

The return of the seized items to those who were in his possession at the time of their seizure is conditional on the absence of a dispute or the existence of doubt about who has the right to receive them. In both cases, the Public Prosecution and the investigating judge must refrain from ordering the return, and the matter must be presented to the Appealed Misdemeanors Court sitting in a consultation chamber. If the court deems that the dispute over who has the right to receive the seized items is more appropriately addressed by the civil judiciary, it may refer the litigants to litigation before the civil court. In such a case, the civil court must examine the origin of the right in order to decide who has the right to receive the seized items [364].

He shall be ordered to respond, even without a request. Neither the Public Prosecution nor the investigating judge may order dismissal in the event of a dispute. In such cases, or in the event of doubt, the matter shall be referred to the Appellate Misdemeanors Court sitting in the counseling chamber of the Court of First Instance, at the request of the concerned parties, to order what it deems appropriate ([365].

When a preservation order is issued, or when 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 ([366].

([362]) 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.
([363]) Article 107 of the Criminal Procedure Law.
([364]) Appeals No. 14297, 14452 of 76 issued at the session of January 18, 2016 (unpublished).
([365]) Article 105 of the Criminal Procedure Code.
([366]) 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.

Second: Forfeiture of the right to demand the return of seizures

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 ([367]).

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 lawsuit ([368]).

Third: Ordering the sale of seizures by public auction

If the seized item is damaged over time or incurs expenses that reduce its value, it may be ordered to be sold at a public auction whenever the requirements of the investigation permit. In this case, the rightful owner may claim within three years from the date of the end of the lawsuit the price at which it was sold ([369]).

2 - 3 Hearing witnesses

Testimony is the proof of a certain fact through what a person says about what he has seen, heard, or perceived by his senses about this incident in a direct manner. It is the person's report of what he has seen, heard, or perceived in general by his senses, and it requires, in principle, the ability to distinguish ([370]).

Discrimination is the basis of perception, and therefore the age of distinction must be met in the witness, otherwise his testimony is invalid without effect, and it is not permissible to rely on that testimony, even as an inference ([371]).

([367]) Article 108 of the Criminal Procedure Code.

([368]) 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 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.

([369]) Articles 108, 109 of the Criminal Procedure Code.

([370]) Appeal No. 15357 of 59 S issued at the session of 21 December 1989 and published in the first part of the book of the Technical Office No. 40 page No. 1289 rule No. 207, Appeal No. 518 of 34 S issued at the session of 15 June 1964 and published in the second part of the book of the Technical Office No. 15 page No. 493 rule No. 98.

([371]) Appeal No. 984 of 67 s issued at the 7th session of October 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 s issued at the 7th session of October 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 s issued at the 27th session of November 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 s issued at the 17th session of November 1975 and published in the first part of the Technical Office book No. 26 page No. 701 rule No. 154.

2 - 3 - 1 The investigator shall hear anyone that he deems necessary to hear from the witnesses or at the request of the litigants

The investigator shall hear the testimony of the witnesses whom the litigants request to be heard unless he deems it useless to hear them. He may hear the testimony of the witnesses he deems it necessary to hear about the facts that prove or lead to proving the crime and its circumstances and attributing it to the accused or acquitting him of it. [372].

The civil plaintiff may request the investigator to hear witnesses in the lawsuit, and he may make his observations on the statements of the witness after the completion of hearing them, and he may request to hear the statements of this witness on other points that he has not proven.

The investigator may always refuse to ask any question that has nothing to do with the lawsuit, or that is prejudicial to others.

The legislator left to the investigator the discretion of whoever he deems necessary to hear his statements from the witnesses that the litigants ask to be heard and who do not see in hearing them a benefit ([373].

The investigator must respect the witness, treat him well, and avoid directing any hint or statement to him to belittle him, so as not to reach a state of denial of testimony that harms justice ([374].

It is not permissible for the investigator to appear in front of witnesses as a skeptic of their statements by making observations or signals that cause fear in them and make them hesitant to report the facts they claimed to have occurred ([375].

The witness is expected to give his testimony freely and selectively. Therefore, the investigator must behave objectively and honestly toward him. The investigator should not use means of deceit, threat, or intimidation. He may not suggest a specific answer to the witness or ask questions that involve deception or trickery. The investigator may not interrogate the witness or conduct an interrogation. The investigator must allow the witness to testify about the incident to be proven freely and without interference. After that, the investigator can intervene with detailed questions to define the scope and limits of the testimony. Through this, the investigator may draw attention to inconsistencies in the testimony or confront the witness with

([372]) Articles 110 and 208 of the Criminal Procedure Code.
([373]) See Appeal No. 1273 of 22 S issued on March 3, 1953 and published in the second part of the Technical Office's letter No. 4, page No. 590, rule No. 217.
([374]) Article 162 of the Judicial Instructions of the Public Prosecution.
([375]) Article 163 of the Judicial Instructions of the Public Prosecution.

facts that have been proven to be contradictory in the investigation. The investigator must clarify whether the facts presented by the witness are from his direct and personal knowledge or are simply indirect hearsay information passed on from others, or speculative conclusions. In all cases, the investigator must ensure that the testimony is personal to the witness and respond to the information provided that is not based on speculation.

The investigator must take into account the recording of the testimony in the same manner as the witness, no matter how colloquial or sloppy, and any intervention by the investigator to correct the witness's style or shorten it without his consent involves a change in the truth ([376]).

If the report submitted to the prosecution is of special importance to the person of the complainant, the prosecution must hear the statements of the informant alone in detail, and then send the record to the general advocate of the general prosecution or the first general advocate of the appellate prosecution, as the case may be, for an opinion poll ([377]).

Prosecutors must economize on requesting officers, doctors and employees of reform centers to investigate, and they must miss the purpose of some inmates of reform centers to report committing a crime in order to provide an opportunity to leave the reform centers, they must move to the reform center to ask these inmates instead of requesting them to the prosecution house ([378]).

The members of the prosecution must also, when summoning the employees of the civil registry departments to hear their statements at some technical points related to the civil status work, address the inspectors of the civil status departments in the capitals of the governorates so that they can gather the correct information and data about the incident under investigation and submit them to the prosecution to determine the truth of the matter when the employee summoned for investigation is asked[(379)].

The members of the prosecution shall economize on the request of the employees of the Central Agency for Mobilization and Statistics to be asked as witnesses in the investigations regarding the crimes stipulated in Law No. 87 of 1960, as amended regarding general mobilization, only the correspondence received from the aforementioned agency in this regard.

If the investigation requires the necessity of summoning one of the agency's employees to ask him, the agency must be notified by sending the competent employee of the subject matter of

([376]) Dr. Ahmed Fathi Sorour, Mediator in Criminal Proceedings, page 302.
([377]) Article 252 of the Judicial Instructions of the Public Prosecution.
([378]) Article 253 of the Judicial Instructions of the Public Prosecution.
([379]) Article 263 bis of the Judicial Instructions of the Public Prosecution.

the investigation to testify in it, taking into account the instructions required for the prosecution offices located outside Greater Cairo to send a memorandum on the incident of the lawsuit and the completion required to be achieved, to the competent prosecution in whose jurisdiction the aforementioned agency is located to be carried out by one of its members ([380]).

If the investigation requires hearing multiple persons from the drivers of the cars of the Mechanical Transportation Department, they shall not be assigned to attend at once, thus disrupting the work of their department. Rather, the prosecution must summon them individually and at different times, with the initiative of asking those who attend to avoid their request for investigation more than once.

If the criminal case is filed against one of the aforementioned motorists, the members of the prosecution must work to adjudicate it[381] expeditiously.

The prosecution offices shall include in the correspondence they issue to the Labor Department and in the requests for the attendance of the representatives of this Department witnesses, the serial numbers proven by the inspectors of the aforementioned department with the papers and minutes received from them to the prosecution regarding the cases in which the correspondence was issued or the request of witnesses ([382]).

2 - 3 - 2 Witness Declaration

The Public Prosecution shall announce the witnesses whom the investigating judge decides to hear. They shall be assigned to attend by the bailiffs, or by the public authority, and the investigator may hear the testimony of any witness who attends on his own initiative, in which case this shall be recorded in the record ([383]).

The prosecution shall announce the witnesses that the investigating judge decides to hear, whether by the bailiffs or the public authority. If the prosecution is presented with witnesses other than those requested by the judge and at a time when it is difficult to present them to him, it must prove in the record and hear the statements of these witnesses briefly and submit them with the record to the judge as soon as possible)[384](.

The general rule is that those who should not be heard do not need to be invited ([385]).

([380]) Article 269 of the Judicial Instructions of the Public Prosecution.
([381]) Article 280 of the Judicial Instructions of the Public Prosecution.
([382]) Article 287 of the Judicial Instructions of the Public Prosecution.
([383]) Articles 111, 208 of the Criminal Procedure Code.
([384]) Article 642 of the Judicial Instructions of the Public Prosecution.
([385]) Appeal No. 26730 of 59 S issued in the session of February 2, 1995 and published in the first part of the book of the Technical Office No. 46 page No. 295 rule No. 42.

Whoever is invited to appear before the investigating judge to perform a certificate must attend at the request issued to him. Otherwise, the judge may sentence him, after hearing the statements of the Public Prosecution, to pay a fine not exceeding fifty pounds, and he may issue an order to order him to attend for expenses on his part or issue an order to seize and bring him ([386]).

It is established that the correct declaration of testimony is the one that imposes on the witness the duty to appear. The crime of refraining from testimony does not occur if the declaration is invalid because this duty arises only from a valid declaration ([387]).

If the witness appears before the judge after being assigned to appear second or on his own initiative and gives acceptable excuses, he may be exempted from the fine after hearing the statements of the Public Prosecution, and he may also be exempted on the basis of a request submitted by him if he is unable to attend in person ([388]).

The legislator has specified in the Code of Criminal Procedure the procedures that must be followed in the event that a witness fails to comply with appearing before the investigator to give testimony about the facts that prove or lead to the proof of the crime and its circumstances, whether it implicates the accused or proves their innocence. These procedures include taking measures to arrest and bring the witness or imposing a fine not exceeding fifty pounds. If the witness attends after being summoned and provides acceptable excuses, they may be exempted from the fine.

There is nothing in the law that prevents the summoning of officers, investigative judges, and prosecutors - as well as investigative clerks - as witnesses in the cases in which they work, but the summoning of any of them is only when the court or the authority before which the testimony is given considers it a place for that ([389]).

2 - 3 - 3 Moving to hear the witness in his place

If the witness is sick or has something preventing him from attending, his testimony shall be heard at his place of presence. If the investigator moves to hear his testimony and it is found that the excuse is false, he may be sentenced to a fine not exceeding two hundred pounds. The magistrate shall have jurisdiction to do so if the Public Prosecution is the one who initiated the

([386]) Article 117 of the Criminal Procedure Law.
([387]) Crim. 18 oct. 1956, J.C. P.57 II 9713, 7 Nov. 1971, Crim. no: 301.
([388]) Article 118 of the Criminal Procedure Law.
([389]) See: Appeal No. 6200 of 56 S issued at the session of February 5, 1987 and published in the first part of the book of the Technical Office No. 38 page No. 231 rule No. 33.

investigation. The convicted person may appeal the judgment issued against him either by opposition or by filing an appeal against the judgment. ([390]).

Prosecutors shall not move to government hospitals to question injured persons present in them except after receiving a written notice or a telephone signal from the hospital requesting them to do so. They may, if necessary, and if the condition of the injured person indicates danger or the interest of the investigation requires the speed of questioning, move to the hospital without delay and at any time, provided that they notify the hospital in a timely manner of their movement whenever possible. They must also contact the hospital director, the chief doctor, or their representative, if any, as soon as they arrive at the hospital, and inquire about the condition of the injured person and their ability to respond reasonably to the questions directed to them, and record all of this in the record ([391]).

2 - 3 - 4 Hearing the witness in private and confronting each other or the accused

The investigator hears each witness separately, and he may confront the witnesses with each other and with the accused ([392]).

The investigator must respect the witness, treat him well, and avoid directing any hint or statement to him to belittle him, so as not to reach a state of denial of testimony that harms justice ([393]).

It is not permissible for the investigator to appear in front of witnesses as a skeptic of their statements by making observations or signals that cause fear in them and make their tongues reasonable to decide the facts they claimed to make ([394]).

Whereas the legislator stipulated that the investigator shall hear each witness separately, and he may confront the witnesses with each other and with the accused, this does not result in the nullity of the procedures if violated. It is only for the court to assess the testimony of the witness given under these circumstances ([395]).

The investigator is not permitted to initiate the witness with specific questions regarding the details of the investigation. Instead, the witness must be allowed to express their information

([390]) Articles 121, 208 of the Criminal Procedure Code.
([391]) Article 234 of the Judicial Instructions of the Public Prosecution.
([392]) Articles 112 and 208 of the Criminal Procedure Code.
([393]) Article 162 of the Judicial Instructions of the Public Prosecution.
([394]) Article 163 of the Judicial Instructions of the Public Prosecution.
([395]) Appeal No. 1702 of 66 S issued at the session of January 5, 1998 and published in the first part of the Technical Office's book No. 49 page No. 50 rule No. 5, Appeal No. 23075 of 61 S issued at the session of November 15, 1993 and published in the first part of the Technical Office's book No. 44 page No. 988 rule No. 154, and Appeal No. 1316 of 8 S issued at the session of May 2, 1938 and published in the first part of the set of legal rules No. 4 page No. 226 rule No. 215.

first without being interrupted by the investigator unless it becomes clear that what the witness is saying is unrelated to the subject of the investigation. The investigator should then consider the statements made by the witness, clarifying any ambiguities, contradictions, or inconsistencies between their statements and those of others, or anything that seems inconsistent with reality or reason, or anything else that requires further discussion. The investigator should also take into account the sequence and interconnection of the investigation. As for a large number of irrelevant questions, the investigator gains nothing from them except the waste of effort and a distraction from investigating the key points, making it easier for the defense to challenge the investigation, which may lead to confusion or be exposed through surprise revelations. As much as possible, the witness must clarify the time and place of the incident, who was involved, how it occurred, and its consequences. The investigator must be diligent, precise, persistent, and committed to uncovering the facts.[396]

If the police officer refuses to mention how the accused was arrested or how he knows that some of the perpetrators intended to commit a crime, this shall only be recorded in the investigation report. He shall not be asked to disclose what he refrained from mentioning unless the interest of the investigation requires it.)[397](

Prosecutors must ask the injured, even if their injuries are minor, without waiting for their recovery, unless they know from the treating doctor that there is a danger to the injured from asking him, and then postpone his question for another time and they must alert the judicial officers to take this into account in their investigations ([398]).

It is noted that the defectiveness of the investigation conducted by the prosecution has no impact on the integrity of the judgment issued in the case. If the prosecution conducts an investigation into the absence of the accused, it is its right and there is no invalidity in it. The principle is that the lesson at trial is the investigation conducted by the court itself, and as long as the defense does not request it to complete the deficiency or defect that may be in the preliminary investigations, it may not take this as a reason to prevent it ([399]).

([396]) Article 231 of the Judicial Instructions of the Public Prosecution.
([397]) Article 232 of the Judicial Instructions of the Public Prosecution.
([398]) Article 233 of the Judicial Instructions of the Public Prosecution.
([399]) See Appeal No. 525 of 50 BC issued at the session of June 15, 1980 and published in the first part of the Technical Office's letter No. 31 page No. 775 rule No. 150.

The mere absence of the accused when the witness is questioned does not invalidate his statements ([400].

2 - 3 - 5 Witness Hearing Record

The investigator asks each witness to provide their name, surname, age, occupation, residence, and relationship with the accused, and records this information and the witness's testimony without erasing or overwriting. No correction, cancellation, or deletion is allowed unless approved by the investigator, the recorder, and the witness. ([401]

Both the investigator and the recorder shall sign the testimony, as well as the witness, after it is read to him and he acknowledges that he insists on it. If he refuses to sign or seal, or is unable to do so, this is recorded in the report along with the reasons he provides. In all cases, both the investigator and the recorder shall sign each page. [402]

The absence of the minutes of the prosecution investigation session from the signature of the witness does not invalidate the procedures and does not affect the integrity of the judgment that took his statements, and the law stipulates the need for the witness to sign his testimony after reading it to him and acknowledging that he insists on it and to prove the witness's refusal to put his signature or stamp in the record or his inability to do so, with mentioning the reasons he gives, but it is a regulatory procedure that the law did not cause the invalidity of its violation, in addition to the fact that the signature of the investigator and the writer on the investigation minutes indicates the validity of what he proved. ([403]

Witnesses may make their observations on the testimony after the witness's statements have been heard, and they may request the investigating judge to hear the witness's statements on other points they mention. The investigator may always refuse to ask any question that is unrelated to the case or that is prejudicial to others. ([404]

([400]) The Court of Cassation ruled that: [The Public Prosecution may conduct the investigation in the absence of the accused if it is not possible to attend, and all that the accused has is to adhere to the court of what he deems to be a defect, so this is estimated in the authority of the court as the investigation of the prosecution is evidence of the case that the court is independent in its assessment, and the mere absence of the accused when the witness is asked does not invalidate his statements] Appeal No. 1861 of 40 BC issued at the session of 7 March 1971 and published in the first part of the Technical Office's book No. 22 page 194 rule No. 47.
([401]) Articles 113 and 208 of the Criminal Procedure Code.
([402]) Articles 114 and 208 of the Criminal Procedure Code.
([403]) Appeal No. 10461 of 80 S issued at the session of January 4, 2011 (unpublished), Appeal No. 1649 of 28 S issued at the session of January 12, 1959 and published in the first part of the book of the Technical Office No. 10 Page No. 15 Rule No. 4.
([404]) Articles 115 and 208 of the Criminal Procedure Code.

2 - 3 - 6 Witness Protection

The legislator prohibits arresting officers or investigative bodies from disclosing the victim's details in any of the crimes related to indecent assault, corruption of morals, exposure to others, and harassment mentioned in the Penal Code and the Children's Law, out of concern that the victim may be reluctant to report these crimes.

This comes especially since the crimes of indecent assault, corruption of morals and exposure to others, and harassment contained in the Penal Code and the Child Law promulgated by Law No. 12 of 1996 are among the crimes that affect the reputation of the victim, which may be a reason for failure to report for fear of damaging the reputation except for those concerned. Article 113 bis of the Criminal Procedure Law stipulates that: "**Police officers or investigative authorities may not disclose the victim's details in any of the crimes stipulated in Chapter Four of Book Three of the Penal Code promulgated 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 promulgated by Law No. 12 of 1996, except for those concerned**" ([405].

Reporting crimes in general is one of the basic human rights guaranteed by international charters and national legislation. In fact, this right often becomes a duty when exercised by public officials, as reporting a crime can often prevent its occurrence, as well as avoid the serious consequences that may result from it. This contributes to building trust and confidence in society, and leads to enhancing the participation of individuals, in particular, and society, in general, in combating crime in all its forms, while also assisting public authorities in carrying out their duties in this regard.

The UNCAC recognized the right of civil society, NGOs, individuals and local organizations to actively participate in the prevention, fight and detection of corruption.

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**

1. 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.

([405]) Article No. 113 bis of the Criminal Procedure Law added by Law No. 177 of 2020.

2. 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:

(A) 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.

(B) 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.

3. 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.

4. The provisions of this article shall also apply to victims if they are witnesses.

5. 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, under the title Protection of Whistleblowers, stipulates that: "**Each State Party shall consider introducing 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" (**[406].

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 the rights of victims, and consider the establishment of funds for victims, in addition to developing and implementing witness protection policies."

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,

([406]) 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.

and Punish Trafficking in Persons, under the heading of mutual legal assistance, stipulates the following: " 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 testify in a judicial 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 his or her personal liberty in the territory of that Party with respect to any act, omission, or conviction prior to his or her departure from 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 he or she has been officially informed that his or her presence is no longer required by the judicial authorities, or if he or she returns voluntarily to the territory after having left it". [407]

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: "**1. 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 his 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 an investigation.**

2. 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.

3. 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.

([407]) 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.

4. 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.

5. 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.

6. 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 unclear."

Article 7 (18) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, under the heading of mutual legal assistance, states: **"18. 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 requesting Party shall be prosecuted, detained, punished or subjected to any other form of restriction of his personal liberty in the territory of that Party in connection with an act or omission or with convictions prior to his departure from the territory of the requested Party. Traffic safety shall end if the witness, expert or other person remains of his 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 from the date on which he was informed that his presence is no longer required by the judicial authorities or in the event of his return to the territory of his own free will after he has left it**. [408]

Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that: **"Each State Party shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to its competent authorities and to have his 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 his complaint or any evidence provided**. [409]

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 voluntarily appear for this**

([408]) 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.
([409]) 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.

purpose before the judicial bodies of the requesting State. They shall enjoy legal protection against criminal measures being taken against them, their arrest, or imprisonment for acts or the execution of judgments prior to their entry into the territory of the requesting State.

The requesting party shall notify the witness or expert in writing of this protection before he attends for the first time.

The protection of the witness or expert shall cease after the lapse of thirty days from the date of his notification to dispense with his presence in its territory without leaving it, provided that nothing prevents this for reasons beyond his control or if he returns to it voluntarily after leaving it. [410]

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, or participate in terrorist acts in any way whatsoever. In order to prevent and combat terrorist crimes in accordance with their respective domestic laws and procedures, they shall endeavor to:**

Second: Control Measures:

1. 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.

2. Ensuring effective protection for criminal justice personnel.

3-Ensuring effective protection of sources of information on terrorist crimes and witnesses to them.

4-Providing the necessary assistance to victims of terrorism.

5- Establishing effective cooperation between the concerned agencies and citizens to confront terrorism, including the creation of appropriate guarantees and incentives to encourage the

([410]) 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.

reporting of terrorist acts and provide information that helps to detect them and cooperate in apprehending the perpetrators. [411]

Article 35 stipulates that: "**1. 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 includes a statement of the penalty for failure to comply.**

2- If the witness or expert comes voluntarily to the territory of the requesting State, he shall be assigned to attend in accordance with the provisions of the internal legislation of this State.
"

Article 36 stipulates that: "**1- A witness or expert shall not be subject to trial, imprisonment, or restriction of his freedom in the territory of the requesting State for acts or judgments prior to his departure from the territory of the requested State, regardless of his nationality, as long as his appearance before the judicial authorities of that State is based on a summons to appear.**

2- It is not permitted to try, imprison or subject to any restriction on his freedom in the territory of the requesting State any witness or expert, regardless of his 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 his departure from the territory of the requested State.

3. 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 his ability to leave it after his presence has become not required by the judicial authorities or if he returns to the territory of the requesting State after his departure."

Article 37 also stipulates that: "**1-The requesting State undertakes to take all necessary measures to ensure the protection of the witness or expert from any publicity that endangers him, his family or his property as a result of his testimony or expertise, and in particular:**

(A) Ensuring the confidentiality of the date and place of his arrival in the requesting State and the means of transportation.

(B) Ensuring the confidentiality of his place of residence, his movements, and his whereabouts;

([411]) 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.

(c) Ensuring the confidentiality of his statements and information he makes before the competent judicial authorities.

2-The requesting State undertakes to provide the necessary security protection required by the situation of the witness or expert and his family, the circumstances of the case in which he 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 be prosecuted, detained, punished, or subjected to any other form of restriction of his or her personal liberty in the territory of that Party in connection with the commission of an offence or conviction prior to his or her departure from the territory of the Requested Party. The protection shall cease if the witness, expert, or other person remains in the territory of his own free will after having had the opportunity to leave within a period of fifteen consecutive days or any period agreed upon by the parties from the date on which he was informed that his presence is no longer required by the judicial authorities, or in the event of his return to the territory of his own free will after leaving 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 his 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 him for acts or executing judgments prior to his entry into the territory of the requesting Contracting Party.**

The body that declared the witness or expert must notify him in writing of this immunity before his 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 his presence in its territory without leaving it, provided that nothing prevents this for reasons beyond his control or if he returns to it of his own free will after leaving it. [412]

([412]) 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.

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, dedicated Chapter Four to the attendance of witnesses and experts in criminal matters. Article 23 of this agreement, 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 summons 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 his 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 his departure from the territory of the requested party, nor may he be prosecuted, detained, or punished because of his testimony or expert report submitted by him.

The immunity granted to the witness and expert as stipulated in the preceding two paragraphs shall terminate if a period of thirty consecutive days has elapsed from the date of being notified by the entity that assigned him to attend that his presence is no longer desired, and he had the opportunity to leave but remained in the territory of the requesting party, or left and then returned to it of his own free will. This period does not include the times during which the witness or expert was unable to leave the territory of the requesting party for reasons beyond his control.[413]

Article 21 of the Agreement on Legal and Judicial Cooperation concluded between the Arab Republic of Egypt and the State of Bahrain signed on May 17, 1989 stipulates that: "**Every witness or expert - regardless of his 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 criminal measures may be taken against him, or he shall be arrested or imprisoned for acts or in implementation of provisions prior to his 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 his presence, without

([413]) 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.

him leaving, provided that there is nothing preventing this for reasons beyond his control, or if he returns of his own free will after leaving. The authorities that have summoned the witness or expert shall notify him in writing of this immunity before his first appearance. [414]

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 from any criminal proceedings against him, arrest or imprisonment for acts or the implementation of previous judgments issued against him 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 his presence in its territory" (**[415].

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 his 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 he shall be arrested or imprisoned for acts or in implementation of provisions preceding his 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 his presence without him leaving it, unless there are reasons beyond his control preventing this, or if he returns to it after leaving.

The authority that declared the witness or expert shall notify him in writing of this immunity before he testifies for the **first time**. [416]

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,

([414]) 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.
([415]) 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.
([416]) Approved by the Arab Republic of Egypt by Presidential Decree No. 293 of 1977 and published on January 19, 1978.

1976 stipulates that: "**Every witness or expert, regardless of his nationality, shall be declared to be present in any of the Contracting States at his own discretion for this purpose before the authorities of the requesting State. No penal measures may be taken against him, or he shall 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.**

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 his presence without leaving it, with nothing preventing him from doing so for reasons beyond his control or if he returns to him after he leaves it. The authority that declared the witness or expert shall notify him in writing of this immunity before he testifies for the **first time**. [417]

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: «**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 related to a crime committed in the requesting state, unless this 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 agree to assist in the investigation or appear as a witness in the proceedings and shall take all necessary steps to facilitate the request. [418]

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: «**1- If, during the judicial consideration of the case in the territory of a Contracting Party, the need arises for the presence of a witness in person or the appointment of an expert in the territory of the other Contracting Party, the request for a declaration must be addressed to the corresponding authority in that Party.**

([417]) Approved by the Arab Republic of Egypt by Presidential Decree No. 407 of 1976 and published on 06 January 1977.
([418]) 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.

2. The notice shall not contain any penalties relating to the failure of the addressee to announce attendance.

3- A witness or expert, regardless of their nationality, who voluntarily attends in person based on 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 crossing the borders of that party's State. Such persons may not be prosecuted for any crime, detained, or punished for testifying or expressing their opinion as experts, or in connection with a crime that is the subject of the proceedings.

4- This immunity may 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 informed him that his presence is no longer necessary. This period does not include any time during which the witness or expert is unable to leave the territory of the requesting Contracting Party for reasons beyond his control.

5. 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.

6- 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 his testimony or performing work that he 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 specifies the rights and duties of the witness[419] or expert.

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**

([419]) 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.

appear, even if the summons to appear includes a statement of the penalty for default, unless he voluntarily goes to the territory of the claimant State, provided that he is then reassigned to attend again."

Article 11 also stipulates that: "**1. A witness or expert shall not be subject to trial, imprisonment or restriction of his freedom in the territory of the requesting State for acts or judgments prior to his departure from the territory of the requested State, regardless of his nationality, as long as his appearance before the judicial authorities of that State is based on a summons to appear.**

2- It is not permitted to try, imprison, or subject to any restriction on his freedom in the territory of the requesting State, any person, regardless of his 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 his departure from the territory of the requested State.

3-The immunity provided for 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 his ability to leave after his presence has become not required by the judicial authorities, if he returns to the territory of the requesting State after leaving it. [420]

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 02 April 1974 stipulates that: "**1- If a witness or expert attends to testify, whatever his 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 him or arrested for a punishable act committed before he 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.**

2- The witness or expert who gives his testimony shall lose the immunity provided for in the preceding paragraph if he does not leave the territory of the requesting Contracting Party within fifteen days from the date of his notification that there is no longer a need for his stay,

([420]) 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 he is unable to leave the territory of the Contracting Party for reasons beyond his control shall not be included in the calculation of this period.

3- 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 he were obliged to move for this purpose, he shall be entitled to the immunity guaranteed to him under the first and second paragraphs of this article. [421]

The Egyptian Constitution also recognized the right of everyone to report in Article 85, which stipulates that: "**Everyone has the right to address the public authorities in writing and with his signature, and it is not addressed in the name of groups except for legal persons." The right to report is also supported in Article 25 of the Criminal Procedure Law, which stipulates that: "Anyone who is aware of the occurrence of a crime may have the Public Prosecution file a lawsuit for it without a complaint or request to report it to the Public Prosecution or any judicial officer**."

Accordingly, the legislator set the general rule in Article 25 of the Criminal Procedure Law based on a constitutional origin stipulated in Article 85 of the Constitution, establishing the inherent right of every citizen to report crimes when they are punishable without the requirement that the amount be the same as the victim or any of his relatives, in-laws, or those associated with him. It is an absolute right for all. The only restriction on him is that the crime shall not be one that the law subjects to the registration of the complaint or request as a restriction on the right of the Public Prosecution to initiate criminal proceedings in its regard, such as crimes of adultery and theft between assets and branches for which the legislator requires that the victim submit a complaint to the Public Prosecution so that it has the right to initiate public proceedings against the perpetrators. The victim remains the holder of the right to pursue the lawsuit or not, and like the crimes stipulated in Articles 8 and 9 of the Criminal Procedure Law, in which it is required for the Public Prosecution to initiate a public lawsuit to be preceded by a request from the Minister of Justice or the head of the competent authority or interest.

The legislator criminalized the order to torture any accused person to make him confess. Article 126 of the Penal Code stipulates that: "**Any public official or employee who orders the torture of an accused person or carries it out himself to force him to confess shall be punished with rigorous imprisonment for a term ranging from three to ten years. If the victim dies, he shall be sentenced to the penalty prescribed for intentional murder."**

([421]) Approved by the Arab Republic of Egypt by Presidential Decree No. 1653 of 1974 and published on July 13, 1978.

Article 129 of the Penal Code also criminalizes the employee's use of cruelty to people based on his job, stipulating that: "**Any public employee, official, or individual entrusted with a public service who inflicts cruelty on others in the course of their duties, thereby violating their dignity or causing physical harm, shall be subject to imprisonment for up to one year or a fine not exceeding two hundred Egyptian pounds**."

In order to encourage witnesses to report crimes, the legislator authorized the action of the informant in the event that his communication is submitted to judicial and administrative rulers, and that the amount was reported in truth and good faith against the informant and in an order that requires the punishment of the perpetrator of any prohibited act, Article 303 of the Penal Code stipulates that " **Defamation shall incur a fine ranging from a minimum of five thousand pounds to a maximum of fifteen thousand pounds. If the defamation targets a public official, a prosecutor, or anyone entrusted with a public service, and it relates to the performance of their official duties, the fine will be no less than ten thousand pounds and no more than twenty thousand pounds.** "Article 304 stipulates penalties that **"This punishment shall not be imposed on those who tell the truth and not the bad intention of the judicial or administrative rulers by an order that requires the punishment of the perpetrator."** This means that it is required to allow the act of the amount:

The notification must be to one of the judicial or administrative rulers, who are the men of the public authority competent to receive the reports and take the procedures resulting from the notification or the administration men in regard to administrative and disciplinary violations committed by public officials.

The notification of the truthfulness and the intention of the truthfulness of the incident shall be its validity in itself, and the informant shall benefit from the authorization if he submits his communication and supports it with the evidence he knows or does not support it with any evidence, but the validity of his communication is verified based on procedures carried out by the public authorities.

This shall be in good faith, meaning that the reporter aims to achieve the public interest and assist the public authorities in identifying the crimes and their perpetrators, and it is not in good faith if the reporter knows that the report is false or believes that it is true, but aims to defame the reporter against him.

Finally, that the reported order requires the punishment of the perpetrator, that is, it constitutes a punishable criminal act or a disciplinary action in the case of public officials.

Thus, the reason for permissibility is that society has a fundamental interest in being aware of the crimes committed in order to take the measures specified by law. Whoever informs the public authorities achieves this interest for society.

The Court of Cassation ruled that: **[It is established that the key element in the crime of making a false report is the intentional act of lying in the report. This requires that the person making the report be fully aware, with certainty, that the incident they are reporting is false and that the person accused is innocent of the alleged act. For the ruling to be valid, it is necessary to prove to the court, with certainty, that this knowledge was clear, and the court must base its decision on logical evidence presented during the trial.] (**[422]

It ruled that: [**It is legally established that for an investigation into the crime of false reporting, two key elements must be present: first, the reported facts must be proven false; and second, the perpetrator must knowingly lie with the intention to harm the victim. Additionally, the matter reported must be one that justifies the punishment of the perpetrator, even if no formal complaint has been filed by the person who was falsely accused**] **(**[423].

From the above, it is clear that when the legislator decided the reason for the permissibility referred to in Article 304 of the Penal Code, he meant cases of truthful reporting of criminal or disciplinary facts that must be punished, and therefore he did not impose responsibility on the informant except in the case of false reporting to protect the rights of others, but he may benefit from the reason for permissibility in the case of truthful reporting in order to protect people and urge them to report crimes and fight corruption.

2 - 3 - 7 The witness swears an oath

Witnesses who are fourteen years of age or older are required to take an oath to testify truthfully. Witnesses under the age of fourteen may provide testimony without taking an oath, and their statements can still be considered as evidence. ([424]

The testimony is not valid unless it is preceded by an oath that the testimony is the truth, and the witness says only the truth.

([422]) Appeal No. 1067 of 41 s issued at the hearing of 14 May 1972 and published in the second part of the book of the Technical Office No. 23 page No. 691 rule No. 155.
([423]) Appeal No. 203 of 40 BC issued at the session of 5 April 1970 and published in the second part of the book of the Technical Office No. 21 page No. 514 rule No. 124.
([424]) Articles 116 and 283 of the Criminal Procedure Code.

However, taking the oath is decided in the interest of the litigants. If the witness is heard without taking the oath, in the presence of the defendant's lawyer without objection from him, then his right to plead is null and void ([425]).

The Court of Cassation ruled: [**Although the testimony is not legally integrated except by the swearing of the witness, this does not negate the statements made by the witness without taking an oath that they are testimony. The witness is a language who has seen and seen the thing, and the testimony is the name of the witness, which is to see the thing in person, and the law - in Article 283 of the Code of Criminal Procedure - considered the person a witness as soon as he was invited to testify, whether he took it after taking the oath or without taking it, and therefore the judgment is not defective in describing the statements of the victim who did not take the oath as testimony**] [426]

2 - 3 - 8 Non-refoulement of witnesses

Witnesses may not be dismissed for any reason ([427]).

Taking the statements of a witness, even if he is a relative of the victim, is entrusted to the reassurance of the trial court of the validity of what he testified ([428]).

2 - 3 - 9 The right of the witness to refrain from testifying

The witness must remain completely impartial, without any personal interest that could conflict with their testimony or their role in the case. A witness may refuse to testify against the accused, their parents, children, close relatives, in-laws up to the second degree, or their spouse, even after the marriage has ended. However, the witness may be required to testify if the crime was committed against them or a close family member, or if they are the one making the report, or if there is no other evidence available to prove the case. ([429])

However, if the witness appears before the investigator and refuses to take the testimony or to take the oath, the investigating judge shall sentence him in the cases in which he is investigating

([425]) Appeal No. 168 of 27 s issued at the session of April 1, 1957 and published in the second part of the Technical Office's letter No. 8 page No. 322 rule No. 86, Appeal No. 2443 of 24 s issued at the session of February 26, 1955 and published in the second part of the Technical Office's letter No. 6 page No. 573 rule No. 186, and the Court of Cassation ruled that: (If the witness takes the legal oath and then takes the testimony, there is no need to re-invoke him if the court deems it necessary to clarify matters related to what he has already said or new facts. This is because the oath taken by the witness is focused on everything he makes in the lawsuit] Appeal No. 1189 of the year 7 of the issued in the session of May 10 of the year 1937 and published in the letter of the Technical Office No. 4 p No. Part 1 Page No. 71 Rule No. 80.

([426]) Appeal No. 1137 of 38 S issued at the session of 21 October 1968 and published in the third part of the book of the Technical Office No. 19 page No. 841 rule No. 166.

([427]) Articles 116, 208, 285 of the Criminal Procedure Code.

([428]) Appeal No. 136 of 25 S. Issued at the session of May 31, 1955 and published in the third part of the book of the Technical Office No. 6 page No. 1056 rule No. 310.

([429]) Articles 116, 286 of the Criminal Procedure Code.

to a fine not exceeding two hundred pounds, after hearing the statements of the Public Prosecution. If the Public Prosecution is responsible for investigating the case, the witness shall be sentenced upon his refusal to take the testimony or to take the oath by the partial judge in the party in which the witness's presence was requested, as usual. ([430])

The witness, if he is a relative or a spouse of the person he testifies against, does not refrain from testifying about the facts he saw or heard, but he is exempted from performing the testimony if he wants to. In this regard, the Court of Cassation ruled that: [**The text of Article 286 of the Criminal Procedure Law states that the witness does not refrain from testifying about the facts he saw or heard, even if the person against whom he testifies is a relative or spouse. Rather, he is exempt from performing the testimony if he wants to. 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 he may have informed him during the marriage, even after its expiration, unless the case is filed by one of a felony or misdemeanor committed against the other, and if the evidence is from the vocabulary - included - that these two witnesses did not ask for exemption from the testimony or objected to its performance, and it was fixed from the records of the contested judgment that they witnessed what they saw or heard from the accident, their parents, their testimony is far from the invalidity and the law advised to base their statements on the judgment]**. [431]

The prohibition stipulated in the Evidence Law that it is not permissible to disclose to one of the spouses the consent of the other what he communicated to him during the marriage, even after its separation, does not apply 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 for a felony or misdemeanor committed against the other. However, if the felony or misdemeanor was committed by one of the spouses against others, this prohibition does not apply. Article 67 of the Evidence Law stipulates that: **"One spouse may reveal, without the other's consent, any information shared during the marriage, even after they have separated, unless a lawsuit is filed by one spouse against the other, or a case is brought against one spouse for a felony or misdemeanor committed against the other."** ([432])

([430]) Articles 119, 208 of the Criminal Procedure Code.
([431]) Appeal No. 61170 of 74 BC issued on 21 July 2005 (unpublished).
([432]) Article 67 of the Law of Evidence in Civil and Commercial Matters.

The Court of Cassation ruled that the testimony of the wife of the accused against him in the murder of her grandmother is correct, as long as the accused did not show his dissatisfaction with the investigations. ([433])

Exemption from the certificate is an authorized allowance for a relative or spouse and their mortgage, upon request. Therefore, their testimony may be heard and relied upon as long as they do not object to giving it. ([434])

The failure of the investigator to alert the witness to her right to refrain from testifying against her husband is not a defect in the investigations because that license is authorized for the wife, so if she wants to use it, she must disclose her desire to use this license granted to her by law, but if she does not, her testimony is valid in law and may be inferred. ([435])

Exemption from testimony against a relative or spouse is also required to have the witness's knowledge of that testimony from the spouse or relative. If he knew it from another way, there was no place to enforce that exemption. The Court of Cassation ruled that: [**Article 286 of the Code of Criminal Procedure stipulates that a witness is not exempt from testifying about facts they have directly seen or heard, even if the person against whom they testify is a relative or spouse. However, they may choose to be exempted from giving testimony if they wish. On the other hand, Article 209 of the Code of Procedure prohibits one spouse from disclosing, without the other's consent, any information shared during the marriage, even after it ends, unless a lawsuit is filed by one spouse against the other for a felony or misdemeanor. In this case, the court determined that the wife of the appellant did not withhold information from her husband but rather testified to what she had personally witnessed. Therefore, her testimony is valid and can be relied upon in accordance with the law.**] ([436]).

2 - 3 - 10 Prohibition of the witness from testifying or exemption from its performance

Before the criminal courts, the rules prescribed in the Code of Procedure shall apply to prevent the witness from performing the testimony or to exempt him from performing it ([437]).

([433]) Appeal No. 17203 of 83 S issued at the session of May 12, 2014 and published in the letter of the Technical Office No. 65 page No. 369 rule No. 41.
([434]) Appeal No. 3506 of 78 S issued on December 17, 2008 and published in the Technical Office's letter No. 59, page No. 557, rule No. 99.
([435]) Appeal No. 6281 of 53 s issued at the session of 27 March 1984 and published in the first part of the Technical Office letter No. 35 page No. 353 rule No. 76, Appeal No. 826 of 48 s issued at the session of 6 February 1978 and published in the first part of the Technical Office letter No. 29 page No. 136 rule No. 25.
([436]) Appeal No. 1970 of 30 S issued at the session of 7 March 1961 and published in the first part of the Technical Office's book No. 12 page No. 324 rule No. 62, Appeal No. 1194 of 29 S issued at the session of 2 February 1960 and published in the first part of the Technical Office's book No. 11 page No. 128 rule No. 26.
([437]) Articles 116 and 287 of the Criminal Procedure Code.

Article 65 of the Evidence Law stipulates that: **"Employees and those in charge of a public service do not testify, even after leaving work, about the information that may have come to their knowledge during the course of their work, which has not been published by legal means and has not been authorized by the competent authority to broadcast it. However, this authority may authorize them to testify at the request of the court or one of the litigants" (**[438]

Article 66 also stipulates that: "**A lawyer, agent, doctor, or any other professional who learns of an incident or information in the course of their work is prohibited from disclosing it, even after their service ends or their role ceases, unless revealing it is necessary to report the commission of a felony or misdemeanor.**

However, the individuals mentioned above are required to testify about the incident or information if requested by their family members, as long as this does not violate the provisions of their respective laws." ([439]

Article 65 of the Lawyers Law stipulates that: "**A lawyer shall refrain from giving testimony about facts or information that he has learned through his profession if requested to do so by the person who informed him, unless it is mentioned to him with the intention of committing a felony or a misdemeanor**" ([440]

However, the Court of Cassation stipulated for the invalidity of the testimony of the defendant's lawyer against his client that his statements in the same lawsuit before the court or in a lawsuit related to it, but if the lawyer is an agent for the appellant in a lawsuit other than the lawsuit in which the defendant is being tried, this restriction has no place, it ruled that: [**It is decided that, although the court may not rely on any of the statements of the lawyer in convicting the accused, otherwise its judgment is invalid because it is based on invalid evidence derived from the statements of his lawyer, but the condition of this invalidity is that what the judgment was based on is derived from the statements of the lawyer in the same lawsuit or in a lawsuit related to it on the basis of what is indicated in Article 32 of the Penal Code. However, if the lawyer is an agent for the appellant in a lawsuit other than the lawsuit in which the accused is being tried, this restriction has no place, and it was established from the records of the trial sessions that the said lawyer was not the defender of the appellant in the present lawsuit and therefore did not make statements in it, it can be said that the contested judgment was relied**

([438]) Article 65 of the Law of Evidence in Civil and Commercial Matters.
([439]) Article 66 of the Law of Evidence in Civil and Commercial Matters.
([440]) Article 65 of the Advocacy Law.

upon in his judgment. Conviction and therefore what the appellant raises in this regard is not valid] ([441].

It ruled that: [**It is established that Article 65 of the Advocacy Law stipulates that "the lawyer shall refrain from testifying about the facts or information that he has learned through his profession if requested to do so by the person who informed him of it, unless he mentions it to him with the intention of committing a felony or a misdemeanor", which is consistent with what is stipulated in Article 66 of Law 25 of 1968 promulgating the Evidence Law, which states that the lawyer must testify about the facts that he saw or heard when asked to do so by those who captured it, but he shall refrain from disclosing without the consent of his client what he may have informed him about because of his profession, and when this is so, and it is established from the minutes of the trial session and the impugned judgment records that the lawyer who testified with his knowledge and contacted hearing about an incident related to the lawsuit at the request of the civil rights claimants and without objection from the appellant defendant, his testimony is free of invalidity and the judgment is advised to rely on it.**] ([442]

It also ruled: [**The general principle regarding the giving of testimony before the judiciary is that it is a duty necessary for uncovering the truth in disputes and for proving or disproving accusations. A witness is required to provide all the information they know and cannot withhold anything, except in special circumstances outlined by law. One such exception is the prohibition against disclosing professional secrets, as stated in Article 207 of the Code of Procedure, unless the individual being questioned explicitly requests it. In this case, the witness is obligated to testify in accordance with Articles 207 and 208 of the Code of Procedure. The law indicates that the prohibition against disclosure is not absolute. Modern legislation tends to prioritize the public interest in uncovering the truth, especially when it concerns the welfare of society. For instance, French legislation added a second paragraph to Article 378 of the French Penal Code through a Decree-Law on July 29, 1939, allowing doctors and other professionals to testify about secrets in abortion cases without facing punishment. Similarly, Article 622 of the Italian Penal Code mandates that professional secrecy should not be disclosed, though there are legitimate justifications for breaking this rule. Furthermore, the final paragraph of Article 321 of the Swiss Law enacted on December 21, 1937, states that the prohibition on revealing professional secrets does not relieve professionals from their**

([441]) Appeal No. 6067 of 79 S issued on December 16, 2009 (unpublished).
([442]) Appeal No. 69622 of 74 S issued at the 22nd session of October 2012 and published in the letter of the Technical Office No. 63 page No. 558 rule No. 97.

obligation to testify before the judiciary. This principle was established when Article 310 of the Penal Code was drafted, which specifically addressed groups such as doctors, surgeons, pharmacists, midwives, and others, and outlined the situations in which they could be prohibited from revealing secrets entrusted to them due to the nature of their work. However, this exception should not be broadly expanded to include other employees, such as servants or clerks, who do not possess the same professional obligations, as they are not required to be privy to acts that violate the law.] [443]

2 - 3 - 11 Hearing the testimony of the civil rights plaintiff

The investigator may call the civil rights plaintiff to testify and administer an oath ([444]).

There is no legal objection that prevents the victim, even if he does not claim to be a civilian, from being a witness and taking the oath. He is not an opponent of the accused and is not a party to the criminal case. He may be the most important witness in it, and there is no objection to the court accepting his testimony and then assessing it for what it is worth and relying on it in forming its belief ([445]).

It is clear from the text of Article 288 of the Code of Criminal Procedure that hearing the statements of the civil rights plaintiff is not a duty of the investigator. The Court of Cassation ruled that the civil rights plaintiff hears as a witness and takes an oath. If the plaintiff does not request to hear the testimony of the civil rights plaintiff in accordance with the provision of this article, he may not - afterwards - complain to the court that it did not carry out this procedure, which he did not request from it ([446]).

The plaintiff swore the oath as a guarantee for the defendant against them. Therefore, if the civil rights plaintiff did not take the oath and the court did not accept their testimony against the defendant, they cannot later challenge the proceedings for not taking the oath ([447]).

([443]) Appeal No. 884 of 22 S issued in the session of July 2, 1953 and published in the third part of the book of the Technical Office No. 4 page No. 1064 rule No. 370.

([444]) Articles 116 and 288 of the Criminal Procedure Code, and Article 528 of the Judicial Instructions of the Public Prosecution.

([445]) Appeal No. 5587 of 80 S issued at the session of January 17, 2011 (unpublished), Appeal No. 1350 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 90, rule No. 22, Appeal No. 145 of 42 S issued at the session of December 24, 1972 and published in the third part of the Technical Office's letter No. 23, page No. 1431, rule No. 322, Appeal No. 192 of 7 S issued at the session of December 21, 1931 and published in the set of legal rules, book IV, part I, page No. 24, rule No. 24.

([446]) Appeal No. 18327 of 62 S issued at the 27th session of May 1997 and published in Part I of Technical Office Book No. 48 Page 663 Rule No. 99, Appeal No. 589 of 59 S issued at the 27th session of December 1990 and published in Part I of Technical Office Book No. 41 Page 1114 Rule No. 201, Appeal No. 1627 of 50 S issued at the 8th session of January 1981 and published in Part I of Technical Office Book No. 32 Page 32 Rule No. 2, Appeal No. 826 of 48 S issued at the 6th session of February 1978 and published in Part I of Technical Office Book No. 29 Page 136 Rule No. 25, Appeal No. 149 of 37 S issued at the 27th session of March 1967 and published in Part I of Technical Office Book No. 18 Page 449 Rule No. 85.

([447]) Appeal No. 79 of 23rd S issued on March 30, 1953 and published in the second part of the Technical Office's letter No. 4, page No. 662, rule No. 240.

2 - 3 - 12 Appealing the judgments issued against witnesses

It is permitted to contest the judgments issued against witnesses by the investigating judge for refraining from attending, refraining from testifying, or taking the oath, taking into account the rules and conditions prescribed by the law ([448]).

The convict may appeal the judgment issued against him due to the invalidity of the excuse of the disease that prevented him from attending, by way of objection or appeal ([449]).

2 - 3 - 13 Witness Expenses

At the request of witnesses, the investigator estimates the expenses and compensation they are entitled to because of their attendance to testify ([450]).

2 - 3 - 14 Taking statements of one accused against another

The permissibility of taking the statements of one accused over another has been eliminated. It is scheduled that the statements of one accused over another in fact are a testimony that justifies the court to rely on them in conviction when it has trusted and relieved it, and the trial court may take the statements of one accused against himself and against other defendants when satisfied with their truth and conformity with reality ([451]).

([448]) Articles 117, 119, and 120 of the Criminal Procedure Code.
([449]) Article 121 of the Criminal Procedure Code.
([450]) Articles 122 and 208 of the Criminal Procedure Code.
([451]) Appeal No. 48600 of 85 S issued at the hearing of December 21, 2016 (unpublished), Appeal No. 37284 of 85 S issued at the hearing of November 28, 2016 and published in the Technical Office's letter No. 67, page No. 864, rule No. 106, Appeal No. 16483 of 85 S issued at the hearing of February 6, 2016 (unpublished), Appeal No. 2774 of 82 S issued at the hearing of October 22, 2012 (unpublished), Appeal No. 9361 of 79 S issued at the hearing of September 19, 2011 (Unpublished), Appeal No. 1593 of 77 S issued at the hearing of March 8, 2009 (Unpublished), Appeal No. 76701 of 75 S issued at the hearing of November 26, 2006 and published in Technical Office Letter No. 57, page No. 913, rule No. 102, Appeal No. 50614 of 74 S issued at the hearing of December 7, 2005 and published in Technical Office Letter No. 56, page No. 691, rule No. 105, Appeal No. 580 of 66 S issued at the hearing of October 5, 2005 and published in Technical Office Letter No. 56, page No. 468 Rule No. 70, Appeal No. 37227 of 73 S issued at the hearing of 16 December 2004 and published in the Technical Office Letter No. 55 Page No. 824 Rule No. 124, Appeal No. 29339 of 70 S issued at the hearing of 17 January 2002 and published in the Technical Office Letter No. 53 Page No. 125 Rule No. 23, Appeal No. 26293 of 67 S issued at the hearing of 13 March 2000 and published in the Technical Office Letter No. 51 Page No. 288 Rule No. 53, Appeal No. 24806 of 67 S issued at the 6th session of February 2000 and published in Technical Office Letter No. 51 Page 117 Rule No. 21, Appeal No. 19120 of 66 S issued at the 1st session of December 1998 and published in Part I of Technical Office Letter No. 49 Page 1353 Rule No. 194, Appeal No. 17106 of 64 S issued at the 25th session of September 1996 and published in Part I of Technical Office Letter No. 47 Page 878 Rule No. 127, Appeal No. 25471 of 62 S issued at the 12th session of December For the year 1994, published in Part I of Technical Office Letter No. 45, Page No. 1129, Rule No. 178, Appeal No. 12752 of 62 S issued at the hearing of June 2, 1994, published in Part I of Technical Office Letter No. 45, Page No. 696, Rule No. 106, Appeal No. 4207 of 61 S issued at the hearing of December 21, 1992, published in Part I of Technical Office Letter No. 43, Page No. 1181, Rule No. 185, 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. 1425 of 57 S issued at the session of October 21, 1987 and published in the second part of the Technical Office letter No. 38 page 829 rule No. 150, Appeal No. 543 of 57 S issued at the session of May 12, 1987 and published in the first part of the Technical Office letter No. 38 page 677 rule No. 118, Appeal No. 7098 of 55 S issued at the session of March 18, 1986 and published In the first part of Technical Office Letter No. 37 Page No. 419 Rule No. 86, Appeal No. 1011 of 54 S issued at the 26th session of November 1984 and published in the first part of Technical Office Letter No. 35 Page No. 829 Rule No. 187, Appeal No. 2612 of 50 S issued at the 6th session of April 1981 and published in the first part of Technical Office Letter No. 32 Page No. 334 Rule No. 59, Appeal No. 356 For the year 44 S issued in the session of April 22, 1974 and published in the first part of the Technical Office letter No. 25, page No. 425, rule No. 91, Appeal No. 13 of 43 S issued in the session of March 4, 1973 and published in the first part of the Technical Office letter No. 24, page No. 284, rule No. 62, Appeal No. 391 of 36 S issued in the session of June

The trial court may consider the statements of one accused person against another, even if those statements are included in the police report, as long as the court is confident in their truthfulness and accuracy, even if the statements are later retracted during subsequent stages of the investigation. ([452])

It is incorrect to claim that the statements of one accused person against another can only be considered if they are supported by evidence or presumptions. The law does not prevent the court from accepting the statements of another accused person if it finds them credible, even if there is no additional evidence to corroborate them. To suggest otherwise undermines the judge's authority to assess the evidence and exercise their discretion in forming a conviction based on any evidence presented to them. ([453])

2 - 4 Assigning the accused to attend

2 - 4 - 1 The authority of the investigator to order the accused to appear

The investigator may, as appropriate in each case, issue a warrant for the accused's appearance or for their arrest and detention ([454]).

The order issued by the prosecution for the accused to appear on a specified date does not grant permission to use force to compel their attendance. However, if the accused fails to appear without a valid excuse, the prosecution may issue an arrest warrant to bring them in, even if the case does not involve a situation where the accused could be held in custody ([455]).

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

7, 1966 and published in the second part of the Technical Office letter No. 17, page No. 771, rule No. 144, Appeal No. 9 of 35 S issued in the session of May 3, 1965 and published in the second part of Technical Office Letter No. 16 Page No. 415 Rule No. 85, Appeal No. 987 of 33 S issued at the 9th session of December 1963 and published in Part III of Technical Office Letter No. 14 Page No. 894 Rule No. 163, Appeal No. 15 of 15 S issued at the 15th session of January 1945 and published in Technical Office Letter No. 6P Part No. 1 Page No. 593 Rule No. 455.

([452]) Appeal No. 25900 of 66 S issued at the session of May 21, 2006 (unpublished), Appeal No. 28073 of 75 S issued at the session of February 27, 2006 (unpublished), Appeal No. 7897 of 60 S issued at the session of October 22, 1991 and published in the first part of the Technical Office book No. 42 Page 1017 Rule No. 141, Appeal No. 176 of 47 S issued at the session of June 13, 1977 and published in the first part of the Technical Office book No. 28 Page 759 Rule No. 159, Appeal No. 1041 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 1 Rule No. 1, Appeal No. 335 of 39 S issued at the session of April 7, 1969 and published in the second part of the Technical Office book No. 20 Page 476 Rule No. 100.

([453]) Appeal No. 83 of 24 s issued at the session of March 11, 1954 and published in the second part of the book of the Technical Office No. 5 page No. 415 rule No. 139, Appeal No. 16 of 14 s issued at the session of January 10, 1944 and published in the first part of the set of legal rules No. 6 page No. 375 rule No. 285.

([454]) Articles 126 and 199 of the Criminal Procedure Code.

([455]) Article 370 of the Judicial Instructions of the Public Prosecution.

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 ([456].

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 their arrest and detention, depending on the circumstances. The decision to issue such a warrant is at the discretion of the investigator, and the law does not require the crime to be a flagrant offense in order for this order to be issued. ([457]

2 - 4 - 2 The data that must be available in the order to summon the accused to attend

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. In addition, the order for the presence of the accused includes assigning him to attend on a specific date ([458].

2 - 4 - 3 Announcing orders to the accused

The orders shall be delivered to the accused by a bailiff or a member of the public authority, and a copy of the order shall be provided to him. ([459]

2 - 4 - 4 Enforcement of orders issued by the investigating judge

The orders issued by the investigating judge shall be effective in all Egyptian territories ([460].

2 - 5 Ordering the arrest and arrest of the accused

2 - 5 - 1 The authority 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**

([456]) 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.
([457]) Appeal No. 293 of 82 S issued at the 24th session of October 2012 (unpublished).
([458]) Article 127 of the Criminal Procedure Law.
([459]) Article 128 of the Criminal Procedure Law.
([460]) Article 129 of the Criminal Procedure Law.

of the legally competent authorities. He must also be treated in a manner that preserves human dignity, and it is not permissible to harm him physically or morally" ([461].

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.

Prosecutors, in line with national laws, should carefully consider the option of dismissing charges or halting legal proceedings, either with or without conditions, and of redirecting criminal cases away from the formal justice system, while fully respecting the rights of both suspects and victims. In this regard, States are encouraged to explore alternatives to prosecution, not only to reduce the strain on the courts but also to prevent individuals from facing the negative consequences of pretrial detention, formal charges, convictions, and the harmful impacts of imprisonment.

In countries where prosecutors have discretion over whether to charge a juvenile, careful attention should be given to the seriousness of the offense, the need to protect society, and the juvenile's character and background. When making this decision, prosecutors should specifically consider alternatives to prosecution provided by juvenile justice laws and procedures. Prosecutors should make every effort to avoid taking legal action against juveniles unless it is absolutely necessary ([462].

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 ([463].

([461]) 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.
([462]) Guidelines on the Role of Prosecutors, paras. 18, 19.
([463]) Articles No. 126, 199 of the Criminal Procedure Code.

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 ([464]).

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 ([465]).

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 ([466]).

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 ([467]).

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:

1. 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.

2- If the accused does not attend after being assigned to attend without an acceptable excuse.

3- If it is feared that the accused will escape.

4- If he does not have a known place of residence.

([464]) Article 730 of the Judicial Instructions of the Public Prosecution.
([465]) 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).
([466]) 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.
([467]) 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.

5-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. [468]

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 ([469].

Every accused person who is arrested must be treated or his freedom restricted in any way that preserves human dignity, and it is not permissible to harm him physically or morally, and he may not be detained in places other than those subject to the laws issued to regulate prisons ([470].

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 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. These procedures shall be recorded in the investigation report ([471].

If the prosecution issues an arrest warrant or orders pretrial detention for a suspect who is present during the investigation, the investigation clerk must promptly execute the order. This includes preparing one original and two copies of the form designated for this purpose, completing all necessary details such as the charges, applicable legal provisions, the suspect's full name, address, age, occupation, and the date of the detention order. The clerk must also affix the official seal of the Republic on the form. Afterward, the clerk will present the form to the prosecuting officer for their signature, along with two copies, and then send the order, along with one copy, to the relevant authority for implementation. The second copy must be kept in the case file. The clerk is responsible for following up to ensure the original form is returned to

([468]) Article 371 of the Judicial Instructions of the Public Prosecution.
([469]) Article 372 of the Judicial Instructions of the Public Prosecution.
([470]) Article 374 of the Judicial Instructions of the Public Prosecution.
([471]) Article 376 of the Judicial Instructions of the Public Prosecution.

the prosecution from the detention facility, signed, and then added to the case file after verifying it against the copy kept in the file.

Where the investigation clerk records 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 defendants, witnesses, victims and litigants in the civil prosecution and its data, if any, as well as the dates of arrest of the defendants, 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 ([472].

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. [473]

2 - 5 - 2 Data to be provided in arrest warrants and subpoenas

The arrest order for an absent accused person must contain the individual's full name, surname, occupation, residence, the charge they are facing, the date of the order, the signature of the issuing authority, and the official seal. The order must also instruct the relevant public authority to arrest the accused and present them before the judge if they refuse to appear voluntarily ([474].

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 ([475].

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[476].

([472]) Article 377 of the Judicial Instructions of the Public Prosecution, and Articles 80 and 114 of the Written, Financial and Administrative Instructions of the Public Prosecution.
([473]) Article 377 of the Judicial Instructions of the Public Prosecution, and Articles 80 and 114 of the Written, Financial and Administrative Instructions of the Public Prosecution.
([474]) Article 127 of the Criminal Procedure Code, and Article 375 of the Judicial Instructions of the Public Prosecution.
([475]) Article 1394 of the Judicial Instructions of the Public Prosecution.
([476]) 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.

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 ([477].

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 ([478].

The request from the Public Prosecution to the police to search for and arrest an unidentified offender does not constitute a valid arrest warrant, as Article 127 of the Criminal Procedure Code clearly states that the person subject to an arrest warrant must be identified, and the warrant must be executed by bringing the individual from their legal place of residence. ([479]

2 - 5 - 3 Informing the accused of the arrest warrant and the habeas corpus order

If the investigating judge issues an order without directly facing the parties involved, the Public Prosecution is responsible for notifying the accused within 24 hours of its issuance. The notification must be carried out by the bailiffs, although a member of the public authority may also serve the notice. A copy of [480]the order must be provided to the accused.

([477]) 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).

([478]) 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.

([479]) 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.

([480]) 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.

2 - 5 - 4 Enforcement of orders issued by the investigating judge

The orders issued by the investigating judge shall be effective in all Egyptian territories ([481]).

2 - 5 - 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 ([482]).

If the investigating judge is conducting the investigation and the accused is arrested by a different prosecuting authority, the prosecution handling the arrest must first verify the accused's identity, inform them of the charges against them, and record their statements. The accused, along with the record of their statements, must then be sent to the prosecution overseeing the investigation, so that the record can be submitted to the judge ([483]).

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 ([484]).

The Court of Cassation ruled that: [**The Public Prosecution is The Public Prosecution is unified and functions in a complementary manner, and Article 132 does not impose any penalties for its violation. Furthermore, when the competent prosecutor initiates investigative procedures within their designated jurisdiction, and later the circumstances require extending the investigation beyond that jurisdiction, the procedures carried out by the prosecutor or their delegate remains valid and effective.**] ([485])

([481]) 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.

([482]) Articles 132, 199 of the Criminal Procedure Code, and Article 379 of the Judicial Instructions of the Public Prosecution.

([483]) Article 645 of the Judicial Instructions of the Public Prosecution.

([484]) Articles 133, 199 of the Criminal Procedure Code.

([485]) Appeal No. 8352 of 88 S issued on 5 May 2019 (unpublished).

The Court of Cassation ruled that since: [**The court addressed the appellant's defense, which claimed that the arresting officer had exceeded his jurisdiction. The court stated: "Regarding the claim of invalidity of the arrest due to it taking place outside the officer's jurisdiction, Article 132 of the Criminal Procedure Code provides that if the accused is arrested outside the jurisdiction where the investigation is taking place, they must be sent to the Public Prosecution of the area where the arrest occurred. Therefore, this provision is procedural and does not render the arrest invalid if the arrest order was issued by the Public Prosecution in accordance with Article 126 of the same law." Furthermore, the court noted that the investigations and case records showed that the Major Investigator at Al-Khanka Police Station drafted the investigation report on 28/11/2009 at 10:00 AM and submitted it to the Public Prosecution, which issued its order to seize and bring the accused later that same day at 2:52 PM. The officer then arrested the accused during an ambush, not at her residence as initially indicated by the investigation. Thus, the court concluded that the appellant's argument was unfounded and should be rejected. The court's response to the appellant's defense was sufficient, and the dismissal of the claim was correct, making the appellant's argument on this point invalid.**] ([486])

2 - 5 - 6 Exact Order Duration 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 ([487]).

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 ([488]).

The Court of Cassation ruled that once the accused is referred to trial, the authority of the investigating body is nullified, and any arrest warrant that was not executed becomes void. If a judicial officer proceeds with executing the arrest warrant after it has been invalidated, the arrest is considered void, along with any evidence obtained from it, including the testimony of the person arrested. This nullity cannot be rectified by the good faith or belief of the arrestee that the order remained valid: [**Articles 40, 126, and 131 of the Code of Criminal Procedure clarify that the purpose of an arrest warrant is to allow the investigator to question the**

([486]) Appeal No. 8352 of 88 S issued on 5 May 2019 (unpublished).
([487]) Article 139 of the Criminal Procedure Law.
([488]) 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.

accused or confront them with other accused persons or witnesses. Once the case is referred to trial, however, the role of the investigating authority is terminated, and its jurisdiction is nullified. As a result, the arrest warrant issued before the trial is rendered void and no longer serves its intended purpose. If a judicial officer proceeds to execute this expired warrant, the arrest is considered invalid, and any evidence or testimony obtained from it is also invalid. The fact that the judicial officer acted in good faith, believing the arrest warrant was still valid, does not legitimize the action. While Article 63 of the Penal Code may exempt public officials from liability if they act with good intentions and within their legal authority, this does not validate an unlawful procedure or rectify the mistake after the fact. For a judgment to be valid, it is not enough for the evidence to be truthful if it was obtained through an illegal act.] (489)

2 - 5 - 7 Interrogation of the accused immediately after arrest

If an investigation is carried out under the supervision of the investigating judge, the judge must promptly interrogate the arrested accused. If this is not immediately possible, the accused must be held in detention until they can be questioned, but the detention cannot exceed twenty-four hours. Once this period has expired, the prison warden must transfer the accused to the Public Prosecution, which must then promptly request the investigating judge to conduct the interrogation. If necessary, the request can also be made by the magistrate, the president of the court, or any other judge designated by the president of the court. If none of these steps are taken, the accused must be released.

If the investigation is conducted under the supervision of the Public Prosecution, it is required to immediately inform the arrested individual of the reasons for their arrest. The Public Prosecution must also ensure that the individual can communicate with anyone they deem appropriate to inform them of the situation and assist them in obtaining legal representation. Additionally, the arrested person must be promptly notified of the charges brought against them.

Seizure and habeas corpus orders may not be executed after the lapse of six months unless approved by the prosecution for another period (490).

(489) 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.
(490) Articles No. 131, 199 of the Criminal Procedure Code, and Article No. 373 of the Judicial Instructions of the Public Prosecution.

2 - 5 - 8 Placing the accused in the reform center in case he 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, 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 ([491].

Under Egyptian law, the only authorized places of detention are police stations and correctional facilities, both of which are subject to unannounced inspections by the prosecution. The Egyptian Constitution prohibits the detention or imprisonment of any individual outside these designated locations. It also mandates that detention facilities must be humane and maintain a healthy environment, prohibiting anything that could undermine human dignity or jeopardize the detainee's health. This principle is reinforced by the Code of Criminal Procedure, which states that no person may be held in detention except in officially designated prisons. Furthermore, the law prohibits prison wardens from accepting detainees without an order from the competent authority, and they are not allowed to keep a detainee beyond the period specified in the detention order.

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 prisons and places indicated in the Egyptian Law on the Organization of Correction and Community Rehabilitation Centers ([492].

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 for the establishment by a decision of the President of the Republic, in which the Minister of Interior issues a decision specifying the bodies in which public reform and rehabilitation centers and geographical reform centers and their respective departments are established. The legislator

([491]) Articles No. 131, 199 of the Criminal Procedure Code.
([492]) Article 91 bis of the Law on the Organization of Correction and Community Rehabilitation Centers, added by Law No. 57 of 1968.

also authorized the Minister of Interior to issue a decision specifying one of the places to place anyone who is detained, detained, detained, or deprived of his freedom in any way ([493].

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 considering that place as reform centers only. In this regard, the Court of Cassation ruled that the imprisonment of the accused in the Human Frogs Unit of the National Security Agency is valid, and the provisions contained in the Prisons Law apply to him, prior to the issuance of a decision by the Minister of Interior considering that place as[494] a prison.

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 International Convention for the Protection of All Persons from Enforced Disappearance also prohibited the detention of any person in an unknown place ([495].

The Convention defines enforced disappearance as "**The arrest, detention, abduction, or any other form of liberty deprivation carried out by state agents or by individuals or groups acting with the authorization, support, or consent of the state, coupled with a refusal to acknowledge the deprivation of liberty or a concealment of the person's fate or whereabouts, results in that individual being placed outside the protection of the law."** ([496]

The Declaration on the Protection of All Persons from Enforced Disappearance defines enforced disappearance as a crime against human dignity and a severe violation of the human rights and fundamental freedoms outlined in the Universal Declaration of Human Rights. It deprives the affected person of legal protection and causes immense suffering for both the individual and their family. This act contravenes international law, which guarantees the right to liberty and security, the right not to be subjected to torture or [497]cruel, inhuman, or degrading treatment, and the right to life, or it poses a serious threat to their life.

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

([493]) Article No. 1 of the Law on the Organization of Correction and Community Rehabilitation Centers, 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 - amended by Law No. 14 of 2022.

([494]) 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, rule No. 94, page 735.

The [495]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.

([496]) Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

([497]) Article 17 of the Declaration on the Protection of All Persons from Enforced Disappearance.

as the perpetrator continues to conceal the fate of the victim of disappearance and the place of his disappearance. ([498])

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. ([499])

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. ([500])

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. ([501])

Each State is required to provide access to any individual with a legitimate interest in obtaining information about the authority responsible for depriving a person of their liberty, including details such as the date, time, and place of detention, as well as entry into the detention facility. This includes information on the authority overseeing the deprivation of liberty, the location of the detained person (including if they are transferred to another facility), the authority responsible for their transfer, and the date, time, and place of their release. States must also provide information on the detained person's health status, the circumstances and causes of death (if applicable), and the location of the deceased's remains. Additionally, States must

([498]) Article 17 of the Declaration on the Protection of All Persons from Enforced Disappearance.
([499]) Articles 4, 6 and 18 of the Declaration on the Protection of All Persons from Enforced Disappearance.
([500]) Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.
([501]) Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance.

protect individuals seeking such information from ill-treatment, intimidation, or punishment. The right to obtain information regarding the detained person cannot be restricted, and there must be a prompt and effective judicial remedy available to ensure access to all such information as soon as possible. (502)

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 release. (503)

The SPT has determined that individuals, who are detained in secret, with no one aware of their whereabouts, face a higher risk of ill-treatment. The right to notify someone outside of the detention facility about the individual's deprivation of liberty serves as an important safeguard against abuse. The possibility of a third party being informed can act as a deterrent to potential ill-treatment, as those responsible may be aware that the detainee's condition is being monitored by someone outside the facility. As a result, the SPT recommended that authorities ensure the detainee's right to inform a family member or other contact of their detention is upheld within 24 hours. Additionally, the SPT advised that detainees be regularly reminded of this right and that a standard form be used to document the name of the person to be notified. Police officials should be trained to inform detainees of this right and ensure it is implemented by notifying the designated contact. (504)

2-6 Interrogation and Confrontation

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.

(502) 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.
(503) Article 22 of the International Convention for the Protection of All Persons from Enforced Disappearance.
(504) (CAT/OP/MDV/1, 26 February 2009, 101 - 102).

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. ([505])

Detailed information about the nature and cause of the charges must be given "urgently" ([506]).

The Human Rights Committee, in interpreting the obligations of governments under article 14 (3) (A) of the International Covenant, has emphasized that individuals should be promptly informed once they are formally charged with a criminal offense under national law, or when they are publicly identified as a suspect. ([507])

In a case where an individual was initially arrested for fraud, only to be informed over a month later that he was a suspect in the murder of three people, and then formally charged with murder more than six weeks after the arrest, the Human Rights Committee determined that his rights under Article 14 (3) had been violated. ([508])

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. ([509])

Failure to promptly inform the accused about changes to the charges against them can also violate their rights. The accused must be given sufficient time and resources to prepare a defense against the revised charges. In a decision regarding a request to amend the indictment,

([505]) 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

([506]) 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.

([507]) General Comment 32 of the Human Rights Committee, 31.

([508]) Kurbanov v. Tajikistan, Human Rights Commission,. UN Doc.3/ 7 (2003) CCPR/C/79/D/1096/2002.

([509]) Lopez-Alvarez v. Honduras, Inter-American Court 149 (2006).

the Special Tribunal for Rwanda stated that the key consideration is whether the amendment would unfairly disadvantage the accused in their defense. It also highlighted that the longer the amendment is delayed, the more likely it is to infringe on the accused's rights [510]

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. [511]

Information regarding the charges must be provided in a language that the accused can understand ([512].

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 ([513].

The American Committee emphasized the vulnerability of individuals undergoing legal proceedings in a foreign country. It stated that, to ensure the individual fully understands the charges and their rights within the legal process, it is essential to translate and interpret all

Musema [510]v. The Prosecution (ICTR-96-13-A), ICTR Appeals Chamber (16) Nov. 343 (2001).
([511]) Belissier and Sassi v. France (25444) / 94), Grand Chamber of the European Court (63- 42 (1999).
([512]) 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.
([513]) See Hermé v. Italy (18114) / 02), Grand Chamber of the European Court 68 (2006).

relevant legal concepts into the person's native language. Furthermore, the committee argued that the state should, if needed, cover the costs for these services. (514)

This right also requires the provision of services or facilities necessary to facilitate accused persons with disabilities and children's access to such information (515).

2 - 6 - 1 Proving the personality of the accused and informing him of the charge against him

Anyone who is arrested or detained must be informed of their rights before any questioning begins, while they are deprived of their liberty. This includes the right to be promptly notified of the reasons for their arrest or detention, both the factual and legal grounds, and the right to challenge their detention in court and access appropriate remedies. Individuals arrested or detained on criminal charges have the right to immediate information about those charges. It is acknowledged that if individuals are unaware of their rights, their ability to exercise them effectively is compromised. The right to be informed of these rights is essential not only for preventing ill-treatment but also as a fundamental condition for the proper exercise of rights related to a fair trial (516).

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 (517).

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 (518).

The Special Rapporteur on torture acknowledges that the scope of certain procedural rights may vary depending on the legal status of the person being questioned and the nature of the

(514) Report on Terrorism and Human Rights, Inter-American Commission (2002), Section 3(h)400 (3).
(515) Article 13 of the Convention on the Rights of Persons with Disabilities; see Principle 10 of the Principles of Legal Aid.
(516) (A/71/298, 5 August 2016, 64), (see Body of Principles) (see General Comment No. 35) (CAT/OP/MDV/1, 26 February 2009, 96).
(517) (A/71/298, 5 August 2016, 65), (see Rome Statute; Article 55; and EU Directive 2012/13/EU).
(518) (A/71/298 ،5 August 2016 ،66) ،(WGAD/CRP.1/2015).

interrogation. Therefore, it is crucial to provide clear and accurate information about the individual's status and rights before the interrogation begins. Authorities are prohibited from questioning individuals as "witnesses" or framing their questioning as "information-gathering conversations" in order to bypass the legal protections afforded to suspects. Anyone who is legally required to stay at an institution for questioning should be granted the same rights as a suspect. If a person is reclassified as a suspect during interrogation, the questioning must be halted and cannot resume until the person has been informed of the change in status, been fully briefed on their rights, and is able to exercise those rights fully. ([519])

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 ([520].

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

([519]) (A/71/298, 5 August 2016, 67), (EU Directive 2013/48/EU).

CPT [520]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.

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. ([521])

No human being shall be tortured, treated or punished in a cruel, inhuman or degrading manner ([522]).

States should regularly and systematically review these rules and interrogation methods ([523]).

The rules should cover, among other things: informing the individual of the identities (names or identification numbers) of everyone present during the investigation; setting limits on the maximum duration of both the overall interrogation process and individual interrogation sessions; specifying mandatory breaks between sessions and pauses during each session; designating the locations where interrogations may occur; and addressing the interrogation of individuals who are under the influence of drugs or alcohol. ([524])

The identity of each person conducting the investigation should be known ([525]).

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 ([526]).

The Convention against Torture requires such training ([527]).

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 ([528]).

Every individual deprived of their liberty must be treated humanely, with respect for their inherent dignity. Except in exceptional cases, accused persons should be separated from convicted individuals, and treated in accordance with their status as unconvicted. The separation of juvenile offenders from adults and ensuring their cases are promptly referred to the judiciary for adjudication must also be considered. The prison system should prioritize the

([521]) (A/HRC/RES/46/15, 1 April 2021, (3-5), (A/HRC/46/L.27, 15 March 2021, (3-5).
([522]) Article 5 of the Universal Declaration of Human Rights, and Article 7 of the International Covenant on Civil and Political Rights.
([523]) Article 11 of the Convention against Torture.
Committee [524]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 [525]4(4) of the Council of Europe Guidelines on the Eradication of Impunity.
Resolution [526]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).
([527]) Article 10 of the Convention against Torture.
([528]) 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.

reform and rehabilitation of prisoners, ensuring that juvenile offenders are separated from adults and receive treatment appropriate to their age and legal status. ([529])

Many international standards contain two separate provisions on the right to information about the charges against him, which vary in their purpose, the persons to whom they apply, and the level of detail required. Provisions such as those contained in article 9 (2) of the International Covenant require States to inform any detained person promptly of the charges against him in sufficient detail to allow him to challenge his detention and begin preparing his defense. In contrast, provisions such as article 14 (3) (a) of the International Covenant are applicable 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 is charged ("the nature of the charge") and the alleged material facts that form the basis of the accusation ("the reason"). Information must be sufficient and detailed to allow him to prepare his defense). [530]

The Special Tribunal for the former Yugoslavia clarified that when the prosecution claims the accused personally committed criminal acts, it must present detailed material facts, including information about the victim's identity, the time and location of the events, and the methods used to carry out the acts. The Tribunal further emphasized that for large-scale crimes, such as persecution, it is "unacceptable" for the prosecution to omit key details of the main allegations in the indictment in order to manipulate the case to the disadvantage of the accused as the trial progresses and evidence unfolds. However, it acknowledged that if the evidence develops in an unexpected way, it might be necessary to amend the indictment and, in some cases, exclude certain evidence if it falls outside the scope of the indictment." ([531].

Information regarding the charges should be provided in writing; if presented orally, it should be confirmed in written form at a later date ([532].

A formal obligation should be imposed to inform a relative or other 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

([529]) Article 10 of the International Covenant on Civil and Political Rights.
([530]) 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)..
([531]) Prosecution v. Kupreškić et al., (IT-95-16-A), ICTY Appeals Chamber (23) Oct. 88- 124 (2001) (excerpt from 92).
([532]) 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 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.

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 in order 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. ([533])

In Egypt, when the accused is present for the first time in the investigation, the investigator must verify his identity and then inform him of the charge against him and record his statements in the record ([534]).

In dealing with the accused, the investigator takes into account respect for his dignity and humanity, by distancing himself from methods and phrases that include an affront to human dignity, and it is not permissible to resort to torture in order to obtain a confession to the perpetration of the incident being investigated ([535]).

The law does not require that the statements of the accused be heard or interrogated at the stage of the preliminary investigation unless he is arrested pursuant to the order of the judicial officer or when he appears for the first time in the investigation or before issuing a pre-trial detention order or before considering this detention ([536]).

It is not permissible for the investigator to promise the accused something such as reducing his punishment, or to try to entrap him by means of questions directed to him, or by misrepresenting incorrect facts such as the allegation that another accused confessed to him, or the testimony of others against him, until he confesses to committing the crime ([537]).

This means that when the accused is present for the first time in the investigation, the investigator must verify his identity and then inform him of the charge against him and prove his statements in the record. The investigator is the one who verifies the personality of the

([533]) (A/HRC/28/68 ،75).
([534]) Article 123 of the Criminal Procedure Law.
([535]) Article 160 of the Judicial Instructions of the Public Prosecution.
([536]) Article 782 of the Judicial Instructions of the Public Prosecution.
([537]) Article 161 of the Judicial Instructions of the Public Prosecution.

accused. The law did not impose a duty on the investigator to inform the accused about his personality, nor did he arrange for nullity because he omitted to do so ([538]).

In a separate ruling, the Court of Cassation determined that the interrogation of the accused was invalid due to irregular procedures. Specifically, it found that the Public Prosecution's decision to conduct the investigation at the headquarters of the Administrative Control Authority—without informing the accused that the Public Prosecution was responsible for the investigation—was improper. Additionally, the accused was left for extended hours at the Administrative Control Authority's headquarters, leading to exhaustion to the point where the investigator noted the accused's fatigue. This conduct was deemed to render the interrogation 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 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**

([538]) 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.

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] **(**[539].

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 ([540].

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 indicating his name, 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 takes the initiative to question him in detail, taking 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 turn to 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

([539]) 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.
([540]) Article 242 of the Judicial Instructions of the Public Prosecution.

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 if he has one. 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 based on the fact that the accused is imprisoned, as it is not difficult for him or his family to contact these witnesses. It shall be taken into account that the accused and witnesses confront each other regarding the differences in their statements. (541)

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 (542).

Prosecution members are responsible for scheduling the investigation sessions themselves, rather than delegating this task to clerks. They must take legal steps to ensure that witnesses attend on the scheduled days to prevent unnecessary delays. Witness statements should be heard promptly and confronted with any relevant information. If some witnesses attend while others do not, the statements of those present may be taken, provided it does not harm the investigation. Witnesses should not be asked to attend the investigation multiple times without a valid reason, and any postponement of the investigation must only occur for significant reasons and be done as quickly as possible, even if it falls on an official holiday, as long as it serves the interests of the investigation.

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

(541) Article 216 of the Judicial Instructions of the Public Prosecution.
(542) Article 243 of the Judicial Instructions of the Public Prosecution.

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[543] the prosecution.

2 - 6 - 2 Notifying the litigants of the day and place of initiating the investigation

The investigator must notify the litigants of the day on which the investigation begins and its place ([544]).

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 ([545]).

2 - 6 - 3 Confrontation of the accused with opponents and witnesses

The investigator must conduct the investigation against the litigants who want to attend, namely the accused, the victim, the civil rights claimant, 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 ([546]).

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

([543]) Article 247 of the Judicial Instructions of the Public Prosecution.
([544]) Article 225 of the Judicial Instructions of the Public Prosecution.
([545]) Article 207 of the Judicial Instructions of the Public Prosecution.
([546]) Article 223 of the Judicial Instructions of the Public Prosecution.

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[547].

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 express what helps to assess the validity of the documents submitted to it, in order to ensure the integrity of the judgment issued in it ([548].

2 - 6 - 4 Guarantees of the accused during interrogation and confrontation procedures

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: "**1. 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.**

2. Every person accused of a crime shall be presumed innocent until proven guilty by law.

3. Every person charged with a crime shall, while his case is under consideration, be entitled to equal enjoyment of the following minimum guarantees:

(A) To be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him;

([547]) Article 235 of the Judicial Instructions of the Public Prosecution.
([548]) Article 1391 of the Judicial Instructions of the Public Prosecution.

(B) To be given adequate time and facilities to prepare his defense and to communicate with an advocate assigned to him for his defense.

(C) To be tried without undue delay.

(D) The accused must be tried in their presence and allowed to defend themselves either personally or through a defense attorney of their choosing. They must be informed of their right to have a lawyer, and, when justice requires it, a judge-appointed attorney should be provided at no cost if the accused is unable to pay for their legal fees.

(E) To examine the witnesses against him or her and to secure the attendance and hearing of witnesses on his or her behalf under the same conditions as witnesses against him or her.

(D) To be provided free of charge with an interpreter if he does not understand or speak the language used in court.

(G) Not to be coerced to testify against himself or to confess guilt.

4. In the case of juveniles, procedures appropriate to their age and the need for rehabilitation shall be followed.

5. 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.

6. 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 shall 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.

7. 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 being guilty,

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:
«**1. 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.**

2. Every arrested person shall be informed of the reasons for his arrest and shall be promptly notified of the charges against him.

3. 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.

4. 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 if the illegality of this detention is proven.

5. Every person who is unlawfully arrested or detained shall have a necessary right to compensation. [549]

Judicial oversight of detention is a critical safeguard for individuals deprived of their liberty in connection with criminal charges. Those detained on criminal charges should not be held in facilities controlled by their interrogators for longer than the time necessary to conduct a judicial hearing and secure a pre-trial detention order. This period should never exceed 48 hours, except

([549]) (A/71/298 ،5 August 2016 ،60) ،(A/HRC/WGAD/2012/40)

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in rare and fully justified circumstances. After this, suspects must be transferred immediately to a pre-trial detention facility managed by a different authority, with no further contact allowed between them and interrogators or investigators unless supervised. As a best practice, States should ensure that detention and interrogation are handled by separate bodies under distinct chains of command to protect detainees from ill-treatment and reduce the risk of using detention conditions to pressure them during interrogation. All detainees must be properly registered at the time of their arrest, a public central detention record should be maintained, and the full sequence of their detention must be thoroughly documented. ([550])

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 ([551].

First: The right of the accused to silence

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 collecting 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 a presumption or evidence against him. This right allows the 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 was notified by the investigation authority that he is not obligated 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

[550](A/71/298, 5 August 2016, 62), (see general comment No. 35) (see A/68/295) (see A/HRC/13/39/Add.5).
([551]) (A/71/298 ،5 August 2016 63) ،(A/56/156).

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 during the interrogation stage and at trial is closely related to the principle of presumption of innocence. It is also an important guarantee of the right not to be forced to incriminate himself and during the investigation of the person 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 carried out by law enforcement officials. A number of national legal systems have included the right to remain silent in their legislation. This right is explicitly enshrined in the principles of fair trial in Africa, the Rome Statute, the rules of Yugoslavia and the rules of Rwanda ([552]).

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” ([553]).

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

Section N (6[552]) (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 [553]observations of the Human Rights Committee: France, / UN Doc. CCPR/C . 14 (2008) FRA/CO/4.

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 ([554].

The Commission on Human Rights called for the right to remain silent to be enshrined in law and applied in practice ([555].

The European Court stated that "there is no doubt that the right to remain silent during police interrogation, and the right not to self-incriminate, are widely recognized international standards central to the concept of fair procedures outlined in Article 6 of the European Convention." However, the Court also noted that the right to remain silent is not absolute. Unlike the principles of fair trial in Africa and the Rome Statute, the Court holds that, under certain circumstances, an accused person's silence during an investigation may lead to negative inferences being drawn during the trial. ([556]

The right of the accused to remain silent is applied in comparative laws. In American 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

([554]) (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 [555]observations of the Human Rights Committee: Algeria, / UN Doc. CCPR/C . 18 (2007) DZA/CO/3.

([556]) 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).

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 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 ([557]).

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 silence. 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 court 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 ([558]).

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 the case to the Criminal Court and losing the file because he believes that this investigation is null and void, a presumption that the charge was proven before him.**] [559]

([557]) Allan v. United Kingdom (48539/ 99), European Court (2002) .53- 50.
([558]) 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.
([559]) 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

Second: Prohibition of torture and other forms of ill-treatment

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 is derived from the duty to respect human dignity "Dignité Humaine". Three consequences arise from this right: the inadmissibility of subjecting the accused to torture, the inadmissibility of inhuman treatment, and the inadmissibility of subjecting him to inhuman punishments.

Persons held in pretrial detention by the authorities shall not be subjected to torture or other ill-treatment. Persons questioned on suspicion of involvement in a criminal offence shall also have the right to be presumed innocent, not to be compelled to incriminate them, to remain silent, to have a lawyer attend interrogation sessions with them and receive assistance from him. A number of other guarantees 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 ([560].

The Human Rights Council resolution of 23 March 2021 on the roles and responsibilities of police officers and other law enforcement officials emphasized 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. [561]

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.

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.

([560]) 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).

([561]) (A/HRC/RES/46/15, 1 April 2021, 9 - 10), (A/HRC/46/L.27, 15 March 2021, 9).

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 ([562]).

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 ([563]).

Additional safeguards apply during the investigation of children and women. For example, women in detention should be investigated by female police officers or judicial[564] 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 ([565]).

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: ([566]).

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,**

[562] See the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 187 / UN Doc. A/RES/67 (2012), Suppl. 32.

[563]See Resolution 65/221 of the United Nations General Assembly, 6 (n); Report on Terrorism and Human Rights, Inter-American Commission, section 1(a) 1, and section 3(c) .216 - 210 (3).

([564]) Section M(7) (b) of the Principles of Fair Trial in Africa; see Rule 65 of the Bangkok Rules..

Principle [565]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.

([566]) 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.

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. [567]

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 ([568]).

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 ill-treatment and torture is often unclear. Experience shows that conditions that allow for ill-treatment can also create an environment where torture is more likely to occur. As a result, measures to prevent torture must also address the prevention of ill-treatment. The Committee therefore concluded that the prohibition of ill-treatment is a

([567]) Article 2 of the Convention against Torture.

Committee [568]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).

non-derogable principle under the Convention, and efforts to combat it are both effective and non-derogable. ([569])

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 adopted. [570]

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. ([571])

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 11 September 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”), article 15 (prohibition of confessions obtained by torture being admitted as evidence, except against the torturer), and article 16 (prohibition of cruel,

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Committee [569]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).
Committee [570]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 [571]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).

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 fulfill these obligations, as long as they are effective and consistent with the object and purpose of[572] the Convention.

The term "any territory under its jurisdiction," which is tied to the principle of non-derogability, refers to any territory or facility under the control of the State Party and must be applied to protect all individuals, whether citizens or non-citizens, without discrimination, as long as they are within the de jure or de facto control of the State Party. The Committee stresses that the obligation to prevent torture extends to all persons acting on behalf of, in cooperation with, or at the direction of the State Party, whether de jure or de facto. It is crucial for each State Party to closely monitor its personnel and those acting on its behalf, to identify and report any cases of torture or ill-treatment, particularly those resulting from counter-terrorism measures. States must take appropriate steps to investigate these incidents, hold perpetrators accountable, and prevent future occurrences, with particular attention to the legal responsibility of both the direct perpetrators and those in the chain of command, including cases involving incitement, acquiescence, or consent.([573])

The obligation to take effective measures to prevent torture includes that States 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 ([574]).

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

On [572]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).

Committee [573]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 [574]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).

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. " [575]

The Committee against Torture has stated that significant differences between the definition of torture in domestic law and the definition provided in the Convention can create real or potential loopholes for impunity. While the language used in domestic law may sometimes resemble the Convention's definition, its interpretation is often shaped by national law or judicial practices. Therefore, the Committee urges each State Party to ensure that all government bodies adhere strictly to the definition in the Convention when determining the State's obligations. At the same time, the Committee acknowledges that broader domestic definitions may help achieve the goals of the Convention, as long as they reflect the standards set out in the Convention and are applied in accordance with those standards as a minimum. Specifically, the Committee underscores that the intent and purpose elements of Article 1 should not involve a subjective examination of the perpetrators' motives but must be based on objective criteria relevant to the circumstances. Investigations should be conducted to determine the responsibility of all individuals in the chain of command, as well as the direct responsibility of the perpetrators. [576]

The Committee against Torture has acknowledged that many State parties define certain acts as ill-treatment in their criminal laws. Ill-treatment may differ from torture in terms of the intensity of pain and suffering involved and does not require proof of prohibited intent. The Committee emphasized that a conviction for ill-treatment, even when the elements of torture are present, still constitutes a violation of the Convention. [577]

By defining torture as a distinct crime, separate from ordinary assault or other offenses, the Committee believes that States parties will directly contribute to the overarching goal of the Convention, which is to prevent torture and ill-treatment. A clear definition of torture will help achieve this objective by raising awareness among all, including perpetrators, victims, and the public, about the seriousness of the crime. Codifying this offense will also (A) highlight the need for appropriate penalties that reflect the severity of the crime, (A) strengthen the deterrent

([575]) Article 4 of the Convention against Torture.

Committee [576]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 [577]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).

effect by underscoring the risks involved, (C) improve the ability of authorities to identify and address torture as a specific crime, and (D) empower the public to monitor and, if necessary, challenge government actions or inactions that violate the Convention. [578]

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 the Convention. [579]

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[580] 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 ([581]).

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

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Committee [578]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 [579]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 [580]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).

[581]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).

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 specify the international responsibility that can be incurred by States or individuals as a result of the practice of torture and ill-treatment under international customary law and other treaties ([582]).

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 ([583]).

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 fulfill these obligations. For example, when detention centers are privately owned or run, the Committee against Torture

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Committee [582]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 [583]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).

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 ([584]).

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 ([585]).

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 in accordance with 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. ([586])

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

Committee [584]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 [585]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).
Committee [586]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).

psychological or physical violence or abuse is an important factor in determining whether an act constitutes torture ([587]).

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 ([588]).

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 in fact 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. ([589])

Committee [587]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 [588]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 [589]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).

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 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." ([590])

Each State is required to adhere to established rules regarding interrogation procedures, including the methods, instructions, and practices used, as well as the arrangements for the custody and treatment of individuals who are arrested, detained, or imprisoned, in order to prevent instances of torture. Article 11 of the Convention mandates that: "Each State shall systematically review the rules, instructions, methods, and practices of interrogation, along with the arrangements for the custody and treatment of individuals subjected to any form of arrest, detention, or imprisonment in any territory under its jurisdiction, with the goal of preventing torture." ([591])

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." ([592])

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 ([593]).

([590]) Article 15 of the Convention against Torture.
([591]) Article 11 of the Convention against Torture.
([592]) Article 10 of the Convention against Torture.
([593]) 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.

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 22 November 1969, the Organization of American States (OAS) adopted the American Convention on Human Rights, which entered into force on 18 July 1978. Article 5 of the Convention states: “1. Everyone has the right to respect for 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."([594])

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.

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 9 December 1985 and entered into force on 28 February 1987. Article 2 of this Convention defines torture as:

"Any act deliberately causing physical or mental pain or suffering to an individual for purposes such as a criminal investigation, intimidation, personal punishment, deterrence, execution of a sentence, or any other reason, is considered torture. It is also deemed torture to employ methods aimed at erasing a person's identity or impairing their physical or mental abilities, even if these methods do not result in physical pain or mental distress. [595]

Under article 1, States parties to the Convention undertake to prevent torture and to punish perpetrators in accordance with the provisions of the Convention.

United [594]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).

([595]) 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.

States Parties shall promptly and properly investigate 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 highlighted that a significant barrier to effectively prosecuting those responsible for torture is the lack of independence in investigating torture allegations. Specifically, it noted the issue of investigations being assigned to federal agencies that may have established connections with the parties accused of committing torture. The Committee referenced Article 8 to emphasize the necessity of "impartial consideration" in every case. ([596])

The Inter-American Court of Human Rights, having considered the need to investigate claims of violation of the American Convention on Human Rights, decided in its judgment of 29 July 1988 in the Velásquez Rodríguez case: “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 shall have 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.

Article 3 of the Convention asserts that "no one shall be subjected to torture or to any cruel, inhuman, or degrading treatment or punishment."

([596]) Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Mexico, 1998, para. 323, 324.

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 entered into force on 1 November 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 are able to 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 ([597]).

The first judgment on this subject was the judgment issued by the court on 18 December 1996 in the case of Aksoy v. Turkey. In this case, the court considered: "When an individual is in good health when the police take him into custody and then upon his release it becomes clear 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" ([598]).

The Court held that the injuries sustained by the Claimant arose from torture and that Article 3 had been violated.

The Court has 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, in view of 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 ([599]).

([597]) United Nations, Treaty Series, vol. 213, p. 222.
([598]) See Protocols Nos. 3, 5 and 8, which entered into force, respectively, on 21 September 1970. 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.
([599]) Ibid., paras. 64, 98, 100.

In its judgment of 28 October 1998 in the case Asenov 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 on the basis of article 13 but also on the basis of article 3.

In this case, a young Roma man who had been arrested by the police provided medical evidence of repeated beatings, although it was impossible to determine from the available evidence whether his father or the police were responsible for the injuries.

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. "

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 is 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 formal investigation.

This obligation of the State should make it possible to identify and punish those responsible. Unless this happens, the general legal prohibition of torture and inhuman or degrading treatment or punishment, while essential, will have no effect in practice and it will be possible in some cases for state agents to infringe on the rights of those under their control with virtual 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, finding that: "Where an individual makes an arguable allegation 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 also required by Article 3, effective access by the complainant to the investigation proceedings and, where appropriate, compensation" ([600].

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 ([601].

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 wishes; it may inspect, without any restriction, all places (not only those of cells); it may see all papers and files relating to persons it visits. The entire work of the Committee is based on confidentiality and cooperation.

After the visit, the committee prepares a report based on the observations made during the visit. This report includes comments on the findings, specific recommendations, and questions

([600]) Ibid., paras. 95, 101, 102, 117.
([601]) European Treaty Series, No. 126.

regarding any points that need further clarification. The State party then responds to the report in writing, initiating a dialogue between the Committee and the State party that continues until the next visit. Both the Committee's reports and the State party's replies are considered confidential documents, though it is up to the State party (not the Committee) to decide whether to make them public. So far, almost all State parties have made both the reports and their responses public.

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:

(A) The right of a person deprived of liberty to be informed immediately, if he so wishes, of the arrest of a third party (a member of his family).

(B) The right of persons deprived of their liberty to have prompt access to a lawyer.

(C) 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 primarily addressed 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 " ([602]).

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

([602]) Organization of African Unity, (document CAB/LEG/67/3, Rev. 5, 21.) International Legal Materials, 58 (1982).

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 created opportunities for victims and NGOs to submit information directly to the Special Rapporteurs. Additionally, victims or the relevant NGOs can file complaints with the Committee regarding acts of torture as defined in Article 5 of the African Charter. If an individual complaint is being considered by the Committee, the same information can also be sent by the victim or the NGO to the Special Rapporteurs to be included in their public reports to the Committee sessions. To establish a body for adjudicating claims of violations of rights protected by the African Charter, the Organization of African Unity (OAU) adopted a protocol in June 1998 to create the 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 25 September 2000, the Rome Statute of the International Criminal Court had been signed by 113 countries and ratified by 21 States.

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, detained, or whose freedom is**

restricted must be treated in a way that upholds their dignity. They must not be subjected to torture, intimidation, coercion, or any form of physical or psychological harm. Their detention or imprisonment must occur only in facilities specifically designated for that purpose, and these facilities must be humane and suitable for maintaining health. The state is also obligated to ensure that individuals with disabilities have access to appropriate accommodations.

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.

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 ([603]).

The right to be free from torture and ill-treatment is a fundamental principle of customary international law and a peremptory norm of jus cogens, binding on all States. It is codified in international and regional treaties, as well as in domestic legal systems worldwide. Violating this right is a serious breach of the Geneva Conventions, a violation of Common Article 3 of those Conventions, and a breach of customary international humanitarian law. It can also be classified as a crime against humanity or an act of genocide under international criminal law. The obligation to prevent torture and ill-treatment is absolute and applies at all times, including

([603]) (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.

during the investigation of serious crimes and in situations of armed conflict, supported by a range of additional standards and procedural safeguards. ([604])

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 ([605]).

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 ([606]).

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 ([607]).

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

([604]) (A/71/298 ،5 August 2016 ، 6).
([605]) (A/71/298 ،5 August 2016 ، 8).
([606]) (A/71/298 ،5 August 2016 ، 9).
([607]) (A/71/298 ،5 August 2016 ، 10).

systems that require extrajudicial confessions to be corroborated by other evidence in order to prove guilt create real incentives for ill-treatment ([608]).

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 ([609]).

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, 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 ([610]).

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,

([608]) (A/71/298 ،5 August 2016 ،11).
([609]) (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.
([610]) (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).

judge matters, force them to confess, incriminate themselves, or testify against another person ([611].

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 ([612].

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

([611]) (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).
([612]) (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).

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 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 ([613]).

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. Prisoners of war, who refuse to provide information shall 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

([613]) (CAT/OP/MDV/1, 26 February 2009, 108 - 112).

policy, regardless of the international or non-international character of the conflict and the status of the person questioned ([614].

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 ([615].

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 about the existence of evidence against him, also increase the likelihood of making false confessions ([616].

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, ambiguous, or leading questions with great 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 ([617].

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

([614]) (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).
([615]) A/71/298 ،5 August 2016 ،39.
([616]) (A/71/298, 5 August 2016, 40), (see E/CN.4/813).
([617]) (A/71/298, 5 August 2016, 41), (E/CN.4/813), e.g., 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).

interrogation based on the principle of the presumption of innocence are essential to prevent ill-treatment during interrogation and increase the effectiveness of authorities ([618]).

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 ([619]).

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 ([620]).

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

([618]) (A/71/298 ،5 August 2016 ،42).
([619]) (A/71/298, 5 August 2016, 43), see: Body of Principles, and see (A/HRC/68/295).
([620]) (A/71/298 ،5 August 2016 ،44).

interrogation. Unfortunately, these illegal methods have often been accompanied by poor conditions of 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 ([621]).

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 ([622]).

It is promising that some countries have moved away from interrogation methods centered on accusation, manipulation, and the goal of obtaining a confession, instead focusing on gathering accurate and reliable information. This shift aims to reduce the risks of unreliable information and miscarriages of justice. The PACE model, introduced in England and Wales in 1992, was the first to embody the principles of alternative information-gathering methods. Subsequent interrogation models used by other jurisdictions and the International Criminal Court (ICC) were based on this approach. ([623])

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 in order to obtain the truth; gather all available evidence relevant to the case in question prior to commencing operations; prepare and plan interrogations on the basis of 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

([621]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).
([622]) (A/71/298 ،5 August 2016 ،46) ،(A/66/268).
([623]) (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.

analyze the information obtained against previously available information or evidence; and evaluate each interrogation with a view to learning and developing additional skills ([624]).

Therefore, I must emphasize that the specific objective of the interrogation, which is to obtain accurate and reliable information in order 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 ([625]).

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 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 ([626]).

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

([624]) (A/71/298 ،5 August 2016 ،48).
([625]) (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).
([626]) (A/71/298, 5 August 2016, 50), see European Code of Police Ethics.

structure with the aim of finding the best way to extract information, and the ability to retain flexibility throughout the interrogation is indispensable ([627]).

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 ([628]).

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 ([629]).

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 into 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 concocting an alibi. Although interrogators can insist on the line of

([627]) (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).
([628]) (A/71/298 ،5 August 2016, 52).
([629]) (A/71/298 ،5 August 2016 ،53).

interrogation they took when investigating the narrative provided by the interrogator, the interrogation must never become oppressive or unfair ([630]).

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.

Perpetrator capacity

Article 126 of the Penal Code stipulates that: "**Every public official or employee**...", and it follows that in order for the crime to be investigated, the perpetrator must have a special characteristic, which is to be an official or public employee.

Article 119 of the Penal Code stipulates that: "**A public official means, in the terms of this Part:**

(A) Those responsible for the public authority and those working in the state and local administration units.

(B) Heads and members of councils, units, popular organizations and others who have a general representative capacity, whether they are elected or appointed.

(C) Members of the armed forces.

(D) Anyone who is appointed by a public authority to perform a specific task, within the scope of the work assigned to them.

(E) 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.

(F) Anyone who performs a task in public service, based on an assignment given to them in accordance with the laws or by a public official, and who holds such an assignment as prescribed by the relevant laws or regulations, in relation to the assigned work.

([630]) (A/71/298, 5 August 2016, 54), see Ivar A. Fahsing and Asbjrn 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).

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 given some degree of public authority permanently or temporarily or is granted this status by virtue of laws and regulations**] (631).

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**] (632).

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.

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

(631) 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.

(632) , 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) The Arab Republic of Egypt Unpublished judgments of the Court of Cassation Criminal Misdemeanors of Cassation Criminal Chambers, 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 Technical Office Letter No. 53 Page 265 Rule No. 48, Appeal No. 14376 of 64 s issued in the session of October 25, 2000 and published in Technical Office Letter No. 51 Page 667 Rule No. 132, Appeal No. 12898 of 64 s issued in the session of June 14, 2000 and published in Technical Office Letter No. 51 Page 507 Rule No. 99, Appeal No. 608 of 60 s issued in the session of January 5, 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 in the first session of February 1, 1995 and published in the first part of the Technical Office letter No. 46, page No. 291, rule No. 41, Appeal No. 21484 of 59 S issued in the session of May 21, 1992 and published in the first part of the Technical Office letter No. 43, page No. 548, rule No. 80, Appeal No. 8951 of 59 S issued in the session of March 29, 1992 and published in the first part of the Technical Office letter No. 43, page No. 344, rule No. 48, Appeal No. 7193 of 60 S issued at the 10th session of October 1991 and published in the first part of the Technical Office letter No. 42 page No. 981 rule No. 135, Appeal No. 16077 of 59 S issued at the 17th session of January 1991 and published in the first part of the Technical Office letter No. 42 page No. 98 rule No. 13, 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. 2814 of 1989 56 Q issued at the 9th session of October 1986 and published in the first part of the Technical Office's book No. 37 page No. 723 rule No. 137, Appeal No. 2506 of 53 Q issued at the 11th session of January 1984 and published in the first part of the Technical Office's book No. 35 page No. 39 rule No. 6, Appeal No. 2125 of 50 Q issued at the 9th session of February 1981 and published in the first part of the Technical Office's book No. 147 rule No. 21, Appeal No. 1601 of 45 Q issued at the 2nd session of February 1976 and published in the first part of the Technical Office's book No. 27 page No. 152 rule No. 30, Appeal No. 1813 of 35 Q issued at the 15th session of February 1966 and published in the first part of the Technical Office's book No. 17 page No. 152 rule No. 27.

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 has been ruled that the provisions of Article 126 of the Penal Code do not need to be applied when a public official tortures an accused person to obtain a confession. It is not necessary for the official to be involved in the investigative or procedural steps concerning the alleged crime or suspicion of the accused. It is sufficient for the public official to have the authority, under their public role, to torture the accused with the intention of securing a confession, regardless of the motive for doing so.]**)633(

Article 1 of the Code of Conduct for Law Enforcement Officials states: " (A) The term '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." (634)

Status of the Victim

In the application of Article 126 of the Penal Code, the accused means anyone who is accused of committing a specific crime, even while the judicial officers are searching for the crimes and their perpetrators and collecting the evidence necessary for investigation and lawsuit, as long as there is suspicion that he is involved in committing the crime in which the judicial officers collect evidence. (635)

Material Element of Crime

The material element of the crime being examined is fulfilled by the act of torture, though the Penal Code does not offer a specific definition of torture. Article 55 of the Constitution states:

(633) 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.
(634) Adopted and made public by United Nations General Assembly resolution 34/169 of 17 December 1979.
(635) See Appeal No. 36562 of 73 S issued at the session of February 17, 2004 and published in the letter of the Technical Office 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 book of the Technical Office 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 book of the Technical Office No. 17 page No. 1161 rule No. 219.

"Anyone who is arrested, detained, or whose freedom is restricted must be treated in a way that respects their dignity. They shall not be subjected to torture, intimidation, coercion, or any physical or psychological harm. Their detention must occur only in facilities designated for that purpose, which are humane and suitable for health. The state is also required to ensure access for persons with disabilities."

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment defines torture as follows: "1. For the purposes of this Declaration, torture refers to any act in which severe pain or suffering, whether physical or mental, is deliberately inflicted on a person by or with the instigation of a public official. This may be done for purposes such as obtaining information or a confession from that person or another, punishing them for an act they have committed or are suspected of committing, or intimidating them or others. However, in line with the Standard Minimum Rules for the Treatment of Prisoners, torture does not include pain or suffering that is solely a result of, 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**[636] **application**.

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**

([636]) 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.

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[637] this article.

Egyptian 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. The assessment of such torture is left to the trial court to deduce from the circumstances of the case ([638]).

It is clear from this that torture is the assault or abuse of the accused, whether this assault or abuse is physical or psychological, so the physical pain is equal to the psychological pain, and this is clear from the statement of the constitutional legislator "physical or moral abuse" 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**

([637]) Organization of American States - Treaty Series No. 67 entered into force on February 28, 1987.

([638]) See: 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 28 December 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 2 July 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 1 June 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 18 September 1997 and published in Part I of Technical Office Letter No. 48 Page No. 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 No. 951 Rule No. 137, Appeal No. 2524 of 59 S issued at the 9th session of November 1989 and published in Part I of Technical Office Book No. 40 Page No. 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 No. 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 No. 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 No. 688 Rule No. 153.

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] **(**[639].

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.

Photographs of the torture order

Ordering torture can be positive or negative.

Positive order for torture

This occurs when a superior directs their subordinates to torture the accused in order to obtain a confession. There is no specific formula for this order; it can be expressed in any form and any language. For example, the superior may explicitly tell the subordinate to beat or torture the accused to get a confession, or may apply pressure in various ways to force a confession. The directive can also be implicit, such as a vague statement like "Do what is necessary," which the subordinates understand, or even a non-verbal cue, like a nod, a shake of the head, or a tap on the table, as long as these signals are understood by the subordinates. In such cases, the order to torture is valid even if it is given through subtle or indirect means.

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 regard to 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, for any president to violate legitimacy in such a manner. Torture is often an individual verbal order issued to subordinates to act in the light of this order.

The crime against the superior is not based on 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

([639]) 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.

the required confession. After the torture is completed, the matter is presented to the superior 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 superior.

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 crime of torture can also occur through a negative order, which happens when the president fails to intervene and prevent their subordinates from torturing the accused. This constitutes a failure to act, as the president takes no steps to stop the torture, even though the law requires intervention. It is assumed that the president witnessed the torture but chose not to stop it. The crime is also considered committed if the president does not witness the torture but is aware that the accused is being tortured to extract a confession. This knowledge may come from the president hearing the accused's cries of distress or screams, or through complaints from the accused, their representative, or their family.

Therefore, for the perpetrator to be questioned about his negative order of torture, two conditions are stipulated:

The first condition for this crime is the existence of a legal duty to perform a specific task and the failure to do so. In this case, the legal duty imposed on the president is to protect the accused, ensuring their dignity and safety, and refraining from causing them any physical or moral harm. This duty is outlined in legislative and constitutional texts, which affirm the right of an arrested citizen to be treated in a way that preserves their dignity and prevents harm. Article 55 of the Constitution and international conventions define this responsibility, which applies to any authority involved with the accused during the stages of accusation, trial, or execution. These authorities are responsible for preventing any material or moral coercion the accused might face. If the official responsible for safeguarding the accused fails to intervene and allows such coercion to continue, their refusal constitutes a negative order to 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.

For the crime of a negative order of torture to be established, the president - the perpetrator - must have the free will and ability to prevent the torture. Despite this, the president deliberately chooses not to intervene, allowing the torture to occur, which aligns with their will to use torture as a means of extracting a confession.

Mens Rea

Mens Rea

The criminal intent is achieved whenever the employee or public employee tortures an accused person to make him confess and has no reason 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 has been determined that the criminal intent required for the offense under Article 126 of the Penal Code is established when a public official or employee tortures a suspect to obtain a confession, regardless of the underlying motive. The determination of whether this intent exists falls within the discretion of the trial court, and is beyond the scope of review by the Court of Cassation, as long as the intent is properly supported by the case evidence. The court's judgment addressed the appellants' claim that criminal intent was absent, rejecting it based on sound reasoning derived from the circumstances of the case, the evidence presented by prosecution witnesses, and statements from the second accused during the public prosecution's investigation. The second accused acknowledged that an offense had occurred but clarified that the intent was not to harm the victim, but rather to pressure him into confessing to the crime he was accused of. As such, the judgment confirmed the presence of criminal intent as required by Article 126 of the Penal Code against the appellants.] (**[640]

([640]) 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.

Non-requirement of recognition

The criminal intent is achieved in the crime of torturing a defendant with the intention of obtaining a confession to commit the act of torture, and it is not required for it to be fully realized. **(**[641]

Causation

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: [**The causal relationship in criminal law refers to a material connection that starts with the perpetrator's actions and is morally linked to the expected consequences of those actions, especially if the perpetrator intentionally brings them about. This relationship is an objective matter for the trial judge to assess. Once the judge makes a determination based on reasonable grounds, the Court of Cassation cannot intervene, as long as the judge's decision is supported by sound reasoning. In this case, the judgment established a causal link between the appellant's acts of torture and the victim's death, stating: "The court finds a causal relationship between the torture inflicted by the accused on the victim and the result—namely, the victim's death by drowning. The application of the second paragraph of Article 126 of the Penal Code is justified in this case, as the accused's actions, starting with the beatings and submerging the victim in contaminated water, followed by threats of further harm and continued assaults, led to the victim being pushed near the water's edge in an attempt to drown him. The victim had already suffered harm from the accused earlier. This led the victim to attempt to free himself from the accused's grip by pulling away. In response, the accused pushed the victim, trying to force him into the water or even threatening him, despite being unsure of the victim's swimming ability. This occurred in a confined area along the edge of the pavement, made narrower by the presence of oil pipes running along it. The chain of events, which culminated in the victim falling into the sea, becoming entangled in the defendant's belt, and ultimately drowning, follows a natural and expected sequence of actions. It aligns with the usual course of events and does not involve any extraordinary or unusual factors. Therefore, the defendant's claim that he did not anticipate the victim's death by drowning is rejected, as it is a reasonable and foreseeable outcome in line with the judgment and the law. The appellant's argument on this matter is unfounded, and his lack of concern for this defense is also irrelevant. The five-year prison sentence imposed falls within the prescribed penalty for the crime of torture to compel**

([641]) 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.

a confession regarding the victim's death, as outlined in the first paragraph of Article 126 of the Penal Code.] ([642])

The extent to which the perpetrator benefited from the text of Article 63 of the Penal Code - Committing the crime in implementation of an order issued to him by his 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:**

(I) If he commits the act in implementation of an order issued to him by a superior, he must obey him or he believes that it is obligatory on him.

(II) If he improves his intention and commits an act in implementation of what is ordered by the laws or what he believes to be 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.

In order for an employee to benefit from the permissibility of his criminal act, three conditions are required:

Condition 1: Employee Goodwill

The employee must mistakenly believe that their actions are lawful in order to claim good faith. If the employee is aware that the act they are committing is punishable by law, then good faith cannot be claimed. In this context, the Court of Cassation has ruled that: **[It is established that obedience to a superior does not justify the commission of crimes, and a subordinate is not**

([642]) 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.

required to follow an order from their superior if they know that carrying out the act would result in legal punishment.] ([643])

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 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 two exemption conditions contained in the text.

The second condition: Verification and investigation

In order for a public official to justify their actions while carrying out a superior's order, it must be demonstrated—along with the presence of good faith—that the official took steps to verify and investigate the legitimacy of the order before executing it. The burden of proof lies with the official to establish this. In this regard, the Court of Cassation has 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.]** ([644])

This is achieved by the employee doing everything he can 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, and there is no doubt that the act of torture does not need to make an effort to verify its illegality.

([643]) 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 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.

([644]) 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.

The third condition: The belief in the legality of the act must be based on reasonable grounds

Third, the permissibility of the employee's act requires that his belief in the legitimacy of the act he committed is 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 ([645]).

In application of the foregoing, the employee or the 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 conditions for exemption contained in the text of Article.

Extent to which the legitimate defense against the act of the torturer is permissible

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 must be unlawful, that the assault or its danger is considered a crime. If the assault is not considered a crime, 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

([645]) 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.

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 public authority." Because the act of aggression against him is an act of the public authority itself 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, cannot rely on the provisions of Article 248 of the Penal Code, which prohibits invoking the right to legitimate defense against a judicial police officer. This article states: "The right of legitimate defense does not permit resisting a police officer while carrying out an order related to his official duties in good faith, even if the officer exceeds the scope of his duties, unless there is a reasonable fear that his actions will lead to death or serious injury. "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 goodwill of the judicial officer, so the officer must believe in the legitimacy 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.

Aggravated image 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.

Punishment for simple torture

The first paragraph of Article 126 of the Penal Code states: “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.

Punishment 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, the penalty for premeditated murder shall be imposed.”

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 deliberately kills a person without premeditation and is not 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 states: “Every sentence for a felony inevitably entails depriving the convict of the following rights and benefits:

(i) Acceptance of any service in the government directly or as a contractor or obligor, regardless of the importance of the service.

(ii) Holding the rank of Nishan or Medal.

(iii) Testifying before the courts about the duration of the sentence except by way of inference.

(iv) Managing his financial affairs and property during his detention, and appointing a guardian for this responsibility, must be approved by the court. If no guardian has been appointed by the civil court in the jurisdiction where he resides, at the request of the Public Prosecution or any interested party, the court may require the appointed guardian to provide a surety. The values set or determined by the court will be subject to its authority in all matters concerning their management.

The convict may not manage or dispose of his property without the permission of the relevant civil court. Any obligation he assumes without this approval will be automatically void. Upon the completion of his sentence or his release, the convict's property will be returned to him, along with an account of the funds managed on his behalf.

(V) He remains, as of the day of his final judgment, a member of one of the Hassala councils, district councils, municipal or local councils, or any public committee.

(Sixth) 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

A crime, as an illegal act, causes harm to an individual — the victim — which can be physical, financial, or emotional in nature. As a result, the victim has a right 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.

The civil lawsuit is not time-barred

Article 52 of the 2014 Constitution stipulates that: "Torture in all its forms and manifestations is a crime that is not subject to 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 and occurring after the date of its entry into force shall not lapse by the statute of limitations.

If the criminal case is dismissed for any of its own reasons, this will not impact the continuation of the civil case filed alongside it."

Article 15 of the Criminal Procedure Law 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 that 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.

The State's Civil Responsibility for Torture

The general rule is that the convict is held responsible for the crime of torturing an accused person to force a confession and is liable for compensating the victim. Article 253 of the Code of Criminal Procedure states: "A civil lawsuit for damages may be filed against the accused if they are an adult, or against their legal representative if they are incapacitated. If the accused has no representative, the court will appoint one 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 shall be established, even if the subordinate is not free to choose his subordinate, whenever he has authority over him, he shall have control over 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: [**A relationship of subordination exists whenever there is oversight and direction, where the superior has the actual authority to give orders to the subordinate regarding how they perform their tasks, supervise their execution, and hold them accountable for any deviations from these instructions.] (**[646]**)**.

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**

([646]) 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.

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. ([647]

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**] ([648].

Inadmissibility of evidence obtained by torture and ill-treatment

The effectiveness of a state's criminal justice system depends on the trust of the people it serves.

The methods employed by police and other law enforcement agencies to investigate crimes, question suspects, witnesses, and victims, and collect evidence are crucial for establishing and maintaining public trust.

However, when torture or ill-treatment is used to extract confessions or other information, it undermines that trust.

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.

([647]) Appeal No. 10820 of 75 S issued at the 24th session of November 2011 (unpublished).
([648]) 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.

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.

Statements, documents or other evidence obtained through torture or ill-treatment are inadmissible in any legal proceedings, except when used against the individuals suspected of committing the abuse. This exclusionary rule is a fundamental principle of customary international law that cannot be waived. It is vital to uphold the prohibition of torture and ill-treatment by establishing strong deterrents. This rule applies not only to the ill-treatment of suspects but also to third parties, including witnesses, and extends to evidence obtained in a third country, regardless of whether the evidence is particularly significant or decisive in the case. The exclusionary rule fully applies to the collection, sharing, and acceptance of any information that has been 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 ([649]).

Torture Evidence

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.

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**

([649]) (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), see: Report of the Inter-American Commission on Human Rights of Persons Deprived of Liberty in the Americas (OEA/SER.L/V.II.Doc.64), Inter-American Court of Human Rights, Cabrera Garca and Montiel Flores v. Mexico).

shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." ([650]

There are several good policy reasons for excluding evidence obtained by torture or ill-treatment, including:

1. 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.

2. Saving police and court time and associated costs spent on responding to allegations of torture or misconduct.

3. Avoiding miscarriages of justice, where someone is forced to confess to a crime they did not commit;

4. To protect the rights of victims of torture, in legal proceedings, and to provide remedies for the violation of their rights.

5. Protect the fairness of the trial by protecting the defendant's right to remain silent and not to have to provide information under pressure.

6. Protecting the integrity of the judicial system, instilling public confidence in it, and promoting the supremacy of institutions based on the rule of law.

7. Enhance police effectiveness, by encouraging police forces to develop effective investigative skills and techniques.

8. 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 ([651]).

([650]) Article 15 of the United Nations Convention against Torture.
([651]) Equatorial Guinea, Article 8 of Law No. 2 of 2006 on the Prevention and Punishment of Torture.

The Constitution of Japan expressly prohibits the admission of confessions extracted by torture as evidence: "**A confession obtained through coercion, torture, threat, or after extended periods of arrest or detention shall not be accepted." (**[652].

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**" ([653].

The Spanish Supreme Court has stated that: [**Evidence obtained in violation of fundamental rights must not be considered by the court**] **(**[654].

In Tunisia, the Code of Criminal Procedure invalidates evidence of torture, and the explicit legal prohibition on the use of evidence obtained by torture was added to Article 155 of the Criminal Procedure Code of 2011, which stipulates 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**" ([655].

The 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 to be used 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 ([656].

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.

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.

([652]) Article 38, paragraph 2, of the Constitution of Japan of 1947.
([653]) Spain, Spanish Judiciary Law of 1985, Article 11.1.
([654]) Judgment No. 3943/1990 of 24 May 1990.
([655]) Tunisia, Code of Criminal Procedure, Article 155.
United [656]Nations General Assembly Resolution A/Res/72/163, 19 December 2017, para.

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:

- Notice of suspect's rights

- Immediate access to a lawyer

- Independent Medical Examination

-Communication with a family member or with a third party

- Audio and video 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].

The role of prosecutors

Prosecutors play a crucial role in preventing the use of evidence obtained through torture by police investigators and in deciding what evidence should be presented in court. They are often among the first authorities, besides the police, to have access to interviewees and/or receive copies of their interviews. In many jurisdictions, prosecutors are also responsible for gathering evidence and determining whether a case should proceed to trial, which involves evaluating whether the evidence was lawfully and fairly obtained. In several Latin American countries, prosecutors or a specific police force known as the "judicial police" — typically under the judiciary's authority or reporting to judicial branches like the prosecutor’s office — conduct interviews, rather than leaving this task to regular police forces, as is common in common law systems.

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 examine the proposed evidence to ascertain whether it was obtained lawfully or constitutionally; [and] refuse to use evidence that is reasonably believed to have been

obtained through recourse to unlawful methods which constitute a serious violation of the suspect's human rights, in particular methods which constitute torture or cruel treatment. [657]

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] ([658].

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" ([659].

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 to[660] justice.

The Role of Medical Practitioners

Medical practitioners have both professional and ethical duties to document and prevent torture and ill-treatment, as well as to assist in the rehabilitation of torture victims. Adhering to the comprehensive guidelines in the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol) is crucial in ensuring that forensic medical examinations produce the necessary evidence to support claims of torture and ill-treatment. This evidence is vital for purposes such as prosecution or seeking justice and 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,

([657]) Standards of Professional Responsibility of the International Association of Prosecutors and Statement of Fundamental Duties and Rights of Prosecutors, 1999, Article 4 (3).
([658]) Article 173 of the French Code of Criminal Procedure.
([659]) [Opper v United States [1954] 348 US 84, 93].
([660]) United Nations Guidelines on the Role of Prosecutors, the Havana Guidelines, 1990.

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 has the right to receive a medical certificate during the investigation conducted by the Judicial Police or the Judicial Prosecution Police. Chapter V of the Manual of the Public Prosecution Authority and the Investigation Procedures of the Judicial Police of Ecuador outlines that anyone arrested by the competent authority or caught in the act of committing a crime must, upon being transferred and registered at a police station or similar facility, be taken to a forensic medicine unit or health center to obtain a medical certificate, which must then be included in 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 stated: "**National medical associations should advocate for the implementation of legal standards and legislative measures that emphasize the ethical duty of doctors to report or expose any signs of torture or cruel, inhuman, or degrading treatment that they become aware of." (**[661]

The World Medical Association on the Responsibility of Physicians to Document and Condemn Acts of Torture, Cruel, Inhuman or Degrading Treatment or Punishment decided that: "**National medical associations should endorse the adoption of established guidelines and legal provisions that reinforce the ethical responsibility of physicians to report or condemn acts of torture or cruel, inhuman, or degrading treatment that they become aware of" (**[662].

Role of Judges

Judges play a crucial role in assessing whether the accused has been subjected to ill-treatment while in police custody or any other place of detention. They are also responsible for excluding any evidence obtained through 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 in the absence of a formal complaint, a judge's experience or training may help them remain alert to signs of ill-treatment, such as visible injuries or the detainee's overall condition and behavior. The law should empower the judge to act promptly if there are any indications of abuse. This could involve the judge documenting any clear allegations or injuries, ordering an immediate medical examination of the detainee, or initiating 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.

([661]) United Nations Standard Minimum Rules for the Treatment of Prisoners, "Mandela Rules" 2015, Rule No. 34.
([662]) World Medical Association Resolution on the Responsibility of Physicians to Document and Condemn Acts of Torture, or Cruel, Inhuman or Degrading Treatment, para 9.

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.

[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.

In line with their laws and judicial practices, states have developed various procedures to exclude evidence obtained through torture or ill-treatment. Some countries follow a two-stage process: the first stage involves initiating an exclusion procedure, which requires a credible complaint of torture or ill-treatment, or is triggered by a judge; the second stage is determining whether the evidence in question was obtained through such methods. In common law countries with a jury system, this process is carried out before the trial commences.

In the absence of a jury, excluding a confession from the proceedings due to the prohibition on using torture-derived evidence does not automatically lead to the accused's acquittal if other credible evidence exists. Instead, it may require an evaluation of whether the specific evidence, or any evidence derived from it, should be admitted in the trial.

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 acknowledged that evidence obtained through coercion or force violates the right to a fair trial. The Guidelines on the Right to a Fair Trial and Legal Assistance in Africa affirm this principle, stating that: "**Any confession or evidence obtained through coercion or force cannot be accepted as valid evidence or used to establish any facts during trial or sentencing."** ([663].

In Kenya, the court holds a "trial within a trial" to assess the admissibility of evidence obtained through torture. The Kenyan Constitution prohibits the use of any evidence that violates rights or freedoms protected by the Bill of Rights, as such evidence would render the trial unfair and undermine justice. In practice, the prosecution must notify the court if it intends to present a confession as evidence. If the accused objects, the court will conduct a "trial within a trial" to examine the circumstances under which the statement was obtained and determine its admissibility. This process ensures the accused can testify about the evidence's admissibility without the risk of self-incrimination during cross-examination on issues that may influence the determination 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. [664]

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.

([663]) 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.
([664]) Articles 29 and 54 of the Chinese Criminal Procedure Code.

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 ([665].

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" ([666].

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, federal courts exclude evidence if there is a "reasonable possibility" that the admission was influenced by violent, oppressive, inhumane, or unprofessional conduct, either directed at the person making the admission or another individual, or by the threat of such conduct" ([667].

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 probabilities, 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 misconduct or violation is inconsistent with the rights of an individual as recognized in the International Covenant on Civil and Political Rights." ([668]**

In England and Wales, the Police and Criminal Evidence Act states: "**When there are claims before the court that a confession was obtained through "repression or as a result of any**

([665]) The Criminal Procedure Code of Vietnam for the year 2015 Article No. 174.
Report [666]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.
([667]) Australia, Evidence Act 1995, Article 84/1.
([668]) Australia, Evidence Act 1995, Article 138 [3] [f].

actions or statements that make the confession unreliable," the confession must be excluded, even if it may be true. It is the prosecution's duty to prove "beyond a reasonable doubt" (the forensic standard) that the confession was not obtained in such a manner. Repression includes "torture, inhuman or degrading treatment." [669]

In practice, this means that if the defense or the court (on its own initiative) challenges a confession, the court must exclude the confession from the evidence unless the prosecution proves that it was not obtained through "repression." This is typically done by calling the interviewing officer to demonstrate that proper procedures were followed, no mistreatment occurred, and to present a recording of the interview.

In South Africa, reasonable grounds must be provided 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 guarantees that "Everyone has the right to liberty and security of person, including the right not to be subjected to torture in any form; and not to be treated or punished in a cruel, inhuman, or degrading manner." In practice, the accused or defense must first raise the possibility that evidence against them was obtained through torture. The court then evaluates whether there are reasonable grounds to suspect torture. If such suspicion exists, an investigation is conducted to determine the admissibility of the evidence. This process ensures that the accused can testify about the admissibility of the contested evidence without risking cross-examination on matters related to their 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, and other witnesses].

To guard against the risks of "elicited" evidence leading to the use of torture, ill-treatment, or other forms of coercion against suspects, several states, as well as international and regional bodies and courts, have excluded such evidence from legal proceedings. Some states exclude all elicited evidence, while others use a balancing approach, weighing the integrity of the evidence against the severity of the harm or wrongdoing inflicted on the individual.

In Brazil, evidence derived from “illegitimate evidence” is prohibited by law and the Code of Criminal Procedure states that: “**Any evidence obtained unlawfully, as well as evidence derived**

([669]) England, Police and Criminal Evidence Act 1984, Article 76.

from such illegal practices, is inadmissible in legal proceedings. Illegitimate evidence refers to evidence acquired in violation of the Constitution or other laws." ([670]

The prohibition of torture and ill-treatment was enshrined in the 1988 Constitution of Brazil ([671].

The Constitution also stipulates that: "**Evidence obtained by illegal means is inadmissible in any proceedings**" **(**[672].

In Thailand, all evidence obtained by unlawful means is prohibited by law. The Code of Criminal Procedure states that: "**In any case where the court determines that evidence has been lawfully obtained through unlawful means or is based on information acquired unlawfully, such evidence shall be deemed inadmissible**" **(**[673].

The Inter-American Court of Human Rights has ruled that: [**The absolute character 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**] **(**[674].

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.

States that are parties to the United Nations Convention against Torture are required to offer "the greatest measure of assistance" to other States in cases involving torture, including providing all relevant evidence in their possession for legal proceedings. These States also fulfill their obligations for mutual legal assistance in this context. ([675]

Whether in relation to proceedings relating to torture offences, or to 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 should 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

([670]) Brazil, Code of Criminal Procedure of 1941, Article 157.
([671]) Brazil, 1988 Constitution, Article 5 [III].
([672]) Brazil, 1988 Constitution, Article 5 [LVI].
([673]) Thailand, Thai Criminal Procedure Code of 1937.
Inter-American [674]Court of Human Rights, Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico, Case No. 12, [26 November 2010], para. 449
([675]) Article 9 of the United Nations Convention against Torture.

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 is complicit in torture when it aids another State in carrying out torture or other forms of ill-treatment, or when it condones such actions, with the knowledge (or presumed knowledge) that there is a real risk of torture or ill-treatment occurring or having occurred, and helps the torturing State to maintain impunity for these acts. Therefore, a State is responsible if it is aware, or should have been aware, of the risk that information will be obtained through torture or ill-treatment, and fails to take reasonable measures to prevent it. " [(676)].

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"**].

([676]) Report of the United Nations Special Rapporteur on Torture, Juan E. Mendes, 10 April 2014, 60/25 / HRC / A, para. 53.

- Establishes internal mechanisms that allow police officers and intelligence agencies to raise concerns about intelligence sharing, offering an additional layer of protection against the associated risks.

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 ([677]).

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 through intelligence exchange ([678]).

The UN Human Rights Committee has acknowledged the importance of prior independent authorization for intelligence sharing, emphasizing that "robust systems for surveillance, interception, and intelligence sharing of personal communications" must involve "judicial oversight in authorizing such measures in all cases" ([679]).

Third: Prohibition of coercion to confess

A confession is a self-confession by the accused to commit the facts constituting the crime in whole or in part ([680]).

Any person charged with a criminal offence has the right not to be coerced or compelled to confess guilt, testify or give 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, as already mentioned.

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

([677]) Canada, Canadian Security Intelligence Service Act of 1985, Article 17.
([678]) Gesetzes zur Ausland-Ausland-Fernmeldeaufkl rung des Bundesnachrichtendienstes.
Seventh [679]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.
([680]) Guarantees of the accused in the stage of criminal investigation - Dr. Abdul Hamid Al-Shawarbi - Al Maaref Establishment in Alexandria - page 415.

humiliate the accused in any way, including insulting their beliefs, sanctities, honor, or consideration.

No individual accused of committing a criminal act may be forced to confess guilt or testify against themselves. ([681])

The right not to be compelled to incriminate oneself or to confess guilt is wide-ranging. 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" ([682]).

Prohibited interrogation techniques include sexual humiliation, waterboarding, restraining with handcuffs, forcing a person into painful physical positions, and using their phobias to intimidate them. ([683])

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. [(684)]

Coercion can also involve interrogation methods that are meant to insult or violate personal, cultural, or religious sensitivities. ([685])

([681]) 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.

([682]) General Comment 32 of the Human Rights Committee, 41 and 60.

([683]) Concluding observations of the Committee against Torture: United States of America, 24 (2006) UN Doc. CAT/C/USA/CO/2..

[684] 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; 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 [685]Report of the UN Mechanisms on Guantánamo Bay Detainees, 120/2006/ 60 (2006) UN Doc. E/CN.4..

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 of this device. [686]

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 ([687]).

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 ([688]).

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 ([689]).

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" ([690]).

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 ([691]).

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, in order 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

([686]) Article 220 of the Judicial Instructions of the Public Prosecution.

Joint [687]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.

([688]) Section N(6) (d) (1) of the Principles of Fair Trial in Africa..

Special [689]Rapporteur on Torture, 268 / 73 (2011) UN Doc. A/66 and 85.

([690]) Asensios Lindo et al. v. Peru (11).182), Report 49 / 00 of the American Commission 103 (2000)..

[691]See Joint Report of the UN Mechanisms on Guantánamo Bay Detainees, 120/2006/ 53 (2006) UN Doc. E/CN.4..

the rights of the suspect. The same applies to audio samples (except for statements condemning their owners), even if they were obtained in secret. (692)

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 with a view to preparing them to withstand further abuse (693).

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 (694).

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 (695).

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 (696).

The Special Rapporteur on torture stressed that confessions alone should not be sufficient for a guilty verdict; other corroborating evidence should be required (697).

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 (698).

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 choice and of 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 issued by a detainee under the weight of something of the foregoing, or the threat of something of it, is wasted and unreliable."

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(692) 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..

Principles 6932 and 4 of the Principles of Medical Ethics, Special Rapporteur on Torture, 156/2001) UN Doc. A/56) .(1) 39.

(694) General Report 12 of the Committee for the Prevention of Torture, 15) 35 ,CPT/Inf2002.

(695) 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)..

(696) 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 697Rapporteur on Torture, UN Doc A/HRC/13/39/Add.5 100- 101 (2010); see HRC Resolution 13/19, 7 (2010).

(698) Article 217 of the Judicial Instructions of the Public Prosecution.

The UN 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 a reasonable doubt that the confession was not obtained by unlawful means, including torture and other ill-treatment” ([699].

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 illegal 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 this 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 these methods are brought to justice**" ([700].

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” ([701].

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” ([702].

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: "...Any 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."

([699]) General Recommendations of the Special Rapporteur on Torture, E/CN.4/2003/68, para. 26.
([700]) 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.
([701]) Egypt: Halt Execution of Accused Taba Bombers: Government Should Give Alleged Attackers a Fair Trial, "Human Rights Watch news release, June 10, 2007.
([702]) Human Rights Committee, General Comment No. 20: Replaces general comment 7concerning prohibition of torture and cruel treatment or punishment (Art. 7), October 3, 1992.

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 ([703]).

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 ([704]).

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 taken place and deny the existence of this coercion in a reasonable inference] ([705]).

([703]) Article 219 of the Judicial Instructions of the Public Prosecution.
([704]) Article 218 of the Judicial Instructions of the Public Prosecution.
([705]) Appeal No. 26806 of the year 84 Q, issued in the session of January 1, 2015, and published in the Technical Office Book No. 66, page 25, Rule No. 1; Appeal No. 67463 of the year 74 Q, issued in the session of May 15, 2012 (unpublished); Appeal No. 9801 of the year 80 Q, issued in the session of February 13, 2011, and published in the Technical Office Book No. 62, page 59, Rule No. 10; Appeal No. 737 of the year 73 Q, issued in the session of April 18, 2010 (unpublished); Appeal No. 4923 of the year 78 Q, issued in the session of April 7, 2009, and published in the Technical Office Book No. 60, page 201, Rule No. 26; Appeal No. 34525 of the year 77 Q, issued in the session of March 8, 2009 (unpublished); Appeal No. 34150 of the year 77 Q, issued in the session of June 11, 2008 (unpublished); Appeal No. 7555 of the year 69 Q, issued in the session of January 27, 2008 (unpublished); Appeal No. 34294 of the year 77 Q, issued in the session of January 20, 2008 (unpublished); Appeal No. 1114 of the year 67 Q, issued in the session of February 16, 2006 (unpublished); Appeal No. 26783 of the year 67 Q, issued in the session of January 19, 2006 (unpublished); Appeal No. 10854 of the year 75 Q, issued in the session of May 16, 2005 (unpublished); Appeal No. 51867 of the year 74 Q, issued in the session of January 6, 2005 (unpublished); Appeal No. 30639 of the year 72 Q, issued in the session of April 23, 2003, and published in the Technical Office Book No. 54, page 583, Rule No. 74; Appeal No. 14847 of the year 63 Q, issued in the session of November 7, 2002 (unpublished); Appeal No. 9496 of the year 63 Q, issued in the session of September 26, 2002 (unpublished); Appeal No. 23449 of the year 71 Q, issued in the session of February 5, 2002, and published in the Technical Office Book No. 53, page 224, Rule No. 41; Appeal No. 3721 of the year 70 Q, issued in the session of December 3, 2000, and published in the Technical Office Book No. 51, page 784, Rule No. 156; Appeal No. 3943 of the year 65 Q, issued in the session of January 10, 1996, and published in part one of the Technical Office Book No. 47, page 55, Rule No. 6; Appeal No. 7979 of the year 64 Q, issued in the session of January 5, 1995, and published in part one of the Technical Office Book No. 46, page 94, Rule No. 9; Appeal No. 23377 of the year 59 Q, issued in the session of April 12, 1990, and published in part one of the Technical Office Book No. 41, page 625, Rule No. 107; Appeal No. 23758 of the year 59 Q, issued in the session of March 8, 1990, and published in part one of the Technical Office Book No. 41, page 504, Rule No. 84; Appeal No. 3523 of the year 59 Q, issued in the session of October 2, 1989, and published in part one of the Technical Office Book No. 40, page 717, Rule No. 120; Appeal No. 3725 of the year 58 Q, issued in the session of October 4, 1988, and published in part one of the Technical Office Book No. 39, page 853, Rule No. 128; Appeal No. 4114 of the year 57 Q, issued in the session of January 7, 1988, and published in part one of the Technical Office Book No. 39, page 112, Rule No. 10; Appeal No. 1281 of the year 57 Q, issued in the session of May 20, 1987, and published in part one of the Technical Office Book No. 38, page 709, Rule No. 125; Appeal No. 4985 of the year 55 Q, issued in the session of January 22, 1986, and published in part one of the Technical Office Book No. 37, page 114, Rule No. 25; Appeal No. 4421 of the year 55 Q, issued in the session of January 20, 1986, and published in part one of the Technical Office Book No. 37, page 105, Rule No. 24; Appeal No. 5925 of the year 54 Q, issued in the session of May 2, 1985, and published in part one of the Technical Office Book No. 36, page 601, Rule No. 106; Appeal No. 256 of the year 55 Q, issued in the session of February 25, 1985, and published in part one of the Technical Office Book No. 36, page 300, Rule No. 51; Appeal No. 951 of the year 53 Q, issued in the session of June 2, 1983, and published in part one of the Technical Office Book No. 34, page 730, Rule No. 146; Appeal No. 275 of the year 51 Q, issued in the session of November 1, 1981, and published in part one of the Technical Office Book No. 32, page 795, Rule No. 137; Appeal No. 488 of the year 51 Q, issued in the session of November 1, 1981, and published in part one of the Technical Office Book No. 32, page 801, Rule No. 138; Appeal No. 532 of the year 50 Q, issued in the session of June 16, 1980, and published in part one of the Technical Office Book No. 31, page 800, Rule No. 154; Appeal No. 1193 of the year 45 Q, issued in the session of November 23, 1975, and published in part one of the Technical Office Book No. 26, page 726, Rule No. 160; Appeal No. 805 of the year 45 Q, issued in the session of June 22, 1975, and published in part one of the Technical Office Book No. 26, page 528, Rule No. 123; Appeal No. 1148 of the year 42 Q, issued in the session of December 25, 1972, and published in part three of the Technical Office Book No. 23, page 1459, Rule No. 327; Appeal No. 1248 of the year 42 Q, issued in the session of December 25, 1972, and published in part three of the Technical Office Book No. 23, page 1472, Rule No. 330; Appeal No. 853 of the year 42 Q, issued in the session of October 15, 1972, and published in part three

The plea of invalidity of the confession, based on it being made under coercion, is a substantive argument that the trial court must address and respond to. The Court of Cassation has ruled that this claim is equivalent to the defendant personally raising the issue of nullity, or to another defendant in the case joining in the plea.] ([706])

If the court decides to base its judgment on the confession of the accused as evidence of guilt, it must first examine whether the confession was made voluntarily or under duress, specifically regarding any injuries the accused claims to have sustained as a result of coercion. Failing to do so would render the judgment flawed, as the reliance on the confession and other supporting evidence would be compromised. The Court of Cassation has ruled that a confession used as evidence must be made freely and voluntarily; even if the confession is true, it cannot be accepted if it resulted from coercion. The court is required to assess the link between the confession and any alleged injuries that could have been caused by coercion. In this case, the court failed to address the appellant's claim of a fracture in his right arm caused by physical

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of the Technical Office Book No. 23, page 1049, Rule No. 234; Appeal No. 1056 of the year 41 Q, issued in the session of December 26, 1971, and published in part three of the Technical Office Book No. 22, page 805, Rule No. 193; Appeal No. 506 of the year 40 Q, issued in the session of June 22, 1970, and published in part two of the Technical Office Book No. 21, page 905, Rule No. 214; Appeal No. 1712 of the year 38 Q, issued in the session of January 12, 1970, and published in part one of the Technical Office Book No. 21, page 80, Rule No. 20; Appeal No. 558 of the year 37 Q, issued in the session of May 15, 1967, and published in part two of the Technical Office Book No. 18, page 651, Rule No. 127; Appeal No. 914 of the year 35 Q, issued in the session of October 25, 1965, and published in part three of the Technical Office Book No. 16, page 739, Rule No. 140; Appeal No. 29 of the year 27 Q, issued in the session of March 26, 1957, and published in part one of the Technical Office Book No. 8, page 288, Rule No. 83.

([706]) 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, 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.

coercion, and it did not examine how this injury might relate to the confession. As a result, the judgment is tainted by this oversight, and the other evidence used to support it is also invalidated. The evidence in criminal cases must work together to form a coherent judgment, and if any piece of evidence is invalidated, it is impossible to determine how it affected the court's decision or what the outcome would have been had the invalid evidence not been considered.] ([707])

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 itself 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] ([708])

([707]) Appeal No. 7555 of 69 S issued on January 27, 2008 (unpublished).

([708]) Appeal No. 2470 of 85 Q issued on March 9, 2016, published in the Technical Office Book No. 67, page 302, Rule No. 38; Appeal No. 12589 of 83 Q issued on January 2, 2016, published in the Technical Office Book No. 67, page 13, Rule No. 1; Appeal No. 15915 of 84 Q issued on January 12, 2015, published in the Technical Office Book No. 66, page 144, Rule No. 11; Appeal No. 15963 of 84 Q issued on January 12, 2015, published in the Technical Office Book No. 66, page 149, Rule No. 12; Appeal No. 5173 of 4 Q issued on May 20, 2014, published in the Technical Office Book No. 65, page 442, Rule No. 50; Appeal No. 26503 of 75 Q issued on January 6, 2013, published in the Technical Office Book No. 64, page 33, Rule No. 4; Appeal No. 36048 of 74 Q issued on November 27, 2012, published in the Technical Office Book No. 63, page 790, Rule No. 143; Appeal No. 37273 of 74 Q issued on November 25, 2012, published in the Technical Office Book No. 63, page 777, Rule No. 139; Appeal No. 3746 of 80 Q issued on January 2, 2012, published in the Technical Office Book No. 63, page 41, Rule No. 4; Appeal No. 12795 of 80 Q issued on July 25, 2011 (unpublished); Appeal No. 23979 of 73 Q issued on March 16, 2010 (unpublished); Appeal No. 20251 of 72 Q issued on November 23, 2009 (unpublished); Appeal No. 1593 of 77 Q issued on March 8, 2009 (unpublished); Appeal No. 19849 of 67 Q issued on December 10, 2006 (unpublished); Appeal No. 51030 of 74 Q issued on July 10, 2006 (unpublished); Appeal No. 24044 of 66 Q issued on January 19, 2006 (unpublished); Appeal No. 10534 of 70 Q issued on December 2, 2004 (unpublished); Appeal No. 36732 of 73 Q issued on May 10, 2004 (unpublished); Appeal No. 10118 of 78 Q issued on November 21, 2009, published in the Technical Office Book No. 60, page 477, Rule No. 64; Appeal No. 14527 of 72 Q issued on October 21, 2009, published in the Technical Office Book No. 60, page 354, Rule No. 49; Appeal No. 7961 of 78 Q issued on May 14, 2009, published in the Technical Office Book No. 60, page 246, Rule No. 33; Appeal No. 10938 of 77 Q issued on March 2, 2008, published in the Technical Office Book No. 59, page 172, Rule No. 29; Appeal No. 50614 of 74 Q issued on December 7, 2005, published in the Technical Office Book No. 56, page 691, Rule No. 105; Appeal No. 22878 of 73 Q issued on January 6, 2004, published in the Technical Office Book No. 55, page 86, Rule No. 4; Appeal No. 4184 of 73 Q issued on September 29, 2003, published in the Technical Office Book No. 54, page 884, Rule No. 120; Appeal No. 29650 of 70 Q issued on April 17, 2003, published in the Technical Office Book No. 54, page 569, Rule No. 71; Appeal No. 7981 of 70 Q issued on February 8, 2002, published in the Technical Office Book No. 52, page 243, Rule No. 39; Appeal No. 5223 of 70 Q issued on February 4, 2001, published in the Technical Office Book No. 52, page 205, Rule No. 35; Appeal No. 26293 of 67 Q issued on March 13, 2000, published in the Technical Office Book No. 51, page 288, Rule No. 53; Appeal No. 8744 of 66 Q issued on April 22, 1998, published in the first part of the Technical Office Book No. 49, page 608, Rule No. 79; Appeal No. 29653 of 67 Q issued on March 10, 1998, published in the first part of the Technical Office Book No. 49, page 388, Rule No. 53; Appeal No. 25649 of 64 Q issued on December 17, 1996, published in the first part of the Technical Office Book No. 47, page 1362, Rule No. 196; Appeal No. 21539 of 64 Q issued on November 3, 1996, published in the first part of the Technical Office Book No. 47, page 1131, Rule No. 163; Appeal No. 9837 of 64 Q issued on April 14, 1996, published in the first part of the Technical Office Book No. 47, page 519, Rule No. 73; Appeal No. 2024 of 63 Q issued on January 16, 1995, published in the first part of the Technical Office Book No. 46, page 163, Rule No. 22; Appeal No. 3838 of 62 Q issued on February 6, 1994, published in the first part of the Technical Office Book No. 45, page 221, Rule No. 33; Appeal No. 3271 of 62 Q issued on January 12, 1994, published in the first part of the Technical Office Book No. 45, page 151, Rule No. 22; Appeal No. 6840 of 60 Q issued on October 3, 1991, published in the first part of the Technical Office

The Court of Cassation has further clarified that the defendant's claim that his statements during the investigation were influenced by threats and intimidation by the police does not, by itself, constitutes a valid defense to challenge the validity of his confession. The court ruled that the appellant or his defense did not argue during the trial that his confession was coerced. The appellant's statement—that his confession was a result of threats and intimidation by the police and that he was pressured to confess in order to avoid being charged with fraud—was vague and did not provide specific evidence to support his claim. Therefore, this statement cannot be considered a valid defense against the confession's validity or a claim of coercion. The court further found that the judgment was based on the appellant's confession, which was given after he was reassured about his safety. Additionally, it was ruled that the appellant could not raise the issue of coercion for the first time before the Court of Cassation, as this would require a fresh investigation—an area outside the Court of Cassation's jurisdiction. Therefore, the claim of coercion was deemed invalid.] ([709])

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: [The minutes from the trial session clearly show that the appellants' defense did not argue that the confession was invalid due to coercion. The first appellant's defense merely claimed moral coercion and the arrest of his family, while the second appellant's defense stated that the confession was invalid, but neither of them provided specific reasons for challenging the validity of the confession. This raises doubts about the reliability of the confession, but it cannot be considered a proper defense of its invalidity or a claim of coercion. Therefore, the only action that could be taken would be to question the evidence derived from the confession and argue that the court should not rely on it. However, it is not permissible for the appellants to raise this argument for the first time before the Court

Book No. 42, page 958, Rule No. 133; Appeal No. 557 of 60 Q issued on May 21, 1991, published in the first part of the Technical Office Book No. 42, page 851, Rule No. 118; Appeal No. 2534 of 59 Q issued on February 6, 1990, published in the first part of the Technical Office Book No. 41, page 275, Rule No. 48; Appeal No. 4537 of 57 Q issued on January 14, 1988, published in the first part of the Technical Office Book No. 39, page 164, Rule No. 19; Appeal No. 6261 of 56 Q issued on February 18, 1987, published in the first part of the Technical Office Book No. 38, page 301, Rule No. 43; Appeal No. 2455 of 55 Q issued on October 27, 1985, published in the first part of the Technical Office Book No. 36, page 935, Rule No. 170; Appeal No. 882 of 52 Q issued on April 6, 1982, published in the first part of the Technical Office Book No. 33, page 441, Rule No. 90; Appeal No. 1175 of 48 Q issued on March 15, 1979, published in the first part of the Technical Office Book No. 30, page 346, Rule No. 71; Appeal No. 649 of 44 Q issued on January 6, 1975, published in the first part of the Technical Office Book No. 26, page 20, Rule No. 5; Appeal No. 1947 of 39 Q issued on April 6, 1970, published in the second part of the Technical Office Book No. 21, page 532, Rule No. 128; Appeal No. 1009 of 30 Q issued on November 7, 1960, published in the third part of the Technical Office Book No. 11, page 756, Rule No. 145.

([709]) 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.

of Cassation, as it requires a factual investigation, which falls outside the scope of the Court of Cassation's role.] ([710])

This is what is required by procedural legitimacy, and considering nullity as absolute nullity or invalidity of public order entails several consequences, namely:

1-It is not permissible to waive the claim to nullity.

2- It is the duty of the trial court to rule on its own initiative and without a request.

3- 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, on the grounds that it was made under coercion or an unfree will that violates public order, is intended to assert the innocence of the accused. Innocence is presumed to be associated with the accused until a final conviction is rendered. If a confession is used as criminal evidence, its evaluation falls under the jurisdiction of the trial court, and it is not appropriate to reconsider this evaluation at the Court of Cassation. However, this does not mean that the plea of nullity cannot be raised for the first time before the Court of Cassation in all cases. Additionally, there is no indication in the final paragraph of Article 55 of the 2014 Constitution that the plea of nullity, based on a confession made under coercion or duress, is inadmissible. The text explicitly states: "Any statement proven to have been made by a detainee under the influence of any of the foregoing or threats related to it is void 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 ([711]).

The defendant's confession made in the presence of a police officer—assuming it took place—does not impact its validity, as the mere presence of authority does not constitute coercion,

([710]) 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.
([711]) Article 226 of the Judicial Instructions of the Public Prosecution.

provided that the officer's actions do not cause the accused any physical or psychological harm. ([712])

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. ([713])

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 ([714]).

Fourth: The accused's lawyer must be present for the interrogation or confrontation procedures

Individuals suspected of or charged with criminal offenses have the right to legal representation during the investigation, as well as the right to remain silent and not be forced to testify against themselves.

Individuals suspected of or charged with a criminal offense have the right to have a lawyer present during their interrogation and to receive legal assistance. This right serves as a crucial safeguard against torture and mistreatment. A lawyer’s presence helps prevent ill-treatment or coercion and ensures that corrective measures can be taken if such abuses occur. Additionally, it protects those involved from unjust accusations of misconduct.

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 expresses concern that in many jurisdictions, the right to legal representation is often disregarded or delayed during interrogations, allowing incriminating

([712]) 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.
([713]) Article 227 of the Judicial Instructions of the Public Prosecution.
([714]) 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.

confessions or statements to be extracted without legal oversight. The protocol should explicitly state that interrogating individuals without a lawyer present is prohibited, except in exceptional circumstances or when the individual voluntarily and knowingly waives this right. It should also emphasize that all persons deprived of their liberty must have access to legal counsel, regardless of whether the offense is classified as "minor" or "serious."

According to the Special Rapporteur on torture, exceptional circumstances that prevent access to a lawyer must be clearly defined in domestic law and should align with situations where urgent action is required to avoid severe consequences for a person's life, liberty, or physical integrity, or where immediate investigative measures are necessary to prevent the destruction or tampering of crucial evidence or witness interference. Even in such cases, necessary safeguards must be in place during interrogations conducted without a lawyer present. The interrogation should be strictly limited to addressing the immediate circumstances, specifically obtaining information crucial to the situation, and must not unduly compromise the right to a defense. The right to a defense is irreparably harmed when statements made during an interrogation without legal representation are later used to secure a conviction.

When an individual waives their right to counsel, verification methods should be employed to ensure that they have been clearly and thoroughly informed about the right and the potential consequences of waiving it, and to confirm that the waiver was made voluntarily and knowingly. If an individual requests to exercise their right to counsel during interrogation, the waiver of this right cannot be assumed simply because the person continues to answer questions without a lawyer present, even if they were previously informed of their right to remain silent. In such cases, the interrogation must be paused until a lawyer is present, unless the individual voluntarily chooses to continue speaking with the interrogators ([715]).

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.

Special [715]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 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 Human Rights Committee, Communication No. 770/1997, Gidin v. Russian Federation, views adopted on 20 July 2000, (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)..

The investigator's presence and authority are essential during interrogations to safeguard the rights of the individuals being questioned and to ensure they are treated fairly. Lawyers must be allowed to ask questions, request clarifications, object to improper or unfair questioning, and provide legal advice to their clients without facing intimidation, obstruction, harassment, or undue interference. However, lawyers cannot prevent the individuals from answering questions they wish to respond to, answer on their behalf, or interfere in the interrogation without valid reasons.

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 detention stage.

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 ([716].

They should be notified of these rights before their interrogation begins ([717].

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). [718]

Both the Inter-American Court and the European Court have made it clear that suspects have the right to a lawyer during police interrogation ([719].

The Human Rights Committee and the Committee against Torture have consistently urged States to guarantee that all detainees, including those suspected of involvement in terrorist

([716]) (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).
([717]) Principle 29 8 of the Principles of Legal Aid..
([718]) General Comment 32 of the Human Rights Committee, 32..
([719]) 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, have the right to access legal counsel before interrogation and to have a lawyer present during interrogation sessions ([720]).

The Principles on Legal Aid assert that, except in exceptional circumstances, States should prohibit police interrogations of suspects without their lawyer present, unless the suspect has voluntarily and knowingly waived their right to legal representation. This prohibition should be absolute for individuals under the age of 18 ([721]).

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 ([722]).

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. ([723])

Article 124 of the Code of Criminal Procedure stipulates that: "**The investigator handling felony and misdemeanor cases punishable by imprisonment must not question the accused or confront them with other suspects or witnesses unless the accused's lawyer has been invited to attend, except in cases of flagrante delicto or urgent circumstances where there is a risk of evidence being lost, as noted by the investigator in the record. The accused must inform the court clerk, prison warden, or investigator of the name of their lawyer, and the lawyer can also make this notification on behalf of the accused. If the accused does not have a lawyer or if their lawyer fails to attend after being invited, the investigator must assign a lawyer on their own initiative. The lawyer may record any defenses, requests, or comments in the investigation minutes. Once the investigation is concluded, the investigator must, upon the request of the appointed lawyer, issue an order to determine the lawyer's fees, based on the**

Concluding [720]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.

([721]) Guidelines 43 3 (b) and 53 10 (b) of the Principles of Legal Aid.

([722]) Special Rapporteur on Torture, 68/2003/2002) UN Doc. E/CN.4) 26 (e).

([723]) Special Rapporteur on Torture, 68/2003/2002) UN Doc. E/CN.4) 26 (e).

fee schedule set by the Minister of Justice, following the opinion of the General Bar Association. These fees are treated as judicial fees.

The investigator must invite the accused's lawyer, if one is available, to attend the interrogation or confrontation of the accused. However, the investigator may proceed with the interrogation without the lawyer's presence if the accused has not provided the name of their lawyer, either in the interrogation record, in a report to the court clerk, or to the prison warden. The fact that the lawyer was present earlier in the process does not alter this, as long as the accused has not followed the legally required procedure for formally notifying the authorities of their lawyer's name.

It is necessary to distinguish between the question of the accused and his interrogation. The question of the accused is when he is present for the first time in the investigation, and it is limited to informing him of the charge against him and proving his statements about it in the record without entailing questions to him. As for the interrogation, it is to confront the accused with the evidence of the case and discuss it.

The criminal investigator is not allowed to interrogate the accused or confront them with other suspects or witnesses unless the accused's lawyer has been invited to attend, except in cases of flagrante delicto or when urgent circumstances exist, such as the risk of losing evidence. If the accused does not have a lawyer or if the case involves a misdemeanor, the interrogation can proceed without delay. The decision regarding urgency and the risk of losing evidence is left to the investigator's discretion, but must be carried out under the supervision of the trial court. A valid reason for such urgency may include obtaining a confession from the accused, which could justify the need for swift actions in the interest of the investigation.

The accused shall announce the name of his lawyer in a report in the court clerk's office or to the prison warden, and his lawyer may also take over this declaration or declaration. ([724])

The investigator shall appoint lawyers to perform their duty in defending the accused, and answer them to what they request in order to prove the innocence of their clients, within the limits permitted by law, and in a manner that does not unduly disrupt and hinder the work of the investigation. ([725])

The intent behind this provision is to safeguard the accused from any potential flaws in their confession that could be influenced by material or moral coercion, or any such coercion that

([724]) Article 221 of the Judicial Instructions of the Public Prosecution.
([725]) Article 169 of the Judicial Instructions of the Public Prosecution.

may extend to other defendants or witnesses when confronted. This protection ensures that the accused is not unduly affected by coercion in a way that could impact the fairness of the proceedings. However, if the accused denies the charges during the investigation, there is no confrontation with other defendants or witnesses, or if the interrogation relates to a flagrante delicto or an urgent situation due to the risk of evidence being lost, then the application of Article 124 of the Code of Criminal Procedure no longer applies. ([726])

The investigator is required to invite the defendant's lawyer to be present before questioning the defendant or confronting them with other defendants or witnesses in cases involving felonies and misdemeanors punishable by imprisonment. This is mandatory, except in cases of flagrante delicto or when urgent action is needed to prevent the loss of evidence, as documented by the investigator in the record.

The Court of Cassation ruled that conducting a photographic inspection without assigning a lawyer to the accused renders the inspection invalid, along with any evidence obtained from it: [It is evident from the review of the records that the investigating prosecutor carried out the photographic inspection on June 23, 2010, during which the accused confessed to killing the victim and demonstrated how the crime was committed. This inspection occurred without the Public Prosecution appointing a lawyer for the accused, despite her being unrepresented. In light of this, Article 124 of the Criminal Procedure Law, as amended by Law No. 145 of 2006, issued on June 28, 2006, and effective from July 15, 2006, states: “The investigator is not permitted to question the accused or confront them with other suspects or witnesses in cases involving felonies or misdemeanors punishable by imprisonment, unless the accused's lawyer has been invited to attend, except in cases of flagrante delicto or when urgent circumstances arise due to the risk of losing evidence, as recorded by the investigator. The accused must provide the name of their lawyer through a report to the court clerk, the prison warden, or by notifying the investigator, and the lawyer may also handle this notification on behalf of the accused. If the accused does not have a lawyer or if their lawyer fails to attend after being invited, the investigator is required to assign a lawyer automatically.” This provision establishes that the legislator mandates a specific safeguard for every accused individual in a felony or misdemeanor case punishable by imprisonment: if the accused has a lawyer, that lawyer must be invited to attend the interrogation or confrontation, except in cases of flagrante delicto or urgent circumstances where there is a risk of evidence being lost. This ensures the accused's

([726]) 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).

right to defend themselves and preserves their right to legal representation. To facilitate this safeguard, the accused must inform the court clerk or prison warden of their lawyer's name or the lawyer can provide this notification on behalf of the accused. The law does not require a specific format for this notification—it can be done by letter, through a bailiff, or by an officer of the public authority. If the accused has no lawyer or their lawyer does not attend after being invited, the investigator is obligated to assign a lawyer to the accused. It is evident from the records and the surrounding context that the convicted woman was not accompanied by a lawyer during the photographic inspection. The minutes of the inspection show that she confessed to killing the victim and demonstrated how the crime was committed. However, the investigator did not assign her a lawyer, in violation of the immediate provisions of Law No. 145 of 2006, rendering the inspection invalid. Since the contested judgment relied on this photographic inspection as evidence for the conviction, the judgment is flawed and)[727]must be considered invalid.] (

The assessment of the availability of cases of flagrante delicto and urgency is left to the investigator under the supervision of the trial court. ([728])

If the record fails to document this statement, it suggests that the investigator did not follow the required procedure, thereby violating the right of defense. ([729])

The accused must inform the court clerk or the prison warden of their lawyer's name through a report, or notify the investigator directly. Alternatively, the lawyer may handle this notification on behalf of the accused.

If the accused does not have a lawyer, or if their lawyer fails to attend after being invited, the investigator must appoint a lawyer for the accused on their own initiative.

The lawyer may record in the minutes whatever defenses, requests, or observations he may have.

Once the investigation is concluded, the investigator must, upon the request of the assigned lawyer, issue an order to determine their fees, based on the fee schedule established by a

([727]) 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.
([728]) 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.
([729]) Crime, 13 April 1911, Bull. No. 210.

decision of the Minister of Justice, following consultation with the General Bar Association's Board. These fees will be subject to the same regulations as judicial fees.

The right to a defender is granted to every person accused of a criminal offense, but it is mandatory in cases of felonies or misdemeanors punishable by imprisonment. In such cases, the investigator must appoint a lawyer for the accused, regardless of their status, wealth, or social standing. In other words, there are no conditions related to income or social status that could limit this right. Therefore, the investigator has no discretion to consider these factors or to delay the appointment of a lawyer based on the accused's financial situation or social position; it is his duty to ensure the appointment is made.

The legislator mandates a specific safeguard for every accused person in a felony or misdemeanor punishable by mandatory imprisonment: if the accused has a lawyer, the lawyer must be invited to attend the interrogation or confrontation. If no lawyer is present, the investigator is obligated to appoint one on their own initiative. ([730])

If the accused has a private lawyer, the right to a defender takes effect as soon as the accused formally announces the name of their lawyer in accordance with the procedures outlined 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.

The accused, once arrested, must be brought before the Public Prosecution within twenty-four hours of their arrest. The Public Prosecution is required to begin interrogating the accused within twenty-four hours of their presentation. Consequently, this period represents the maximum time frame within which the right to legal assistance must be exercised, meaning the Public Prosecution must assign a lawyer to be present with the accused. ([731])

The prosecution is not to be criticized for starting the investigation of the accused in the absence of a lawyer, provided that assigning one was impossible or the process was otherwise hindered. The Court of Cassation has ruled as follows: **[The legislator established a specific safeguard for anyone accused of a felony or misdemeanor punishable by imprisonment. This safeguard requires that the accused's lawyer, if they have one, must be invited before the accused is**

([730]) 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.

([731]) Articles 36, 123/1 and 124 of the Criminal Procedure Code.

interrogated or confronted with other defendants or witnesses. The accused also has the right to choose their lawyer by formally announcing the lawyer's name in a report with the court clerk, the prison warden, or through the lawyer themselves. If the accused does not have a lawyer, the investigator is obligated to appoint one on their own initiative. However, the legislator provides two exceptions where the evidence of the case must be preserved: in cases of flagrante delicto and when there is a risk of evidence being lost due to the urgency of the situation. In these cases, the investigator must document the circumstances that led to the urgency, justifying the decision to interrogate the accused without waiting for or inviting their lawyer. At the same time, the investigator must ensure the accused's right to defend themselves is upheld. The judgment addressed the appellant's defense, noting that since the accused did not have a lawyer, the investigator sought assistance from the Bar Association to appoint one. However, no lawyer was available, and as a result, the investigator was unable to proceed with the investigation in the usual manner and proceeded to interrogate the accused. This explanation, provided in the judgment, is sufficient and reasonable for rejecting the claim. The prosecution is not at fault for starting the investigation in the absence of a lawyer, as long as appointing one was not possible— as was the case here— and the prosecution was otherwise unable to carry out its duties.] (732)

It also ruled that: [**It is clear that the accused did not provide the name of his lawyer to the investigator either in the interrogation record or in a report to the court clerk or prison warden before the interrogation. At the request of a lawyer, the investigator attempted to arrange for a lawyer from the Bar Association to attend the interrogation. However, this was not possible due to the association being closed. As a result, assigning a lawyer was not feasible. Therefore, the prosecution was not obligated to delay or suspend the interrogation of the appellant. There is no fault with the investigator, as he was not required to wait for the lawyer or postpone the interrogation until one was present. Consequently, the trial procedures were in accordance with Article 124 of the Criminal Procedure Law. To suggest otherwise would risk compromising the evidence, especially when the investigation requires prompt action, as in this case. Any delay would hinder the Public Prosecution from performing its duties, given that the accused did not announce a lawyer in the manner required by the law.**] **(**(733)

It is not permissible for the accused to waive the right to seek the assistance of a defender. When a defendant is presented to the Public Prosecution for a felony or misdemeanor

(732) 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).
(733) Appeal No. 3190 of 81 S issued on July 7, 2013 (unpublished).

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 does 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 defendants or witnesses is a duty and not freedom or a license that the accused may waive at any time. This is also true even 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. However, the application of this rule must not prejudice 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:

(A) 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. ([734])

B. 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**

([734]) 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 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).

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, he conducted his interrogation, then the investigation procedures were carried out in accordance with the law.] (735)

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.

- A severe injury to the accused that could bring them close to 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.

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: [**Article 124 of the Code of Criminal Procedure clearly states that in felony cases, the accused cannot be interrogated or confronted unless their lawyer is invited to attend, if they have one. The only exceptions to this rule are cases of flagrante delicto or urgency due to the risk of losing evidence. The determination of such urgency is left to the discretion of the investigator, subject to the oversight of the trial court, which must approve the reasons for such urgency if they are justified and demonstrate a real threat of evidence being lost. Therefore, the appellants cannot challenge or dispute this approach based on its established legal reasoning or the conclusions reached.**] (736)

There are important things to consider when making either exception:

• First, the investigator must justify his decision to begin the investigation without the presence of a defender for the accused, specifying which of the two exceptions applied. This is necessary

(735) Appeal No. 8958 of 81 S issued on 7 May 2013 (unpublished).

(736) 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.

to enable the trial court to later assess whether the investigator's judgment regarding the circumstances that led to the use of the exception was appropriate.

The Court of Cassation ruled that: [**The legislator has established a special guarantee for every defendant in a felony or misdemeanor punishable by mandatory imprisonment. This guarantee requires that, if the defendant has a lawyer, the lawyer must be notified before the defendant is interrogated or confronted with other defendants or witnesses. The accused is also granted the right to choose their lawyer by formally announcing the lawyer's name in a report filed with the court clerk or prison warden, or allowing the lawyer to do so. If the accused does not have a lawyer, the investigator is required to assign one on their own initiative. However, the legislator makes two exceptions to this rule, aimed at preserving evidence: the case of flagrante delicto and situations of urgency where there is a risk of losing evidence. In such cases, the investigator must justify the urgency that led to proceeding with the investigation without waiting for or inviting the lawyer, while ensuring the accused's right to defend themselves is still upheld.**]

• Second, the defendant's lawyer must be permitted to attend their client's interrogation at any time, provided the lawyer is present at the prosecutor's office when the investigation begins or during its progress, even if one of the two exceptions applies. ([737])

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.

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.

([737]) 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).

The law did not mandate a specific form for the accused to announce the name of their lawyer. This can be done through a letter, by a bailiff, or by a person of public authority ([738]).

The Court of Cassation ruled that: [**It is decided that the accused has the freedom to choose their own defender, and this right is inherent and personal, superseding the judge's discretion in selecting a defender. If the accused selects a defender, the judge is not required to assign a different one. However, if this right conflicts with the presiding judge's authority to manage the proceedings and ensure the case progresses without disruption, the judge must respect the accused's right to choose a defender, while ensuring that the accused is never left without legal representation.**] ([739])

[**As long as it is established that the accused has been attended by 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 based on a power of attorney from the accused or on behalf of the lawyer assigned by the court or on his own initiative, as what matters is that the defendant has achieved the defense in the manner required by law.**] ([740])

In the event that the accused does not have a lawyer and is unable to appoint one, the law is clear that a member of the prosecution must appoint a lawyer to attend the interrogation or confrontation if the accused has not chosen a lawyer beforehand. However, this requirement is limited to these two investigative procedures. For other investigative actions, such as inspecting the crime scene or questioning witnesses, the investigator may proceed 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**

([738]) 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.

([739]) 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.

([740]) 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.

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] **(**[741].

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 between all or some of the defendants: [**If one of the defendants confesses, both to their own actions and those of the other defendant, they are considered a witness against the other. In such a case, it is not allowed for a single lawyer to represent both defendants.**] ([742])

The Bar Association is legally responsible for providing the lawyers assigned to attend with defendants who are before the Public Prosecution for interrogation or confrontation, which is one of its key roles. Therefore, the prosecutor cannot seek the assistance of any lawyer to represent the accused before the legal requirements are met. This includes notifying the relevant branch of the Bar Association to take the necessary steps to assign a lawyer to attend with the accused. ([743])

The law did not specify a particular form for inviting a lawyer to attend the interrogation of the accused or confront them. This can be done through a verbal request or by a public authority figure. However, there are certain requirements that must be fulfilled in the notification to ensure it achieves its intended purpose. These requirements are as follows:

- The notification must be directed to the appropriate branch of the Bar Association, specifically to the office of the association within the same geographic area as the prosecution office where the accused is being presented. The final section of the manual includes the contact details for the 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).

([741]) 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.
([742]) 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.
([743]) Articles 64, 93, 94, 121/b of the Advocacy Law.

- Proof of that notification in the investigation report.

- It is worth mentioning that there is no barrier preventing the Public Prosecution, in coordination with the General Bar Association, from using alternative communication methods, such as email or fax, as long as these methods provide sufficient information for the trial court to maintain oversight of the procedure. It should always be considered that the means of communication with the Bar Association may change depending on evolving circumstances and the proximity of the prosecution office to the branch of the Bar Association. (744)

The branch Bar Association has complete discretion in selecting any lawyer registered with it. Therefore, the prosecutor does not have the right to object to the presence of a lawyer appointed from this list, except in the following cases:

- If the lawyer is assigned to another defendant in the same case in a way that 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 permits a lawyer, even if they are still in training, to attend investigations regardless of the nature of the case, whether it is a felony or a misdemeanor.

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(744) 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. _____, the Prosecutor.

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: _____.

It is preferable, despite the above, that the assigned lawyer is qualified to plead before the court that will finally hear the case. (745)

The law and the prosecution's guidelines do not set a specific time frame for how long the prosecutor must wait for the appointed lawyer to arrive. This matter is flexible and varies depending on several factors, such as the distance between the prosecution office and the branch of the Bar Association, the time of day the investigation is taking place (morning or evening), the location of the investigation (at the prosecution office or elsewhere), the availability of transportation, and other considerations. Ultimately, this decision is at the discretion of the prosecutor, but it remains subject to the oversight of the trial court. Therefore, the prosecutor must always document the actions taken in this regard in the investigation record and explain the reasons for each decision, so that the trial court can ensure the integrity of the procedure. (746)

The prosecutor may initiate the investigation even if the assigned lawyer is not present, but it is necessary to follow the following steps:

1. Notify the competent sub-union of the decision of the Public Prosecution with a legal mandate.

2. Verify that the subordinate union has received the said notification form.

3. Waiting for the appropriate time for the presence of the assigned lawyer.

4. 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.

5. If the prosecutor is unable to contact the relevant branch of the Bar Association or confirm that a lawyer has been assigned, they must seek the assistance of any other available lawyer at the prosecution office who is willing to represent the accused.

6. 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 prosecutor 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 member of the prosecution. He may see throughout the interrogation of the accused in the

(745) Articles 26, 65, 70 of the Advocacy Law.
(746) Article 603 of the Judicial Instructions of the Public Prosecution, Circular Letter of the Attorney General No. 11 of 2006.

morning of the next day 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. (747)

The lawyer is entitled to the following rights during the preliminary investigation stage:

- The right to have access to all files relevant to the investigation.

- The right to prove observations or make defenses and motions 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 a general power of attorney.

- The right of the attorney assigned by the Public Prosecution to apply for the estimation and payment of fees.

- The right to good treatment and assistance during performing of his task. (748)

In Articles 124 and 125 of the Code of Criminal Procedure, the legislator outlines the process of questioning the accused once they are investigated by the Public Prosecution, ensuring that legal protections are provided solely for their benefit, including the right to be with their lawyer without separation. (749)

During the preliminary investigation phase, the lawyer has the following substantive obligations:

- The duty to protect his client's interests by offering all necessary legal assistance.

(747) Articles 64 and 98 of the Advocacy Law.
(748) Articles 81, 84, 124, 125 of the Criminal Procedure Code and articles 49 to 57 of the Advocacy Law.
(749) Appeal No. 7954 of 86 S issued at the 10th session of December 2016 (unpublished).

- Safeguarding the confidentiality of his client's information.

- Maintaining the confidentiality of the investigation.

- Refrain from making media statements or declarations.

- Refrain from disclosing the statements made by the assignee regarding the case.

- The lawyer is also required to fulfill certain procedural duties, such as paying the lawyer's stamp fee, dressing appropriately, and addressing the prosecution and other parties involved in the case in a respectful manner. ([750])

The Ministry of Justice, in coordination with the General Syndicate Council, has established a fee schedule for lawyers appointed to attend Public Prosecution investigations and trials. The fees range from a minimum of one hundred pounds to a maximum of two hundred pounds for misdemeanor cases, and from a minimum of two hundred pounds to a maximum of three hundred pounds for felony cases. These fees will be paid from the treasury of the Court of First Instance in the relevant circuit or from the prosecution that initiated the investigation. ([751])

Regarding the procedures for fee payment, there is a specific set of steps that must be followed to enable the assigned lawyer to pay their legally prescribed fees, which are as follows:

1. The assigned lawyer must submit a request for fee payment to the relevant prosecution after the case has been definitively resolved, either by its closure or referral.

2. 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 give him a signature legible in his triple name.

3. The responsible investigation clerk shall prepare a memorandum for the payment of the assigned lawyer's fees, along with "Form No. 38b Prosecution," which pertains to the fee estimation order from the prosecution in criminal cases. This document must be signed by the authorized prosecution member.

4. 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

([750]) Articles 62 to 76 of the Advocacy Law.
([751]) 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.

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.

5. 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.

6. The Chief Prosecutor shall approve the disbursement note and the appreciation order.

7. The Chief Criminal Registrar shall issue the exchange approval form.

8. The fees for the lawyer shall be paid from the treasury of the competent court of first instance. (752)

Criteria for estimating attorneys' fees

The prosecutor's estimate of the fees of the assigned lawyer includes several criteria, for example:

1. The number of investigation sessions attended by the assigned lawyer during which the accused was questioned or confronted with other accused individuals or witnesses.

2. Defenses, requests or observations made by him and proven in the minutes of the investigation.

3. The number of requests he made to see what was done in the case.

4. The size and importance of the documents submitted to support the position of his client. (753)

The right to have a defender present is a fundamental guarantee during interrogation. Failure to uphold this right renders the interrogation invalid, along with any evidence obtained from it. Consequently, any confession made by the accused during this invalid interrogation is also considered void, as a confession can only be accepted as valid evidence if it follows a properly conducted interrogation by the investigating authority. (754).

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.

(752) Attorney General's Circular No. 34 of 2007.
(753) Attorney General's Circular No. 34 of 2007.
(754) Articles 331 to 336 of the Criminal Procedure Code.

- The defendant is notified of the name of a lawyer in one of two ways:

1-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.

- Proof in investigations of 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.

- Allowing the assigned lawyer to pay their legally prescribed fees after the case has been conclusively resolved, following the required legal procedures.

The investigator is prohibited from:

- Denying the accused the right to seek the assistance of a defender in any criminal case.

- Denying the accused the 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.

- 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 exceed 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 ([755]).

The Court of Cassation ruled that the prohibition of interrogating the accused in a felony or misdemeanor punishable by mandatory imprisonment, or confronting them with others, unless their lawyer is present (or a lawyer assigned by the investigator), is a right established for the benefit of the accused. The accused may choose to waive this right by requesting interrogation without a lawyer, but they also have the right to revoke this waiver and request the presence of a lawyer at any point during the investigation ([756]).

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

([755]) 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.
([756]) Appeal No. 4930 of 81 S issued on January 10, 2013 (unpublished).

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 the litigants. ([757])

If the Legal Aid Committee appoints a lawyer to initiate a lawsuit on behalf of a litigant who has been exempted from judicial fees, the costs for transferring the delegated lawyer are not permissible. Additionally, the prosecution representative on the Legal Aid Committee must request the judge to restrict the assignment to lawyers who are based within the court's jurisdiction. [(758)]

Fifth: The accused's lawyer must be informed of the investigation the day before the interrogation or confrontation

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.

Every person charged with a criminal offence must have adequate time and facilities to prepare his defense. ([759])

This right is a key element of the principle of equal legal opportunity: both the defense and the prosecution must be treated in a manner that guarantees each party has an equal chance to prepare and present their case before the court. ([760])

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 ([761]).

([757]) Article 224 of the Judicial Instructions of the Public Prosecution.
([758]) Article 290 of the Judicial Instructions of the Public Prosecution.
([759]) 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 444 (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.
([760]) General Comment 32 of the Human Rights Committee, 32.
([761]) Galstian v. Armenia (26986/03), European Court (2007) 85-88.

The European Court has made it clear that the right to adequate time and facilities for the preparation of the defense implies that the accused must be given 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." ([762])

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. ([763])

Regarding the issue of "facilities," the European Court observed that the conditions in which individuals are held in pre-trial detention must allow them to read and write with a reasonable level of focus. The Court further concluded that certain situations undermine the rights of the defense, including: the exhaustive transfer of the detainee to court the night before the trial in a prison vehicle, hearings lasting more than 17 hours, and restrictions on the defense team's access to the case file and their own personal notes. ([764])

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. ([765])

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 decisive for this purpose. ([766])

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.

([762]) Moiseev v. Russia (62936), ECt 220 (2008)..
[763]Ramirez v. Guatemala, Inter-American Court (2005) 70- 80.
([764]) 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).
([765]) 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.
[766]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).

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. ([767])

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. ([768])

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. ([769])

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. ([770])

Disclosure of documents allows the defense to review the observations and evidence that the prosecution intends to present, providing an opportunity to prepare responses or comments on them. ([771])

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. ([772])

([767]) 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).

([768]) 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).

([769]) Galstian v. Armenia (26986) / 03), European Court (2007) .88- 85.

Principle [770]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.

([771]) See Foucher v. France (22209/ 93), European Court (1997) .38- 36.

([772]) Rule 66 of the Rules of Yugoslavia..

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". (773)

The information should be provided in a timeframe that allows the accused sufficient time to prepare his defense. (774)

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. (775)

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 (776).

In cases involving extensive amounts of information, the prosecution is required to identify and disclose evidence that may either incriminate or exonerate the accused. Simply providing the defense with large volumes of documents, including information that requires searching through a computer database, does not fulfill this duty. The defense may struggle to determine the relevance or usefulness of such materials, which can negatively impact their rights and cause delays in the trial process. (777)

The right to access information relevant to a case is not absolute. However, restrictions on the disclosure of documents or withholding of information must not result in an unfair trial. In some cases, the need to prevent injustice due to non-disclosure may lead to charges being dropped or criminal proceedings being terminated. In exceptional circumstances, it may be permissible for an independent and impartial tribunal, following a fair process, to acknowledge that certain evidence has been withheld from the defense.

Any restrictions on disclosure must be strictly necessary and proportionate, aimed at protecting another individual's rights (such as individuals at risk of retaliation) or serving an important public interest (such as national security or the effectiveness of police investigations). Court

(773) Leyva v. Venezuela, Inter-American Court 54 (2009).
(774) Castillo Petruzzi et al. v. Peru, Inter-American Court (1999). 141.
(775) General Comment 32 of the Human Rights Committee, 33.
(776) 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).
(777) Prosecution v. Bemba (55) - 08/01 - 05 / ICC-01), ICC Pre-Trial Chamber, Decision on the Evidence Disclosure Regime and the Setting of a Disclosure Timetable between the Parties (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 Attorney General's Electronic Disclosure Claim in Exemption from Disclosure Obligations (30) June 2006).15- 9.

orders to withhold information should be the exception rather than the rule, and must not undermine the overall fairness of the trial.

The difficulties caused by non-disclosure to the defense must be carefully balanced by the court with the need to maintain the integrity of the proceedings. Authorities and courts must continuously assess the impact of non-disclosure, considering the significance of the information, the safeguards in place, and how these factors affect the fairness of the trial. ([778])

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 decide in a dispute session between the arguments of the defense and the prosecution and respect the principle of equality of arms ([779]).

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 ([780]).

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[781] 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

([778]) 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).
([779]) 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).
([780]) Principles 1, 2 and 15 of the Johannesburg Principles..
Concluding [781]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).

equal legal opportunities includes the right of the defense to have access to the documents necessary for the preparation of its defense ([782]).

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 ([783]).

Principle 21 of the Basic Principles on the Role of Lawyers: «**It is the responsibility of the competent authorities to ensure that lawyers have access to relevant information, files, and documents in their possession or control, for a sufficient period of time to allow them to provide effective legal assistance to their clients. This access should be granted within the shortest reasonable timeframe**».

The Code of Criminal Procedure stipulates that the lawyer must be allowed to view the investigation on the day preceding the interrogation or confrontation unless the judge decides otherwise, and that the accused and his lawyer present with him during the investigation shall not be separated in all cases ([784]).

The investigator must allow the lawyer to view 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. The 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 exercises 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**

([782]) Concluding observations of the Human Rights Committee: Spain,. UN Doc. 18 (2008) CCPR/C/ESP/CO/5.

Onofrio [783]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.

([784]) Article 125 of the Criminal Procedure Law, and Article 222 of the Judicial Instructions of the Public Prosecution.

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.] ([785])

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 ([786]).

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 ([787]).

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. The Administrative Court ruled that: [**Since the investigation is a purely judicial act conducted by the Public Prosecution or the investigating judge, depending on the case, everything related to it falls under the jurisdiction of the body conducting the investigation. This includes the original judgment and all matters related to it, which are within the authority of the body that carried out the investigation. Consequently, matters such as requests for revocation are outside the jurisdiction of the General Council of State, in accordance with the constitutional and legal rules governing the division of jurisdiction between the two judicial bodies. Therefore, the request to halt the implementation of, and revoke, the Attorney General's decision to withhold a copy of the investigations in Case No. of the year (concerning the Supreme State Security Investigation) falls outside the jurisdiction of the Council of State courts.**] ([788])

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 ([789]).

Sixth: 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

([785]) 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.
([786]) Article 80 of the Criminal Procedure Code, and Article 646 of the Judicial Instructions of the Public Prosecution.
([787]) Article 84 of the Criminal Procedure Law.
([788]) 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).
([789]) 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.

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 ([790].

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 ([791].

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 ([792].

Prosecutors must also take care of investigating cases in which foreigners are accused and dispose of them expeditiously ([793].

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 ([794].

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[795] this regard.

([790]) Article 1384 of the Judicial Instructions of the Public Prosecution.
General comment[791] 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.
([792]) Article 1395 of the Judicial Instructions of the Public Prosecution.
([793]) Article 1383 of the Judicial Instructions of the Public Prosecution.
([794]) Article 1385 of the Judicial Instructions of the Public Prosecution.
([795]) Article 1387 of the Judicial Instructions of the Public Prosecution.

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 ([796]).

Seventh: Using Translators

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 ([797]).

With regard to witnesses, victims, suspects, and individuals deprived of their liberty who do not speak or understand the language used during the interrogation, they have the right to receive free assistance from a qualified and competent independent interpreter during interrogations and, when applicable, during consultations with their lawyer. Individuals with sensory impairments are also entitled to interpreter services. If an interpreter is unavailable, a person who knows the interviewee and can communicate effectively with them may be allowed to act as a substitute. Alternatively, the interviewee should be permitted to respond to questions in writing or in their preferred language, if allowed.

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 interpretation applies to the interrogation of all persons arrested or deprived of liberty, including during armed conflicts and in administrative detention ([798]).

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

([796]) Article 1388 of the Judicial Instructions of the Public Prosecution.

([797]) 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)..

([798]) (A/71/298, 5 August 2016, 82-83), (ICCPR, art. 14 (3) (f)), (Body of Principles, para. 14).

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). (799)

The right to interpretation and translation of documents should be extended to include accessibility for persons with disabilities, including those with visual or hearing[800] impairments.

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 ([801].

The European Court concluded that the rights of a Kurdish woman, who had limited knowledge of the Turkish language and was unable to read or write in it, were violated in a case where she was interrogated in Turkish before the trial without the presence of an interpreter or assistance from a lawyer ([802].

The original principle is that the trial should be conducted in the official language of the state, which is Arabic, unless an investigation or trial authority is unable to proceed with the investigation without the assistance of an interpreter, or unless the accused requests an interpreter, in which case the request is subject to the discretion of the authority. It is not considered a flaw in the investigative procedures if the responsible authority hires a translator to perform the translation, as this decision is based on the specific circumstances and needs of the case, and is always at the discretion of the authority conducting the procedure. (803)

([799]) 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).

([800]) See Article 13 of the Convention on the Rights of Persons with Disabilities.

Singarasa [801]v. Sri Lanka, Human Rights Commission,. UN Doc .2/ 7 (2004) CCPR/C/81/D/1033/2001.

([802]) Saman v. Turkey (35292) / 05), European Court (37- 31 (2011)).

([803]) 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 body in charge of 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 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

There is no issue with the investigative procedures if the authority conducting the investigation used two interpreters - one to translate the defendant's statements from Hindi to English, and another to then translate them from English to Arabic ([804].

Eighth: Additional Guarantees for Vulnerable Persons

Acknowledging that certain groups are more vulnerable during interrogation, the protocol should include specific provisions for children, women and girls, individuals with disabilities, members of minorities or indigenous groups, non-citizens (including migrants, regardless of their migration status), refugees, asylum-seekers, and stateless persons. The vulnerability of individuals should be promptly identified to assess their specific needs, which must be considered when conducting interrogations and implementing additional safeguards to protect their rights.

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 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

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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.

([804]) 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.

during interrogation, whether a relative, legal guardian, mental health professional, or social worker with appropriate experience and training ([805].

Ninth: Recording interrogations

Recording interrogations is a crucial safeguard against torture, ill-treatment, and coercion, and should be implemented in the criminal justice system for all forms of detention. Every reasonable effort must be made to fully record interrogations, either audio or video. If circumstances prevent recording or if the interviewee objects to electronic recording, the reasons must be documented in writing, and a complete written record of the interrogation should be maintained. Accurate records of all interrogations must be preserved and stored securely. Evidence obtained from unrecorded interrogations should be excluded from court proceedings, and recordings should not be limited to the suspect's confessions or other incriminating statements. Regardless of the format, several key elements must be recorded during the interrogation, including: the place, date, time, and duration of the interrogation; the intervals between sessions; the identities of the interrogators and all other individuals present, along with any changes in those present during the interrogation; confirmation that the person being interrogated was informed of their rights and had the opportunity to exercise them, along with 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 the suspect; the time and reasons for any interruptions; and the time when the interrogation resumed. [806]

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 ([807].

The Robben Island Guidelines, along with various human rights bodies and mechanisms, advocate for the electronic recording of investigative hearings, as mandated by the rules of international criminal tribunals ([808].

([805]) (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.

([806]) (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 [807]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.

([808]) 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 ([809]).

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 ([810]).

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 ([811]).

The Special Rapporteur on torture declared that any unrecorded investigative material should be excluded from court proceedings ([812]).

This protective measure should extend to interrogations conducted by all state representatives, including intelligence officers questioning individuals in connection with criminal offenses, even if the investigation takes place outside the state's territory. ([813])

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.

[809](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).

([810]) Committee for the Prevention of Torture: (Turkey), 13) 33 ,CPT/Inf2011. (Ireland) 18 ,CPT/Inf2011(3).

[811](A/71/298, 5 August 2016, 87), Concluding observations of the Committee against Torture: Algeria,. UN Doc . 5 (2008) CAT/C/DZA/CO/3.

([812]) Special Rapporteur on Torture 156//2001) UN Doc. A/56) 39 (f)..

([813]) Special Rapporteur on human rights and counter-terrorism,. UN Doc 2010 (A/HRC/14/46), Practice 29 and43; Concluding observations of the Committee against Torture: United States of America, / UN Doc. CAT/C/USA . 16 (2006) CO/2.

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 location(s) where the interrogation or investigation took place.

- The time, or times, at which each investigative hearing began and ended.

- The intervals between each interrogation or investigation and the duration of each.

- Proof of the identity of the person or persons conducting the interrogation or investigation at each session, as well as the identity of the persons present.

The investigator must be accompanied in all his procedures by a clerk from the court clerk 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 ([814]).

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 ([815]).

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.

Accordingly, 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 ([816]).

([814]) Articles 73 and 199 of the Criminal Procedure Code.

([815]) 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.

([816]) 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

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

If the procedural principle is correct and it is permissible, in cases of necessity, to assign the competent investigation clerk to record the investigation report, the failure to include in the record the circumstances that led the investigator to assign someone other than the competent clerk does not invalidate the need to assign others. The determination of this necessity is within the discretion of the investigating authority, subject to the oversight of the trial court. (817)

The minutes of the investigation must be written by a clerk from the criminal registry on behalf of the competent authority, ensuring that the record is accurate, clear, and properly maintained. (818)

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. (819)

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 is responsible for assigning tasks to its clerks, determining their designated locations, appointing the chief clerks and the first clerk in the district courts, as well as transferring and assigning clerks within the court circuit.**

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.

(817) 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.

(818) Article 201 of the Judicial Instructions of the Public Prosecution.

(819) 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.

Similarly, the president of each prosecution is tasked with overseeing these duties concerning the clerks in their prosecution office."

The distribution of tasks among the clerks of each court or prosecution is an internal organizational matter entrusted to the president of each court or prosecution within their jurisdiction, including magistrates' courts and magistrates' prosecutions. The law does not impose a penalty of nullity if a prosecution clerk is assigned to different tasks within the same department of the prosecution. The meaning of Articles 73 and 199 of the Code of Criminal Procedure is that a clerk must be accompanied by another clerk from the court or prosecution, and cannot perform duties alone, unless specialization or necessity dictates otherwise necessity. ([820])

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 ([821]).

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 ([822]).

([820]) 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.

([821]) 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. 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." What the court responded to the appellant's defense in this regard was sufficient and justifiable to reject his defense, and since the court was satisfied with the health and safety 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.

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

The lesson in proving the date of the investigation report is the fact of reality, not what the investigation clerk inadvertently proved ([823].

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 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[824] with them.

The legislator requires that the investigator be accompanied by a court clerk, who must sign the minutes of the investigation. However, the law does not specify that the failure of the clerk to sign the minutes invalidates the proceedings, nor does it treat the minutes as merely a record of evidence collection. If the legislator intended for the lack of the clerk's signature to result in invalidity, it would have explicitly stated this. Instead, the law establishes the legal validity of the investigation minutes based on the signature of the investigating prosecutor, not solely on the clerk's signature. [825]

The mere failure to sign each page does not result in the nullity of the procedures, and as long as the accused does not claim that anything recorded in the investigation report was contrary to the reality of the reality, it is not acceptable for him to adhere to the nullity of the investigation procedures based on the mere lack of signature by the writer on the pages of the investigation report ([826].

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

([823]) 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.

([824]) Article 203 of the Judicial Instructions of the Public Prosecution.

([825]) Appeal No. 4298 of 61 s issued at the session of 20 December 1999 and published in the first part of the Technical Office book No. 50 page 709 rule No. 158, Appeal No. 5731 of 63 s issued at the session of 5 July 1995 and published in the first part of the Technical Office book No. 46 page 910 rule No. 140, Appeal No. 24657 of 62 s issued at the session of 22 December 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 6 June 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).

([826]) 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.

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 ([827]).

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 ([828]).

The investigator may perceive the meanings of the signs of the dumb and deaf without the assistance of an expert as long as he is able to clarify the meaning of those signs ([829]).

The role of the employee serving as the secretary for the investigations of the Public Prosecution is limited to recording what is heard or dictated by the investigator, with no influence over the content of what is being recorded. The employee's actions do not constitute forgery, as long as they accurately record what was dictated to them. However, it is appropriate to accuse the employee, if they knowingly fail to report a crime to the competent authorities, but this would not be considered forgery in an official document. ([830])

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 not[831] resident there.

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

([827]) Article 204 of the Judicial Instructions of the Public Prosecution.
([828]) Article 205 of the Judicial Instructions of the Public Prosecution.
([829]) Article 229 of the Judicial Instructions of the Public Prosecution.
([830]) 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.
([831]) Article 206 of the Judicial Instructions of the Public Prosecution.

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 ([832]).

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 ([833]).

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 ([834]).

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 leave with an idea for the investigation so that he is not hindered 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 ([835]).

If it is necessary to question an accused person or hear a witness without administering an oath, and a member of the prosecution does so by recording it on the back of the evidence report and without the presence of a clerk, this does not constitute an official investigation report. Instead, it is merely a record of statements made to supplement the evidence. ([836])

([832]) Article 207 of the Judicial Instructions of the Public Prosecution.
([833]) Article 209 of the Judicial Instructions of the Public Prosecution.
([834]) Article 210 of the Judicial Instructions of the Public Prosecution.
([835]) 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.
([836]) Article 212 of the Judicial Instructions of the Public Prosecution.

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 ([837]).

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 ([838]).

2 - 6 - 5 Procedures for Investigating Some Entities

First: Investigating with judicial bodies

The Public Defenders shall assign Chief Prosecutors to investigate cases where members of the judicial bodies are accused and must notify the Technical Office of the Attorney General when any investigative procedure is initiated. This notification must be accompanied by a detailed and comprehensive summary report of all the facts and proceedings of the investigation. ([839])

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.

([837]) Article 250 of the Judicial Instructions of the Public Prosecution.
([838]) Article 279 of the Judicial Instructions of the Public Prosecution.
([839]) Article 556 bis of the Judicial Instructions of the Public Prosecution.

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 ([840]).

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 ([841]).

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 ([842]).

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 ([843]).

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

([840]) 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.

([841]) 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 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).

([842]) 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.

([843]) 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.

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 ([844].

Imprisonment shall be carried out on members of judicial bodies in places separate from those designated for the detention of other prisoners. ([845])

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. [(846)]

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. [(847)]

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, or file a criminal lawsuit 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 attending a hearing in the course of performing their duties, violates the order of the hearing or engages in any conduct that may lead to criminal or disciplinary accountability, the chairman of the hearing must instruct that a

([844]) 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.
([845]) The fifth paragraph of Article 96 of the Judicial Authority,Article 556 bis (c) of the Judicial Instructions of the Public Prosecution.
([846]) Article 91 of the State Council Law, and Article 556 bis (a) of the Judicial Instructions of the Public Prosecution.
([847]) 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.

memorandum be written detailing the incident and refer it to the competent public defender. The head of the branch to which the member is affiliated must also be notified. In such cases, the member cannot be arrested, placed in custody or subject to a criminal lawsuit unless authorized by the public prosecutor or their representative, such as an assistant public prosecutor or a senior public attorney from the appellate prosecution. [848]

The Court of Cassation ruled that: [**Since the accused, while serving as an adviser to the State Cases Authority, is not considered a judge—he does not have the authority to issue judicial rulings in cases involving individuals or between individuals and the state, nor is he empowered to decide appeals as determined by the legislator—the legislator has entrusted him, under Article 6 of Law No. 75 of 1963 (as amended by Law No. 10 of 1986), with representing the state and its public legal entities in cases filed by or against it in various courts and bodies authorized by law to exercise judicial authority.**

Furthermore, Article 1 of the same law defines the State Lawsuits Authority as an independent judicial body attached to the Minister of Justice, ensuring that the immunity and guarantees of impartiality and independence required by the Constitution and relevant laws are respected.

The legislator further established safeguards for the members of the State Lawsuits Authority in Article 6 bis, which states that "a criminal investigation against a member of the authority can only occur with the knowledge of a member of the Public Prosecution." It also specifies that in cases other than flagrante delicto, a member of the authority cannot be arrested, detained, or subjected to criminal prosecution without the order of the competent public defender and notification to the authority. These protections mirror those granted to lawyers in Articles 49, 50, and 54 of the Advocacy Law No. 17 of 1983.

In line with the guarantees provided for public officials, Article 63/3 of the Code of Criminal Procedure similarly restricts criminal cases against public officials, including those equivalent to them, for crimes committed during or due to the performance of their duties. Such cases can only be initiated by the Attorney General or other authorized prosecutorial authorities.

Therefore, in light of the above, the accused is a public official, not a member of the judiciary who is entrusted by the Constitution and law with the authority to adjudicate and issue judgments on legal disputes, which is the primary function of the courts and the independent judges overseeing them. Consequently, the competence of the Administrative Control

([848]) 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.

Authority to investigate any irregularities within its work remains unaffected, as are the other matters listed in Article 4 of the Administrative Control Authority Law] [849]

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 ([850]).

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 prosecutors. 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 ([851]).

Second: Investigation of police officers

Prosecutors are responsible for investigating all allegations involving police officers and incidents that occur in prisons, whether the alleged offenses are related to the performance of their duties or not. This includes both felonies and misdemeanors. Prosecutors must personally handle all significant incidents in prisons, with the exception of minor matters, which may be delegated to the prison director or their warden for investigation, unless the complaint is against a prison employee, in which case the prosecutor must investigate it directly. Investigations should be carried out promptly on the designated day, and it is advisable for the prosecutor to conduct the investigation on-site at the prison, especially when the matter involves questioning a number of employees or prisoners ([852]).

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 ([853]).

Prosecutors must notify the Advocate General or the Chief Prosecutor by telephone of allegations made against police officers.

([849]) Appeal No. 4144 of 75 S issued at the session of February 20, 2007 (unpublished).
([850]) Article 6 bis 1 of the Law Regulating the State Cases Authority.
([851]) Article 556 bis (b) of the Judicial Instructions of the Public Prosecution.
([852]) Articles 125, 128 and 557 of the Judicial Instructions of the Public Prosecution.
([853]) Article 558 of the Judicial Instructions of the Public Prosecution.

This notification shall be attached to a comprehensive and accurate summary report of all the facts and proceedings of the investigation ([854]).

The members of the prosecution must notify the security director or the head of the department to which the officer belongs, or the authority overseeing the jurisdiction where the investigation is taking place, well in advance of the investigation. This allows the relevant authority to attend the investigation or to send a representative to be present and monitor its proceedings. Additionally, a notification must also be sent to the general attorney or the head of the general prosecution ([855]).

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 ([856]).

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 ([857]).

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 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 ([858]).

If the investigation requires the inclusion of military investigations of a police officer, the investigating prosecution member must contact the public defender at the Court of Appeal in this regard to request these investigations from the competent authority ([859]).

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[860] adjudication.

([854]) Article 559 of the Judicial Instructions of the Public Prosecution.
([855]) Article 561 of the Judicial Instructions of the Public Prosecution.
([856]) Article 562 of the Judicial Instructions of the Public Prosecution.
([857]) Article 563 of the Judicial Instructions of the Public Prosecution.
([858]) Article 564 of the Judicial Instructions of the Public Prosecution.
([859]) Article 565 of the Judicial Instructions of the Public Prosecution.
([860]) Article 566 of the Judicial Instructions of the Public Prosecution.

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 ([861].

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 ([862].

The presidential authorities, along with the relevant police officers, must be notified of the charges against them, the final outcome of the case, and the judgment issued in the lawsuit ([863].

Third: Investigation of members of the armed forces

Prosecutors are responsible for investigating felonies and misdemeanors attributed to members of the armed forces, even when the military judiciary does not have jurisdiction over such cases. This applies regardless of whether the crime was committed during the performance of their duties, because of their duties, or unrelated to their official functions ([864].

The member of the prosecution must initiate the investigation as soon as the incident report is received, either from the police or directly from those involved. It is only permitted for the prosecutor to delegate the investigation to the police 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

([861]) Article 567 of the Judicial Instructions of the Public Prosecution.
([862]) Article 568 bis of the Judicial Instructions of the Public Prosecution.
([863]) Article 569 of the Judicial Instructions of the Public Prosecution.
([864]) Article 570 of the Judicial Instructions of the Public Prosecution.

up its procedures, without suspending the progress of these procedures on the presence of this representative in cases of flagrante delicto, as well as informing the authorities of the result of the final disposition of the investigation ([865]).

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 ([866]).

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 ([867]).

If the prosecution's investigation into any crime requires questioning a member of the armed forces, such as non-commissioned officers or soldiers, it is sufficient to establish their identity by asking for their full name, rank, and military number, and to verify this information using their military identity card. Under no circumstances is it allowed to include the name of the unit to which the individual belongs, its location, or its secret code number in the investigation record. ([868])

In the reports to which the Military Justice Law No. 25 of 1966 applies, whether by themselves or by the police, as the case may be, the members of the prosecution shall take the necessary preliminary measures to ensure that the evidence is not lost, while notifying the military

([865]) Article 571 of the Judicial Instructions of the Public Prosecution.
([866]) Article 572 of the Judicial Instructions of the Public Prosecution.
([867]) Article 573 of the Judicial Instructions of the Public Prosecution.
([868]) Article 574 of the Judicial Instructions of the Public Prosecution.

prosecution, and seizing the accused by the police when necessary until the military prosecution receives them ([869]).

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 ([870]).

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 ([871]).

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 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. [872]

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 ([873]).

Prosecutors must observe the provisions of the Military Justice 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 ([874]).

If a member of the armed forces, non-commissioned officers, or military college students commits a crime while on regular leave (which is granted for a limited period) at a location where a military unit is present, and the prosecution has issued a warrant for their arrest or pre-trial detention, the accused must be escorted by a police officer to the military unit. This should be done with a letter from the prosecution, stamped with the case number, the date of the incident, the charge against the accused, and the date of the arrest or pre-trial detention order. The original arrest or detention order, along with a copy, must be sent to the Public Prosecutor's Office on the same day. The Public Prosecutor's Office will inform the competent authority to

([869]) Article 575 of the Judicial Instructions of the Public Prosecution.
([870]) Article 576 of the Judicial Instructions of the Public Prosecution.
([871]) Article 577 of the Judicial Instructions of the Public Prosecution.
([872]) Article 578 of the Judicial Instructions of the Public Prosecution.
([873]) Article 579 of the Judicial Instructions of the Public Prosecution.
([874]) Article 580 of the Judicial Instructions of the Public Prosecution.

carry out the detention by placing the accused in the special prison attached to the military prison, and the original detention order will be returned with a note confirming its execution

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 same procedure applies to officers of the armed forces of all ranks. In all cases, they must be placed in the special prison attached to the military prison ([875]).

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 ([876]).

If the investigation requires the inclusion of military investigations into a member of the armed forces and the like, the prosecution must inform the Public Defender at the Court of Appeal about them to request these investigations from the competent authority as mentioned above ([877]).

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 ([878]).

([875]) Article 581 of the Judicial Instructions of the Public Prosecution.
([876]) Article 582 of the Judicial Instructions of the Public Prosecution.
([877]) Article 583 of the Judicial Instructions of the Public Prosecution.
([878]) Article 583 bis of the Judicial Instructions of the Public Prosecution.

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 ([879]).

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 ([880]).

Fourth: Investigating Lawyers

The public prosecutors' offices must record any complaints received against lawyers related to their professional conduct in the lawyers' complaints book. These complaints should be recorded according to the dates of receipt, with each entry marked with a registration number, and the verification should be done by the senior members of the public prosecution whenever possible. The procedures undertaken in relation to each complaint must also be documented in the same 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 measures with its knowledge ([881]).

If a lawyer is accused of committing a felony or misdemeanor unrelated to their profession, the police must immediately notify the prosecution upon receiving the report, so that the prosecution can investigate the incident. The prosecution office that receives the report or is informed of the incident must initiate the investigation and record it in its official registers. They must also notify the general advocate or the chief prosecutor of the relevant jurisdiction before starting the investigation. The prosecution is not permitted to delegate the investigation of complaints filed against lawyers to the police or allow the police to carry out the investigation on their behalf.

([879]) Article 584 of the Judicial Instructions of the Public Prosecution.
([880]) Article 585 of the Judicial Instructions of the Public Prosecution.
([881]) Article 586 of the Judicial Instructions of the Public Prosecution.

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 ([882]).

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 ([883]).

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 ([884]).

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. [885]

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. ([886])

([882]) Article 587 of the Judicial Instructions of the Public Prosecution.
([883]) Article 588 of the Judicial Instructions of the Public Prosecution.
([884]) Article 589 of the Judicial Instructions of the Public Prosecution.
([885]) Article 590 of the Judicial Instructions of the Public Prosecution.
([886]) Article 591 of the Judicial Instructions of the Public Prosecution.

It is not permitted to arrest or detain a lawyer on remand if they sign a memorandum of what occurred during a session while performing their duties or due to a breach of the session's order. This includes crimes such as slander, insult, or defamation arising from statements or writings made during or as a result of performing professional duties. In such cases, a memorandum of the incident must be prepared and referred to the Public Prosecution, with a copy sent to the Syndicate Council. The Public Prosecutor may take further action if the lawyer's actions constitute a criminal offense under the Penal Code, or refer the matter to the Syndicate Council if the issue is simply a breach of order or professional duty. The trial, if applicable, shall be conducted 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 ([887]).

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.

([887]) 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 of the prosecution of appeal ordered.... 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 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.

The Council of the Bar Association and the competent subordinate council of the Bar Association may request copies of the investigation without fees ([888]).

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 any of the procedures mentioned in the preceding paragraph. ([889])

The Court of Cassation ruled that: [**It is established that the provision of Article 51 of the Lawyers Law No. 17 of 1983, which requires the Bar Council or the Bar Association to be notified in advance of the initiation of any investigation against a lawyer, is a procedural requirement. However, failure to comply with this requirement does not result in the nullity of the investigation procedures.**] ([890])

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, 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 ([891]).

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 ([892]).

([888]) Article 51 of the Advocacy Law, Article 593 of the Judicial Instructions of the Public Prosecution.
([889]) Article 594 of the Judicial Instructions of the Public Prosecution.
([890]) 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.
([891]) 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.
([892]) 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.

Fifth: 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[893] 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 ([894]).

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 relevant legal provisions, and the date of the session scheduled for the investigation with the journalist - allowing for an appropriate time frame. This memorandum shall be sent through the public defender to the Technical Office of the Attorney General, which will then forward it to the Journalists Syndicate. The Syndicate will consider assigning the necessary members to attend the investigation and may take any actions it deems appropriate to help reconcile the parties involved in 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 ([895]).

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

([893]) Article 68 of the Law on the Establishment of the Journalists Syndicate.
([894]) Article 595 bis of the Judicial Instructions of the Public Prosecution.
([895]) Article 595 bis (a) of the Judicial Instructions of the Public Prosecution.

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 ([896]).

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 ([897]).

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 ([898]).

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 ([899]).

Sixth: 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 ([900]).

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 to him. [901]

The notification must include the name of the complainant, the number of the case, its subject matter and the applicable articles of law ([902]).

([896]) Article 69 of the Law on the Establishment of the Journalists Syndicate, Article 595 bis (b) of the Judicial Instructions of the Public Prosecution.
([897]) Article 595 bis (c) of the Judicial Instructions of the Public Prosecution.
([898]) 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.
([899]) 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.
([900]) Article 51 of the Trade Union Organizations Law and the Protection of the Right to Organize.
([901]) Article 596 of the Judicial Instructions of the Public Prosecution.
([902]) Article 597 of the Judicial Instructions of the Public Prosecution.

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 ([903]).

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[904] misdemeanor courts.

Seventh: Immunity for Foreign Consular Political Corps

The term "members of the political corps" refers to individuals within the diplomatic mission, including ambassadors, ministers accredited to the Head of State, chargé d'affaires accredited to the Minister of Foreign Affairs, as well as ministers, advisers, secretaries, and diplomatic attachés. These individuals are listed on the diplomatic roster issued by the Protocol Department of the Egyptian Ministry of Foreign Affairs, with updates made in accordance with changes in the composition of the diplomatic corps.

Diplomats are considered military attachés, commercial advisors, cultural advisors, their assistants, and administrative attachés.

The diplomatic envoy also includes members of his family from his family ([905]).

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 ([906]).

([903]) Article 598 of the Judicial Instructions of the Public Prosecution.
([904]) Article 599 of the Judicial Instructions of the Public Prosecution.
([905]) Article 1398 of the Judicial Instructions of the Public Prosecution.
([906]) Article 1399 of the Judicial Instructions of the Public Prosecution.

Foreign politicians shall also enjoy judicial immunity in civil and administrative matters, except in the following cases:

1- Lawsuits concerning private real estate funds in Egypt are excluded from the jurisdiction of the courts, except when these funds are held by members of the political corps on behalf of the authorized state for the purposes of the diplomatic mission.

2- 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 ([907]).

Foreign cadres shall be exempted from performing the certificate ([908]).

Prosecutors are required to inform the Technical Office of the Attorney General in cases involving criminal, civil, and administrative matters concerning non-Egyptian technical and administrative staff in diplomatic missions, as well as non-Egyptian private servants employed by members of those missions. In each case, they must seek the opinion of the Attorney General's Office. This is because the granting of diplomatic immunities to such individuals is subject to the discretion of the Egyptian authorities, in line with Egypt's reservations regarding the immunities outlined in the 1961 Vienna Convention on Diplomatic Relations. [909]

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. ([910])

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. ([911])

([907]) Article 1400 of the Judicial Instructions of the Public Prosecution.
([908]) Article 1401 of the Judicial Instructions of the Public Prosecution.
([909]) Article 1402 of the Judicial Instructions of the Public Prosecution.
([910]) Article 1403 of the Judicial Instructions of the Public Prosecution.
([911]) Article 1404 of the Judicial Instructions of the Public Prosecution.

The aforementioned immunities shall not be enjoyed by employees of diplomatic missions and private servants who are harmed citizens or permanent residents, except to the extent permitted by the State. ([912])

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 ([913]).

The following persons shall also enjoy immunity and diplomatic privileges:

1- Representatives who visit Egypt on special assignments, such as presenting the Niyashin to the President of the State, as well as delegates attending international conferences and organizations.

2- Members of the World Health Organization.

3- Members of the Council of the League of Arab States, members of its committees and employees, who are provided in the rules of procedure of the League to enjoy diplomatic privileges and immunity while carrying out their work.

4. Delegates of States Members of the United Nations and officials of the United Nations in connection with the functions of their functions in connection therewith.

5. Members of the International Court of Justice while exercising their functions.

6. The Governors of the International Monetary Fund and the International Bank for Reconstruction and Development, along with the members, deputies, officers, and staff of their Executive Committees, are granted immunity for actions carried out in their official roles, unless the Fund or the Bank decides to waive this immunity.

([912]) Article 1405 of the Judicial Instructions of the Public Prosecution.
([913]) Article 1406 of the Judicial Instructions of the Public Prosecution.

7- 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. ([914])

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. ([915])

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. ([916])

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.

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 visions 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 ([917]).

([914]) Article 1407 of the Judicial Instructions of the Public Prosecution.
([915]) Article 1408 of the Judicial Instructions of the Public Prosecution.
([916]) Article 1409 of the Judicial Instructions of the Public Prosecution.
([917]) Article 1410 of the Judicial Instructions of the Public Prosecution.

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 ([918]).

In the event that a foreign consular officer is arrested, detained, or facing criminal charges, the prosecution offices must promptly notify the Technical Office of the Attorney General. This office will then inform the head of the consular mission through the Ministry of Foreign Affairs, or take steps to notify the sending State using the same procedure, particularly if any of these actions are directed at the head of the mission. [919]

He does not enjoy any privileges or immunities of honorary consular members, whether they are Egyptians or foreigners ([920]).

Jurisdictional immunity does not extend to members of the entourage of the foreign consular corps or members of their families ([921]).

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 ([922]).

Except in the 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. ([923])

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 ([924]).

([918]) Article 1411 of the Judicial Instructions of the Public Prosecution.
([919]) Article 1412 of the Judicial Instructions of the Public Prosecution.
([920]) Article 1413 of the Judicial Instructions of the Public Prosecution.
([921]) Article 1414 of the Judicial Instructions of the Public Prosecution.
([922]) Article 1415 of the Judicial Instructions of the Public Prosecution.
([923]) Article 1416 of the Judicial Instructions of the Public Prosecution.
([924]) Article 1417 of the Judicial Instructions of the Public Prosecution.

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 ([925]).

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 ([926]).

If the prosecution receives a complaint regarding a direct misdemeanor lawsuit against a foreign consular officer, the head of the criminal registry department must immediately present the case to the director member of the prosecution before any fees are assessed. The director will decide whether to suspend the case if it appears to relate to the officer's official duties. If it's unclear from the complaint, the director must arrange to hear statements from the complainant and any relevant witnesses to assess whether the lawsuit concerns the officer's official work. If it is determined to be related to official duties, the case will be suspended. However, if it is found not to be related to official duties, the case will be referred to the technical office of the Attorney General for further review.

If the prosecution decides not to proceed with the complaint, it must, in all cases, promptly return the complaint to the bailiffs' registry. This should be done along with the prosecution's opinion and any investigations conducted, so that the matter can be presented to the judge of temporary matters for a decision, in accordance with Article 8 of the Code of Procedure ([927]).

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 ([928]).

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 ([929]).

([925]) Article 1418 of the Judicial Instructions of the Public Prosecution.
([926]) Article 1419 of the Judicial Instructions of the Public Prosecution.
([927]) Article 1420 of the Judicial Instructions of the Public Prosecution.
([928]) Article 1421 of the Judicial Instructions of the Public Prosecution.
([929]) Article 1422 of the Judicial Instructions of the Public Prosecution.

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 ([930].

2 - 6 - 6 Training of investigators and interrogators

Interrogating individuals is a specialized task that demands specific training to be carried out effectively and in line with the highest professional standards. The protocol should highlight the need for consistent and comprehensive training for law enforcement officers and other personnel involved in the interrogation process. ([931]

The training of interviewees includes several elements, beginning with comprehensive education on international human rights law, particularly the prohibition of torture, ill-treatment, and other forms of coercion. Where relevant, training on the Geneva Conventions should also be included. The program should cover both theoretical knowledge of international and domestic standards and guidelines on interrogation, as well as practical training on the steps involved in interrogation and investigation. This should aim to develop essential skills through hands-on practice. Best practices include scenario-based training, along with the recording and review of interviews. Incorporating empirical and scientific evidence that demonstrates the unreliability and negative consequences of torture and coercion will help shift attitudes and improve interrogation practices. Special emphasis should be placed on the harmful effects of maltreatment on memory recall. Additionally, training should raise awareness of the need to protect vulnerable individuals and address their specific needs during interrogation. ([932]

States must also ensure that supervisors, judicial officials, prosecutors and medical personnel receive training on international standards regarding the prohibition and prevention of torture, human rights-compliant interrogation techniques, and their responsibilities to properly report, document, and investigate allegations of torture and ill-treatment. Raising awareness among all staff directly or indirectly involved in questioning individuals is crucial for changing the culture of law enforcement, especially in areas where ill-treatment is commonplace or systemic. This is a key to effectively enforcing the prohibition of torture. Additionally, it is vital to educate leaders of enforcement operations on the harmful strategic consequences of torture and ill-treatment,

([930]) Article 1423 of the Judicial Instructions of the Public Prosecution.
[931](A/71/298, 5 August 2016, 56), (A/HRC/4/33/Add.3; CAT/C/USA/CO/2).
([932]) (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).

particularly how such practices undermine their legitimacy and damage relationships with the communities they serve. ([933])

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 effective interrogations, thereby reducing the risk of interrogation officers resorting to ill-treatment to extract information. ([934])

2 - 7 Ordering the detention of the accused

Pre-trial detention is an investigative measure designed to secure the integrity of the preliminary investigation by ensuring the accused is available to the investigator for questioning or confrontation as needed. It serves to prevent the accused from fleeing, tampering with evidence, influencing witnesses, or threatening the victim. Additionally, pre-trial detention helps protect the accused from potential retaliation and aims to alleviate public outrage over the severity of the crime. ([935])

Any person arrested or detained in connection with a criminal charge shall be brought promptly before a judge or other judicial officer to ensure that his or her rights are protected, and the judge shall rule on the lawfulness of his or her arrest or detention and on whether he or she should be released or detained pending trial.

In general, there is a presumption that detained persons will be released pending the commencement of their trial, and the State bears the burden of proving that the initiation of the arrest or detention of the person was lawful, and that his continued detention, if so requested, is necessary and proportionate.

2 - 7 - 1 Conditions for issuing a detention order against the accused

In order to justify the detention of a person pending trial, the following must be available: [936]

([933]) (A/71/298 ،5 August 2016 ،58).
([934]) (A/71/298 ،5 August 2016 ،59).
([935]) Article 381 of the Judicial Instructions of the Public Prosecution.
([936]) Rules 6 and 7 of the European Rules for Pre-trial Detention..

* A reasonable suspicion that the individual has committed a crime punishable by imprisonment. ([937])

* A real public interest that outweighs in importance personal freedom, regardless of the principle of the presumption of innocence. ([938])

* Substantial reasons to believe that the person will do the following, if released:[939]

* He will run away ([940])

* He will commit a serious crime.

* He will interfere in the course of the investigation or justice. ([941])

* Or that the individual will pose a serious threat to public order. ([942])

* There is no possibility of alternative measures to address these concerns. ([943])

The reasons for ordering pre-trial detention should be interpreted in a strict and limited manner. ([944])

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. ([945])

([937]) (210) Pareto Leyva v. Venezuela, Inter-American Court 122 (2009); Pirano Basso v. Uruguay (12.533), American Commission (110 (2009).

([938]) Van der Tang v. Spain (19382 / 92), European Court (1995) 55; Pinheiro and dos Santos v. Uruguay (11.506), Inter-American Commission 66-65 (2002); General Comment 32 of the Human Rights Committee, 30

([939]) See Bronstein et al. v. Argentina (11.205 et al), American Commission, 37-25 (1997).

([940]) 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)..

([941]) Batsouria v. Georgia (30779 / 04), 71 (2007); Pirano Basso v. Uruguay (12.533), American Commission 131 (2009)

([942]) Letelier v. France (12369 / 86), European Court 51 (1991).

([943]) Batsouria v. Georgia (30779 / 04), (76-75 (2007.

([944]) Medvedev v. France, (3394/03) Grand Chamber of the European Court 117 (2010) and 120..

[945]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), 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, Annex 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)..

Particular attention should be paid to the person with responsibility for caring for young children. ([946])

Detention of children should only be used as a last resort. ([947])

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 ([948]).

It may not last longer than necessary, and the process of examining the legality and necessity of detention must continue in each individual case. ([949])

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 ([950]).

Detention decisions should not be based exclusively on the length of imprisonment that the accused may face ([951]).

To prevent discrimination based on economic status, when bail is granted, the individual's financial resources should be considered in determining a fair and proportionate bail amount. ([952])

In cases involving violent crimes, including domestic violence, authorities must assess the potential risk posed by the suspect. Failing to protect a victim from a known threat posed by a

([946]) 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.
([947]) Article 37 (b) of the Convention on the Rights of the Child and rule 65 of the Bangkok Rules.
Principle 3(2[948]) 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), 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.
([949]) European Court: Weimhof v. Germany (2122/64), ((1968a. 10 , McKay v. United Kingdom (543/03), Grand Chamber (42 (2006 and 43.
([950]) 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..
([951]) 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).
General [952]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..

specific individual is a violation of the victim's rights. In these situations, a variety of measures appropriate to the level of risk should be considered. ([953])

In Egypt, the investigating judge may order the remand of the accused in custody after interrogating them, or if the accused has fled, provided the offense is a felony or misdemeanor punishable by at least one year in prison and sufficient evidence exists. Custody may be ordered if any of the following conditions apply:
1- If the crime is in a state of flagrante delicto, and the sentence must be executed immediately upon its issuance. 2- Fear of the accused's escape. 3- There is concern that the investigation may be compromised, such as through influencing the victim or witnesses, tampering with evidence, or conspiring with other perpetrators to alter the facts or destroy evidence. 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. ([954])

First: The Competent Authority to Issue the Pre-Trial Detention Order

The restriction of personal freedom, as a fundamental human right, may only occur in cases of flagrante delicto, as defined by law, or with the authorization of the competent authority. ([955])

The Constitution upholds personal freedom as an inherent right of every citizen, elevating it to the level of fundamental human rights that cannot be violated or undermined, as explicitly stated in the first paragraph of Article (92). This right is inseparable from the individual and cannot be removed, aligning with the values of democratic societies that adhere to legal frameworks and regulations. Personal freedom serves as a cornerstone for other rights and freedoms, interconnected by reason, purpose, and goal. The Constitution is strict in protecting it and mandates the preservation of this right, as well as the prevention of any violation or prescription of the offense of assault against it, as outlined in Article (99). Any restriction of personal freedom, except in cases of flagrante delicto, must be based on a reasoned judicial order issued after an investigation by the competent authority. Such restrictions must be clearly defined by law, specifying the measures, conditions, reasons, scope, and legal controls governing them. The Constitution ensures the protection of constitutional rights during such

([953]) 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) U.S. Commission 213-211 (2011).
([954]) Article 134 of the Criminal Procedure Law.
([955]) Appeal No. 30770 of 83 S issued in the session of February 15, 2017 (unpublished).

procedures, including informing individuals of the reasons for their detention, providing them with written notification of their rights, and guaranteeing their right to legal defense within the framework outlined by the Constitution. Furthermore, individuals subjected to these measures have the right to file a grievance before the judiciary, which must adjudicate the matter within a week from the date the action is taken. These safeguards, mandated by the Constitution, are essential for ensuring that any restriction of personal freedom adheres to legal and constitutional standards. ([956])

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 from at least a prosecutor ([957]).

The Public Prosecution may request at any time the provisional detention of the accused ([958]).

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 ([959]).

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 ([960]).

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 ([961]).

([956]) 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.
([957]) Articles 134, 201 of the Criminal Procedure Code.
([958]) Article 137 of the Criminal Procedure Law.
([959]) Article 530 of the Judicial Instructions of the Public Prosecution.
([960]) Paragraph 1 of Article 201 of the Criminal Procedure Code.
([961]) Article 201 of the Criminal Procedure Law, and Article 400 of the Judicial Instructions of the Public Prosecution.

Second: The crime may be subject to pretrial detention

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. [962]

It is not permitted to order preventive detention except in the following cases:

1. If the offense attributed to the accused is a felony or misdemeanor punishable by imprisonment for a period not exceeding three months.

2- If the offense attributed to the accused is a misdemeanor punishable by imprisonment, and the accused does not have a known, fixed place of residence in Egypt. (963)

The Special Rapporteur on Torture, in his report, stated that "tough on crime" policies, which excessively penalize non-violent offenses, are not only ineffective in reducing crime rates over time, but also foster environments that enable corruption, torture, and ill-treatment. For instance, the criminalization and mandatory detention for offenses such as irregular border crossing or minor drug-related crimes, or other repeated non-violent offenses, leads to excessive imprisonment, prolonged pre-trial detention, overcrowded facilities, and a lack of resources in detention centers—all of which create conditions ripe for corruption and abuse.

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 proportionate to these circumstances. [964]

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

(962) Article 134 of the Criminal Procedure Law.
(963) Article 382 of the Judicial Instructions of the Public Prosecution.
Report [964]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.

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 their arrest must be considered. ([965])

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 ([966]).

There are several exceptions to this rule:

(1) Pre-trial detention is allowed 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 prison sentence 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 responsible for determining whether the accused has a fixed and known place of residence in Egypt. However, this decision is subject to review by 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 year. [967]

(2) 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 allowed if the crime attributed to the accused is related to offenses committed by newspapers, unless it falls under the crimes specified in Article 179 of the Penal Code or involves defamation of religious symbols or incitement to immoral conduct. ([968])

([965]) Article 388 of the Judicial Instructions of the Public Prosecution.

([966]) Article 389 of the Judicial Instructions of the Public Prosecution, and Article 170 bis of the Penal Code stipulates that: "A penalty of imprisonment for a period not exceeding six months and a fine not less than ten pounds and not exceeding 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.

([967]) Article 134 of the Criminal Procedure Law.

([968]) Article 384 of the Judicial Instructions of the Public Prosecution, and 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."

(3) 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 is under the age of fifteen cannot be remanded in custody. However, the Public Prosecution may place the child in an observation home for up to one week and may request an extension if the circumstances of the case warrant detention. The total period of custody cannot exceed one week unless the court orders an extension, following the procedures for remand in custody outlined in the Criminal Procedure Law.**

In lieu of the procedure outlined in the previous paragraph, it is permissible to order the child to be handed over to one of their parents or legal guardians to ensure their care and availability for questioning upon request. Failure to comply with this obligation is punishable by a fine of up to one hundred pounds.

A child under the age of fifteen may not be placed in pretrial detention. However, a member of the prosecution may order the child to be placed in an observation home for up to one week. If an extension is deemed necessary, the matter must be referred to the juvenile court for consideration. ([969])

Third: 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 ([970]).

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 ([971]).

The accused may not be remanded in custody without first being interrogated, as this interrogation is a crucial step. Its purpose is to allow the accused to present their defense, challenge the evidence against them, and provide the investigator with the necessary information to assess whether detention is justified. If the accused is not interrogated, the

([969]) Article 385 of the Judicial Instructions of the Public Prosecution.
([970]) Article 136 of the Criminal Procedure Code, and Article 647 of the Judicial Instructions of the Public Prosecution.
([971]) Article 383 of the Judicial Instructions of the Public Prosecution.

detention order is considered invalid, except in cases where the accused has fled. In such cases, detention may be ordered without the need for 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 ([972]).

Fourth: 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 ([973]).

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.

Fifth: Informing the Pre-trial Detainee of the Reasons for Imprisonment

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 ([974]).

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 ([975]).

([972]) Articles 136, 152 of the Criminal Procedure Code, Article 386 of the Judicial Instructions of the Public Prosecution.
([973]) Article 134 of the Criminal Procedure Law.
([974]) Article 54 of the Constitution of the Arab Republic of Egypt.
([975]) 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.

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. ([976])

It is established that the presumption of the innocence of the accused and the protection of personal freedom from any aggression against it are two principles 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 principle of innocence except by evidence established by the Public Prosecution and whose persuasive force reaches the level of certainty and conviction, proving the crime attributed to the accused in every aspect of it 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. This judiciary is in line with what is stated in the first paragraph of Article 96 of the Constitution, which states that "the accused is innocent until proven guilty in a legal trial in which he is guaranteed the guarantees of his defense." The meaning of this constitutional text is that the accused is basically innocent and that proving the charge against him falls on the Public Prosecution, which alone bears the burden of providing evidence. The accused is not required to provide any evidence of his innocence, and 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. ([977])

The Human Rights Committee considered that: [**Article 9, paragraph 2, of the Covenant grants every detained individual the right to be informed of the reasons for their arrest and promptly notified of the charges against them. However, the complainant claims that he voluntarily went to the police station on 1 May 1983 and told the officer in charge about his involvement in the murder of [name]. The complainant was detained and later transferred to another station, where he was formally arrested and charged three days after his initial detention. Given these circumstances, where it was evidently clear to the complainant that his detention and subsequent arrest were related to the murder, the Committee does not find a violation of his right to be informed of the reasons for his arrest. Furthermore, the complainant was officially charged with the murder three days after his arrest, likely following a preliminary investigation. It is not required to inform a person of the charges immediately upon arrest, as this is typically done only once the charges have been determined. In this case, the three-day**

([976]) Article 406 of the Judicial Instructions of the Public Prosecution.
([977]) Appeal No. 61 of 88 S issued at the 25th session of November 2018 (unpublished).

gap between the complainant's arrest and the formal charge does not appear to violate his right to be promptly informed of the charges against him.] ([978])

The Human Rights Committee raised concerns about the 72-hour detention period before detainees are informed of the charges against them. This delay is considered excessively long and inconsistent with Article 9, paragraph 2, of the Covenant. The Committee urged the State party to take immediate action to align its Code of Criminal Procedure with the Covenant, ensuring that accused individuals are promptly informed of the charges against them and brought before a judge without unnecessary delay.([979])

It is prohibited to place any person in a correctional center without a written order signed by the competent authorities. Article 5 of the Egyptian Community Correctional and Rehabilitation Centers Organization Law emphasized the necessity of having a written order signed by the competent authorities to place the person in the correctional centers designated for that purpose. It is also prohibited to place any person in a work institution for habitual criminals except by a written order signed by the competent authorities legally, and he remains there 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 execution clerk at the court must send adult convicts with their execution forms to the designated correctional centers to implement the sentence therein, depending on the type and degree of the sentence. [980]

The director of the correctional center or the employee appointed for this purpose must receive a copy of the detention order, after signing the original to acknowledge receipt. The original must be returned to the person who brought the inmate and a copy signed by the person who issued the detention order must be kept.

When the accused is placed in a correctional center based on an order issued for his detention, the competent public prosecution officer must deliver a copy of the detention order to the director of the correctional center or the competent employee appointed for this purpose after signing the original to acknowledge receipt. It must be noted that this copy must be signed by the person who issued the order and stamped with the seal of the emblem of the Republic. ([981])

([978] Communication No. 647/1995 submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.
([979]) Concluding observations of the Human Rights Committee on the initial report of Uzbekistan.
([980] Articles No. 5 and 6 of the Law Regulating Community Reform and Rehabilitation Centers, Article No. 2 of the Internal Regulations of Community Reform and Rehabilitation Centers, Article No. 3 of the Internal Regulations of Geographic Community Reform 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.
([981] Article No. 1044 of the written, financial and administrative instructions of the Public Prosecution.

The Public Prosecutor and his deputies have the right, within their jurisdiction, to enter all places of correctional centers at any time to verify that there is no person illegally detained. [982]

As for the places designated for detaining detainees, which are specified by a decision of the Minister of the Interior, they may only be entered by those delegated by the Public Prosecutor for this purpose from among the public attorneys or heads of the partial prosecutions therein, or their director, who shall notify the Public Prosecutor through the public attorneys or heads of the general prosecutions of the places in their districts. [983]

The Public Prosecution, when inspecting correctional centers, whether public or geographical, must verify that the orders of the Public Prosecution and the investigating judge in the cases he is assigned to investigate, and the decisions of the courts are being implemented in the manner specified therein, and that there is no inmate without a legal basis. This is done by reviewing the detention or arrest orders or written orders for the detainee's deposit or the implementation forms, and verifying that there is a summary of them in the records of the correctional center and requesting copies of the detention order if it is found that it does not exist. If a member of the Public Prosecution finds someone imprisoned or detained without a legal basis, he shall order his immediate release after writing a report proving the incident and specifying in the report the time and date of the procedure and the person and signature of the recipient of the release order. Likewise, if a member of the Public Prosecution finds someone imprisoned or detained in a place other than his designated place, he shall immediately write a report of the incident and order him to be deposited in the designated place, with this being recorded in the report, specifying in it the time 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 Public Prosecution and include in it the crimes and violations he observed, provided that he takes the initiative to notify the lawyer. The Public Prosecution shall report these violations and crimes to the Attorney General and send the inspection report to him, provided that the Attorney General shall assign one of the members of the Public Prosecution to conduct the investigation into the crimes and violations contained in the inspection report, and shall send the case, accompanied by the opinion, to the Assistant Attorney General through the First Attorney General of the Appeal Prosecution. [984]

Whoever arrests, detains or detains any person without an order from one of the competent judges and in circumstances other than those authorized shall be punished by imprisonment or

([982] Article No. 85 of the Law Regulating Community Reform and Rehabilitation Centers, amended by Law No. 106 of 2015.
([983] Article No. 1750 of the Judicial Instructions of the Public Prosecution.
([984] Articles No. 1748, 1749 and 1749 bis of the Judicial Instructions of the Public Prosecution.

a fine not exceeding two hundred Egyptian pounds. The penalty shall be imprisonment if the arrest is made by a person who is unlawfully dressed as a government employee or who has a false identity or who presents a forged order claiming that it was issued by the government. The penalty shall be imprisonment. [985]

In all cases, whoever unlawfully arrests a person, threatens to kill him, or tortures him physically shall be punished with hard labor. [986]

Any person who knowingly lends a place for impermissible confinement or detention shall be punished with imprisonment for a period not exceeding two years. ([987])

In Egypt, enforced disappearance occurs when the authorities deny the arrest or have information about the detainee's whereabouts. Accordingly, Egyptian law prohibits detention in National Security headquarters, which are not recognized by law as legitimate places of detention. It follows that they are outside the authority of the prosecution, while the risk of torture is greater.

In his 2010 report on his mission to Egypt, Special Rapporteur Martin Scheinin expressed serious concerns about the practice of incommunicado detention by the National Security forces. He highlighted the troubling lack of judicial oversight over National Security facilities, which are not subject to the inspections typically required. Given this, it becomes difficult to disregard reports of terrorism suspects being arrested, transferred to secret underground National Security cells, and held incommunicado, often before their detention is officially recorded. Such practices create situations where detainees are deprived of legal protection and, in some cases, may amount to enforced disappearance.

On the other hand, all international conventions prohibit the acceptance of any person in 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. [988]

It is also prohibited to receive any juvenile in a detention facility without a valid detention order issued by a judicial, administrative or other public authority, provided that the details of the detention order are immediately recorded in the institution's records. No juvenile may be detained in any institution or facility that does not have records. [989]

([985] Article No. 280 of the Penal Code, amended by Law No. 29 of 1982.
([986] Article No. 282 of the Penal Code.
([987] Article No. 281 of the Penal Code.
([988]) Paragraph 1 of Rule 7 of the Nelson Mandela Rules, and Principles Nos. 2, 4 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
([989]) Rule 20 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Therefore, a detained person accused of a criminal offence shall be brought promptly before a judicial or other competent authority after his arrest, which shall decide without delay on the lawfulness and necessity of his detention. The detained person shall have the right to make a statement regarding the treatment he received while in detention. (990)

The International Convention for the Protection of All Persons from Enforced Disappearance also prohibited the subjection of any person to enforced disappearance, and prohibited the invocation of any exceptional circumstances, whether a state of war or a threat of war, internal political instability, or any other exceptional situation, to justify enforced disappearance. 991

Every prisoner has the right to inform his family immediately of his arrest or transfer to another prison.992

The use of pretrial detention of juveniles - detention pending trial - is prohibited except as a measure of last resort and for the shortest possible period of time, and is replaced whenever possible by alternative measures such as close supervision, intensive care or placement with a family or in an institution or educational home, provided that the detained juvenile enjoys all the rights and guarantees provided for by the Standard Minimum Rules for the Treatment of Prisoners. (993)

Every case involving a juvenile must be addressed promptly, without any unnecessary delay. .994

Following the arrest of a juvenile, his parents or guardian must be notified immediately. If immediate notification is not possible, notification must be made within the shortest possible time after his arrest, and a judge or competent official must consider the matter of his release without delay. .995

Whereas the situation in Egypt is that any person may be arrested, and the reasons or place of his detention are not disclosed to the person himself or any of his family members or his legal representative, and whereas this is not permissible according to the constitution, which stipulates that no one may be arrested, searched, imprisoned, or have his freedom restricted in any way except by a reasoned judicial order required by the investigation, and the constitution

(990 Principle 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
(991) Article No. 1 of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article No. 7 of the Declaration on the Protection of All Persons from Enforced Disappearance.
(992 Paragraph 3 of Rule 44 of the Standard Minimum Rules for the Treatment of Prisoners.
(993) Rule 13 of the Beijing Rules, Article 17 of the African Charter on the Rights and Welfare of the Child.
(994) Rule No. 20 of the Beijing Rules.
(995) Rule No. 10 of the Beijing Rules.

and the rulings of the Supreme Constitutional Court have recognized the right of every person who has been arrested or detained to contact others to inform them of what has happened or to seek their assistance in the manner regulated by law, which means guaranteeing his right to obtain the legal advice he requests from the lawyers he chooses, so it ruled that: [**The constitution guarantees that anyone who has been arrested or detained has the right to contact others to inform them of their situation or to seek assistance, as regulated by law. This includes the right to obtain legal advice from the lawyer of their choice. Such legal counsel is essential for ensuring trust and reassurance, providing the necessary support to address any suspicions and to confront the consequences of restrictions on their personal freedom. This right ensures that detainees are not separated from their lawyer in a way that could harm their defense, whether during the initial investigation or before it.]** [996]

The International Covenant on Civil and Political Rights also prohibits the arrest, detention or deprivation of liberty of any person except on such grounds and in accordance with such procedures as are established by law. He must be tried within a reasonable time or released, and pre-trial detention shall not be the general rule for all those awaiting trial. Anyone arrested must be informed, at the time of arrest, of the reason for his arrest and be promptly informed of any charges against him.[997]

Anyone arrested, detained or imprisoned or charged with a criminal offence shall be informed of his right to be assisted and represented by a lawyer of his own choosing.[998]

Every person who does not have a lawyer has the right to have a lawyer appointed for him with experience and competence commensurate with the nature of the crime with which he is accused to provide him with effective legal assistance, without having to pay for this service if he does not have sufficient resources for that. (999)

It is also prohibited to keep any person in detention without giving him a real opportunity to make a statement promptly before a judicial or other authority, and he has the right to defend himself or to have the assistance of a lawyer, and the detained person and his lawyer shall be provided with all information regarding his detention and the reasons for it, with the right to have the continued detention reviewed by a judicial or other authority. (1000)

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(996) Article No. 54 of the Constitution, and see: the ruling of the Supreme Constitutional Court in Case No. 6 of Year 13 Q, issued in the session of May 16, 1992, and published in the first part of Technical Office Book No. 5, Rule No. 37, page No. 344.
(997) Article 9 of the International Covenant on Civil and Political Rights, Principles Nos. 10, 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
(998 Principle No. 5 of the Basic Principles on the Role of Lawyers.
(999 Principle No. 6 of the Basic Principles on the Role of Lawyers.
(1000) Principles Nos. 11, 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

A detained person or his counsel shall be entitled at any time to initiate a simple and prompt action in accordance with domestic law before a judicial or other authority to challenge the lawfulness of his detention, with a view to obtaining his release without delay, if his detention is not lawful, provided that the action shall be free of any cost for those who do not have sufficient means, and the detaining authority shall be obliged to produce him without undue delay before the reviewing authority. ([1001])

The juvenile also has the right to be represented by his legal advisor throughout the course of the judicial proceedings, and he has the right to request that the court appoint a lawyer for him free of charge. 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 for the benefit of the juvenile.[1002]

However, the Egyptian legislator uses many terms to justify the restriction of freedom, such as reservation, detention, pretrial detention, or imprisonment, justifying this legally by protecting public peace and security. The law is devoid of any text on the right of the prisoner, the person being detained, the person being held, or the person against whom a pretrial detention order has been issued to review the order issued against him. Moreover, no matter how different the names given by the legislator to detention without a reasoned judicial order are, everything that restricts a person's freedom of movement and detains him in a place unknown to him, his family members, or his legal representative is nothing but a form of enforced disappearance, which is internationally criminalized. The legal justification in Egypt is harming public peace and security, which may not be invoked according to the International Convention for the Protection of All Persons from Enforced Disappearance, as well as according to the Declaration on the Protection of All Persons from Enforced Disappearance.[1003]

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

([1001]) Principle No. 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Articles Nos. 14, 16 of the Arab Charter on Human Rights.
([1002]) Rule No. 15 of the Beijing Rules.
([1003]) Article No. 6 of the Declaration on the Protection of All Persons from Enforced Disappearance, and Article No. 6 of the International Convention for the Protection of All Persons from Enforced Disappearance.

concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. [1004]

The Declaration on the Protection of All Persons from Enforced Disappearance considered any act of enforced disappearance to be a crime against human dignity, and 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, which violates the rules of international law that guarantee every person the right to freedom and security and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and it also violates his right to life or constitutes a serious threat to it. [1005]

Any act of enforced disappearance is a crime that must be punished with appropriate penalties. Criminal responsibility for the act of enforced disappearance shall be borne by anyone who personally commits the crime, orders or recommends its commission, or is complicit 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 committing such a crime. However, national legislation may stipulate mitigating circumstances for anyone who, after participating in acts of enforced disappearance, facilitates the victim's appearance alive, or voluntarily provides information about cases of enforced disappearance, taking into account that 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 penalty.

Any act of enforced disappearance is considered a continuing crime as long as the perpetrator continues to conceal the fate and whereabouts of the disappeared victim. [1006]

In addition to the civil liability of the perpetrators of enforced disappearance, the State also bears civil liability for the authorities that organized, approved or condoned enforced disappearances, with the obligation to compensate the victims of enforced disappearance and their families with appropriate compensation, including the means for their rehabilitation as fully as possible.[1007]

Each State must investigate complaints that a person has been the victim of enforced disappearance, examine the allegation promptly and impartially and take appropriate measures

([1004]) Article No. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.
([1005]) Article No. 1 of the Declaration on the Protection of All Persons from Enforced Disappearance.
([1006] 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.
([1007] Articles 5 and 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.

to ensure the protection of the complainant, witnesses, relatives of the disappeared person and his or her defense counsel. [1008]

Each State shall provide access to any person who establishes a legitimate interest in obtaining information concerning the authority that decided to deprive the person deprived of his/her liberty, as well as the date, time and place of the deprivation of liberty and entry into the place of deprivation of liberty; the authority supervising the deprivation of liberty; the location of the person deprived of liberty, including in the event of his/her transfer to another place of detention, the place to which he/she was transferred and the authority responsible for his/her transfer; the date, time and place of his/her release; data on the state of health of the person deprived of liberty; and access to the circumstances and causes of death and to which the remains of the deceased were transferred in the event of the death of the person deprived of his/her liberty, as well as to protect any person who establishes a legitimate interest from any ill-treatment, intimidation or punishment for seeking information about a person deprived of his/her liberty. [1009]

It is prohibited to restrict the right to obtain information related to a person deprived of his liberty, while ensuring the right to a prompt and effective judicial appeal to obtain all the required information as soon as possible.[1010]

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, when the legal conditions for providing such information are met. [1011]

Any person detained without due regard to the established rules must be released immediately, and the State must take the necessary measures to ensure that he is actually released, and to guarantee his physical safety and full ability to exercise his rights upon his release. [1012]

Enforced disappearances are considered a “multifaceted violation of human rights.” They violate the right to life, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to a fair and public trial. These rights are contained in the International Covenant on Civil and Political Rights

([1008]) Articles 12 and 17 of the International Convention for the Protection of All Persons from Enforced Disappearance, and Articles 12 and 13 of the Declaration on the Protection of All Persons from Enforced Disappearance.
([1009]) Article No. 18 of the International Convention for the Protection of All Persons from Enforced Disappearance.
([1010]) Article No. 20 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article No. 9 of the Declaration on the Protection of All Persons from Enforced Disappearance.
([1011]) Article No. 22 of the International Convention for the Protection of All Persons from Enforced Disappearance.
([1012]) Article No. 21 of the International Convention for the Protection of All Persons from Enforced Disappearance, Article No. 11 of the Declaration on the Protection of All Persons from Enforced Disappearance.

and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). The above requires that States undertake to hold legally responsible anyone who "commits, orders, tolerates, is complicit in or participates in an enforced disappearance," as well as their superiors.

Enforced disappearance violates the right to communicate with one's legal representative, the right to know one's family or to have one's family, or any person of one's choice, know that one is detained and where one is detained, the right to a medical examination and the right to humane treatment.

UN human rights bodies have held that incommunicado detention, in general, can lead to gross violations of human rights and that the practice should be prohibited. This position has been reiterated several times by the UN Human Rights Committee, which has adopted the view that: "Prolonged incommunicado detention may facilitate the perpetration of torture and may in itself constitute a form of cruel, inhuman or degrading treatment or even torture. " [1013]

Accordingly, detaining or imprisoning a person in places other than those designated for that purpose, or without informing him of the information related to that detention or imprisonment, is a form of enforced disappearance that is internationally criminalized. Therefore, the detention of any person must be in places specified by law, and must be in a place known to him personally and to his relatives.

Sixth: The right of the person in pretrial detention to contact whomever he deems necessary to inform him of the detention order.

Anyone against whom a pretrial detention order has been issued has the right to contact whomever he deems fit to inform him of what has happened, and he must be informed promptly of the charges against him. .[1014]

If the interest of the investigation requires the pre-trial detention of the foreign accused, the investigating member of the Public Prosecution must send an urgent memorandum to the General Technical Office, stating the name of the accused, written 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 may be notified of this, so that it may notify his consulate. .[1015]

([1013]) United Nations Commission on Human Rights, resolution 32/2003, paragraph 14. It is noted that the Commission on Human Rights was replaced by the Human Rights Council in 2006.
([1014] Article No. 139 of the Code of Criminal Procedure.
([1015] Article No. 1386 of the Judicial Instructions of the Public Prosecution.

Seventh: The right of the person in pretrial detention to seek the assistance of a lawyer

Anyone against whom a pretrial detention order has been issued shall have the right to seek the assistance of a lawyer. [1016]

2 - 7 - 2 Alternatives to imprisonment

Since pretrial detention should be an exception, international standards recommend alternative measures that are less restrictive than detention. These alternatives should be considered if the court determines that some action is needed to ensure the accused's appearance in court. [1017]

The competent authority has at its disposal a wide range of management measures, which provide it with the flexibility to avoid, to the greatest extent possible, resorting to placement in correctional institutions. Such measures, some of which can be taken together, include the following:

(A) The order to provide care, guidance and supervision.

(B) Place under surveillance.

(C) Order to serve in the local community.

(D) Imposing financial penalties, exposure, and restoring rights.

(E) Ordering intermediate treatment methods and resorting to other treatment methods.

(F) Ordering participation in group counseling and similar activities.

(G) Ordering care with a foster family, in group living centers or other educational institutions.

(H) Other appropriate orders.

No juvenile may be removed from parental supervision, whether partially or completely, unless his special circumstances require it. [1018]

Such measures include appropriate bail or guarantees, a ban on the accused leaving the country, house arrest, and movement restriction orders. [1019]

([1016] Article No. 139 of the Code of Criminal Procedure.
([1017]) Rules 57, 58 and 62 of the Bangkok Rules, see Kaszczyniec v. Poland (59526/00), European Court (2007) 57; UNGA Resolution 65/229, 5.
([1018]) Rule No. 18 of the Beijing Rules.
([1019]) Canis v. Paraguay, Inter-American Court113 - 135 (2004).

These measures must be prescribed by law, necessary and proportionate. [1020]

Decisions regarding the amount of bail or other alternatives to detention should, in each case, be based on an assessment of the specific risk applicable to the case and the condition of the accused person.[1021]

Non-custodial measures should be preferred for persons who are solely or primarily caring for children, and for pregnant or breastfeeding women. .[1022]

The deprivation of liberty for children should only be used as a last resort and for the shortest appropriate period, as emphasized by the Committee on the Rights of the Child in its General Comment No. 10. This principle is also reflected in Article 37 of the Convention on the Rights of the Child, which states:
"States Parties shall ensure:

(A) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for crimes committed by persons below eighteen years of age.

(B) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(C) 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 through correspondence and visits, save in exceptional circumstances.

(D) Every child deprived of his or her 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 his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

([1020]) 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 on Fair Trial in Africa, and Principle 3(4) of the European Rules on Pre-trial Detention.

([1021]) European Court: Mangoras v. Spain (12050/04), Grand Chamber (93-78 (2010), Hristova v. Bulgaria (60859/00), (111 (2006..

([1022]) Rules 57-60 and 62 of the Bangkok Rules, Section M1(f) of the Principles on Fair Trial in Africa, Rule 10 of the European Rules on Pre-trial Detention, UNGA Resolution 65/229, 9; UNGA Resolution 63/241, 47; Special Rapporteur on Torture, 41 (2008) UN Doc. A/HRC/7/3.

Likewise, the Havana Rules provide for deprivation of liberty only in exceptional cases. The Beijing Rules and the Riyadh Guidelines also affirm this 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. [1023]

If the deprivation of liberty for a child is deemed necessary, it must be limited and in line with the child's best interests. The child should be treated with humanity and respect for their inherent dignity, considering their age and maturity. The Convention on the Rights of the Child emphasizes that age-appropriate restrictions include, in particular, the right to be separated from adults unless such separation is not in the child's best interests. Additionally, the child has the right to maintain contact with their family through correspondence and visits, except in exceptional circumstances. Paragraph (1) of Article 40 of the Convention affirms the principle of treating children in conflict with the law in a way that promotes their dignity and worth, while also encouraging their reintegration into society and their development into constructive members of society. It states: "States Parties recognize the right of every child alleged to have infringed the penal law to be treated in a manner that promotes the child's sense of dignity and worth, reinforces respect for human rights and fundamental freedoms, and considers the child's age, as well as the desirability of fostering their reintegration and constructive societal role." Similarly, Article 10(2)(b) of the International Covenant on Civil and Political Rights asserts: "Accused juveniles shall be separated from adults and brought before the courts as soon as possible for adjudication of their cases." [1024]

Article 40, paragraphs 3 (b) and (4) of the Convention on the Rights of the Child provide that alternative measures to detention should be considered first, such as care, guidance and supervision orders, counseling; placement in 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) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

([1023]) (CRC/C/GC/10) ،(A/HRC/28/68 ،25).
([1024]) International Covenant on Civil and Political Rights, article 10; Convention on the Rights of the Child, article 40; (A/HRC/28/68, 26).

4- Various arrangements, such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care, are available to ensure that children are treated in a manner that is appropriate to their well-being and proportionate to both their circumstances and the offence." [1025]

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 requires that any decision to deprive a child of his or her liberty must be subject to periodic review in terms of its continued need and appropriateness, stating that: "(D) Every child deprived of his or her 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 his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action." The Human Rights Committee explained in its General Comment No. 35 that the child has the right to be heard, either directly or through legal or other appropriate assistance, concerning any decision to deprive him or her of his or her liberty, and that the procedures followed should be child-friendly. .[1026]

In Egypt, the authority responsible for pretrial detention may issue an order instead of one of the following measures: 1 - Obligating the accused not to leave his residence or domicile. 2 - Obligating 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 detained in custody. The same rules established for pretrial detention apply to the duration of the measure, its extension, its maximum limit and its resumption. Arrest and detention orders issued by the Public Prosecution may not be executed after six months from the date of their issuance, unless the Public Prosecution approves them for another period. .[1027]

Under these measures, the accused is left free during the initial investigation period, subject to certain obligations that ensure his placement at the disposal of the investigator and the accused's good behavior.

The investigating judge has the authority to release an accused individual who is in pretrial detention, while requiring them to report to the police at designated times as specified in the

([1025]) (A/HRC/28/68 ،30).
([1026]) (CCPR/C/GC/35 ،62) ،(A/HRC/28/68 ،31).
([1027] Article No. 201 of the Code of Criminal Procedure.

release order, taking into account the person's particular circumstances. The accused may request the investigating judge to select a residence outside the area where the crime took place, and the judge may also impose restrictions, such as prohibiting the accused from visiting certain locations.

Members of the Public Prosecution must take into account the circumstances of the cases brought before them and carefully consider the extent to which it is necessary to detain the accused on remand. In particular, they must take into account the accused's social circumstances, family and financial ties, and the seriousness of the crime. This is left to their intelligence and good judgment.[1028]

If the investigation of a major felony or misdemeanor requires examining the mental state of the accused and he is in pretrial detention, the Public Prosecution must obtain from the district judge an order to place him under observation in one of the government facilities designated for that purpose for a period or periods not exceeding a total of forty-five days.

The period of observation shall be renewed until it reaches the maximum limit referred to in the previous paragraph, as well as the accused being removed from the place where he is being held and placed in prison before the end of that period by order of the partial judge based on the request of the prosecution.

The Public Prosecution must order the accused to be released from the place where he is being held immediately after the maximum period of observation has expired, and it may order his release in accordance with the general rules.

If the accused is not in pretrial detention, the partial judge may, upon the request of the prosecution, order that he be placed under observation in any other place where observation can be carried out for the previous period or periods.

If he is referred to the court, the matter of placing him under observation shall be within the jurisdiction of the court to which he is referred, in accordance with the above. .[1029]

The order to place under observation referred to in the previous article shall be implemented in accordance with the procedures and in the places specified in Articles 555 and 556 of the written, financial and administrative instructions issued in 1979.

([1028] Article No. 387 of the Judicial Instructions of the Public Prosecution.
([1029] Article No. 1314 of the Judicial Instructions of the Public Prosecution.

When implementing this order, a certified photocopy of the case file bearing the Public Prosecution seal must be sent to the Office of the Assistant Public Prosecutor, and the original case must be kept at the Public Prosecution headquarters to complete the investigation and take measures to extend the pretrial detention.[1030]

If the accused is under observation and is in pretrial detention, the members of the prosecution must take into account and take measures to extend his detention while he is in the place where he is being held, in accordance with the general rules and to ensure that the detention is avoided.[1031]

It is absolutely not permissible for a forensic doctor to be assigned to examine the mental state of the accused in a serious felony or misdemeanor case. .[1032]

If the investigation involves assessing the mental state of the accused in a minor misdemeanor or violation case, the prosecution must appoint a forensic doctor to conduct the examination and prepare a report on the findings. If the forensic doctor determines that the accused has a mental illness that requires treatment, the prosecution must act based on the doctor's report and contact the relevant administrative authority to transfer the accused to an appropriate medical facility, treating them as a patient rather than an accused person. This transfer can only occur after the competent health doctor issues Form No. "5 Mental Illness Health." Once the accused is placed in the hospital, the prosecution is no longer responsible for their admission or release, as the individual will be subject to the procedures outlined in Law No. 141 of 1944 concerning the detention of individuals with mental illnesses.

If the forensic doctor does not reach an opinion on the accused's mental state and indicates that he should be placed under observation, the prosecution must refer him to the competent health doctor to issue Form No. 29, Health Hospitals, with the accused being admitted to the local public hospital for observation by its doctors and a report on his condition being submitted. If it appears from their report that he suffers from a mental illness and that his condition requires care and treatment in the aforementioned hospital homes, the prosecution must deal with the case accordingly and instruct the administrative authorities to send the accused to one of these homes after issuing Form No. 5, Health, Mental Illnesses, in accordance with the above. [1033]

The prosecution must request the criminal record of the accused suspected of being mentally unsound and attach it to the special cases before sending them to the office of the First Public

([1030] Article No. 1315 of the Judicial Instructions of the Public Prosecution.
([1031] Article No. 1315 bis of the Judicial Instructions of the Public Prosecution.
([1032] Article No. 1316 of the Judicial Instructions of the Public Prosecution.
([1033] Article No. 1317 of the Judicial Instructions of the Public Prosecution.

Prosecutor. If it is necessary to expedite the sending of the case while awaiting the criminal record, such as if the accused is in a state of extreme agitation, the prosecution must send the case immediately to the office of the First Public Prosecutor and request the Criminal Evidence Investigation Department to extract the criminal record of the accused urgently, provided that the request states the date and number of sending the case and that the accused is suspected of being mentally unsound, while notifying the aforementioned department of the necessity of submitting the criminal record directly to the office of the First Public Prosecutor the following day at the latest. It is noted that this should be noted in the letter in which the case is sent to the aforementioned office. [1034]

The members of the prosecution shall order an investigation into the past of the accused, whose mental faculties are suspected, and their tendency to harm, and an investigation into the crimes they have previously committed, the actions they have taken, and other information that helps determine their condition when examining their mental faculties or when they are released from the hospital, provided that this is stated in the memoranda sent with the cases to the office of the first public prosecutor whenever possible, or in subsequent memoranda if the cases have been previously sent to him. [1035]

If it is suspected that a person who is not accused has a mental illness that could disturb public security or order or that could threaten the safety of the patient or the safety of others, the member of the Public Prosecution or the judicial police officer may place him under custody to present him to the competent health physician for examination, within a maximum period of twenty-four hours from the time of his arrest. If it becomes clear to the physician after examining him that he is not suffering from a mental illness, he must be released immediately.

If the doctor has any doubts about his condition but is unable to reach a definitive opinion, he shall order him to be placed under observation for a period not exceeding eight days in a government hospital not intended for mental illness, provided that he is examined medically every day. At the end of the observation period, the doctor shall decide whether to release him or detain him. In all cases, the doctor shall write a report on the results of the examination he conducted.

The patient shall be detained in the cases in which it is decided to do so in one of the government hospitals for mental and psychological health, unless the patient's relatives or those in charge

([1034] Article No. 1318 of the Judicial Instructions of the Public Prosecution.
([1035] Article No. 1319 of the Judicial Instructions of the Public Prosecution.

of his affairs decide to place him in one of the private hospitals prepared for the aforementioned diseases. .[1036]

2 - 7 - 3 Data required in the detention order

The detention order must contain the following details: the name, surname, occupation, and place of residence of the accused; the charge against the accused; the date of the order; the signature of the investigator; the official seal; and an instruction to the prison warden to accept the accused and place them in custody. Additionally, the order should include a description of the alleged crime, reference to the relevant legal article applicable to the offense, the prescribed penalty, and the reasons supporting the detention decision.[1037]

The member of the Public Prosecution must record in the minutes the order he issues to detain the accused on remand, stating its date and signing it with a visible signature, as well as requesting its extension from the district judge. The district judge shall also issue his order on the minutes to extend the detention or release the accused.

The detention order form or its extension shall be prepared in an original and two copies, taking into account what is required by Article 127 of the Code of Criminal Procedure, which requires that the pretrial detention order include the name of the accused, his surname, his profession, his place of residence, the charge attributed to him, the articles of law applicable to the incident, and the date of issuance of the order. It shall be signed by the member of the Public Prosecution or the judge, as the case may be, and the Public Prosecution seal shall be placed on it, with the prison warden being instructed to accept the accused and place him in prison. A copy of this form shall be kept in the case file.[1038]

The criminal record of the accused must be requested as soon as the order for his pre-trial detention is issued.[1039]

2 - 7 - 4 Depositing the accused in a reform center

When the accused is placed in a correctional center pursuant to a detention order, a copy of this order must be provided to the director of the correctional center. The director must sign the original order to acknowledge receipt of the document.[1040]

([1036] Article No. 1332 of the Judicial Instructions of the Public Prosecution.
([1037] Articles Nos. 127, 136, 199 of the Code of Criminal Procedure.
([1038] Article No. 395 of the Judicial Instructions of the Public Prosecution.
([1039] Article No. 396 of the Judicial Instructions of the Public Prosecution.
([1040] Article No. 138 of the Code of Criminal Procedure.

Detainees shall reside in separate quarters from other inmates. Detainees on remand may be permitted to reside in a furnished room in return for the amount specified in the Law Regulating Community Reform and Rehabilitation Centers, within the limits permitted by the places and tasks of the reform center. They also have the right to wear their own clothes, unless the management of the reform center decides, in consideration of health, cleanliness or the interests of security, that they should wear the clothes designated for other inmates.

They may also bring the food they need from outside the correctional center or buy it from the correctional center at the specified price. If they do not wish to do so or are unable to do so, the prescribed food will be provided to them.[1041]

There is nothing in Articles 134 to 143 of Chapter Nine of Part Three of Book One of the Code of Criminal Procedure, nor in Law No. 396 of 1956 regarding the organization of the Community Reform and Rehabilitation Center, nor in Interior Minister Decision No. 79 of 1961 regarding the internal regulations of reform centers, that requires the implementation of a pretrial detention order on defendants accused of a single crime in a single geographical reform center.[1042]

If the accused is remanded in custody in a case and it is necessary to remand him in custody in another case or cases, the member of the Public Prosecution must order his detention in this case or cases as well, provided that the detention order issued therein is implemented as of the date of his release in the first case for which he was remanded, and he must clearly indicate on the file of each of these cases the numbers of the other cases in which it was decided to remand him in custody, while notifying the correctional center of that. .[1043]

If the convict is in pretrial detention in one case and a ruling is issued against him in another case with a financial penalty or simple imprisonment and the convict chooses to work, this choice should be implemented until the pretrial detention ends or the penalty restricting freedom that he may be sentenced to in the case for which he was pretrial detained is implemented.

If he chooses to implement the ruling in the other case by physical coercion or simple imprisonment without work, his pretrial detention will be interrupted and then he will be returned to it after the implementation is completed.

([1041] Article No. 398 of the Judicial Instructions of the Public Prosecution.
([1042]) See in this regard: Appeal No. 2096 of Year 35 Q issued in the session of March 14, 1966 and published in the first part of Technical Office Book No. 17, page No. 286, Rule No. 56.
([1043] Article No. 402 of the Judicial Instructions of the Public Prosecution.

If, during the execution of the operation in one of the cases, an order is issued to detain the convict in another case on remand, the execution by operation shall be suspended until the remand ends, and then the operation shall be resumed as a result of that. [1044]

It is prohibited to place any person in correctional centers without a written order signed by the competent authorities. Article 5 of the Egyptian Law Regulating Correctional and Community Rehabilitation Centers emphasized the necessity of having a written order signed by the competent authorities to place the person in the correctional centers designated for that purpose. It is also prohibited to place any person in a work institution for habitual criminals except by a written order signed by the competent authorities legally, and he remains there 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 execution clerk at the court must send adult convicts with their execution forms to the designated correctional centers to implement the sentence therein, depending on the type and degree of the sentence.[1045]

The director of the correctional Centre or the employee appointed for this purpose must receive a copy of the detention order, after signing the original to acknowledge receipt. The original must be returned to the person who brought the inmate and a copy signed by the person who issued the detention order must be kept.

When the accused is placed in a correctional center based on an order issued for his detention, the competent public prosecution officer must deliver a copy of the detention order to the director of the correctional center or the competent employee appointed for this purpose after signing the original to acknowledge receipt. It must be noted that this copy must be signed by the person who issued the order and stamped with the seal of the emblem of the Republic.[1046]

The Public Prosecutor and his deputies have the right, within their jurisdiction, to enter all places of correctional centers at any time to verify that there is no inmate there without legal justification.[1047]

As for the places designated for detaining detainees, which are specified by a decision of the Minister of the Interior, they may only be entered by those delegated by the Public Prosecutor for this purpose from among the public attorneys or heads of the partial prosecutions therein,

([1044] Article No. 403 of the Judicial Instructions of the Public Prosecution.
([1045] Articles No. 5 and 6 of the Law Regulating Correctional Centers, Article No. 2 of the Internal Regulations of Correctional Centers, Article No. 3 of the Internal Regulations of Geographic Correctional 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.
([1046] Article No. 1044 of the written, financial and administrative instructions of the Public Prosecution.
([1047] Article No. 85 of the Law Regulating Community Reform and Rehabilitation Centers, amended by Law No. 106 of 2015.

or their director, who shall notify the Public Prosecutor through the public attorneys or heads of the general prosecutions of the places in their districts. [1048]

The Public Prosecution, when inspecting reform centers, whether public or geographical, must verify that the orders of the Public Prosecution and the investigating judge in the cases he is assigned to investigate, and the decisions of the courts, are being implemented in the manner stated therein, and that there is no inmate without a legal basis. [1049]

This is done by reviewing the detention or arrest orders or written orders for the detainee or the execution forms, and verifying the existence of a summary of them in the records of the correctional center and requesting copies of the detention order if it is found that it does not exist. If the prosecution member finds that he is unlawfully detained or imprisoned, he shall order his immediate release after writing a report proving the incident and specifying in the report the time and date of the procedure and the person and signature of the recipient of the release order. Also, if the prosecution member finds that he is detained or imprisoned in a place other than his designated place, he shall immediately write a report of the incident and order that he be deposited in the designated place, indicating that in the report, specifying in it the time 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 prosecution headquarters and include in it the crimes and violations he observed, provided that he takes the initiative to notify the Attorney General of the General Prosecution of those violations and crimes and send the inspection report to him, provided that the Attorney General assigns one of the members of the General Prosecution to conduct the investigation into the crimes and violations included in the inspection report, and sends the case accompanied by the opinion to the Assistant Attorney General through the First Attorney General. To the Appeal Prosecution. (1050)

Whoever arrests, detains or detains any person without an order from one of the competent judges and in circumstances other than those authorized shall be punished by imprisonment or a fine not exceeding two hundred Egyptian pounds. The penalty shall be imprisonment if the arrest is made by a person who is unlawfully dressed as a government employee or who has a false identity or who presents a forged order claiming that it was issued by the government. The penalty shall be imprisonment. [1051]

([1048] Article No. 1750 of the Judicial Instructions of the Public Prosecution.
([1049] Article No. 1748 of the Judicial Instructions of the Public Prosecution.
([1050] Articles No. 1749 and 1749 bis of the Judicial Instructions of the Public Prosecution.
([1051] Article No. 280 of the Penal Code, amended by Law No. 29 of 1982.

In all cases, whoever unlawfully arrests a person, threatens to kill him, or tortures him physically shall be punished with hard labor. .[1052]

Any person who knowingly lends a place for impermissible confinement or detention shall be punished with imprisonment for a period not exceeding two years. [1053]

On the other hand, all international conventions prohibit the acceptance of any person in 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 .[1054]

It is also prohibited to receive any juvenile in a detention facility without a valid detention order issued by a judicial, administrative or other public authority, provided that the details of the detention order are immediately recorded in the institution's records. No juvenile may be detained in any institution or facility that does not have records. [1055]

The Subcommittee on Prevention of Torture has considered that adequate recording of deprivation of liberty, including detainees' movements, possible complaints, requests and subsequent follow-up, constitutes a fundamental safeguard against ill-treatment, as well as an indispensable condition for the effective exercise of legally established rights, such as the right to challenge the legality of the deprivation of liberty. Furthermore, proper recording of detention constitutes a tool that enables proper and effective oversight by the officers entrusted with oversight duties and serves as protection for police officers against false allegations of ill-treatment or omissions.

The Subcommittee on Prevention therefore recommended that the police service should establish a standard and unified register for the timely and comprehensive recording of all key information relating to the deprivation of liberty of individuals and that police personnel should be trained in its use in an appropriate and consistent manner. The Subcommittee recommends that records include at least the following information:

(A) The reasons for the deprivation of liberty, the exact time at which it began and the duration of the deprivation.

([1052] Article No. 282 of the Penal Code.
([1053] Article No. 281 of the Penal Code.
([1054]) 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 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
([1055]) Rule 20 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

(B) The person responsible for authorizing the deprivation of liberty and the person who entered the deprivation in the register.

(C) Precise information regarding the location where the person is being held during that period, including any movements within and between facilities.

(D) The date on which the person first appeared before a judge or other authority.

(E) Requests and complaints.

(F) The time at which the person was informed of his or her rights, the time at which he or she was notified of detention, the identity of the person notified and the identity of the official making the notification.

(G) The time when the person was examined by a doctor or received a visit from a family member or a lawyer or any other person.

Furthermore, the Sub-Committee recommended that supervisory officials exercise strict control over record-keeping to ensure the regular recording of all relevant information.[1056]

First: Separating pretrial detainees from the rest of the inmates

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that anyone detained on suspicion of or charged with a criminal offence is presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. It is prohibited to impose restrictions on such a person that are not strictly necessary for the purposes of detention or for preventing interference with the investigation or the administration of justice, or for the maintenance of security and good order in the place of detention. Therefore, detained persons must be separated from other prisoners whenever possible. (1057)

The Standard Minimum Rules for the Treatment of Prisoners and the Nelson Mandela Rules also stipulate that remand prisoners (untried prisoners) must be separated from other prisoners, and that juveniles in remand detention must be separated from adults. .1058

(1056) (CAT/OP/MDV/1, 26 February 2009, 116 - 118).
(1057) Issued by the United Nations in Resolution No. 43/173 dated December 9, 1988, Principles Nos. 8, 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
(1058) Rules Nos. 8, 85 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule No. 112 of the Nelson Mandela Rules.

The International Covenant on Civil and Political Rights also requires that accused individuals (those in pretrial detention) be separated from convicted persons, and that they be treated independently in accordance with their status as unconvicted individuals.[1059]

The Arab Charter on Human Rights also stipulates that accused persons should be separated from convicted persons and that they should be treated in a manner consistent with their not being convicted.[1060]

The Egyptian legislator approved the principle of separating pretrial detainees from the rest of the inmates, and stipulated that they be separated and housed in places separate from the places of other inmates.[1061]

Children in detention should be appropriately separated in detention centers, including but not limited to the separation of children in need of care from those in conflict with the law, children awaiting trial from convicted children, boys from girls, younger children from older children, and children with physical or mental disabilities from those who do not have such disabilities. Children detained under criminal law should never be placed with adult detainees. The Special Rapporteur also emphasized that the exception to the separation of children from adults, as outlined in Article 37(c) of the Convention on the Rights of the Child, should be interpreted narrowly. The child's best interests should not be overshadowed by the interests of the State. Children in conflict with the law should be held in facilities specifically designed for individuals under 18, offering a non-prison-like environment and systems suited to their needs, managed by specialized staff trained to work with children. These facilities should provide access to natural light, adequate ventilation, sanitary facilities, and respect for privacy. Accommodation should primarily be in individual rooms, and large sleeping areas should be avoided. [1062]

Second: The right of the person in pretrial detention to continue his education during his detention period.

The law governing community correctional and rehabilitation centers allows inmates to take examinations for their studies at the committee's headquarters. This provision applies to all inmates, whether they are in pretrial detention or serving sentences. The law stipulates that: "The administration of public correctional and rehabilitation centers must encourage inmates

([1059] Article No. 10 of the International Covenant on Civil and Political Rights.
([1060] Article No. 20 of the Arab Charter on Human Rights.
([1061] Article No. 14 of the Law Regulating Community Reform and Rehabilitation Centers, amended by Law No. 106 of 2015, and Article No. 11 of the Internal Regulations for Geographic Reform Centers.
([1062]) (A/HRC/28/68 ،76).

to engage in reading and learning, and facilitate study for those who wish to continue their education."

The educational authorities in which the inmates are registered must form special committees for them within their detention center to enable them to take the examinations prescribed for them, unless the head of the educational authority requests that the inmates be transferred to take the practical or oral examinations outside the centers in which they are detained in circumstances that require this, unless there is a risk in their transfer, as assessed by the Minister of the Interior or his delegate. .[1063]

Since the principle is to preserve the dignity and humanity of the imprisoned person, whatever his crime, it is not permissible to harm him physically or morally or to detract from his constitutionally and legally established rights, there is no doubt that among those rights is the right of the prisoner to education, just like the rest of the members of society, which is what prison laws and internal regulations have urged. The legislator considered education a right guaranteed to all, and obligated the prison administration to encourage prisoners to do so. The imprisonment of a citizen does not cancel his right to education, nor does it absolve the state from guaranteeing this right, and its commitment to it remains in place as long as it does not conflict with the duties of imprisonment. [1064]

Therefore, the legislator has obliged the administration to educate and encourage the inmates of correctional centers, and to facilitate the means of studying and taking exams for them, and that the contribution of the Community Reform and Rehabilitation Centers Authority in educating and cultivating the inmate contributes to eliminating illiteracy on the one hand and raising the educational level of the inmate, which is one of the main approaches to changing concepts and changing the cognitive and intellectual reference of the inmate, which ultimately leads to refining the inmate and changing his hostile view of society, which is what the articles of the Correctional Centers Law stipulated, with the necessity of encouraging inmates to read and learn and facilitating the means and ways of studying for them and allowing them to take special exams at the committee headquarters, as well as establishing a library in every correctional center containing religious, scientific and moral books and allowing inmates to bring books, newspapers and magazines at their own expense in accordance with what is decided by the internal regulations of correctional centers.

([1063] Article No. 31 of the Law Regulating Community Reform and Rehabilitation Centers, and Article No. 405 of the Judicial Instructions of the Public Prosecution.
([1064]) Rules Nos. 58, 59 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule No. 4 of the Nelson Mandela Rules.

The Community Protection Sector strives to facilitate education for inmates at various educational levels, in line with available resources and in a manner that does not conflict with penal enforcement regulations or public security requirements. Special committees may be established within the reform and rehabilitation center where inmates are housed, to enable them to take prescribed examinations in coordination with the relevant educational authorities they are registered with.

If it is necessary to transfer inmates to take practical or oral exams outside the centers in which they are being held, based on a request from the head of the educational authority, the opinion of the relevant security authorities is sought to consider the request and express an opinion. If it becomes clear that there is a danger from their transfer, the educational authority is notified of the impossibility of their transfer without giving reasons. [1065]

The prison administration must teach prisoners educational, social and religious lessons aimed at correcting any deviation in them and preparing them to return to service with better behavior and work in accordance with the program prepared by the training department for this purpose. It must encourage prisoners to read and learn and facilitate memorization for those of them who wish to continue their studies and allow them to take exams in accordance with what is followed for ordinary prisoners, with a special focus on combating illiteracy among the uneducated among them. .[1066]

The Administrative Court ruled that the decision to expel a student from school due to his arrest or imprisonment violates the law and is tainted by the defect of abuse of power: **Education is a right guaranteed by the state to every citizen, whether free or imprisoned or detained, a fortiori considering that the imprisonment of a citizen, whether in pretrial detention pending a case or detention, does not deprive him of the right of citizenship and does not deprive him of the right to education. On this basis, Article 31 of the Prisons Organization Law, after its amendment by Law No. 87 of 1973, confirmed this right for prisoners, and obligated the prison administration to enable the prisoner to take his exams at the committee headquarters. From here, it was inevitable that this administration would fulfill this duty, which is part of its mission to reform and educate the prisoner before its role in reprimanding and disciplining him.**

Whereas it is evident from the papers that the plaintiff was enrolled in the first year of secondary school at the Esna Industrial Secondary School for Boys in the 1988 academic year

([1065] Article No. 15 bis of the internal regulations of community correctional and rehabilitation centers, added by Interior Minister Decision No. 3320 of 2014.
([1066] Article No. 11 of the Internal Regulations of Military Prisons.

and was denied entry to the exam for not meeting the percentage of practical training. He then took the exam again in the 1989/1990 academic year and failed. On 8/15/1991, he was arrested and has remained in this state until now. The administrative authority (Qena Education Directorate) decided in its response to the lawsuit that the aforementioned person could take the exam using the home system, but after his release.

It is clear from this that the administrative authority, represented by the Qena Education Directorate and the Ministry of Interior, is refusing to allow the plaintiff to take the first year industrial secondary school exams, claiming that the aforementioned is still detained and has not yet been released.

Whereas what the administrative authority concluded contradicts, in text and spirit, the text of Article 31 of the Prisons Law, which stressed the necessity of holding the prisoners' exams at the committee headquarters, and if the plaintiff was in his prison and did not complete the percentage of practical lessons, then the reference for that is the circumstances of his detention, which are beyond his control, as they are coercive circumstances, which makes the contested decision in violation of the law and should be cancelled. Saying otherwise would impose on the plaintiff what he cannot bear, and would empty the aforementioned excuse of its content, and would equate the student who has dropped out of school without an excuse with the person against whom this aforementioned excuse was made and its content, and would equate the student who has dropped out of school without an excuse with the person against whom this excuse was made, which is something that sound logic does not accept.[1067]

The administration's prevention of inmates and detainees from taking exams at their own committee headquarters, and its approval of them taking their exams in their prison only, violates and conflicts with the law: [**The legislator has considered education a right guaranteed to all, and has obligated the prison administration to encourage prisoners to do so, and that the imprisonment of a citizen does not waive his right to education nor does it absolve the state from guaranteeing this right, and its commitment to it remains in place as long as it does not conflict with the duties of imprisonment. Therefore, the legislator has obligated the administration to educate prisoners and encourage them to do so, and to facilitate for them the means of studying and taking exams at their own committee headquarters and not in their prison. Consequently, the Minister of Interior's approval of prisoners and detainees taking exams in their prison only becomes a violation of the aforementioned law and conflicts with it.**

([1067]) The ruling of the Administrative Court in Case No. 2927 of 12, issued in the session of November 24, 2005.

Whereas it was clear from the apparent documents that the respondent was imprisoned in Wadi El Natrun prison and that he was enrolled in the first year of the Faculty of Education, Minya University, in the academic year 2001/2002, and that he had applied to the appellant administrative authority to allow him to take the exams for that year, but it refused to respond to his request despite his submission of several requests for this purpose, which constitutes a negative administrative decision that violates the law, and is likely to be cancelled when deciding on the cancellation request, which provides the element of seriousness in the request to suspend the implementation of this decision, in addition to the availability of the element of urgency due to the damages that will result from implementing this decision and continuing to implement it, including depriving him of continuing his education and depriving him in the future of a legitimate source of livelihood, and whereas the request to suspend the implementation of the contested decision provides the elements of seriousness and urgency, which requires a ruling to suspend the implementation of this decision with the consequences that result from that.] (1068)

The Administrative Court also ruled that: [**The legislator has recognized education as a fundamental right for every citizen, and the state is required to ensure access to this right, even for those who are imprisoned or detained. Imprisonment or detention should not prevent individuals from benefiting from education. The law mandates that prison administrations provide prisoners who wish to continue their education with the necessary resources for studying and enable them to take exams at the designated committee headquarters where the exams are held.**

Whereas, by applying the above to the facts of the present dispute, and since it is evident from the apparent documents and to the extent necessary to decide on the urgent aspect and without delving into the subject, the plaintiff's son is a student in the third year of Al-Azhar secondary school (Al-Azhar secondary school certificate) - literary section, and he was sentenced to imprisonment with hard labor for a period of one year in the session of 5/3/2009 in felony No. 16713 of 2007, Beni Suef Section, registered under No. 2103 of 2007, Beni Suef, and the administrative authority refused to allow the student to take the first-year examination for the academic year 2008/2009, and thus this behavior of the administrative authority was in violation of the provisions of the law, and thus the element of seriousness required by the law to rule to suspend execution is available without being affected by that, since the administrative authority has invoked the provisions contained in the decision of the

(1068) The ruling of the Supreme Administrative Court in Appeal No. 13238 of Year 48, Session of January 28, 2009, Technical Office 54, Page 240, Rule No. 28.

Sheikh of Al-Azhar No. 337 of 1998 regarding the rules for student affairs, as they were in violation of the provisions of the aforementioned Prisons Law, which is similar to the general principle in this case.

As for the urgency element, the first committed to the colleges that the plaintiff's son may join on 1/16/2010, and therefore the behavior of the administration in not announcing his result will result in damages that are difficult to remedy if the ruling is issued in the subject matter to cancel that decision. Accordingly, the two elements of suspending execution are available in the present case, and therefore the court responds to his request to suspend the execution of the contested decision in what it included of depriving the plaintiff's son from taking the May 2009 exam for the academic year 2008/2009 for the Al-Azhar secondary school certificate and the consequences that result from that, most notably announcing the student's result in this exam that the court enabled him to take in the session of 5/26/2009, with what follows from that of his entitlement - in the event that his success is proven - to submit his papers to the competent coordination office to join the college that qualifies him for his total score that he obtained in this exam, and that the ruling be issued in its draft without announcing it in implementation of the provisions of Article 286 of the Code of Civil Procedure.] [1069]

The administration may not use the excuse of depriving the inmate from taking his exams at the committee headquarters, on the grounds that it is impossible to allow the inmate to be transferred to the committee headquarters - according to what the administration claims - that the process of his transfer is surrounded by extremely dangerous security precautions. The administration may also not use the excuse of the inmate not meeting the attendance rate in its entirety: [**Education is a right guaranteed by the state to every citizen, whether he is free or imprisoned or detained, and it is even more appropriate to consider that the imprisonment of a citizen, whether it is pretrial detention pending a case or detention, does not strip him of his citizenship status, nor does it deprive him or forfeit his right to education. On this basis, Article (31) of the Prisons Organization Law, after its amendment by Law No. 87 of 1973, confirmed this right for prisoners, and obligated the prison administration to enable the prisoner to take his exams at the committee headquarters. From here, it was inevitable for that administration to fulfill this duty, which is part of its mission to reform and educate the prisoner before Her role in reprimanding and disciplining him.**

([1069]) Ruling of the Sixteenth Circuit (Beni Suef, Fayoum) of the Administrative Court No. 4940 of 9 Q issued in the session of January 5, 2010.

Whereas the Ministry of Interior, in its letter issued by the Assistant Minister for the Prisons Sector dated 11/27/2001 and attached to the documents of the defendant university, stated that it was impossible to allow the plaintiff to be transported to the college headquarters to take the exam due to the extremely dangerous security precautions surrounding his transport related to the presence of the aforementioned person, as the Ministry stated in the same letter of the Assistant Minister for the Prisons Sector referred to that the plaintiff had not met the attendance rate in his entirety.

Whereas what the Ministry of Interior concluded contradicts, in text and spirit, the text of Article (31) of Law No. 396 of 1956 referred to after its amendment by Law No. 87 of 1973, which stressed the necessity of holding prisoner examinations at the committee headquarters, and that if there was fear of the plaintiff escaping during his transfer to the committee headquarters or during the examination, then all of these matters were under the legislator's sight when he decided for the prisoner this right. However, if there were security considerations that required taking precautions to prevent the plaintiff from being transferred to take the examination at the committee headquarters, then these considerations do not entitle the aforementioned administrative body to prevent a right guaranteed to him by the legislator. In addition, the police force, which is the country's security fortress, is always able to provide the security requirements for the detainee to take the examination at the committee headquarters.

Since this is the case, the contested decision not to allow the plaintiff to take the third-year exams at the College of - If the defendant university's decision is made within the committees' headquarters in the college; it is a decision that violates the law, which requires a ruling to cancel it and the consequences that result from that.

This is not changed by what the Ministry raised, that the plaintiff did not meet the attendance rate at the college in which he was enrolled, which prevented him from taking the exam. In addition to the fact that the aforementioned did not meet the attendance rate stipulated by law, it was due to the circumstances of his arrest, which were beyond his control, as they were coercive circumstances. It is evident from the university's response to the lawsuit from the university council, which decided in its session No. 85 dated 5/31/2003 to allow detained students who did not meet the attendance rate to take the exams. [1070]

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**

([1070]) The ruling of the Administrative Court in Case No. 1197 of 12 Q issued in the session of December 29, 2005.

imprisonment of a citizen, whether it is pretrial detention pending a case or his arrest, does not strip him of his citizenship, and therefore does not deprive him or forfeit his right to education. On this basis, Article (31) of the Prisons Organization Law, after its amendment by Law No. 87 of 1973, confirmed this right for prisoners, obligating the prison administration to enable the prisoner to take his exams at the committee headquarters. From here, it was inevitable that this administration would undertake this duty, which is part of its mission in reforming and rehabilitating the prisoner before its role in reprimanding and disciplining him.

Whereas the Ministry of Interior stated in its response to the lawsuit that it had addressed the administration of the Higher Institute of Social Service in Aswan to enable the plaintiff to take the exams inside his prison cell, and the institute refused this on the basis that it does not hold special examination committees outside the institute based on the instructions of the Minister of Education, and it is clear from the response of the administrative body that it does not authorize the plaintiff to take his exams in the fourth year of the aforementioned institute except inside the prison in which he is detained.

Whereas what the Ministry of Interior has gone to contradicts in text and spirit the text of Article (31) of Law No. 396 of 1956 referred to after its amendment by Law No. (87) of 1973, which confirmed that the examinations of prisoners shall be held at the committee headquarters, and that if there is a fear of the prisoner or detainee escaping while taking the examination at the committee headquarters, then this consideration was under the sight of the legislator when he decided for the prisoner this right. However, if there are security considerations that require taking precautions to prevent the detainee from taking the examination at the committee headquarters, then these considerations do not entitle that party to deny him a right decided for him by the legislator, in addition to the fact that the police apparatus is always able to provide the security requirements for the detainee to take the examination at the committee headquarters, and since this is the case, the contested decision not to enable the plaintiff to take the fourth-year examination at the Higher Institute of Social Service in Aswan inside the committee headquarters at the institute is a decision that violates the law, and with it the plaintiff's request to cancel it is based on a sound legal basis and is worthy of acceptance.] [1071]

The decision to deprive the detainee or inmate from continuing his studies and taking his exams on time at the committee headquarters is an error that requires the administration to be responsible for compensating him for the damages that he suffered as a result of this decision:

([1071]) The ruling of the Administrative Court in Case No. 2138 of 11 Q, issued in the session of November 24, 2005.

[Whereas the basis of the administration's responsibility for the decisions issued by it is the existence of an error on its part, such that the decision is unlawful due to one or more of the defects stipulated in the State Council Law, and that the person concerned suffers harm, and that there is a causal relationship between the error and the damage.

As for the element of error, it is established that arrest, according to what is stipulated in Article (Third) of Law No. 162 of 1958 regarding the state of emergency, is limited to suspects and those who are dangerous to security and public order. Therefore, the ruler's authority to arrest citizens does not extend to anyone except those whose arrest is permitted by the Emergency Law, namely suspects and those who are dangerous to security and public order. They are those to whom a specific activity is attributed that the detainee is proven to have actually committed and that represents a danger to security and public order, which constitutes the element of reason in the arrest decision. If the arrest decision is devoid of attributing a specific activity and specific facts to the detainee, then the arrest decision becomes devoid of its legally justifying reason, and thus the element of error is present in it. (The ruling of the Supreme Administrative Court in the session of 2/9/2002 in Appeal No. 2894 of Year 45 Supreme Court, Year 47 Collection, p. 426).

The documents provided do not offer any justification for the plaintiff's arrest in December 1992, apart from the administrative authority's claim that the arrest was for "security reasons," which is not a valid basis for issuing an arrest warrant, thus rendering the arrest unjustified. Furthermore, after the appellant's arrest, detention, and the subsequent denial of the rights guaranteed to prisoners under Article 31 of Law No. 396 of 1956 (as amended by Law No. 87 of 1973), which includes the right to take exams, the administrative authority not only ignored the appellant's legal rights but also failed to implement a ruling in the appellant's favor. This ruling, issued by the Administrative Court of Qena on 11/30/1994 in the urgent part of Case No. 288 of Year 2Q and in the substantive part on 6/26/1997, was never enforced, as acknowledged by the appellant in the appeal and not disputed by the administrative authority. The refusal to comply with this ruling persisted until the second academic year of 2003, when the ruling was finally implemented as part of the appeal in this case. As such, the wrongful arrest and the unjustified denial of the appellant's right to take exams and continue his education represent a clear error on the part of the administrative authority.

Regarding the harm caused, the arrest decision made in the case of the appellant represents an infringement on two fundamental freedoms and a violation of two constitutional rights, each of which holds equal significance as general constitutional

freedoms and rights. Although these rights are distinct and independent in their provisions and organization, the arrest decision creates a material reality that restricts the citizen's freedom. If the arrest is found to be illegal, it conflicts with the principles set forth in Articles 41 and 50 of the Constitution, which affirm that personal freedom is a natural right. These articles stipulate that a citizen's freedom cannot be restricted, nor can they be compelled to remain in a specific place, except under the conditions and procedures outlined in these constitutional provisions.

Furthermore, the arrest decision—whether as a factual occurrence or a determination of the individual's legal status—also infringes upon another constitutional right: the right to education. The decision prevents the appellant from continuing their studies, developing their abilities, and advancing in specialized educational fields to prepare for a productive life and to contribute to the country, as provided for in Article 18 of the Constitution. Given that the violation of each of these constitutional rights (personal freedom and the right to education) leads to distinct and separate types of harm, each requires separate compensation. This principle is supported by the ruling of the Supreme Administrative Court in its session of 3/24/2001, in Appeal No. 2894 of the 43rd Supreme Year, published in the collection of rulings from the First Circuit of the Supreme Administrative Court from October 2000 to March 2001 (Vol. 1, p. 619).

Whereas, based on the above, and since it is evident from the papers that the appellant was enrolled in the third year of agricultural secondary school at Qena Agricultural Secondary School in the academic year 1992/1993, and was arrested in December 1992, and was deprived of continuing his education in a normal educational environment and taking the scheduled exams until 2003, as he was deprived of the second round exams in the third year of agricultural secondary school despite the ruling issued in the session of 5/29/2003 by the Qena Administrative Court in the urgent part of the lawsuit whose ruling is being appealed against in the present appeal, and therefore his deprivation of his constitutional right to continue his education was due to his unlawful detention that lasted for approximately eleven years, and the damage resulting from his deprivation of his constitutional right to continue his education and take the scheduled exams requires separate compensation for the damages resulting from the arrest decision, especially since the papers originally lacked anything indicating that the administrative body paid any compensation to the plaintiff for his arrest decision, accordingly the court orders the administrative body against which the appeal was

filed (the Ministry of Interior) to pay The appellant shall be entitled to an amount of ten thousand pounds as compensation for the material and moral damages he suffered as a result of being deprived of continuing his education and taking the scheduled examinations. [1072]

The commitment of the administration to allow the prisoner or detainee to continue his studies and take exams depends on the desire and will of the prisoner or detainee, and the administration's refusal to respond to the requests of the prisoner or detainee to allow him to take exams is a negative decision that violates the law, which may be appealed before the Administrative Court. In this regard, the Supreme Administrative Court ruled that: [**The legislator considered education a right guaranteed to all, and obligated the prison administration to encourage prisoners to do so, and that the imprisonment of a citizen does not waive his right to education or absolve the state from guaranteeing this right, and its obligation to it remains in place 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 for them the means of studying and taking exams at their committee headquarters and not in their prison. Therefore, the approval of the Minister of Interior for prisoners and detainees to take exams in their prison only becomes a violation of the aforementioned law and conflicts with it.**

Whereas it was clear from the apparent documents that the respondent was imprisoned in Wadi El Natrun prison and that he was enrolled in the first year of the Faculty of Education, Minya University, in the academic year 2001/2002, and that he had applied to the appellant administrative authority to allow him to take the exams for that year, but it refused to respond to his request despite his submission of several requests for this purpose, which constitutes a negative administrative decision that violates the law, and is likely to be cancelled when deciding on the cancellation request, which provides the element of seriousness in the request to stop the implementation of this decision, in addition to the availability of the element of urgency due to the damages that will result from implementing this decision and continuing to implement it, including depriving him of continuing his education and depriving him in the future of a legitimate source of livelihood, and whereas the request to stop the implementation of the contested decision provides the elements of

([1072]) The ruling of the Supreme Administrative Court in Appeal No. 17753 of Year 52 Q, issued in the session of December 28, 2011, Technical Office 57, Part One, Page 326, Rule No. 41.

seriousness and urgency, which requires a ruling to stop the implementation of this decision with the consequences that result from that.] [1073]

The court also ruled that: [**The state guarantees equal opportunities for all citizens without discrimination, and it also guarantees the right to education for all as a constitutional right, and the prison administration must encourage prisoners to receive this education by facilitating their revision, continuing their studies, and taking the exam.**

This is considered a way of examining the personality of the convicts and methods of rehabilitating them, out of respect for their constitutional rights and dignity, by linking the prison to society by providing the capabilities and opportunities that help them to live a social life and respond to society instead of separating or isolating from it or challenging and clashing with it. This can only be achieved if the prisoner is allowed to complete his studies and the examination is facilitated in order to obtain a greater share of education and academic qualifications.

In terms of applying the above, since the respondent was enrolled in the first year of the Faculty of Advertising, Cairo University, and was arrested and wanted to take the exam to complete his studies at the faculty, then the refusal to allow him to take the exam constitutes a negative decision in violation of the provisions of the law and a departure from the principles of the constitution in equal opportunities and guaranteeing the right to education for citizens. The request to suspend its implementation meets the elements of seriousness and urgency, as this refusal entails harming the respondent's academic future and missing the opportunity to take the exam, which is something that is indeed difficult to remedy and therefore its implementation must be suspended. [1074]

The prisoner or detainee must, in order to compel the administration to allow him to continue his studies and take exams, notify it of his desire to do so, as not every detainee or person restricted in freedom is ready and willing to take the exam: [**The legislator has mandated that the prison administration create an environment conducive to reading and learning within the prison, providing study materials and facilitating students' ability to continue their education, including enabling them to take the exams that are part of their academic progression. The phrasing of this requirement is clear and explicit, indicating that the initiation of all these actions depends on the prisoner's own will. The prison administration is required to support**

(1073) The ruling of the Supreme Administrative Court in Appeal No. 13238 of Year 48 Q issued in the session of January 28, 2009, Technical Office 54, page 240, Rule No. 28.

(1074) The ruling of the Supreme Administrative Court in Appeal No. 7956 of Year 47 issued in the session of June 28, 2006, Technical Office 51, Part No. 2, Page 1006, Rule No. 142.

those who wish to read by providing a suitable environment, books, newspapers, and media that allow them to engage in reading in a state of mind conducive to learning. Similarly, if a prisoner expresses a desire to study, the administration must assist by providing the necessary materials and resources to help them memorize the subjects they are studying. The use of the term "memorization" highlights that the prisoner must express a genuine desire to learn.

Moreover, the phrase "those who have the desire to continue studying" is definitive, indicating that the prisoner's explicit desire to pursue further education is a key factor. It would be unreasonable for the prison administration to anticipate the intentions of prisoners who have not communicated their wishes. A prisoner's desire to take an exam is not assumed; it must be explicitly communicated through a formal request to the prison administration. Without such a request, the administration cannot be held accountable for facilitating exams. Therefore, it is clear that the prisoner must approach the administration, requesting the ability to take the exams, and only then does the administration have an obligation to fulfill the legal requirement to enable the prisoner to do so. Without this request, the administration is not obligated to facilitate the exams.

Whereas the basis of the responsibility of the administrative body for its actions - according to the established rulings of this court - is based on the presence of three pillars: that it committed an error, that the party concerned suffered harm, and that there is a causal relationship between this error and that harm.

And since it is evident from the above that no error can be attributed to the administration, but rather its conduct and actions were in accordance with what the appellant wanted, and he did not approach it requesting that it be allowed to take his exams, and therefore its negligent liability for its conduct collapses. [1075]

The Administrative Court also ruled that: [**The legislator obligated the prison administration to encourage prisoners to study and to facilitate for those of them who wish to continue their studies the necessary means to achieve that goal, and the legislator obligated the administration to allow them to take exams at the committee headquarters.**

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 he

([1075]) The ruling of the Supreme Administrative Court in Appeal No. 32293 of Year 54 Q issued in the session of October 26, 2011, Technical Office 57, Part No. 1, Page 125, Rule No. 14.

notifies the administration of his desire to continue his studies and take the exam, it is not permissible for it to prevent him from doing so.

In light of the above, and in accordance with the documents, the plaintiff was arrested on 11/16/1994, while he was enrolled in the first year of the Faculty of Sharia and Law, Al-Azhar University, for the academic year 1996/1997, and was released on 5/28/2002. He stated in his lawsuit that the defendant administrative body was preventing him from taking exams during the period of his detention, and he demands his right to receive appropriate compensation for the material and moral damages that he suffered as a result of being deprived of taking exams during the period of detention.

When the situation was as described, and the documents did not show any indication that the plaintiff had formally requested permission from the administrative authority to continue studying and take exams each academic year during his detention, and that the authority had failed to respond to this request, it cannot be assumed that every detainee or person deprived of freedom is automatically prepared or willing to take the exam. This responsibility is not inherently assumed by the administrative authority. Moreover, it cannot be argued that the administrative authority should bear the burden of proving that it did not object to the plaintiff's request to take the exam. This would improperly shift the burden of proof from the plaintiff to the defendant, which contradicts the established rules of evidence. Furthermore, the fact of detention alone cannot be used as evidence of the plaintiff's deprivation of the opportunity to take the exam. It is not necessary for the detainee to make the request personally; it can be submitted by a legal representative or a family member to the relevant administrative authority.

Since the plaintiff, who is charged with proving his claim, was unable to prove the validity of his claim, as he did not provide evidence that he had submitted any request to take the exam during the period of his detention and that the administrative authority had rejected it, in addition to the fact that it is proven in the letter of the Director General of the Faculty of Sharia and Law at Al-Azhar University in Assiut that the plaintiff had taken the exams inside the prison committee in Assiut during the years 2000/2001, 2001/2002, then the element of error on the part of the defendant administrative authority, one of the elements of responsibility, is negated, and with its negation that responsibility collapses, without the need

to examine the other elements, which requires, in this case, the ruling to dismiss the lawsuit.] [1076]

The Administrative Court also ruled that: [**The legislator considered education a right established for every citizen, which the court must guarantee to him, and the benefit of this right shall not be prevented by imprisonment or detention. The legislator has obligated the prison administration to provide prisoners who wish to complete their education with study methods and to enable them to take exams at the headquarters of the committees where the exam is held.**

The administration's use of security warnings or other justifications to infringe upon the constitutional rights of a detainee or a person whose freedom is restricted does not excuse or prevent the enforcement of the aforementioned rights.

In terms of applying the above to the facts of the present dispute, and since it is evident from the papers that the plaintiff is registered in the first year at the Faculty of Dar Al-Ulum, Cairo University, and that he has been detained since 1994 and the administrative authority did not enable him to take his scheduled exams, and in this regard, its decision is flawed by illegitimacy, which necessitates a ruling to cancel it with all the consequences that result from that.

As for his request for appropriate compensation, it is settled that the liability that requires compensation must have three elements, one of which is the element of error, since it is proven from the papers in light of what was mentioned above that the plaintiff did not submit a request to take the exams. Therefore, this element has been denied to the administration, so it is necessary to rule to reject the request for compensation.[1077]

Third: Prohibiting the authorities from contacting the detainee inside the correctional center.

The Special Rapporteur on torture states in his report that: “Those who are lawfully arrested shall not be held in facilities under the control of those interrogating or investigating them for longer than the time required to obtain a judicial warrant for their pre-trial detention, which should in any case not exceed 48 hours. They shall accordingly be transferred immediately to a pre-trial detention facility under a different authority, after which they shall not have unsupervised contact with their interrogators or investigators. [1078]

(1076) The ruling of the Administrative Court (Ninth Circuit - Compensation) in Cases No. 13403, 18411 of Year 63 Q issued in the session of June 24, 2018 (unpublished).
(1077) The ruling of the Administrative Court in Case No. 2781 of 57 Q, issued in the session of October 30, 2005.
(1078) A/50/156, paragraph 39 (f).

The Special Rapporteur on torture has noted that torture and ill-treatment during arrest or detention can also occur outside the interrogation room and lead to coerced confessions during subsequent interrogation. [1079]

Judicial control of detention is therefore a fundamental safeguard for persons deprived of liberty in the context of criminal charges. Persons detained on criminal charges should not be held in facilities under the control of their interrogators or investigators for longer than is legally required to obtain a judicial hearing and a judicial order for pretrial detention. This period should never exceed 48 hours, except in extreme and fully justified exceptional circumstances. Suspects must be transferred immediately to a pretrial detention facility under a different authority, and no further contact with interrogators or investigators must then be allowed to take place without supervision. As a best practice, States should entrust the detention and interrogation of persons to different bodies under separate chains of command in order to protect detainees from ill-treatment and reduce the risk that conditions of detention will be used to exert pressure on them during interrogation. All detainees must be properly registered from the moment of arrest, a general central detention register must be maintained, and the chain of detention fully documented. [1080]

The practice of holding individuals in isolation and interrogating them in unofficial or secret facilities is a practice of great concern because it places individuals at high risk of torture. Secret detention in itself amounts to torture or ill-treatment and should be abolished and criminalized under domestic law. States must ensure that interrogation takes place only in accessible official facilities regardless of the form of detention. In the criminal justice system, any evidence obtained from a detainee in an unofficial detention center that has not been confirmed by the detainee during questioning in official settings should not be admissible as evidence in court. [1081]

The director of the correctional center may not allow any of the authorities to contact the person in custody inside the correctional center except with written permission from the Public Prosecution. He must record in the correctional center's register the name of the person who was permitted to do so, the time of the meeting, the date and content of the permission. [1082]

([1079]) (A/71/298 ،5 August 2016 ،61).
([1080]) (A/71/298, 5 August 2016, 62), (see general comment No. 35) (see A/68/295) (see A/HRC/13/39/Add.5).
([1081]) (A/71/298 ،5 August 2016 ،63) ،(A/56/156).
([1082] See in this regard: Article No. 140 of the Code of Criminal Procedure, and Article No. 404 bis of the Judicial Instructions to the Public Prosecution.

The Egyptian constitution prohibits the investigation of a person in pretrial detention from being initiated except in the presence of his lawyer, with a lawyer being assigned to him if he does not have one. [1083]

The Egyptian legislator also prohibited any official from contacting a person in pretrial detention inside the correctional center without written permission from the Public Prosecution, provided that the director of the correctional center records the name of the person who allowed him to do so, the time of the interview, the date of the permission and its content in the correctional center's daily log. [1084]

The law stipulates that the permission must be written, and a mere verbal or telephone permission is not sufficient. The authorities are meant to include police officers, detectives, and anyone who holds the status of judicial police officers. The legislator intended to protect the person in pretrial detention from any attempts to influence him or to subject him to torture by the authorities to force him to make statements or confessions that would affect the course of the investigation. The Court of Cassation ruled that: [**Article 79 of Law No. 376 of 1956 regarding the organization of prisons, as it stipulates that no authority officer is allowed to contact the person in pretrial detention inside the prison except with written permission from the Public Prosecution, it indicates that this prohibition is limited to the person in pretrial detention pending the same case, to prevent the pretext of influencing them, and to prevent the suspicion of forcing them to confess while they are in the hands of the public authority. Nor does it apply to someone who is imprisoned in executive detention pending another case, in addition to the fact that the law did not stipulate nullity for violating the provisions of this article, because it was only intended to regulate the procedures inside the prison, as indicated by its inclusion in the chapter on administration and order inside the prison, unrelated to the investigation procedures.** [1085]

In no case shall a person in pretrial detention be interviewed or investigated by public authorities or the prosecution without the presence of a lawyer. The Supreme Constitutional Court ruled that: [**The Constitution has regulated the right to defense, defining some of its aspects and establishing its guarantee as a primary, initial guarantee to prevent infringement of personal freedom and to protect all rights and freedoms, whether those stipulated in the Constitution or those decided by applicable legislation. It included a decisive ruling regarding**

([1083]) Paragraph 3 of Article 54 of the Constitution.
([1084] Article No. 79 of the Law Regulating Community Reform and Rehabilitation Centers, amended by Law No. 106 of 2015.
([1085]) Appeal No. 5979 of 88 Q, issued in the session of November 21, 2018, Appeal No. 506 of 40, issued in the session of July 22, 1970, and published in Technical Office Book No. 21, Part Two, Page 905, Rule No. 214.

this right when it stipulated in the first paragraph of Article 69 of the Constitution that the right to defense, whether in person or by proxy, is guaranteed. Then the Constitution took a step further by approving the second paragraph thereof, which stipulates that the state shall guarantee for those who are financially unable the means to resort to the judiciary and defend their rights, authorizing the legislator by virtue of it to determine the appropriate means by which the needy are assisted in preserving their rights and freedoms by ensuring the guarantee of their defense. This is a necessary guarantee whenever the presence of a lawyer is necessary in itself as a deterrent to public authorities if they deliberately violate the law, reassured of the absence or neglect of supervision over their actions, including: This means that the practical value of the guarantee of defense is not limited to the trial stage alone, but its umbrella and the aspects of protection related to it also extend to the stage preceding it, the result of which can determine the final fate of the person arrested or detained and then make his trial a formal framework from which no harm will come, especially whenever he confesses to deception or seduction in what incriminates him, or is exposed to coercive means to force him to make statements that contradict his interests, after he has been taken from his surroundings and his freedom has been restricted in one way or another. In confirmation of this trend and within its framework, the Constitution, in Article 71, granted everyone who was arrested or detained the right to contact others to inform them of what happened or to seek their assistance in the manner regulated by law.[1086]

The fact that the incident officer contacted the accused in prison does not invalidate the procedures arising from that, and all that is related to it is the suspicion of influencing the accused, and assessing that is left to the court of subject matter.[1087]

([1086]) The ruling of the Supreme Constitutional Court in Case No. 6 of 13 Q, issued in the session of May 16, 1992, and published in the first part of Technical Office Book No. 5, Rule No. 37, page No. 344.

([1087]) The Court of Cassation ruled that: [There is no point in raising the appellant's claim that his confession is invalid due to a violation of Article 140 of the Criminal Procedure Code, since the person addressed by this text, given its inclusion in Chapter Nine of Part Three of the Investigating Judge of the aforementioned law, is the prison warden, with the intention of warning him against the contact of the authorities with the accused imprisoned inside the prison, and this contact in itself does not entail any invalidity of the procedures, and all that is related to it is the suspicion of influencing the accused, and assessing that is entrusted to the subject court], Appeal No. 20355 of 86 Q issued in the session of October 13, 2018 (unpublished), Appeal No. 25649 of 86 Q issued in the session of September 5, 2018 (unpublished), Appeal No. 10621 of 82 Q issued in the session of May 14, 2014 and published in the Technical Office Book No. 65, page No. 397, Rule No. 44, Appeal No. 62349 of 73 Issued in the session of February 2, 2008 and published in the Technical Office Book No. 59, page No. 81, rule No. 14, Appeal No. 250 of year 40 Q issued in the session of March 22, 1970 and published in the first part of the Technical Office Book No. 21, page No. 431, rule No. 106, Appeal No. 2096 of year 35 Q issued in the session of March 14, 1966 and published in the first part of the Technical Office Book No. 17, page No. 286, rule No. 56, Appeal No. 1970 of year 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.

Fourth: An order prohibiting the accused from contacting other inmates and preventing him from visiting.

The Public Prosecution has the authority to restrict a detainee's communication with other detainees or prevent visits, while ensuring the accused retains the right to communicate privately with their lawyer at all times. In such cases, the Public Prosecution must provide written authorization for the meeting, whether it is requested by the accused, their lawyer, or the court-appointed defense attorney.[1088]

Fifth: Medical examination of the inmate and vaccination of him immediately upon his admission to the correctional center.

International standards provide for immediate and regular access to medical care for persons deprived of liberty. States are required 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 a detainee enters a detention or interrogation facility and at each transfer. Impartial, independent and prompt professional examinations must 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 that ill-treatment may have occurred. It is worth recalling the firm prohibition on the participation of medical personnel, whether actively or passively, in acts that may constitute participation in, complicity in, incitement to, or attempts to commit acts of torture or ill-treatment.[1089]

Examples of other safeguards against abuse and coercion during interrogation include ensuring that no interrogation is conducted without direct or indirect supervision, including through one-sided mirrors, live broadcasts, or audio recordings.

Except in exceptional circumstances, strict domestic regulations should ensure that detainees are not interrogated for more than two hours at a time, that adequate breaks for refreshments are provided, and that periods of at least eight continuous hours of rest – free from interrogation or any investigative activity – are allowed every 24 hours.

Except in compelling circumstances, no interrogation should be conducted at night.[1090]

([1088] Article No. 141 of the Criminal Procedure Code, Article No. 404 of the Judicial Instructions of the Public Prosecution.

([1089]) (A/71/298, 5 August 2016, 88), see the Principles of Medical Ethics relevant 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 the Tokyo Declaration, (see A/68/295 and E/CN.4/2004/56) (see CAT/C/51/4).

([1090]) (A/71/298, 5 August 2016, 89), see the report submitted to the Government of Turkey on the visit to Turkey by 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 has considered that if a person is ill-treated by the police, it is understandable that the person, while in police custody, will fear reporting it to anyone.

If that person wanted to complain about mistreatment, a doctor could be the likely choice, since doctors are supposed to work independently of the security forces and since 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 were routinely examined by a doctor in private while in police custody, this might have the effect of deterring any police officer from resorting to ill-treatment. The Subcommittee on Prevention of Torture considers that access to a doctor without the presence of a police officer is an important safeguard against ill-treatment.

The Sub-Committee found that the lack of medical examinations in police stations or detention centers, as well as the constant presence of police officers when detainees meet with a doctor, showed that there was no culture of medical confidentiality in the meeting between patient and doctor. Moreover, it is an unacceptable routine practice to present patients to the doctor while their hands are tied and constitutes humiliating treatment. It undermines the trust between the patient and his doctor.

The Subcommittee on Prevention of Torture therefore recommended that the authorities ensure that all persons in police custody are provided with regular medical examinations and that these examinations are carried out without the use of any restrictive measures. The Subcommittee also recommends that medical examinations should be conducted in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present and, in exceptional cases, when requested by the doctor, special security arrangements such as keeping a police officer on hand could be considered. The physician should note this assessment in a document as well as the names of all persons present. On the other hand, police officers should avoid being present during the examination period and it is preferable that others do not see them during the medical examination.

In addition to proper medical examination, recording injuries inflicted on persons deprived of their liberty by the police is an important safeguard that contributes to preventing ill-treatment as well as combating impunity. Comprehensive recording of injuries can deter persons who might otherwise resort to ill-treatment. The Subcommittee on Prevention of Torture

recommends that every routine medical examination be carried out using a standard form that includes (A) the person's medical history. (B) any account given by the person examining him relating to any violence committed; (C) the results of a comprehensive physical examination, including a description of any injuries; (D) an assessment, where the training of the physician permits, of the consistency of the first three items mentioned above.

The medical record of the detainee should be made available, upon request, to his lawyer. [1091]

The Egyptian legislator obliged the doctor of the reform and rehabilitation center to examine every inmate immediately upon his admission to the reform and rehabilitation center and to prove his health condition and the work he is able to do, provided that this is not delayed until the morning of the following day. .[1092]

The doctor must also vaccinate the inmates against epidemic diseases when they are admitted to the correctional center. .[1093]

Upon acceptance into a reform and rehabilitation center, the inmate - unless he is transferred from public reform and rehabilitation centers where they have spent the health test period - shall be placed under health testing for a period of ten days, during which he shall not mix with other inmates, perform any work, or be managed.

The necessary medical examinations and tests will be conducted during that period, after which he will be transferred to the section designated for him in the reform and rehabilitation center, unless the doctor sees otherwise.[1094]

The doctor in the geographical correctional centers must examine the new inmates when he passes by the correctional and rehabilitation center. This is done in accordance with the internal regulations of the geographical correctional centers twice a week. The doctor himself records the data related to their ages and health condition, the injuries they have, disabilities and diseases, and the measures he deems necessary to take regarding them..[1095]

In military prisons, the doctor supervising the prison vaccinates the prisoners when they are admitted, when necessary, against smallpox and typhoid. .[1096]

([1091]) (CAT/OP/MDV/1, 26 February 2009, 108 - 112).
([1092] Article No. 27 of the Internal Regulations of Community Reform and Rehabilitation Centers.
([1093] Article No. 30 of the Internal Regulations of Community Reform and Rehabilitation Centers, and Article No. 26 of the Internal Regulations of the Geographical Community Reform and Rehabilitation Centers, amended by Interior Minister Decision No. 3098 of 2001.
([1094] Article No. 46 of the Internal Regulations of Community Reform and Rehabilitation Centers, amended by Interior Minister Decision No. 3320 of 2014.
([1095]) Articles Nos. 23 and 24 of the internal regulations of geographical correction centers.
([1096] Article No. 18 of the Internal Regulations of Military Prisons.

We note that the Egyptian legislator did not grant this right to detainees in places designated by a decision of the Minister of Interior, most of which are located in police stations.

According to international conventions, a preliminary evaluation of a prisoner's needs should be conducted upon admission to prison. This assessment should involve an interview and examination by a physician or another qualified health professional to identify any immediate physical or mental health concerns, as well as those that may affect long-term placement. This includes assessing acute or chronic health conditions, signs of recent violence or abuse, substance use disorders or withdrawal symptoms, medication requirements, infectious diseases, and any physical needs related to accommodation. Additionally, the risk of suicide and self-harm should be evaluated as part of the immediate health review. The interview should take place as soon as possible, ideally within 24 hours of detention, with appropriate follow-up actions implemented thereafter.

Every detainee or prisoner shall be provided with an appropriate medical examination as soon as possible after his admission to the place of detention or imprisonment. The prison doctor or other qualified health-care professional shall meet every prisoner as soon as possible after his admission to the prison to talk to and examine him and to determine his fitness for work, exercise and participation in other activities.

He must also determine the prisoner's health care needs and take the necessary measures to provide him with treatment, medical care and treatment whenever necessary, free of charge. He must also identify any ill-treatment to which the prisoner was subjected before entering prison, any signs of psychological stress on the prisoner due to his imprisonment, or other risks of suicide or self-harm or any symptoms resulting from withdrawal from taking drugs, medications or alcohol. The doctor or health care specialist must take the necessary individual or therapeutic measures.

The doctor or specialist, who is responsible for examining the prisoner, shall make arrangements for clinical isolation and treatment in the event that the prisoner is suspected of having any infectious diseases.[1097]

If the physician or other health care professional, while examining the prisoner upon admission or during the provision of medical care, finds any signs of torture or other cruel, inhuman or degrading treatment or punishment, he or she must document these cases and report them to the competent medical, administrative or judicial authority, provided that proper procedural

([1097]) Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners, and Rule 30 of the Nelson Mandela Rules.

safeguards are applied to protect the prisoner or persons associated with him or her from foreseeable risks of harm. [1098]

The doctor also examines the juvenile immediately upon his admission to the detention facility, to determine any physical or mental condition that requires medical care, as well as to record any evidence of mistreatment prior to his admission to the facility. [1099]

A detained or imprisoned person or his lawyer has the right to request or apply to a judicial or other authority for a second medical examination or a second medical opinion. His request shall not be refused except on reasonable grounds relating to the security and good order of the place of detention or imprisonment. The fact that the detained or imprisoned person was examined; the name of the doctor and the results of the examination shall be recorded and ensures access to these records. [1100]

In the current circumstances, and in light of the spread of the COVID-19 virus, people deprived of their freedom, such as those in prisons and other places of detention, are likely to be more vulnerable to be infected with the virus responsible for the COVID-19 pandemic than the general population due to the conditions of confinement in which they live together for long periods of time. In a matter of weeks, the coronavirus disease (COVID-19) has had a profound impact on daily life, with many severe restrictions on the movement of people and personal freedoms being imposed, with the aim of enabling the authorities to better combat the pandemic through public health emergency measures.

Whereas persons deprived of their 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 unsanitary, 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 unrest inside and outside detention facilities and loss of life. In light of the above, State authorities must take full account of all the rights of persons deprived of 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.

([1098]) Rule No. 34 of the Nelson Mandela Rules.
([1099]) Rule 50 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
([1100]) Principles Nos. 25, 26 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Therefore, transparency should be exercised in informing all persons deprived of their liberty, their families and the media of the measures taken and their reasons.[1101]

Prison and other detention authorities must therefore ensure that the human rights of those in detention during the pandemic are respected, that people are not cut off from the outside world and, most importantly, that they have access to information and adequate health care. The Subcommittee on Prevention of Torture has considered that preventive visits and inspections of places of detention will almost certainly be affected by the necessary measures taken in the interests of public health, but that does not mean that such visits should be suspended. On the contrary, the risk of ill-treatment faced by people in detention could be increased by such public health measures. The Subcommittee considers that national preventive mechanisms should continue to conduct visits of a preventive nature, while respecting the necessary restrictions on the manner in which such visits are carried out. It is of paramount importance at this time for national preventive mechanisms to ensure that effective measures are taken to reduce the possibility of detainees being subjected to inhuman and degrading treatment as a result of the real pressures now being placed on detention systems and those responsible for them. [1102]

The state is responsible for providing health care to prisoners. Prisoners should have access to the same standard of health care as is available in the community, and should have the right to access necessary health services free of charge and without discrimination on the basis of their legal status. It is recognized that the State is responsible for providing health care to persons in its custody, and that it has a duty of care to its staff and to individuals working in detention facilities, including health-care personnel. As provided for in Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), prisoners should receive the same standard of health care as is available in the community, and should

([1101]) See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000); and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). See also Office of the High Commissioner for Human Rights, “High Commissioner

Human Rights Council updated on human rights concerns and progress made around the world”, 27 February 2020; and advice provided by the Sub-Committee to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland on mandatory quarantine for coronavirus (COVID-19) (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 COVID-19 pandemic (CAT/OP/11), 6

See: Advice from the Subcommittee 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.

([1102]) Penal Reform International, “Coronavirus: Health care and human rights of persons in prison”, 16 March 2020, Protocol for national preventive mechanisms conducting field visits during the coronavirus disease (COVID-19) pandemic, (CAT/OP/11), 7, Advice from the Sub-Committee to States Parties and national preventive mechanisms on the coronavirus disease (COVID-19) pandemic, 7 April 2020, CAT/OP/10, 7.

have the right to access necessary health services free of charge and without discrimination on the basis of their legal status. [1103]

All measures taken to address this pandemic affect different groups of people deprived of their liberty differently, particularly the most vulnerable groups in detention settings, including women, children, older persons, and lesbian, gay, bisexual, transgender and intersex persons. With this in mind, adequate safeguards should be put in place when responding to the COVID-19 emergency in prisons and other places of detention, including safeguards that can ensure a gender-sensitive approach. [1104]

Given the high risk of infection among prisoners and individuals held in other detention facilities, the Subcommittee urged all States to:

(A) Conduct urgent assessments to identify the most vulnerable individuals among the detained population, taking into account all extremely vulnerable categories.

(B) To reduce the prison population and other persons in detention, wherever possible, by implementing plans for the early, conditional or temporary release of detainees when it is safe to do so, giving full consideration to the non-custodial measures referred to, as set out in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

(C) Focus in particular on places of detention that exceed their official capacity, and whose official capacity is based on the number of square meters per person, which does not allow for social distancing in accordance with the uniform guidance provided to the general population as a whole.

(D) Review all cases of pretrial detention to determine whether it is absolutely necessary in light of the prevailing public health emergency and to expand the use of bail to all but the most serious cases.

(E) Review the use of closed immigration detention centers and refugee camps with a view to reducing their population to the lowest possible level.

(F) Note that the release of detainees should be subject to scrutiny in order to ensure that appropriate measures are taken for persons who are either infected with COVID-19 or are particularly vulnerable to infection.

([1103]) Protocol on national preventive mechanisms conducting field visits during the COVID-19 pandemic, (CAT/OP/11), 7, and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 24, Advice from the Subcommittee to States Parties and national preventive mechanisms on the COVID-19 pandemic, 7 April 2020, CAT/OP/10, 8.

([1104]) Protocol for national preventive mechanisms conducting field visits during the COVID-19 pandemic, (CAT/OP/11), 10.

(G) Ensure that any restrictions on existing systems are minimized, in proportion to the nature of the health emergency, and in accordance with the law.

(H) Ensure the continued functioning and effectiveness of existing complaints mechanisms.

(I) Respecting the minimum requirements for daily outdoor exercise, while also taking into account the measures necessary to address the current pandemic;

(J) Ensure that adequate facilities and supplies are provided free of charge to all persons who remain in detention, in order to enable detainees to maintain the same standard of personal hygiene as is required of the population as a whole;

(K) Provide adequate alternative compensatory means, where visiting regimes are restricted for health reasons, for detainees to maintain contact with their families and the outside world, including telephone, Internet, e-mail, videoconferencing and other appropriate electronic means. These methods of communication should be both facilitated and encouraged, and should be made available frequently and free of charge;

(L) 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;

(M) Accommodating persons who pose the greatest risk among the rest of the detainees in a manner that reflects this extreme risk, with full respect for their rights within the place of detention;

(N) Prohibit the use of medical isolation in the form of disciplinary solitary confinement; medical isolation must be based on an independent medical assessment, be proportionate, be imposed for a limited period, and be subject to procedural safeguards;

(O) Providing medical care to detainees who need it, outside the detention facility, whenever possible.

(P) Ensure that fundamental 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 restrictions on access.

(Q) Ensure that all detainees and staff receive reliable, accurate and up-to-date information on all measures taken, their duration and reasons.

(R) 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;.

(S) Provide appropriate psychological support to all detainees and staff affected by these measures;

(T) Ensure that all the above considerations are taken into account, as appropriate, in relation to patients who are involuntarily committed to psychiatric hospitals. [1105]

The Subcommittee was informed of a number of measures adopted by States parties to mitigate the impact of the pandemic, which are consistent with the Subcommittee's previous advice, including:

1- Measures to reduce the number of detainees in places of deprivation of freedom

The following measures have been taken to reduce the number of detainees in places of deprivation of liberty:

(a) Establish non-custodial measures to be applied in cases including:

(i) Persons held in pre-trial detention for an excessively long period.

(ii) Persons serving prison sentences of up to three years.

(iii) Persons convicted of non-violent crimes who have served a significant portion of their sentence.

(iv) Pregnant women or women imprisoned with their children.

(v) Detained persons at high health risk, including the elderly and persons with disabilities.

(b) Adopt and implement legislation on special or general amnesties, or other similar measures, covering specific categories of detainees.

(c) Expanding the use of electronic surveillance, including house arrest.

([1105]) Advice from the Subcommittee to States Parties and national preventive mechanisms on the coronavirus disease (COVID-19) pandemic, 7 April 2020, CAT/OP/10, 9.

(d) Reducing the number of persons held in police custody and the length of their detention.

(e) Temporary closure of detention centers or significant reduction in the number of centers connected with the expulsion of migrants.

2- Measures related to hygiene, medical aspects, food, and alternative methods to ensure family contact.

The following measures have been taken with regard to hygiene, medical aspects, food and ensuring family contact:

(a) Identifying persons at risk of health risks.

(b) Urgently procure health equipment and medical supplies for detention facilities, including personal protective equipment, provide inmates and prison staff with hygiene materials, and enhance cleaning and disinfection methods.

(c) Limiting the transfer of detainees between places of deprivation of liberty.

(d) Establish COVID-19 isolation areas for new prisoners and detainees with health risks, preventive isolation for prisoners suspected of infection in order to provide them with an appropriate detention environment, and establish visiting areas suitable for pandemic conditions.

(e) Expanding the provision of goods, food, water, vitamins and nutritional supplements to persons deprived of liberty.

(e) The introduction of new means of communication, including tablets, mobile phones and the use of video calls, the increase in the duration of virtual communications with the outside world, and the increased use of postal communications with relatives.

(g) Improving and expanding access to educational, recreational and sporting activities, particularly for minors and youth.

(h) Production of masks in detention facilities as a professional activity carried out by detainees.

(i) Providing additional psychological support to detainees and their families.

(i) Providing remote psychosocial counseling to detainees and their families.

(k) Providing outpatient treatment for patients and/or residents in medical, psychological and social care institutions.[1106]

On the other hand, the Subcommittee noted other areas of concern, as follows:

(a) Insufficient attention is paid to detainees at risk in places of deprivation of their liberty.

(b) 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.

(c) Suspend all existing forms of family visitation leave for persons deprived of their liberty.

(d) The failure to provide sufficient information to persons deprived of liberty, their families, staff and others, about the situation resulting from the pandemic and the measures taken in each place of deprivation of liberty.

(e) The insufficient use of alternative measures to compensate for the suspension of family visits, including the ban on digital means of communication.

(v) Restrict or suspend complaints mechanisms.

(g) Failure to implement alternative measures to imprisonment, particularly in cases of short-term custodial sentences.

(h) Stopping treatment programs in places of deprivation of liberty.

(i) The widespread and arbitrary arrests and excessive use of force by the police for the purposes of implementing pandemic-related restrictive measures, which in some cases included the detention of groups of people without taking the necessary health measures.

(i) The failure to provide essential hygiene supplies, personal protective equipment, and health guidance to law enforcement, security, and detention staff, along with the inadequate number of healthcare professionals assigned to care for both staff and detainees.

(k) The failure to establish formal mechanisms to collect health-related data in places of deprivation of liberty, including information on deaths, causes of death, persons infected or in

([1106]) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Follow-up to the advice provided by the Subcommittee to States Parties and national preventive mechanisms on the coronavirus disease (COVID-19) pandemic, 18 June 2021, (CAT/OP/12), 8 - 10.

quarantine, and the excessive use of force, including cases of torture and ill-treatment in connection with the pandemic. .[1107]

The Sub-Committee therefore urged all States to:

(a) To include in the national vaccination program, as a priority, all persons deprived of liberty, all personnel working in places of deprivation of liberty, including medical, security, social, administrative and other personnel, and personnel of the national preventive mechanism.

(b) Inform all persons deprived of liberty and their relatives, periodically and comprehensively, about the vaccination program, including its benefits and possible side effects, and ensure that vaccination is voluntary and based on informed consent.

(c) Continue systematic screening for COVID-19 symptoms of all persons entering any detention facility, including new prisoners, staff and visitors, as long as the pandemic continues.

(d) Improving the environment in quarantine areas within places of deprivation of liberty so that they do not resemble places of solitary confinement, and compensating for social isolation by using any means to improve social and family contact.

(e) Continue to raise standards of hygiene, access to and quality of health care.

(f) Continue efforts to reduce the prison population through policies such as early release, parole and non-custodial measures.

(g) Strengthen efforts to consider the specific needs of women, juveniles, persons with disabilities, and lesbian, gay, bisexual, transgender and gender queer persons deprived of liberty, and assess the possibility of finding alternatives to detention given the pandemic's exacerbation of their vulnerability.

(h) Ensure that persons deprived of their liberty whose mental health is affected by COVID-19 measures, including those placed in quarantine, medical isolation units, psychiatric hospitals or places of detention, receive adequate counseling and psychosocial support.

(i) Take effective measures to ensure that patients with COVID-19 in nursing homes and psychiatric institutions are protected and provided with essential emotional and practical support.

([1107]) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Follow-up to the advice provided by the Subcommittee to States Parties and national preventive mechanisms on the coronavirus disease (COVID-19) pandemic, 18 June 2021, (CAT/OP/12), 13.

(i) Continue to provide national preventive mechanisms with all necessary support to conduct visits to places of deprivation of liberty during the pandemic.[1108]

While it is difficult to predict the duration of the current pandemic or all of its impacts, it is clear that it has a significant effect on society and will continue to do so for an extended period. The Subcommittee and national preventive mechanisms must uphold the principle of "do no harm" in their work. This may require national preventive mechanisms to adapt their approaches to address the challenges posed by the pandemic, ensuring the protection of all individuals involved, including staff and healthcare personnel in detention facilities, detainees, and their personnel. The primary focus should be on effectively preventing ill-treatment of those subjected to detention. As a result of the exceptional measures countries have had to implement, the scope of prevention criteria has broadened. The Subcommittee and national preventive mechanisms have a responsibility to respond in innovative and creative ways to the new challenges they face in fulfilling their mandates under the Optional Protocol. .[1109]

2 - 7 - 5 Duration of pretrial detention

If the Public Prosecution is conducting the investigation, the pre-trial detention order it issues will only be effective for a period of four days after the accused's arrest or their transfer to the Public Prosecution if already under arrest. .[1110]

If the Public Prosecution has ordered the accused to be brought in and then, after interrogating him, issues an order for his pre-trial detention, the period of detention shall begin from the day following the implementation of this order.[1111]

If the Public Prosecution begins investigating the crimes stipulated in the first section of the second chapter of the second book of the Penal Code (terrorism crimes), it may order the detention of the accused for periods totaling up to sixty days. If the investigation has not been completed and the Public Prosecution decides to extend the pretrial detention for a further period, it must, before the expiry of that period, issue an order to extend the detention for successive periods, each of which does not exceed forty-five days. The matter must be referred

(1108) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Follow-up to the advice provided by the Subcommittee to States Parties and national preventive mechanisms on the coronavirus disease (COVID-19) pandemic, 18 June 2021, (CAT/OP/12), 15.

(1109) Advice from the Subcommittee to States Parties and national preventive mechanisms on the coronavirus disease (COVID-19) pandemic, 7 April 2020, CAT/OP/10, 14.

(1110 Article No. 201 of the Code of Criminal Procedure, and Article 390 of the Judicial Instructions of the Public Prosecution.

(1111 Article No. 201 of the Code of Criminal Procedure, and Article 390 of the Judicial Instructions of the Public Prosecution.

to the Public Prosecutor if three months have passed since the accused was detained in pretrial detention, in order to take the measures he deems sufficient to complete the investigation.

The period of pretrial detention, in accordance with the aforementioned rules, may not exceed three months unless, before its expiry, an order is obtained from the competent court to extend the detention for a period not exceeding forty-five days, renewable for that period or for other similar periods. Otherwise, the accused must be released in all cases. [1112]

In all cases, the period of pretrial detention during the preliminary investigation stage and all other stages of the criminal case may not exceed one-third of the maximum custodial sentence, provided that it does not exceed six months in misdemeanors, eighteen months in felonies, and two years if the penalty prescribed for the crime is life imprisonment or the death penalty. [1113]

However, the Court of Cassation and the referral court, if the verdict is death or life imprisonment, may order the accused to be detained in custody for a period of forty-five days, renewable without being bound by the periods stipulated in the previous paragraph.[1114]

It is clear from the above that the period of imprisonment varies according to the issuing authority, as follows:

For arrest by a judicial police officer:

24 hours

For arrest by the investigating authority:

24 hours

Regarding pre-trial detention by the Public Prosecution:

Only 4 days starting from the day of the accused's arrest if she is the one who ordered the arrest, and starting from the day he was handed over to her if he was previously arrested by the judicial police officer.

Regarding pre-trial detention by the investigating judge:

The period within which the investigating judge has the power to order, after hearing the prosecution and the accused, is 15 days, renewable for a similar period or periods, provided that

([1112] Article No. 392 bis of the Judicial Instructions of the Public Prosecution.
([1113] Article No. 143 of the Code of Criminal Procedure.
([1114] Article No. 143 of the Code of Criminal Procedure.

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 by the advisory chamber:

The Consultation Chamber has the power to renew detention for a period or successive periods, each of which does not exceed 45 days, noting the following:

First: The matter must be presented to the Public Prosecutor 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 unless an order is obtained before its expiry from the competent court to extend the pretrial detention for a period not exceeding 45 days, renewable for one or more similar periods. The accused must be released in any of the following three cases:

1- If the accused's case was not originally presented to the court

2- If the accused's case is brought before the court after the expiry of the previous renewal period.

3- If the accused's case is presented to the court and it does not order an extension of his detention.

For pre-trial detention by the Court of Cassation or the referral court

The Court of Cassation and the Referral Court, if the verdict is death or life imprisonment, may order the accused to be detained in custody for a period of forty-five days, renewable without being bound by the previous periods.

2 - 7 - 6 Referring pretrial detention to the court and renewing its duration

All forms of detention or imprisonment must be ordered by, or be subject to the effective control of, a judicial authority. [1115]

([1115]) Principle 4 of the Body of Principles, and Principle 5 of the Principles on Persons Deprived of Liberty in the Americas.
Resolution 65/205 of the General Assembly of the United Nations, 20; Resolution 15/18 Reserve of the Human Rights Council, 4 (c); Resolution 2005/27 of the Commission on Human Rights, 4 (c); see Grand Chamber of the European Court: McKee v. the United Kingdom 32-30 (2006), (03/543), Medvedev and Others v. France (3394/03), 117-118 (2010); Inter-American Court: Tibi v. Ecuador, (2004) 115-114, Chaparro Álvarez and Lapo Iñiguez v. Ecuador (81 (2007), Piari v. Argentina, (63 (2008).

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 are not left at the exclusive mercy of the authorities holding them. [1116]

International standards require that anyone arrested or detained should be brought promptly before a judge or other officer authorized by law to exercise judicial power. [1117]

The purposes of bringing a detained person promptly before a judge or other judicial authority include.[1118]

* Assessing whether there are sufficient legal grounds for arresting or detaining the individual, and whether to order his release or to continue his detention.

* Ensure the safety of the detained individual.

* Preventing the violation of the rights of the detained individual.

* Whether the detention or arrest of the individual is lawful in origin, to assess:

* Whether the detained person should be released and whether any conditions should be imposed on him or her, 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 the detained person to make a preliminary statement, without addressing the question of the legality of his detention, such a hearing does not meet the requirements of Article 7(5) of the American Convention. [1119]

The European Court explained that the lawfulness of detention and the question of whether to release or remand the detained person pending trial must be decided expeditiously and said that it was “highly desirable” for these issues to be heard at the same hearing by a judicial officer with jurisdiction to decide on both matters. However, it did not find that there had been a

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([1116]) Ferrer-Mazoura et 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).

([1117]) as 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 on 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 Principles on Fair Trial in Africa, and Rule 14(1) of the Council of Europe Rules on Arrest.

([1118]) Commission on Human Rights resolution 21/4 18 (2008) (a).

([1119]) Pierre v. Argentina, (67 (2008); see Moulin v. France (06/37104), European Court (51-47 (2010).

violation of the American Convention when these issues were heard in separate hearings by two different courts, since the hearings were held within the necessary time frame. .[1120]

The State has an obligation to ensure that persons arrested or detained are brought promptly before a court, regardless of whether the detained person has challenged the validity of his or her detention. This procedure is independent of proceedings initiated by or on behalf of the detained person, such as an application for a writ of habeas corpus or an interim protection measure, nor is it related to the regular periodic review of detention.[1121]

The issuance of a warrant of arrest or other similar measures does not relieve the State of its responsibility if the detained person is not brought promptly before a judicial authority.[1122]

Concerns have been repeatedly expressed about practices that have denied persons linked to crimes such as terrorism and drug trafficking prompt and automatic access to a judicial authority to determine the lawfulness of their detention. The European Court has made it clear that the risks of terrorism and drug trafficking on the high seas do not permit authorities to arrest individuals for questioning outside the effective control of national courts. .[1123]

The State's adherence to this right is particularly important in cases where military forces are in charge of security affairs.[1124]

For persons arrested in connection with a criminal offence, their first appearance before a judge or an authorized judicial officer should signify the end of their detention in police custody and, if they are not released, they should be transferred to a pre-trial detention center outside the control of the investigating authorities, under conditions that meet international standards.[1125]

If a detainee is brought before an official, rather than a judge, that official must be empowered to exercise judicial power, and must be objective, impartial and independent of the executive and all parties.

([1120]) Makki v. United Kingdom (543/03), Grand Chamber of the European Court (47 (2006..

([1121]) European Court: McKee v. United Kingdom (543/03), Grand Chamber (34 (2006), De Jong, Paget and Van den Brink v. Netherlands (79/8805 and 8806/79 and 9242/81), (51 (1984 and 57; Geckos v. Lithuania (34578/1997), (84 (2000..

([1122]) De Jong, Paget and Van den Brink v. The Netherlands (8805/79 and 8806/79 and 9242/81), European Court (1984 51 and 57; see Perry v. Jamaica, Human Rights Committee, 1988/1/11 (1994) U* Doc. CCPR/C/50/D/330..

([1123]) For example, UN General Assembly resolution 63/185, 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 the Fight against Terrorism; Medvedev v. France (3394/03), (2010), Grand Chamber of the European Court 126.

([1124]) Cabrera García and Montiel 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..

([1125]) Concluding 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), A/65 273/75 (2010); Committee for the Prevention of Torture, General Report (2002), CPT/I*f (15, 12) 46; see concluding observations of the Committee against Torture: Japan, U* Doc. 15 (2007). CAT/C/JAP/CO/1.

The judicial officer must be empowered to review the legality of the arrest or detention, and to assess whether there is reasonable suspicion against the person suspected of a criminal case, and must have the power to order his release if he considers that his arrest or detention lacks lawfulness. [1126]

Prosecutors are generally not qualified to act as judicial officers in this regard and have frequently been deemed to lack the objectivity and institutional impartiality necessary to act as judicial officers to determine the lawfulness of detention.[1127]

The European Commission considered that prosecutors, investigators, military officers and investigating judges lacked sufficient independence to exercise judicial power for this purpose, since they were empowered to intervene in subsequent proceedings, as representatives of the prosecuting authority.[1128]

In cases where the judge holding the preliminary hearing, within 36 hours of the arrest of the detainee, has the power to release if he is satisfied that the detention is unlawful, but does not have the power to decide on bail, the European Court has held that there has been no violation of Article 5(3) of the European Convention, taking into account that a bail hearing was held the following day. [1129]

International standards require that individuals be brought before a judge promptly after arrest or detention and while the question of speed is left to be decided on the specific circumstances of each case, the European Court has made clear that the time constraints imposed by the question of speed "leaves little room for interpretation" while the Human Rights Committee has said that "delays may not exceed a few days." [1130]

([1126]) European Court: Schiesser v. Switzerland (7710/76), (1979) 38-25, Asinov and Others v. Bulgaria (24760/94), (-140 (1998) 150, Makki v. United Kingdom (543/03), Grand Chamber (40 (2006), Medvedev v. France (3394/03), Grand Chamber (124-125 (2010); see Joint Report of the UN Mechanisms on Detainees at Guantanamo Bay, 28 (2006) UN Doc. E/CN.4/2006/120; Piari v. Argentina, Inter-American Court (63 (2008.

([1127]) Human Rights Committee: 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, Zheludkova v. Ukraine, 3/8 (2002) UN Doc. CCPR/C/75/D/726/1996, Concluding observations of the Human Rights Committee: Tajikistan, 2005) UN Doc. CCPR/CO/84/TJK) 12; see Working Group on Enforced Disappearances, 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 Alvarez and Lapo Iñiguez v. Ecuador, (86-84 (2007..

([1128]) European Court: Brincat v. Italy (13867/88), (1992) 22-20, Asinov and Others v. Bulgaria (24760/94), (150-146 (1998, Nikolova v. Bulgaria (31195/96) Grand Chamber (53-49 (1999, De Jong, Baljit and Van den Brink v. Netherlands (8805/79 and 8806/79 and 9242/81), 49 (1984), Hood v. United Kingdom (2726/95), (58-57 (1999, Huber v. Switzerland (12794/87), (43-42 (1990, H. for. v. Switzerland 64-62 (2001), (95/26899).

([1129]) Makki v. United Kingdom (543/03), Grand Chamber of the European Court (41-51 (2006..

([1130]) Aquilina v. Malta (25642/94), Grand Chamber of the European Court 51-48 (1999); Human Rights Committee General Comment 8, 2.

In most cases, a delay of more than 48 hours after arrest or detention was considered excessive.[1131]

The Human Rights Committee has expressed concern about laws in a number of countries that allow people to be held in police custody for up to 72 hours or more without being brought before a judicial officer. [1132]

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. [1133]

Problems that adversely affect the criminal justice system shall not, at any time, be considered an excuse for not complying with the requirement of prompt attendance.[1134]

However, the requirement of for a prompt arrest allows for some flexibility depending on the specific circumstances of the case. For instance, flexibility may be necessary when individuals are arrested at sea. [1135]

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 the delays experienced in such cases. [1136]

The European Court's 1988 ruling in Brogan and Others v. United Kingdom, in which it found that a delay of four days and six hours before terrorism suspects were brought before a judge was excessive, remains a landmark case. [1137]

While the Special Rapporteur on human rights and counter-terrorism stressed that every person detained must be given the opportunity to have the lawfulness of his detention examined by a judge or other judicial official within 48 hours. [1138]

([1131]) Rule 14(2) of the European Rules on 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.4/2003/68 (c); and 273/UN Doc. A/65 (2010) 75; see the concluding observations of the Committee against Torture: Venezuela, . UN Doc CAT/C/CR/29/2 (2002) 6 (f); Kandzhov v. Bulgaria (68294/01), European Court (2008) 66-67.
([1132]) 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..
([1133]) Report of the Committee against Torture under Article 20: Mexico, UN DOC. CAT/C/75 (2003) 220 (b).
([1134]) See Koster v. The Netherlands (12843/87), European Court (1991) 24 and 25.
([1135]) European Court: Medvedev and Others v. France, (3394/03) Grand Chamber (2010) 134-127, but see Vasis v. France, (2013) 62-55, (09/62736).
([1136]) 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)(121-122 (1)
([1137]) European Court: Brogan and Others v. United Kingdom (11209/84, 11234/84, 11266/84, 11386/62-55, 85, but see Ipek and Others v. Turkey (17019/02 and 300070/02), (3832-38 (2009..
([1138]) Special Rapporteur on human rights and counter-terrorism, UN Doc 45 (2008) A/63/223 (a).

Referring to the Human Rights Committee, the Committee stressed that the right to be brought promptly before a judge should not be restricted in emergency situations. .[1139]

The jurisprudence of the European Court and the Inter-American Court also indicates that while some delay may be permitted before a person is brought before a court, this must not be prolonged and the European Court requires that there be adequate safeguards against ill-treatment during this period, such as access to a lawyer, a doctor and family, and the right to obtain a court summons.[1140]

The burden of proving that the arrest or detention of persons is lawful, and that their continued detention, if ordered, is both necessary and proportionate, remains with the State – represented either by the public prosecutor or, in some civil justice systems, by the investigating judge. .[1141]

It must demonstrate that releasing the detainee would create substantial risks that cannot be mitigated by other means. .[1142]

International standards guarantee individuals the following procedural rights during hearings.[1143]

* Bringing the person before a judicial official empowered with judicial authority. Judicial oversight of any decision to extend the period of pre-trial detention, meaning that the person deprived of his liberty appears before the court and can appeal the detention decision and submit a report on any ill-treatment, is considered an important guarantee for the rights of the detainee in general and a guarantee against ill-treatment in particular. The Subcommittee on Prevention of Torture emphasizes that no person shall be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

The Subcommittee recommended that detainees should not only be present at the court hearing devoted to their detention and its continuation but should be given a real opportunity to speak and report any ill-treatment to which they have been subjected. There should always

(1139) 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 the concluding observations of the Human Rights Committee: Israel, . UN Doc 7 (2010) CCPR/C/ISR/CO/3 (c); see also the concluding observations of the Human Rights Committee: Thailand: UN Doc 13 (2005). CCPR/CO/84/THA and 15..

(1140) European Court: Brannigan and McBride v. United Kingdom 66-61 (1993), (89/14553, 89/14554), Aksoy v. Turkey (21987/93), 84-83 (1996); Castillo-Petruzzi and Others v. Peru, Inter-American Court (112-104 (1999..

(1141) Ilejkov v. Bulgaria (33977/96) European Court (84-85 (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 or Involuntary Disappearances, South Africa, 65 (2005) UN Doc E/CN.4/2006/7/Add.3.

(1142) Rules 7-8 of the European Rules on Pre-trial Detention, Patsoria v. Georgia (30779/04) (2007) (73-77).

(1143) Rules 28, 25(2)-(4), 26, 29, 21, 18, 27 and 32 of the European Rules on Pre-trial Detention.

be an opportunity for 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 body. [1144]

* Assistance by a lawyer, including an appointed lawyer, and without incurring any expenses where necessary.[1145]

* View relevant documents.[1146]

* Free interpretation services if the person does not speak or understand the language used by the court.[1147]

* Giving the person the opportunity to make his/her statements on all relevant matters.[1148]

* The issued decision must have sufficient and specific grounds.[1149]

* The right to appeal.

* The right to consular or other appropriate assistance for foreign nationals.

* Informing the family of the date and place of the hearing (unless doing so would pose a serious risk to the administration of justice or national security).

If a detention order is issued, the person has the right to challenge the lawfulness of his detention during the regular periodic review of the necessity of continued detention, and to have his trial commenced within a reasonable time.

Everyone who is deprived of his liberty has the right to challenge the lawfulness of his detention before a court, and persons who are unlawfully detained have the right to redress, including compensation.

([1144]) 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: Moulin 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 on Pre-trial Detention states that video linking may sometimes be acceptable, but the Committee for the Prevention of Torture has raised concerns about this in the UK in relation to people detained under terrorism legislation, and has called for detainees to be brought in person before a judge. 27) 9 ‹CPT/Inf)2009(30 ‹10-6 ‹CPT/Inf)2008..

([1145]) Principle 3 and Guideline 444(c) of the Principles on Legal Aid, Principle 27 of the Robben Island Guidelines, and Rule 25 of the European Rules on Pre-trial Detention.

([1146]) Lebedev v. Russia (4403/04), European Court (2007 77.

([1147]) Guideline 43 3 (f) of the Principles on Legal Aid, and Section N (4) (c) of the Principles on Fair Trial in Africa.

([1148]) European Court: Asinov and Others 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: Piari v. Argentina, (68-65 (2008), Chaparro Álvarez and Lapo Iniguez v. Ecuador, 85 (2007).

([1149]) Circular No. 9 of the Working Group on Enforced or Involuntary Disappearances, / UN Doc. A HRC/22/44)2012(67; European Court:, Maki v. United Kingdom (03/543), Grand Chamber (43 (2006); Patsoria v. Georgia (30779/04), 62 (2007), Nikolishvili v. Georgia (30748/04), 76 (2009); see Chaparro Álvarez and Lapo Iniguez v. Ecuador, Inter-American Court, (2007) 102-107 and 116-119.

Everyone who is deprived of his liberty shall have the right to take proceedings to challenge the lawfulness of his detention before a court of law, which shall decide the matter without delay and order the release of the detainee if the detention is not lawful. [1150]

While the African Charter does not explicitly enshrine this right, the jurisprudence of the African Commission indicates that this right is included in Article 7(1) of the African Charter.[1151]

This right provides guarantees for the right to liberty and the right to security of person, and also provides protection from other human rights violations, including torture and other ill-treatment, arbitrary detention and enforced disappearance. [1152]

This right is guaranteed to all persons deprived of their liberty, regardless of the reasons. [1153]

It also applies to all forms of deprivation of liberty, including house arrest and administrative detention (including detention based on national security grounds. [1154]

In general, the detained person or his lawyer files an appeal against the detention decision to ensure judicial protection, but some standards explicitly state that other persons may file such appeals on behalf of the detained person. [1155]

The right to challenge the lawfulness of detention differs from the right to be brought before a judge primarily because the proceedings for the challenge are initiated by or on behalf of the detained person, rather than by the authorities.

([1150]) Article 9(4) of the International Covenant, Article 17(2)(f) of the Convention on Enforced Disappearance, 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 Body of Principles, Guideline 32 of the Robben Island Guidelines, Section M(4) and (5) of the Principles on Fair Trial in Africa, Article 25 of the American Declaration, Guideline 7(3) of the Council of Europe Guidelines on Human Rights and Counter-Terrorism; see Article 8 of the Universal Declaration.

([1151]) Constitutional Rights Project v. Nigeria (153/96), African Commission, Annual Report 13 (17 (1999..

([1152]) 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..

([1153]) General Comment 2 of the Committee against Torture, 13; see, for example, European Court: Ismoilov v. Russia (2947/06), 145-152 (2008) (detention in connection with a request for extradition); Varbanov v. Bulgaria (31365/96), 58-61 (detention in connection with measures for confinement in a psychiatric institution); see also Benjamin and Wilson v. United Kingdom (28212/95), 33-38 (2002) (hospital detention following a discretionary life sentence); A v. Australia, Human Rights Committee, 1993/1997) UN Doc. CCPR/C/59/D/560) 5/9-4/9 (detention of asylum seeker), Baritosio v. Uruguay, Human Rights Committee 40 / UN Doc. A/37 (Annex 40) (13 (1982 (security-related detention)).

([1154]) Abbassi Madani v. Algeria, Human Rights Committee, . UN Doc .5/8 (2007) CCPR/C/89/D/1172/2003.
Human Rights Council resolution 15/18, 4 (d)-(e).

([1155]) Article 17(2)(f) of the Convention on Enforced Disappearance, Article 7(6) of the American Convention, and Section M(5)(b) of the Principles on Fair Trial in Africa; see Principle 32 of the Body of Principles.
Suarez-Rosero v. Ecuador, Inter-American Court (60-59 (1997..

In countries where the authorities detain individuals secretly or in undisclosed places of detention, this right becomes a means of determining the whereabouts of the detainee, his or her safety, and the authority responsible for his or her detention. [1156]

In many legal systems, the right to contest the lawfulness of detention and seek remedy is exercised through an amparo application or by obtaining a writ of habeas corpus before a judge.

The United Nations General Assembly has repeatedly called on States to ensure that counter-terrorism measures are consistent with international law, including the right to challenge the lawfulness of detention. [1157]

The Working Group on Arbitrary Detention stressed the importance of ensuring that all persons deprived of their liberty in connection with terrorism-related activities have the right to obtain an effective arrest warrant. [1158]

Several human rights bodies have raised concerns that individuals held at Guantanamo Bay have been denied this right for a number of years. [1159]

The Committee against Torture has criticized the denial of this right to individuals detained in Australia for interrogation by intelligence agents on the basis of a law that authorizes the authorities to repeatedly renew the detention period of seven days for persons held in preventive detention and those held under control orders issued under anti-terrorism legislation. [1160]

Persons held incommunicado or in solitary confinement must also be allowed to approach a court to challenge the lawfulness of their detention and of both their incommunicado or solitary confinement. [1161]

Detaining persons incommunicado in the context of enforced disappearance without enabling them to exercise their right to challenge the lawfulness of their detention violates not only the right to liberty but also other rights, including the right to recognition before the law. [1162]

([1156]) Article 9 of the Declaration on Enforced Disappearance, Article 10 of the American Convention on Disappearance, and Section M(5)(b) of the Principles on Fair Trial in Africa.
([1157]) Article 27(2) of the American Convention, Article 10 of the American Convention on Disappearance, Article 4(2) of the Arab Charter, and Section M(5)(e) of the Principles on Fair Trial in Africa.
([1158]) UN General Assembly resolution 65/221, 6 (b)-(c), and 64/168, 6 (b)-(c); see also Human Rights Council resolution 13/26, 9.
([1159]) Working Group on Enforced Disappearances, 21/UN Doc. A/HRC/10 53 (2009) and 54 (e)-(f)..
([1160]) See the joint report of the United Nations mechanisms on detainees at Guantanamo Bay, 120/2006/. 29-17 (2006) UN Doc. E/CN4 ...
([1161]) Concluding observations of the Committee against Torture: Australia, . UN Doc .10(2008) CAT/C/AUS/CO/3..
([1162]) Inter-American Court: Suarez-Rosero v. Ecuador, 59 (1997) 60, Sisti-Jortado v. Peru, 123 (1999); see the concluding observations of the Committee against Torture: Iceland, 10 (2008) UN Doc. CAT/C/CR/30..

The right to the lawfulness of detention applies in all circumstances, even in times of emergency, and such challenges constitute a protection of the right to liberty and other rights, including non-derogable rights such as the right to freedom from torture and other ill-treatment. [1163]

In reviewing a law by decree issued by the Nigerian government that prohibits courts from issuing writs of habeas corpus for individuals detained on state security charges, the African Commission stated: "While the Commission understands the need to take genuine measures to maintain public order, it must emphasize that overly restrictive rights often lead to greater unrest. It is highly dangerous for the protection of human rights when the executive acts without the oversight that the judiciary provides." [1164]

The European Court said that not giving a person detained on suspicion of planning or having committed a criminal offence the opportunity to be brought before an independent and impartial court to determine whether his detention is lawful and to release him if the suspicions are found to be unfounded constitutes a clear denial of a fair trial. [1165]

The Convention on Enforced Disappearance requires sanctions to be imposed on those who delay or obstruct procedures to challenge the lawfulness of detention. [1166]

Similarly, UN human rights mechanisms have recommended that laws should include penalties for officials who refuse to disclose relevant information in subpoena proceedings. [1167]

International law mandates that governments establish procedures allowing individuals to challenge the lawfulness of their detention and secure their release if the detention is found to be unlawful. These procedures must be available throughout the entire period of detention, be straightforward and prompt, and be free of charge if the detainee cannot afford to pay. [1168]

([1163]) See, for example, Griot v. Algeria, Human Rights Committee, . UN Doc 5/7 (2007) CCPR/C/90/D/1327/2004 and 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 Human Rights Committee, 16; Inter-American Court: Advisory Opinion 87/42 (1987) OC-8, Advisory Opinion 41 (1987) OC-9/87 (1); Resolution 1992/35 of the Commission on 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 or Involuntary Disappearances, 47-46, (2008) UN Doc. A/HRC/7; and Subcommittee on Prevention of Torture: Honduras, 282 (2010) UN Doc. CAT/OP/HND/1 (A)-(B)..

([1164]) Constitutional Rights Project and Civil Liberties Organization v. Nigeria (95/153 and 150/96), African Commission, Annual Report 13 (33 (1999..

([1165]) European Court: Al-Mu'ayyad v. Germany (35865/03), (inadmissibility) decision (101 (2007); Osman v. United Kingdom (8139/09), (259 (2012..

([1166]) Joint report of the United Nations mechanisms on secret detention, 292, (2010) UN Doc. A/HRC/13/42 (b)...

([1167] Article 22 of the Convention on Enforced Disappearance.

([1168]) Concluding 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 such appeals are usually initiated by the detained person or his or her lawyer, some standards explicitly recognize the right of any person with a legitimate interest, including relatives, their representatives or their lawyers, to do so.

The body that reviews the legality of detention must be a court that is independent of the executive authority and impartial. [1169]

The court must have the power to order the release of the detainee if it considers that the detention is unlawful. [1170]

The European Court has refused to consider that an advisory committee that has no decision-making power, but merely issues non-binding recommendations to a UK government minister, is qualified to act as a "court" for this purpose. .[1171]

The Human Rights Committee and UN mechanisms have raised concerns that the initial bodies that reviewed the detention of individuals at Guantanamo Bay did not meet the conditions of independence necessary for the idea of a "court," since they were not independent from the executive and the military and, moreover, the release of the detainee was not guaranteed if these bodies decided that the individual concerned should no longer be detained. [1172]

Following a decision that United States courts had jurisdiction to hear habeas corpus petitions in relation to Guantanamo Bay detainees, the Inter-American Commission expressed concern that such petitions often did not appear to constitute an effective remedy, since United States courts allegedly did not have the authority to order the release of detainees found not to be wanted until the executive branch had arranged for their transfer to a country other than the United States. .[1173]

The review of the legality of detention must ensure that:

([1169]) Human Rights Committee: Fjöllan 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 11-18 (1999); Inter-American Court, Chaparro Álvarez and Lapo Iniguez v. Ecuador, (128 (2007), Emergency Subpoenas, Advisory Opinion 87/42 (1987), OC-8; European Court: Ramishvili and Kokhridze v. Georgia, (1704/06), (136-128 (2009); see Varbanov v. Bulgaria (31365/96), (61-58 (2000).

([1170]) Article 9(4) of the International Covenant, Article 17(2)(f) of the Enforced Disappearance Convention, 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 and Others v. United Kingdom (3455/05), Grand Chamber (2009 202; 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..

([1171]) Chahal v. United Kingdom (22414/93), Grand Chamber of the European Court (1996 130).

([1172]) Joint report of the United Nations mechanisms on detainees at Guantanamo 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..

([1173]) Resolution 11/2 of the American Committee..

* That the arrest and detention were carried out in accordance with the procedures established by national law.

* The grounds on which the detention is based are established in national law.

* The detention is not arbitrary or unlawful according to international standards. [1174]

The authorities must bring the detainee before the court without undue delay. [1175]

The court must also consider evidence of tangible value to the lawfulness of the detention under national and international law. [1176]

In relation to individuals detained in the context of criminal cases, the procedure should be fair and adversarial, and apply the principle of equality of arms. [1177]

The detainee has the right to be present at the hearing and to be represented by a lawyer of his choice or a lawyer appointed for him free of charge if he is unable to pay.[1178]

An oral hearing may be necessary and the detainee must be given the opportunity to challenge the basis of the allegations against him, and witnesses who may have material bearing on the (continuing) lawfulness of the detention must therefore be available to be heard.

The detainee or his lawyer should be given access to the documents forming the basis of the case, in particular information relating to the reasons for arrest and detention.[1179]

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 in view of legitimate concerns about national security or the safety of others, the

(1174) A and Others v. United Kingdom (3455/05), Grand Chamber of the European Court (2009 202; Human Rights Committee, A v. Australia, . UN Doc 5/9 (1997) CCPR/C/59/D/560/1993, Baban and Others v. Australia, 2/7 (2003) UN Doc. CCPR/C/78/D/1014/2001..

(1175) See Chaparro Alvarez and Lapo Iniguez v. Ecuador, Inter-American Court, (129 (2007..

(1176) European Court: A and Others v. United Kingdom (3455/05), Grand Chamber (2009 202-224 (especially 202-204), Nikolova v. Bulgaria (31195/96) Grand Chamber (1999), Floch v. Poland (27785/95), 125-127 (2000), García Álvaro v. Germany (23541/94), 39 (2001 and 42-43; see Baban and Others v. Australia, Human Rights Committee, . UN Doc .2/7 (2003) CCPR/C/78/D/1014/2001..

(1177) European Court: A and Others v. United Kingdom (3455/05), Grand Chamber (2009, Ramishvili and Kokhridze v. Georgia, (1704/06), 136-128 (2009), Campanis v. Greece (17977/91), (47 (1995; Rafael Ferrer-Mazura and Others v. United States (9903) Inter-American Commission, Report 51/01 (2001, 213).

(1178) Principles 20 3 and 23 of the Principles on Legal Aid; see Guidelines 44 4 (c-d) and 5 of the Principles on Legal Aid.
European Court, Campanis v. Greece (17977/91), (1995) 59-47; see Winterwerp v. Netherlands (6301/73), (260 (1979..

(1179) European Court: Floch v. Poland (27785/95) (-125 (2000 131; A and Others v. United Kingdom (3455/05), Grand Chamber (2009). 202-204.

restrictions imposed on the detained person must be balanced so that, despite the restrictions, he or she can effectively challenge the allegations against him or her.[1180]

Courts reviewing the legality of detention must make their decision "expeditiously" or "without delay," and the speed of review will be determined in light of the circumstances of each individual case. [1181]

The requirement to make a decision "expeditiously" applies to the initial decision and to any subsequent appeals against the decision. [1182]

The court must order the release of the detained person if the detention is unlawful. If the court orders continued detention, the court must state the reasons why it has determined that detention is necessary and reasonable in the specific case. [1183]

Such orders should be subject to appeal and regular review.

Everyone detained in connection with a criminal offence shall be entitled to have the lawfulness of his detention reviewed at reasonable intervals by an independent and impartial court or other appropriate judicial authority. .[1184]

These reviews are covered by Article 5(4) of the European Convention. .[1185]

A detention that begins as lawful can become unlawful. Pre-trial detention remains lawful as long as it is strictly necessary to prevent risks recognized under international standards and specified in the detention order. (If it is alleged that another justification under international standards has arisen, a new hearing should be held and the applicability of the principles of necessity and proportionality to the case reassessed. [1186]

([1180]) A and Others v. United Kingdom (3455/05), Grand Chamber of the European Court (2009 202-224 (especially 205 and 218-224); see also principles 1, 2 and 14 of the Johannesburg Principles.
([1181]) See Suarez-Rosero v. Ecuador, Inter-American Court (1997) 64-63; Flusch v. Poland (27785/95), European Court (2000) 133-136; see Sanchez-Rias v. Switzerland (9862/95), European Court (1986) 55-61; Amezian v. United States (08-P-900), Inter-American Court, Decision on Admissibility (2012) 39.
([1182]) Navarra v. France (13190/87), European Court (1993 28.
([1183]) Principle 4 of the Principles on Persons Deprived of Liberty in the Americas.
European Court: Patsouria v. Georgia (30779/04), (62 (2007, Alexanyan v. Russia (46468/06), (179 (2008 ..
([1184]) Principle 39 of the Body of Principles, Rule 17 of the European Rules on Pre-trial Detention, Guideline 8 of the Council of Europe Guidelines on Human Rights and the Fight against Terrorism, and Article 60(3) of the Rome Statute.
([1185]) European Court: Asinov and Others v. Bulgaria (24760/94), (1998) 162, Chitaev and Chitaev v. Russia (39334/00), (2007) 177.
([1186]) See Rule 6/2 of the Tokyo Rules.

Pre-trial detention, by its nature and in view of the right to a trial within a reasonable period, must be limited in length of time and the longer the period of detention, the greater the need for strict scrutiny of its necessity and proportionality. [1187]

The burden of proving that detention remains necessary and proportionate, in these review proceedings, remains with the authorities, who must also demonstrate that they are pursuing their investigations with particular care. [1188]

If all these conditions are not met, the person must be released and if continued detention is ordered, the reasons must be given. [1189]

During reviews, basic safeguards relating to the fairness of the proceedings should be applied. The detainee has the right to be heard, to be assisted by a lawyer, to present evidence and to have equal opportunity at law, including access to information necessary to challenge allegations made by the authorities. [1190]

The Working Group on Arbitrary Detention has emphasized that deprivation of liberty, even if initially lawful, becomes arbitrary if it is not subject to periodic review. The right to such reviews applies to all individuals who are detained, including those held on suspicion of a criminal offense, regardless of whether they have been formally charged.[1191]

Everyone who has been unlawfully arrested or detained has an enforceable right to reparation for the harm he has suffered, including compensation (the French and Spanish texts of the International Covenant use the broader term reparation; the term compensation used in the English text constitutes an element of reparation. [1192]

Forms of compensation include, but are not limited to: rehabilitation, financial compensation, rehabilitation, satisfaction, and guarantees of non-repetition. [1193]

([1187]) See Rule 6/2 of the Tokyo Rules, and Article 60(4) of the Rome Statute.

([1188]) European Court: Principe v. Monaco (43376)/06 (2009) 88- 73, Lebita v. Italy (26772)/95), (153- 152 (2000); Jorge, José and Dante Perano Basso v. Uruguay (12.553, Report 86/09), Inter-American Commission (105- 104 (2009).

([1189]) Chaparro Alvarez and Lapo Iniguez v. Ecuador, Inter-American Court, 117-118 (2007); see Braunstein et al. v. Argentina (et al. 11.205, Inter-American Commission 19 19 (1997).

([1190]) Guideline 44 4 (c) of the Principles on Legal Aid.
Rafael Ferrer-Mazoura and Others v. United States (9903) American Committee, 213 (2001); Asinov and Others v. Bulgaria (24760)/94, (1998) 165- 163, Mamedova v. Russia (7064)/05, (93- 89 (2006); see Allen v. United Kingdom (18837)/06, (48- 38 (2010).

([1191]) Ali Saleh Kahla Al-Marri v. United States of America (Opinion 3/2006/4), Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/7/4/Add.1 (2008) pp. 29-36, 37; see A v. Australia, Human Rights Committee, 1993/4/9 (1997) UN Doc. CCPR/C/59/D/560..

([1192]) Article 9(5) of the International Covenant, Article 24(4) of the Convention on Enforced Disappearance, Article 16(9) of the Migrant Workers Convention, Article 14(7) of the Arab Charter, Article 5(5) of the European Convention, Section M(1)(h) of the Principles on 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 Body of Principles, and Article 85(1) of the Rome Statute.

([1193]) Articles 18-23 of the Basic Principles on Reparation, and Guideline 16 of the Council of Europe Guidelines on the Eradication of Impunity.

In cases of unlawful detention, redress includes the release of the detained person. [1194]

Principle 39 of the Body of Principles "Except in special cases provided by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to such conditions as may be imposed in accordance with the law. The necessity of such detention shall be kept under review by such authority."

The right to a remedy and reparation applies to persons whose detention or arrest constituted a violation of national laws or procedures, international standards, or both. .[1195]

The crux of the matter in such cases is whether the detention itself is lawful or not, regardless of whether the person is later convicted or acquitted. [1196]

Legal assistance should be available to individuals seeking redress on these grounds. .[1197]

Article 9(5) of the International Covenant

"Everyone who has been the victim of unlawful arrest or detention has a right to compensation."

Pretrial detention ends after fifteen days of the accused's detention. However, the investigating judge may, before the expiry of that period, and after hearing the statements of the Public Prosecution and the accused, issue an order to extend the detention for similar periods, so that the total period of detention does not exceed forty-five days. However, in misdemeanor cases, the arrested accused must be released after 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 is not a repeat offender and has previously been sentenced to imprisonment for more than one year. .[1198]

If the Public Prosecution sees fit to extend the pretrial detention, it must, before the expiry of the four-day period, on the last day on which the detention order is in effect or on the day preceding it if the day is a Friday or an official holiday, present the papers to the partial judge to issue an order as he sees fit after hearing the statements of the Public Prosecution and the accused. The judge may extend the pretrial detention for a period or successive periods, each

European Court, Chitaev and Chitaev v. Russia (39334/00), 192 (2007), Hood v. United Kingdom (27267/95), 69 (1999); see Rodriguez v. Honduras, Inter-American Court 166 (1988) and 174.

([1194] Principle 19 of the Basic Principles of Reparation

([1195]) 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.

([1196]) Human Rights Committee, / UN Doc. CCPR 5/ 6 (1992) C/46/D/432/1990; see Scanina v. Austria (13126)/87) European Court 25 (1993).

([1197]) Guideline 55 11 (b) of the Principles on Legal Aid.

([1198] Article No. 142 of the Code of Criminal Procedure.

of which does not exceed fifteen days, so that the total period of pretrial detention does not exceed forty-five days. .[1199]

The members of the prosecution must take care to request the extension of the detention of the accused on the legal dates set to avoid the detention being dropped, and also take care to attend in person 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 to rely on the presence of any other member of the prosecution who is not related to the investigations that require the extension of the detention. They must also attend when requests for release are presented to the judiciary, and the papers must be presented to the investigating member of the prosecution whenever it is necessary to extend the detention of the accused or to consider the request for his release, whether in the investigation or the trial, so that he himself can sign the request to summon the accused from prison and give the opinion of the prosecution in this regard before the judiciary.

If the investigating member is unable to sign the referendum request, the matter must be referred to the Public Prosecutor or the competent Chief Prosecutor, who must contact the investigator to notify him to attend whenever possible to represent the prosecution at the session set to consider extending the detention or release, or to delegate someone else to do so when necessary.

The public prosecutors, the heads of the general prosecution, and the members of the prosecution who manage the partial prosecutions shall supervise the implementation of this with utmost precision..[1200]

If the investigation has not been completed and the judge decides to extend the pretrial detention beyond what is stipulated, the papers must be referred before the expiry of the aforementioned period to the Misdemeanor Appeals Court, sitting in the advisory chamber, to issue its order after hearing the statements of the Public Prosecution and the accused to extend the detention for successive periods, each of which does not exceed forty-five days, if the interests of the investigation so require, or to release the accused on bail or without bail. However, the matter must be referred to the Public Prosecutor if three months have passed since the accused was detained in pretrial detention, in order to take the measures he deems necessary to complete the investigation. [1201]

([1199] Article No. 202 of the Code of Criminal Procedure, and Article No. 390 of the Judicial Instructions of the Public Prosecution.
([1200] Article No. 397 of the Judicial Instructions of the Public Prosecution.
([1201] Article No. 143 of the Code of Criminal Procedure.

The period of pretrial 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 present the detention order within five days at most from the date of notification of the referral to the competent court, otherwise the accused must be released. [1202]

If the investigation has not ended after the expiry of the period of pretrial detention - forty-five days - the Public Prosecution must submit the papers to the Misdemeanor Appeals Court, sitting in the consultation chamber, to issue an order as it deems appropriate. [1203]

When considering the matter of extending pretrial detention in terrorism crimes, the member of the Public Prosecution must hear each time the statements of the accused and the defense of his lawyer if he is present, and record this in the investigation report without setting aside a separate report for that purpose. He must ask him if he has anything new to add or a defense to present, and then issue his order to release him on bail or without bail, or extend his detention for a period that he determines. [1204]

If the charge against him is a felony, the period of pretrial detention may not exceed five months unless, before its expiry, an order is obtained from the competent court to extend the detention for a period not exceeding forty-five days, renewable for one or more similar periods. Otherwise, the accused must be released.[1205]

If the partial judge or the Court of Misdemeanor Appeal, sitting in the deliberation chamber, responds to a request to extend the accused's pretrial detention, any requests for release submitted after that, during the period of pretrial detention, may not be presented to the judge or court except on the date set for renewing the detention, and the accused may not be summoned from prison for this purpose before that.

Some members of the prosecution shall indicate the requests submitted to them or to the judge or the aforementioned court by presenting them with the accused to the judge or court on the date set for renewing the detention. [1206]

2 - 8 Travel ban order

The decision to include a person on the travel ban list aims to prevent a person from traveling abroad. This decision must be issued regarding a person who is inside the country for the

([1202] Article No. 143 of the Code of Criminal Procedure.
([1203] Article No. 203 of the Code of Criminal Procedure.
([1204] Article No. 392 bis A of the Judicial Instructions of the Public Prosecution.
([1205] Article No. 143 of the Code of Criminal Procedure.
([1206] Article No. 391 of the Judicial Instructions of the Public Prosecution.

purpose of keeping him inside it and preventing him from leaving it for a legal reason that justifies that.

As for inclusion on the arrival watch lists, it is issued against a person who is not inside the country but is outside it with the aim of informing the competent administrative authority of the fact of his arrival in the country, either to arrest him to implement a final judgment issued against him with a penalty restricting his freedom, or to implement an order issued by the investigation authorities to arrest him, or to present him to the investigation authority upon its request upon his arrival from abroad. .[1207]

2 - 8 - 1 Request for inclusion on the travel ban list

Natural persons may be included on the travel ban lists, based on a request from the courts in their enforceable rulings and orders, the Public Prosecutor, and the investigating judge. [1208]

The investigator may decide, upon the release of a person accused of a felony or misdemeanor who is under the care of the state or a foreigner, to prevent him from traveling outside Egypt if he sees fit to do so and the interests of the investigation require it. However, this measure may not be taken against a person unless the elements are present and evidence is established that he has committed a specific crime. [1209]

The names of the accused who are banned from travelling abroad, all data related to them, and the orders issued to lift the ban shall be recorded in the special register prepared by the technical office of the Public Prosecutor and in each general prosecution office, so that they can be easily referred to. The following shall be taken into account in this regard:

A- The request for inclusion in the list of those banned from travel and lifting the ban must be made through the technical office of the Public Prosecutor's Office.

If a citizen or foreigner accused of a serious crime, such as theft, fraud, embezzlement, or manslaughter, is released but it is deemed necessary for the investigation to impose a travel ban, the investigator must submit an urgent memorandum to the Chief Prosecutor, outlining the reasons for the ban. If the request to include the individual on the travel ban list is approved, the Chief Prosecutor will forward the memorandum—detailing key considerations from their perspective—to the technical office for further review. The office will then notify the Passports and Nationality Department and the Public Security Department (Lists Committee) accordingly.

([1207]) Administrative Court, First Circuit, Judgment No. 1379 of 69 Q issued in the session of January 20, 2015 (unpublished).
([1208] Article No. 1 of Interior Minister Decision No. 2214 of 1994 regarding the organization of lists of prohibited persons.
([1209] Article No. 426 of the Judicial Instructions of the Public Prosecution.

The memorandum should include the person's full name in both Arabic and French, their profession, date of birth (day, month, and year) according to their personal or family card or passport, place of residence, nationality, physical description, distinguishing marks, the special case number, the alleged offense, evidence supporting the allegation, the applicable penal code articles, and, when possible, a photograph of the accused.

B- The technical office shall be notified, as soon as possible, of what has been done in cases related to those banned from travel, in order to consider lifting the ban on them.

C- In the event that a decision is issued by the court competent to consider the criminal case to remove the name of the accused from the list of those banned or to permit him to travel, these decisions are recorded in the register of the General Prosecution, and then the papers are sent to the technical office to notify the competent authority of this for implementation. [1210]

It is settled that, although it is true that freedom of movement and travel within or outside the country is an inherent right of the individual and it is not permissible to infringe upon it without justification, nor to diminish it without justification, the Constitution entrusts the legislative authority with regulating that right in a way that achieves the preservation of the integrity of the state and the protection of its security at home and abroad and the protection of public order and the maintenance of the affairs of justice, all of this without the regulation violating the constitutional right to movement and travel or affecting its essence and content. The constitutional legislator himself has restricted this right if the necessity of investigation and the maintenance of the security of society requires it, provided that the order prohibiting movement is issued by the competent judge or the Public Prosecution in the manner determined by law. [1211]

Whereas Article 1 of the Interior Minister's Decision No. 2214 of 1994 regarding the organization of banned lists stipulated that the entities authorized to request inclusion on the banned lists with respect to natural persons, including (the Public Prosecutor), and due to the seriousness of this matter and its connection to the personal freedom of citizens (banned from travel or expected arrival from abroad), the decision required that inclusion in cases other than court requests be issued by the presidency of the entity requesting inclusion, and it is assumed that, by necessity and due to the resulting effect in restricting the citizen's freedom to travel or return to the country, this should be based on an investigation conducted by the Public Prosecution and that the necessary investigation requirements require preventing the citizen from traveling

([1210] Article No. 407 of the Judicial Instructions of the Public Prosecution.
([1211]) Administrative Court, First Circuit, Judgment No. 23511 of 63 Q issued in the session of November 24, 2009 (unpublished), Judgment No. 20677 of 62 Q issued in the session of February 10, 2009 (unpublished).

or including him on the arrival watch lists, especially since the citizen's right to move, travel and return to his homeland has become, in addition to being a right stipulated in the Egyptian Constitution under Chapter Two on the Basic Components of Society, in Article (50), which stipulated that no citizen may be prohibited from residing in a specific area or be required to reside in a specific place except in the cases specified in the law and Article (51), which prohibited the deportation of any citizen from the country or Preventing him from returning to it, but this right has become one of the universal rights stipulated in the Universal Declaration of Human Rights, which was approved by the United Nations General Assembly on December 10, 1948, and announced it and called on member states to act in accordance with it, which stipulates in Article Thirteen thereof:

1- Every individual has the freedom of movement and choice of residence within the borders of each country.

2- That every individual has the right to leave any country, including his own, and has the right to return to it, which was confirmed by the International Covenant on Civil and Political Rights, which was approved by the United Nations General Assembly 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 did not order the person to be placed on the lists of those prohibited or to monitor his arrival for considerations of the interest of the investigation that they value exclusively, then the person has the right to leave his country whenever he wants and to wherever he wants, and to return to his country whenever he wants and to reside within his country wherever he wants. This fundamental human right is not restricted except by the controls imposed by the law and within the limits necessary for it. [1212]

The prohibition of movement is only the right of a judge or a member of the Public Prosecution who is entrusted by law with this task without interference from the executive authority. [1213]

Whereas the parties that are permitted to request inclusion on the lists of those banned from travel or removal from it or entry into the country are specified exclusively, and whereas the legislator did not grant natural persons and individuals the right to request this inclusion except in the event of a ruling or an enforceable order from the courts to register a person on these lists, and therefore individuals may not request the registration of any person on the lists of

([1212]) Administrative Court, First Circuit, Judgment No. 15844 of 61 Q issued in the session of May 13, 2008 (unpublished).
([1213]) Administrative Court, First Circuit, Judgment No. 47576 of 68 Q, issued in the session of February 16, 2016 (unpublished).

those banned from leaving the country unless they submit evidence that they have obtained from one of the courts a ruling or an enforceable decision to register on these lists. [1214]

Requests for inclusion on the lists and removal from them are directed to the Travel Documents, Immigration and Nationality Authority from the same listing authorities and with the same restrictions contained therein. These requests are delivered to the Director of the Lists Department at the Authority to take the necessary action regarding them.

The Director of the Travel Documents, Immigration and Nationality Authority shall consider and decide on requests for registration on the lists of persons prohibited from leaving or entering the country, or for removal from the lists. [1215]

Applications for registration in the lists must include the following information:

(A) The name, at least two-part, and the approximate year of birth for non-Arabic names, and in the Frankish spelling.

(B) The name must be at least three-part in the case of Arabic names and the approximate year of birth (for non-Egyptians). As for Egyptians, the name must be at least three-part in the case of Arabic names and the date of birth must be indicated in the day, month and year.

(C) Nationality.

(D) Profession.

In the event that the above data is not available, the name will be placed on the watch lists, whether for travel or arrival. The Director of the Travel Documents, Immigration and Nationality Authority may register names that do not meet some of the above data, in cases that he deems appropriate. .[1216]

It must be taken into account:

(First): When interrogating the accused, his full name (the accused's name, the father's name, and the grandfather's name) and date of birth, day, month, and year, place of birth, place of residence, profession, and nationality must be mentioned in the investigation report, and his ID card or passport must be viewed - so that this information can be used in preparing forms for

([1214]) See in this regard: Administrative Court, First Circuit, Judgment No. 8868 of 62 Q issued in the session of April 29, 2008 (unpublished).
([1215] Article No. 3 of the Minister of Interior's decision regarding the organization of lists of prohibited persons.
([1216] Articles Nos. 4 and 5 of the Minister of Interior's decision regarding the organization of lists of prohibited persons.

requests to be included in the list of those prohibited from traveling if the interests of the investigation require preventing the accused from traveling abroad.

(Second): When preparing the application forms for inclusion in the list of those banned from travel, they must include, based on the investigations, the full names of the accused (the accused's name, the father's name, the grandfather's name - each box is separate) and the rest of the data referred to in the previous clause.

(Thirdly): The Public Prosecution may not directly address the Travel Documents, Immigration and Nationality Authority regarding requests for inclusion in the travel ban and arrival watch lists. All correspondence from the Public Prosecution in this regard shall be sent to the technical office of the Attorney General, which alone has the right to address the Travel Documents, Immigration and Nationality Authority in this regard. [1217]

When accusing foreigners in criminal cases in general and in cases of assault on persons (intentional or negligent) and property, members of the Public Prosecution must request their inclusion on the lists of those prohibited from traveling, in accordance with the procedures stipulated in Articles 407 and 408 of these instructions.

The name of a foreign defendant who is included on the lists of those banned from travel shall not be requested to be removed until after the execution of the judgment issued against him. [1218]

The passport of a foreign accused person shall not be withheld in cases of travel ban except for the period necessary to issue an order to include him on the lists of persons banned from travel and to verify the complete inclusion, provided that he is given an official receipt certified by the Public Prosecution seal indicating the withholding of his passport and the number and subject of the case in which he is accused. [1219]

2 - 8 - 2 Lifting the travel ban lists

Names that meet the required data criteria will remain on the list from the date of inclusion. The inclusion will be automatically removed after three years, starting from the first of January following the date of inclusion, unless it is removed earlier upon request from the requesting party. If the requesting party submits a request, the inclusion will remain on the list even after the three-year period expires.

([1217] Article No. 408 of the Judicial Instructions of the Public Prosecution.
([1218] Article No. 1387 bis of the Judicial Instructions of the Public Prosecution.
([1219] Article No. 1387 bis (A) of the Judicial Instructions of the Public Prosecution.

The liquidation operations are then limited to the Passports, Immigration and Nationality Authority sending a form to the circulating authority, consisting of an original and a copy of each entry, including the entry book number, for examination and signing, indicating the removal from the entry or its continuation, with the original being returned to the Authority. [1220]

Placing people on no-fly lists and watch lists is the other side of the travel ban. It lasts for three years unless it is lifted before that time. If this period expires without the party requesting the listing requesting its renewal, the listing is automatically lifted from these lists. The three-year calculation begins from the first of January following the date of listing, and the basis for that is that the matter relates to one of the freedoms guaranteed by the Constitution to the citizen, and therefore its limitation or restriction must be for a necessity, so the listing request must be clear and explicit in its meaning, significance and source of issuance, and the administrative body must not rely on a mere request, but rather must follow positive and explicit procedures that are consistent with the nature of that freedom and that right, and the administrative body must explicitly request the lifting of the listing when its justification ends, or request its renewal after the expiration of the three years explicitly if the reason for the listing exists. It must also make its request explicit and not implicit, expressing its will with the authority it has, and the justifications and reasons for the request. Accordingly, if a period of three years has passed from the date of the first of January following the request for listing, and the party requesting listing has not requested its renewal, the listing shall be dropped and its effect shall be permanently lifted. [1221]

In view of the absence of a rule in the Criminal Procedure Code that specifies the methods of appealing the cancellation of the Public Prosecutor's decision to include an accused on the lists of those banned from travel, it follows that it is necessary to refer to the general rules regarding filing and registering the lawsuit. As the legislator stipulated that only the competent judge and the Public Prosecution are competent to issue decisions to prevent movement and travel inside and outside the country, the Public Prosecution, which is the trustee of the criminal lawsuit and a division of the regular judiciary, undertakes judicial work, the most important of which are the functions of investigation and accusation, and is competent to issue a decision to include an accused on the lists of those banned from travel on the occasion of its investigations into a criminal incident based on the Constitution, and that the Travel Documents, Immigration and Nationality Authority's completion of that inclusion is only in implementation of the Public Prosecutor's decision. Moreover, the Minister of Interior's Decision No. 2214 regarding the

([1220] Article No. 6 of the Minister of Interior's decision regarding the organization of lists of prohibited persons.
([1221]) Administrative Court, First Circuit, Judgment No. 50214 of 65 Q, issued in the session of January 19, 2016 (unpublished).

organization of the lists of those banned from travel does not change the competence of the Public Prosecution or the courts in this regard. In application of this, the courts of the regular judiciary are competent to consider the request to cancel the Public Prosecutor's decision to include an accused on the lists of those banned from travel without appealing it, and they are competent to consider it in accordance with the rules of their competence. [1222]

([1222]) In this regard, the Court of Cassation ruled that: [Since it was clear from reviewing the papers that the Public Prosecutor issued a decision to include the name of ..... On the lists of those banned from traveling, on the occasion of the investigations being conducted by the Public Funds Prosecution in cases No. ...., ... For a year.... The Supreme Public Funds Authority confiscated the above-mentioned decision, so the aforementioned party appealed 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 respondent appealed this ruling before the Supreme Administrative Court, and the aforementioned court ruled that it did not have jurisdiction to consider the lawsuit and referred it to the Court of Appeal.... For consideration, and since the case was referred for consideration before the Criminal Court of ..... It ruled that it did not have jurisdiction to hear the case, and that the Public Prosecution should resort to the Supreme Constitutional Court to determine the competent authority.

The Public Prosecution appealed this ruling by way of cassation.

Since this was the case, and the rulings issued are final in matters of jurisdiction that may be appealed independently by way of cassation, namely those in which jurisdiction is related to the jurisdiction of the court or those issued with a lack of jurisdiction to consider the case, where the ruling - in this case - prevents the case from proceeding, then the ruling appealed against may be appealed by way of cassation. Since this was the case, and since the litigation procedures and rules related to jurisdiction in criminal matters are part of the public order and the legislator based his report on them on general considerations related to the proper administration of justice, and since the Code of Civil Procedure is considered a general law with respect to the Code of Criminal Procedure and it must be referred to in order to fill any deficiency in the latter law or to assist in implementing the rules stipulated therein, and since the Code of Criminal Procedure was devoid of a rule specifying the methods of appealing the cancellation of the Public Prosecutor's decision to include one of the accused on the lists of those banned from traveling, it is necessary to refer in this regard to the general rules contained in the Code of Civil Procedure regarding filing and registering the lawsuit, and saying otherwise would protect the Public Prosecutor's decision from being appealed, given that the law did not outline a path for that, which is contrary to justice. However, this does not prevent the legislator from undertaking, through original legislation, to regulate freedom of movement and travel within or outside the country, balancing between 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 Islamic law and what Article Two of the Constitution stipulates, that the principles of Islamic law - definitive in proof and meaning - - It is the main source of legislation. Since that was the case, and the constitutional legislator made personal freedom a natural right that he protects with his texts and safeguards with his principles. Article (41) of the Constitution states that "personal freedom is a natural right, and it is protected and cannot be infringed upon. Except in the case of being caught in the act, no one may be arrested, searched, imprisoned, have his freedom restricted in any way, or be prevented from moving except by an order necessitated by the necessity of the investigation and the maintenance of 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." The citizen's right to move was stipulated to reflect a tributary of his personal freedom, which the Constitution is full of, indicating that freedom of movement is included in the ranks of public freedoms and that restricting it without a legitimate reason strips personal freedom of some of its characteristics and undermines its sound structure. The Constitution has entrusted this text to the legislative authority alone to assess this requirement, and it is necessary that the principle is freedom of movement and the exception is prevention, and that the prevention of movement is only possessed by a judge or a member of the Public Prosecution to whom the law entrusts this without interference from the executive authority. The Constitution is full of rights related to the right to move, as it stipulated in Article 50 that it is prohibited to oblige a citizen to reside in a specific place or prevent him from residing in a specific area except in the cases specified by the law, and Article 51 followed it to prevent the citizen from being deported from the country or being deprived of returning to it, and Article 52 came to confirm the citizen's right to emigrate and leave the country, and the consequence of this is that the Constitution did not grant the executive authority any jurisdiction to regulate anything that affects the rights guaranteed by the Constitution above, and that this regulation must be undertaken by the legislative authority. By issuing laws. The Supreme Constitutional Court ruled that if the constitution assigns the regulation of a right to the legislative authority, it is not permissible for it to evade its jurisdiction and refer the entire matter to the executive authority without restricting it in this regard to general controls and foundations within which it is obligated to work. If the legislator deviates from this and entrusts the executive authority with the regulation of the right from its foundation, he is abandoning his original jurisdiction stipulated in Article 86 of the constitution and thus falls into the abyss of violating the law. Whereas, the legislator has elevated freedom of movement and travel within or outside the country to the level of public freedoms and constitutional rights, and the legislator has decided for this a formal guarantee represented by the provision, by way of limitation, of only two parties, to which he has entrusted the jurisdiction to issue decisions to prohibit movement and travel, namely the competent judge and the Public Prosecution if the necessity of the investigation and the security of society necessitates this. The Public Prosecution is the guardian of the criminal case and is a division of the ordinary judiciary that undertakes judicial work, the most important of which are the investigation function and the accusation function. When it issues a decision of its own accord to include one of the accused on the lists of those banned from traveling on the occasion of investigations it is conducting into a specific criminal incident, this is done by virtue of its jurisdictional authority, with its dominance over the course of the investigation, aiming to manage it well, deriving its right to the authority to issue

2 - 8 - 3 Appeal against inclusion in travel ban lists

Those whose names are included or their legal representatives may appeal their inclusion and submit appeals to the Lists Department at the Travel Documents and Immigration Authority.

These grievances are decided by a committee consisting of:

First Assistant Minister of Interior for Security as Chairman

State Advisor to the Fatwa Department of the Ministry of Interior

Director General of the Travel Documents and Immigration Authority

Representative of the party requesting the listing Members

The secretariat of this committee shall be headed by the Director of the Lists Department at the Travel Documents, Immigration and Nationality Authority at the headquarters of the aforementioned Authority, at the times determined by the Chairman of the Committee. Its decisions shall be issued by a majority of votes, and in the event of a tie, the side to which the Chairman belongs shall prevail. (1223)

2 - 9 Order to prevent action

2 - 9 - 1 Cases of issuing an order to prevent action

In cases where the investigation provides sufficient evidence of the seriousness of the accusation in any of the crimes stipulated in Chapter Four of Book Two of the Penal Code, and other crimes committed against funds owned by the state or public bodies and institutions and their affiliated units or other public legal persons, as well as in crimes in which the law requires

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this inclusion from the Constitution. The Travel Documents, Immigration and Nationality Authority's implementation of this inclusion is only in implementation of the decision of the Public Prosecutor. This view is supported by the fact that the Ministry of Interior's decision No. 2214/1994 was issued regarding "organizing the lists of those banned from traveling" - based on a request from several parties, including the Public Prosecutor and the courts, in whose rulings and orders are enforceable - and this decision of the Minister of Interior does not deprive these two parties of their foundation, nor does what is stated in the text of Article Seven of the aforementioned decision, which clarifies who has the right to appeal this inclusion and how, change this, since the respondent, since He initially filed his lawsuit only to request the cancellation of the decision to include him on the lists of those banned from travel issued against him, and not to appeal it. Therefore, the substantive dispute over that decision is outside the scope of the legality control that the administrative judiciary has the authority to exercise over administrative decisions, and falls within the jurisdiction of the regular judiciary, whose courts shall handle it in accordance with the rules regulating its jurisdiction. Since the respondent had filed his lawsuit before the administrative judiciary by filing a newspaper and announcing it in accordance with the Code of Civil Procedure - the general law that governs litigation systems - the Supreme Administrative Court ruled that it had no jurisdiction, and the lawsuit was referred to the Court of Appeal ..... Whereas the Criminal Court considered it as a case brought before it and ruled that it lacked jurisdiction, what the Criminal Court ruled is a ruling issued by it that can be appealed before the Court of Cassation. The ruling being appealed against, since it considered - erroneously - that the decision of the Public Prosecutor to include the respondent on the lists of those banned from travel is an administrative decision that ordinary courts do not have jurisdiction to consider canceling, is incorrect. Since the error on which the ruling was based prevented the court from considering the subject of the case with respect to him, then the cassation must be coupled with a retrial] Appeal No. 48117 of Year 74 Q issued in the session of June 14, 2010 and published in Technical Office Book No. 61, Page No. 442, Rule No. 58.

(1223 Article No. 7 of the Minister of Interior's decision regarding the organization of lists of prohibited persons.

the court to rule - on its own initiative - to return the amounts or value of the objects subject to the crime or to compensate the injured party. If the Public Prosecution considers that it is necessary to take precautionary measures regarding the accused's assets, including preventing him from disposing of or managing them, it must present the matter to the competent criminal court, requesting a ruling to that effect, to ensure the implementation of any fine, restitution or compensation that may be ruled upon. The Public Prosecutor may, when necessary or in a state of urgency, temporarily order the prevention of the accused, his wife or minor children from disposing of or managing their funds. The order preventing management must include the appointment of someone to manage the seized funds. In all cases, the Public Prosecutor must present the order of prevention to the competent criminal court within seven days at most from the date of its issuance, requesting a ruling to prevent the disposal or management, otherwise the order shall be considered null and void. The competent criminal court shall issue its ruling in the previous cases after hearing the statements of the concerned parties within a period not exceeding fifteen days from the date on which the matter is presented to it. The court shall decide on the extent to which the temporary order referred to in the previous paragraph shall continue to be in effect whenever it sees a reason to postpone consideration of the request. The ruling must include the reasons on which it is based, and the prohibition on management must include the appointment of someone to manage the seized funds after taking the opinion of the Public Prosecution. The court may - based on a request from the Public Prosecution - include in its ruling any money belonging to the accused's spouse or minor children if there is sufficient evidence that it was obtained from the crime under investigation and was transferred to them from the accused, after including them in the request. The person appointed to manage the property shall receive the seized property and take the initiative to inventory it in the presence of the concerned parties and a representative of the Public Prosecution or an expert appointed by the court. The provisions of Articles 965 and 989 of the Code of Civil and Commercial Procedure shall be followed in the inventory. The person appointed to manage the funds is obligated to preserve them, manage them well, and return them with their collected proceeds in accordance with the provisions stipulated in the Civil Code regarding agency in management, deposit, and custody work, in the manner regulated by a decision issued by the Minister of Justice. [1224]

In cases where the investigation or reasoning shows sufficient evidence of the commission of any terrorist crime, the investigating authorities may take the necessary precautionary measures, including freezing funds or other assets, preventing their disposal or management,

([1224] Article No. 208 bis (a) of the Code of Criminal Procedure.

or preventing travel, provided that they adhere to the provisions and procedures stipulated in the Criminal Procedures Law. [1225]

Members of the Public Prosecution must take care to investigate the reports submitted to them regarding crimes of encroachment on the property of the state or one of the bodies whose funds are considered public funds and stipulated in Articles 115 bis and 372 bis of the Penal Code or any other law, in order to demonstrate 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 quickly dispose of them and submit them to upcoming sessions while following up on the criminal case until a final ruling is issued, and verifying the ruling with the original and supplementary penalties stipulated, and appealing the rulings issued in violation of the law. [1226]

The restrictions placed by the legislator on the funds of certain accused individuals, whether concerning their management or disposal, are authorized solely by the Public Prosecutor. These restrictions can also be extended to the funds of their wives and minor children; unless it is proven that the funds belong to them and originate from sources other than the accused's assets. The Supreme Constitutional Court ruled that: [**The restrictions imposed by the text of Article 208 bis of the Criminal Procedure Code on the funds of some of the accused, whether in the field of their management or disposal thereof, are authorized to the Public Prosecutor alone, as he is the one who orders their imposition to ensure the achievement of specific purposes exclusively specified by this text. The Public Prosecutor does not issue this order except based on an investigation in which sufficient evidence is established of the seriousness of the accusation in the crimes specified by the legislator and no others. Rather, these restrictions may be extended by the accused to the funds of their wives and minor children, unless evidence is provided that they are attributed to them from other than the accused's funds.]** [1227]

2 - 9 - 2 Appeal against the order to prevent action

Anyone against whom a ruling has been issued prohibiting the disposal or management of property may file a grievance with the competent criminal court after three months from the date of the ruling. If the grievance is rejected, the individual may file a new grievance every three months from the date the previous grievance was denied. Additionally, anyone subject to

([1225] Article No. 47 of the Anti-Terrorism Law.
([1226] Article No. 140 bis of the Judicial Instructions of the Public Prosecution.
([1227]) The ruling of the Supreme Constitutional Court in 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.

a ruling prohibiting the disposal or management of a matter, as well as any interested party, may challenge the implementation procedures. The grievance should be submitted in writing at the clerk's office of the competent criminal court, and the court president will schedule a session to review the grievance, with the grievant being notified. The grievance must be decided within 15 days from the date of submission. During the examination of the case, the competent court, either on its own initiative or upon request from the Public Prosecution or the interested parties, may decide to lift or modify the prohibition on disposal or management, or adjust its scope or implementation procedures. Any ruling or judgment issued regarding the criminal case must also address the status of precautionary measures in place.

In all cases, the prohibition on disposal or management ends with the issuance of a decision that there is no reason to file a criminal case or with the issuance of a final judgment of acquittal, or with the completion of the implementation of the financial penalties and compensations imposed. When implementing the judgment issued with a fine or the return of the amounts or value of the items subject to the crime or compensation to the injured party, as the case may be, no action issued in violation of the order or judgment shall be invoked from the date of recording either of them in a special register to be organized by a decision issued by the Minister of Justice, and every interested party shall have the right to view this register. [1228]

Anyone against whom a prohibition order has been issued based on sufficient evidence of the accusation of committing any terrorist crime may appeal in accordance with the previous rules. [1229]

2 - 10 Temporary release

The release of the accused occurs when there are no valid grounds for pre-trial detention or when those grounds no longer exist. Release is mandatory in certain cases and optional in others. [1230]

Consistent with the right to liberty and the presumption of innocence, there is a presumption that persons charged with criminal offences shall not be detained while awaiting trial. [1231]

Some international standards explicitly state that, as a general rule, persons charged with criminal offences should not be detained while awaiting trial. [1232]

([1228] Article No. 208 bis (b) of the Code of Criminal Procedure.
([1229] Article 47 of the Anti-Terrorism Law.
([1230] Article No. 409 of the Judicial Instructions of the Public Prosecution.
([1231]) Perano Basso v. Uruguay (12.533), Inter-American Commission (69 (2009..
([1232]) 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

However, the standards, which include the presumption of innocence, and other standards, explicitly recognize that. [1233]

* The decision to release a person may be subject to guarantees that ensure his presence at the trial, such as bail or a condition to report to the authorities at specific times.

* There are circumstances in which an accused may be detained pending trial, as an exceptional measure, when this is necessary and proportionate.

The burden of proving that the deprivation of liberty, including while awaiting trial, is necessary and proportionate remains with the State, which must demonstrate that release will create a substantial risk that the person will abscond, harm others or tamper with evidence or the investigation in a manner that cannot be avoided by other means. .[1234]

2 - 10 - 1 Mandatory release of the accused

The law requires, in misdemeanor cases, the release of the arrested accused under the following conditions:

1- Eight days have passed since the date of his interrogation.

2- He must have a known place of residence in Egypt.

3- The maximum penalty stipulated by law shall not exceed one year.

4- The accused must not be a recidivist.

5- He has not been previously sentenced to imprisonment for more than one year. [1235]

If the investigating authority in the incident attributed to him and the person being held in custody issues an order that there is no reason to file a criminal case, unless he is held in custody for another reason. [1236]

If, after the order is issued, there is no reason to file a lawsuit, and despite the issuance of a ruling on its subject, this ruling is invalid even if the court that issued the ruling was not aware of the issuance of the order. Rather, upon the issuance of the order that there is no reason to

M(1)(e) of the Principles on Fair Trial in Africa, Principle 3(2) of the Principles on Persons Deprived of Liberty in the Americas, and Rule 3 of the European Rules on Pre-trial Detention.

([1233]) Article 7(5) of the American Convention, Article 5 of the European Convention, Principle 3(2) of the Principles on Persons Deprived of Liberty in the Americas, Rules 6 and 7 of the European Rules on Pre-trial Detention; see Article 9(3) of the International Covenant, Article 16(6) of the Migrant Workers Convention.

([1234] Rule 8(2) of the European Rules on Pre-trial Detention.

Marinich v. Belarus, Human Rights Committee, . UN Doc.CCPR/C/99/D/1502/2006..

([1235] Article No. 142 of the Criminal Procedure Code, and Article No. 410 of the Judicial Instructions of the Public Prosecution.

([1236] Article No. 154 of the Criminal Procedure Code, and Article No. 410 of the Judicial Instructions of the Public Prosecution.

file a criminal lawsuit against the accused, he must be released if he is detained in accordance with Article 154 of the Code of Criminal Procedure, unless his detention is for another reason. The implication and consequence of this is that upon the issuance of the order that there is no reason to file a criminal lawsuit against the accused, the previous order to arrest him, which was not executed, is dropped. If the judicial police officers execute the arrest order despite its dropping, the arrest is invalid, and the evidence derived from it and the testimony of the person who carried it out are invalid. This invalidity is not corrected by the fact that the police officer was in good faith in his belief that the previously issued arrest order is still valid. [1237]

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 without an order being issued by the competent court (if the charge is a felony) to extend the pretrial detention, provided that he is brought before this court before the expiry of the three-month period. [1238]

If the accused is acquitted, he must be released immediately, even if the Public Prosecution appeals the acquittal ruling, whether by appeal or cassation, as the case may be. If the accused is banned from traveling during the trial and is acquitted, this restriction must be immediately lifted, even if the Public Prosecution appeals the ruling. All of this is unless the accused is imprisoned or banned from traveling for another reason. .[1239]

2 - 10 - 2 The release of the accused

First: Temporary release of the accused on personal bail

If the Public Prosecution begins the investigation, it may release the accused at any time, with or without bail. [1240]

The release of the accused at any time, with or without bail, is optional for the Public Prosecution, and this right is not restricted by any restriction. .[1241]

The Public Prosecution may release the accused, even if it has requested an extension of the accused's pretrial detention and its request has been granted. Its authority to release the accused temporarily is not subject 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 to whom it is

([1237] Appeal No. 23607 of 67 Q issued in the session of June 1, 1999 and published in the first part of Technical Office Book No. 50, page No. 348, rule No. 82.
([1238] Article No. 143 of the Criminal Procedure Code, and Article No. 410 of the Judicial Instructions of the Public Prosecution.
([1239] Articles No. 304 and 465 of the Code of Criminal Procedure, and Article No. 410 of the Judicial Instructions of the Public Prosecution.
([1240] Article No. 204 of the Code of Criminal Procedure.
([1241]) Civil cassation, requests of the judiciary, appeal No. 134 of year 67 Q issued in the session of July 7, 1998 and published in the first part of the Technical Office book No. 49, page No. 45, rule No. 8.

referred. In the case of referral to the Criminal Court, the matter is outside the session within the jurisdiction of the Misdemeanor Appeals Court, convened in the deliberation chamber.

In the event of a ruling of lack of jurisdiction, the Misdemeanor Appeals Court, convened in the advisory chamber, shall be competent to consider the request for release or detention until the case is brought before the competent court. [1242]

The Public Prosecution may release the accused at any time, with or without bail, but the release of the accused on bail is conditional upon his interrogation in accordance with what is stipulated in the second paragraph of Article 36 of the Code of Criminal Procedure. It may release the accused even if it has requested an extension of his pretrial detention and its request has been granted, if after the detention there are reasons that require release, and it retains this right as long as the investigation is in its hands. The Public Prosecution may not release the accused if the pretrial detention order was issued by the Misdemeanor Appeals Court convened in the consultation chamber based on the Public Prosecution's appeal of the previous release order issued by the investigating judge. It may not release the accused within the time specified for his presentation to the judge to renew his detention if it finds nothing new in the documents. .[1243]

The partial judge or the misdemeanor appeals court, sitting in the advisory chamber, as the case may be, may order, when the matter of the detention of the accused is presented to it, their temporary release.[1244]

If the prosecution decides not to make the release conditional on the provision of bail, it shall be sufficient for his release to be released if he provides personal or family cards or documents proving his identity and place of residence. [1245]

If the Public Prosecution decides to release employees of economic units affiliated with the supply sector who are accused of supply crimes, this release should not be conditional on financial guarantees, but rather it is sufficient to verify their place of residence or guarantee their jobs.[1246]

The members of the Public Prosecution must unify the treatment between private sector traders and public sector employees who commit similar food violations, with regard to releasing them

([1242] Article No. 151 of the Code of Criminal Procedure.
([1243] Article No. 411 of the Judicial Instructions of the Public Prosecution.
([1244] Article No. 415 of the Judicial Instructions of the Public Prosecution.
([1245] Article No. 417 of the Judicial Instructions of the Public Prosecution.
([1246] Article No. 412 of the Judicial Instructions of the Public Prosecution.

without detaining them pending their presentation to the Public Prosecution the following day, if it is decided to initially release them in the aforementioned violations. [1247]

Second: Temporary release of the accused with his pledge to attend

If the investigating authority is the investigating judge, his temporary release shall be either of his own accord or based on the request of the accused, after hearing the statements of the Public Prosecution, on the condition that the released accused designates a place for himself in the area where the court is located if he does not reside there, and that he undertakes to appear whenever requested and not to flee from the execution of the judgment that may be issued against him. [1248]

If the investigating authority is the Public Prosecution, the temporary release from the Public Prosecution shall be subject to the same conditions previously presented.

Third: Temporary release of the accused on bail

Temporary release may be suspended on the provision of bail, and a specific portion of the bail estimated for the release of the accused shall be allocated in the order issued to estimate the amount of bail to be a sufficient penalty for the accused's failure to appear in all investigation and lawsuit procedures, to proceed to implement the judgment, and to perform all other duties imposed on him, and the other portion shall be allocated to pay what follows in its order.

(First) The expenses paid in advance by the civil claimant.

(Second) Expenditures incurred by the government.

(Third) The financial penalties that may be imposed on the accused.

If the bail is estimated without any specification, it is considered a guarantee that the accused will fulfill the duty of attendance and other duties imposed on him and will not evade implementation. The first part of the bail will be confiscated if the released person fails to fulfill 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 recovered from this part of the bail if the second part of the bail is not sufficient to fulfill them. [1249]

([1247] Article No. 413 of the Judicial Instructions of the Public Prosecution.
([1248] Articles No. 144 and 145 of the Code of Criminal Procedure, and Article No. 416 of the Judicial Instructions of the Public Prosecution.
([1249] Article No. 146 of the Criminal Procedure Code, Article No. 419 of the Judicial Instructions of the Public Prosecution, and Article No. 116 of the Written, Financial and Administrative Instructions of the Public Prosecution.

The bail amount shall be paid by the accused or by someone else, and this shall be done by depositing the estimated amount in the court treasury in cash or government bonds or government-guaranteed bonds. It may be accepted from any person who is able to pledge to pay the estimated amount of bail if the accused fails to meet any of the conditions of release, and he shall be required to pledge to do so in the investigation report or in a report in the clerk's office, and the report or report shall have the force of an enforceable bond. [1250]

If the accused, without an acceptable excuse, fails to fulfill 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 to that effect, and the second part is returned to the accused if a decision is issued in the case that there is no basis, or a ruling of acquittal is issued. .[1251]

The partial judge may set bail for the release of the accused whenever the Public Prosecution requests an order to extend the detention. [1252]

The members of the Public Prosecution must be satisfied with releasing the accused after interrogation in crimes of foreign vessels practicing fishing in territorial waters or their presence therein in violation of the provisions of Article (25) of Law No. 124 of 1983 regarding fishing and aquatic life, with a financial guarantee equal to the maximum fine stipulated for the crime stipulated in Article (53) of the aforementioned law (ten thousand pounds) in addition to the criminal expenses, provided that the fine ruled after that is settled from the amount of the financial guarantee.[1253]

The following provisions shall apply with regard to decisions to guarantee release on financial guarantee, their implementation, the issuance of release letters and the allocation of bail. [1254]

If it is decided to release an accused on financial guarantee and the accused or someone else expresses his willingness to pay it, the investigation clerk must immediately submit the papers to the head of the criminal department to deposit the guarantee amount in the court treasury (deposits) on the first page of the prosecution investigation report or on a separate paper attached to the case after it is received from the treasury and placed on its file.

Then the investigation clerk shall prepare the release book in original and copy and stamp the seal of the Republic's emblem on it and its copy and send the original after exporting it to the police if the accused is not in pretrial detention or to the prison where he is being held in pretrial

([1250] Article No. 147 of the Criminal Procedure Code, and Article No. 418 of the Judicial Instructions of the Public Prosecution.
([1251] Article No. 148 of the Code of Criminal Procedure.
([1252] Article No. 205 of the Code of Criminal Procedure.
([1253] Article No. 411 bis of the Judicial Instructions of the Public Prosecution.
([1254] Article No. 425 of the Judicial Instructions of the Public Prosecution.

detention - for his release and keep the copy in the case file - and the competent clerk shall follow up on the arrival of the response to that and expedite it in the event that it does not arrive within ten days and the response shall be attached to the case and placed on its special file; taking into account the marking on the case file and the margin of the investigation report and the special table and book for that, and the release guarantee or bail may be cash or government bonds or guaranteed by the government - and it may be accepted from any person to pledge to pay the estimated amount of the guarantee or bail if the accused breaches the release condition - and the matter is presented to the member of the prosecution; if he agrees - the pledge to that is taken into account in the investigation report or in a report in the clerk's office - and the report or report shall have the force of an enforceable document. [1255]

Fourth: Temporary release of the accused, obligating him to present himself to the police office at the specified times.

If the investigating authority deems that the accused's condition does not permit the provision of bail, it may 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 release order, taking into account his special circumstances. It may ask him to choose a place to reside in other than the place where the crime occurred, and it may prohibit him from frequenting a specific place, such as prohibiting him from frequenting certain places such as bars, shops suspected of being in trouble, markets, festivals, and crowded streets. .[1256]

2 - 10 - 3 Cancellation of provisional release

The order for temporary release does not prevent the investigator from issuing a new order for the arrest or detention of the accused for one of the following three reasons:

1- If new evidence appears against him.

2- Or breached the conditions imposed on him.

3- Or circumstances exist 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 supervision of the authority responsible for extending the detention or the court to which the accused was referred while in detention.

([1255] Article No. 115 of the written, financial and administrative instructions of the Public Prosecution.
([1256] Article No. 149 of the Criminal Procedure Code, and Article No. 424 of the Judicial Instructions of the Public Prosecution.

If the accused is remanded in custody, the duration and renewal of the detention shall be subject to the same procedures that initially govern the order to remand the accused in custody. .1257

The victim or the civil rights claimant shall not be permitted to request the detention of the accused, nor shall any statements be heard from him in the discussions related to his release. 1258

2 - 10 - 4 Enforcement of the order issued for temporary release

The order issued for the temporary release of the accused that is in pretrial detention shall be implemented unless the Public Prosecution appeals it within the legally prescribed period of twenty-four hours. The court competent to consider the appeal may order the extension of the accused's detention in accordance with what is legally prescribed. If the appeal is not decided within three days from the date of the report, the order issued for the release must be implemented immediately. 1259

The members of the prosecution must personally supervise the implementation of the release orders of the accused and assign the clerks assigned to them to follow up on the release letters sent to the police departments, centers and prisons, which must be written in original and a copy kept in the case file, and must be recorded in the issued books and the case records must be marked with the dates and numbers of the aforementioned release letters, with the statements received by the prosecution that the release has actually taken place attached to the case files. If no information is received from the police or prison within ten days from the date of issuance of the release decision indicating its implementation, then this must be inquired about immediately and the case file marked with the result. .1260

Release letters issued by the Public Prosecution to correctional centers must be stamped with the Public Prosecution seal and signed by members of the Public Prosecution.

The heads of the criminal divisions shall review the aforementioned letters before sending them to the correctional centers to ensure that they are stamped and signed, and they shall be responsible for violating this. .1261

(1257 Article No. 150 of the Criminal Procedure Code, and Article No. 422 of the Judicial Instructions of the Public Prosecution.
(1258 Article No. 152 of the Code of Criminal Procedure.
(1259 Articles No. 143, 166, 168 of the Criminal Procedure Code, and Article No. 648 of the Judicial Instructions of the Public Prosecution.
(1260 Article No. 421 of the Judicial Instructions of the Public Prosecution.
(1261 Article No. 420 of the Judicial Instructions of the Public Prosecution.

2 - 11 Disposition of cases

2 - 11 - 1 Disposition of cases after investigation

First: The investigating judge sends the papers to the Public Prosecution.

When the investigation is completed, the investigating judge sends the papers to the Public Prosecution, which must submit its requests to him in writing within three days if the accused is imprisoned and ten days if he is released.

He must notify the other opponents so that they may express any statements they may have. .[1262]

There is no blame on the judge for acting in the investigation according to what his conscience dictates and issuing the decision he deems appropriate, even if it is contrary to the requests of the prosecution. .[1263]

Second: Misdemeanor and felony cases

A- Not requiring any investigation into misdemeanor cases.

The law does not require, in misdemeanor cases, any investigation to be conducted before taking action in the case, taking into account the rules regarding cases requiring investigation previously referred to. .[1264]

B- Jurisdiction to deal with criminal cases

The disposition of criminal cases, whether by filing a lawsuit or by deciding that there is no reason to file a criminal lawsuit, shall be by the public prosecutors or heads of the prosecution. [1265]

C- Cancel the crime number

If the member of the Public Prosecution deems it necessary to cancel the felony number and consider the incident a misdemeanor, violation, or complaint, or to record it with a contingency number, or if he deems it necessary to cancel the misdemeanor or violation number and record it in the administrative complaints register, he must send the case to the Public Prosecutor or the Head of the Public Prosecution accompanied by a memorandum with his opinion.

([1262] Article No. 153 of the Code of Criminal Procedure, see the section on applicable claims.
([1263] Appeal No. 793 of 26 Q issued in the session of November 20, 1956 and published in Part Three of Technical Office Book No. 7, Page No. 1167, Rule No. 324.
([1264] Article No. 851 of the Judicial Instructions of the Public Prosecution.
([1265] Article No. 852 of the Judicial Instructions of the Public Prosecution.

In criminal cases, it should be noted that if the head of the prosecution agrees to cancel the criminal number, there is no reason to return the case to him after that unless there is something found before the final disposition that changes the point of view regarding the legal classification. [1266]

D- Sending criminal cases to the General Prosecution immediately.

Members of the Public Prosecution shall not send criminal cases to the General Prosecution all at once at the end of each month, but rather they shall send them on a regular basis as soon as the required procedures are completed, so that the Attorney General or the Head of the General Prosecution has the opportunity to study them and deal with them with the necessary deliberation and careful consideration. [1267]

E- Attaching a memorandum to the order in the felony stating that there is no reason to file a criminal case.

If a felony case is referred to the Attorney General of the General Prosecution with a memorandum ordering that there is no reason to file a criminal case, this memorandum shall not be excluded from the details of the case except in the event that the Attorney General or the Head of the Prosecution orders the case to be referred to the Criminal Court, as the case may be. [1268]

Third: Administrative Prosecution Cases

If the member of the Public Prosecution finds, upon reviewing the case papers received from the Administrative Prosecution, that they are in their current condition suitable for disposal, he must take the initiative to prepare them for disposal without the need to conduct an investigation into them on his own, as the investigations conducted by the Administrative Prosecution are sufficient.

However, if it is necessary to fulfill certain elements in these lawsuits, then it is limited to conducting the necessary investigation to fulfill these elements only, without others that were included in the investigation of the Administrative Prosecution. [1269]

In cases in which the Public Prosecution wishes to impose appropriate disciplinary penalties on the accused, who are state employees and those in a similar capacity, for crimes committed by them, those cases must be sent to the Administrative Prosecution to undertake the disciplinary

([1266] Article No. 853 of the Judicial Instructions of the Public Prosecution.
([1267] Article No. 854 of the Judicial Instructions of the Public Prosecution.
([1268] Article No. 855 of the Judicial Instructions of the Public Prosecution.
([1269] Article No. 856 of the Judicial Instructions of the Public Prosecution.

action in cases in which the Public Prosecution requests that, or to take in other cases what it deems appropriate disciplinary measures in light of what the Public Prosecution has concluded regarding the accusation, along with any related facts that the Administrative Prosecution may have. [1270]

The Public Prosecution is responsible for conducting investigations with employees of the courts and the Public Prosecution, as well as taking disciplinary trial procedures with regard to them in accordance with the provisions of the Judicial Authority Law No. 46 of 1972. These employees may not be referred to the Administrative Prosecution for investigation or trial in accordance with Law No. 117 of 1958 reorganizing the Administrative Prosecution and disciplinary trials. .[1271]

Fourth: The order that there is no reason to file the lawsuit

A- Issuing an order that there is no basis for filing the lawsuit

If the investigating judge finds that the incident is not punishable by law, or that the evidence against the accused is insufficient, he shall issue an order that there is no basis for filing a case, and release the detained accused if he is not detained for another reason. The order must include the reasons on which it is based. The matter shall be announced to the plaintiff in civil rights, and if he has died, the announcement shall be made to all his heirs at his place of residence. .[1272]

The orders issued by the investigating judge in accordance with Articles 154, 155, 156 and 158 shall include the name, surname, age, place of birth, residence and occupation of the accused, a statement of the incident attributed to him and its legal description. [1273]

It is permissible to infer that there is no reason to file a lawsuit implicitly from the investigator's conduct in the investigation in a manner that establishes, by virtue of rational necessity, the issuance of this order. An example of this is that the investigator, after investigating the theft incident, concludes by accusing the victim of making a false report, which establishes that he has decided that there is no reason to file a lawsuit for the crime of theft. .[1274]

It is established that although the principle is that the order issued by the Public Prosecutor to cancel the order stating that there is no reason to file a criminal case, such as the issuance of

([1270] Article No. 857 of the Judicial Instructions of the Public Prosecution.
([1271] Article No. 858 of the Judicial Instructions of the Public Prosecution.
([1272] Article No. 154 of the Code of Criminal Procedure.
([1273] Article No. 160 of the Code of Criminal Procedure.
([1274] Article No. 863 of the Judicial Instructions of the Public Prosecution.

that order, must be explicit and recorded in writing, it may be inferred by inference from another action or procedure if that action or procedure inevitably and by way of rational necessity results in that order. [1275]

If the Public Prosecution finds, after investigation, that there is no reason to file a lawsuit, it shall issue an order to that effect and order the release of the detained accused, unless he is detained for another reason. The order that there is no reason to file a lawsuit in felonies shall only be issued by the Public Prosecutor or his representative. The order must include the reasons on which it is based. The order shall be announced to the claimant of civil rights, and if he has died, the announcement shall be made to all his heirs at his place of residence. [1276]

If the Public Prosecution finds, after investigation, that there is no reason to file a criminal case, it shall issue an order stating that there is no reason to file a criminal case, not an order to close the case, and shall order the immediate release of the accused unless he is another detainee, provided that the order stating that there is no reason to file a criminal case in felony cases is issued by the Attorney General of the General Prosecution or his representative. [1277]

It is not permissible to report that there is no basis for filing a criminal case before clarifying all the facts of the case, investigating the case, and investigating every piece of evidence contained therein. If the investigator sees that the evidence is surrounded by doubt, it is not sound judgment to stop at this point and order that there is no basis for filing a criminal case due to insufficient evidence. Rather, he must continue the investigation within reasonable limits to arrive at what confirms or refutes this evidence, because the accused has the right to the prosecution to continue the investigation until the truth appears completely and the accusation does not remain attached to him without justification. [1278]

The order that there is no basis for filing a criminal case is considered a judicial ruling, and therefore it must be written and explicit. The member of the Public Prosecution must be careful in his reasoning and include in it a sufficient statement of the facts of the case in a clear manner, and address the evidence present in it and respond to it in a valid logic, and undertake the legal investigation to the extent necessary in the case. [1279]

([1275]) Appeal No. 10247 of 63 Q issued in the session of November 1, 1995 and published in the first part of the Technical Office Book No. 46, page No. 1134, rule No. 170, Appeal No. 11655 of 83 Q issued in the session of November 11, 2015 and published in the Technical Office Book No. 66, page No. 768, rule No. 115.

([1276]) Article No. 209 of the Code of Criminal Procedure.

([1277]) Article No. 859 of the Judicial Instructions of the Public Prosecution.

([1278]) Article No. 860 of the Judicial Instructions of the Public Prosecution.

([1279]) Article No. 861 of the Judicial Instructions of the Public Prosecution.

The order of no grounds must be clear in its meaning. It is not sufficient for there to be a memorandum written in the opinion of the investigating public prosecutor in the case papers, in which he proposes to the public prosecutor to issue an order that there is no ground for filing the case. [1280]

If the prosecution decides to request an accused, then ends its investigation without questioning him, this does not imply that there is no reason to file a criminal case against him.[1281]

An order stating that there is no basis for filing a lawsuit based on objective reasons, such as that the crime did not occur at all or that it is not in itself one of the acts punishable by law, acquires, like acquittal rulings, binding force with respect to all contributors to it. However, it is not so if it is based on circumstances specific to one of the contributors without the others, as it does not acquire binding force except with respect to the person in whose favor it was issued. [1282]

The criterion for determining the nature of the order issued by the Public Prosecution is the reality of the situation, not what the Public Prosecution mentions or describes about it. If the Public Prosecution has carried out an investigation procedure - regardless of the reason for carrying it out - then the order issued by it is a decision that there is no reason to file a lawsuit. [1283]

The Court of Cassation ruled that the preservation order issued by the Public Prosecution after it has carried out any of the investigation procedures is, in accordance with the law, an order that there is no reason to file a criminal case: [**It is established that the preservation order issued by the Public Prosecution after it has carried out any of the investigation procedures is, in accordance with the law, an order that there is no reason to file a criminal case. It has, upon its issuance, its conclusive force that prevents a return to the investigation except in the cases and in the manner decided by the legislator in Article 210 and the following of the Code of Criminal Procedure, even if the order comes in the form of administrative preservation, whether it is reasoned or not**.] [1284]

The order of no grounds must be recorded in writing and explicit in its very wording that the person who issued it did not find in the case papers a ground to proceed with it. Therefore, indicating an investigation by attaching it to other preserved complaint papers, as long as there

([1280] Article No. 862 of the Judicial Instructions of the Public Prosecution.
([1281] Article 864 of the Judicial Instructions of the Public Prosecution.
([1282] Article No. 865 of the Judicial Instructions of the Public Prosecution.
([1283] Article No. 866 of the Judicial Instructions of the Public Prosecution.
([1284] Appeal No. 1218 of 58 Q issued in the session of December 5, 1988 and published in the second part of the Technical Office Book No. 39, page No. 1216, rule No. 188.

is nothing in it that indicates with certainty the meaning of the opinion being settled on not filing the case, it cannot be considered an order of no grounds for the crime it deals with. [1285]

The order issued stating that there is no reason to file a criminal case is issued for the same reasons for which the preservation order is issued, as stated in Article 805 of these instructions. [1286]

The order issued by the Public Prosecution after an investigation it conducted itself into a complaint to administratively file it, whatever its reason, is an order that there is no reason to file a criminal case, issued by it in its capacity as an investigating authority, even if it comes in the form of an order to file it administratively. It is an order that has its own authority that prevents returning to the criminal case as long as the matter is in effect. This does not change if the Public Prosecution relied in the order issued by it on the unimportance of the incident in question or the sufficiency of the administrative penalty, as long as the order was issued after a judicial investigation that it conducted in accordance with its authority granted to it by law, which makes it have the force of res judicata and prevents returning to the criminal case after its issuance unless new evidence appears or the Public Prosecutor cancels it within the three-month period following its issuance.

The civil rights claimant may appeal such an order in accordance with the provisions of the law. [1287]

Issuing a ruling on the subject of the lawsuit after issuing an order stating that there is no reason to file a criminal lawsuit and not cancelling it invalidates the ruling even if the court that issued the ruling was not aware of the issuance of the order. [1288]

The order issued by the investigating authority stating that there is no reason to file a criminal case has its own conclusive force that prevents the return to the case as long as it is in effect and has not been legally repealed. It is not permissible, while it remains in effect, to file a case for the same incident for which the order was issued, because it has, within the scope of its temporary conclusive force for judgments, the force of res judicata. [1289]

([1285] Article No. 867 of the Judicial Instructions of the Public Prosecution.
([1286] Article No. 868 of the Judicial Instructions of the Public Prosecution.
([1287] Article No. 875 of the Judicial Instructions of the Public Prosecution.
([1288] Appeal No. 23607 of 67 Q issued in the session of June 1, 1999 and published in the first part of Technical Office Book No. 50, page No. 348, rule No. 82.
([1289]) Appeal No. 10247 of 63 Q issued in the session of November 1, 1995 and published in the first part of the Technical Office Book No. 46, page No. 1134, rule No. 170, Appeal No. 69 of 48 Q issued in the session of May 15, 1978 and published in the first part of the Technical Office Book No. 29, page No. 520, rule No. 96.

The order that there is no ground for filing a criminal case has the force of a final judgment, which prohibits the filing of a case after its issuance. This prohibition applies to all parties to the criminal case: the Public Prosecution - unless new evidence appears -; the civil rights claimant; and the victim who did not claim civil rights: [**The legislator indicated in what was stipulated in Articles 76, 162, 193, 197, 199, 210, 213, and 232/3 of the Code of Criminal Procedure that the principle is that the order that there is no grounds for filing a case has the force of a final judgment, which prohibits the filing of a criminal case after its issuance. This principle is a general ruling in which the legislator's address extends to all parties to the criminal case. The prohibition on filing the aforementioned case after the issuance of the aforementioned order applies to the Public Prosecution - unless new evidence appears - and to the civil rights claimant, and it necessarily extends, and a fortiori, to the victim who did not claim civil rights. Although the legislator was satisfied with referring in the previous articles to the plaintiff in civil rights without the victim who was excluded from them by the amendment introduced to the Code of Criminal Procedure by Law No. 107 of 1962, this is only on the basis that when the victim refrains from claiming civil rights during the investigation, he does not have the status of a party to the lawsuit and is consequently denied the right of the plaintiff in civil rights to appeal the order issued that there is no reason to file it. Therefore, he shall not be entitled to initiate the lawsuit from the date on which that order is issued by the investigating authority. To say otherwise would be to waste the force of the order by a party that has not taken on a position in the lawsuit, which is not consistent with what the legislator intended to achieve by surrounding the order so that there is no reason - once it has become final - with a fence of force that guarantees respect for it and prevents the same dispute from being brought before the judiciary again. And since it is clear from the minutes of the appeal trial sessions that the appellant's lawyer argued in the first session of that trial that the case was inadmissible because a decision had been previously issued that there was no basis for it and that that decision had not been appealed, then the appealed judgment, in ruling to convict the appellant without examining the availability of the conditions for the defense in reality, is flawed in a way that invalidates it and requires its annulment and referral.**] [1290]

Also, if an order is issued that there is no reason to file a criminal case against the accused, the previous order to arrest him which was not executed shall be dropped. If the judicial police

([1290] Appeal No. 1855 of year 36 Q issued in the session of January 30, 1967 and published in the first part of Technical Office Book No. 18, page No. 117, rule No. 21.

officer executes it despite its dropping, this shall result in the arrest being invalid, as well as the evidence derived from it and the testimony of the person who conducted it being invalid. .[1291]

The Public Prosecution's prior delegation of the forensic laboratory to inspect the scene of the accident, and the registration of the papers in the administrative complaints register and their preservation, is in fact an order that there is no reason to file a criminal case. Consequently, the receipt of the investigation report as new evidence after the issuance of an order that there is no reason from the Public Prosecution allows it to return to the investigation and file a criminal case. The Court of Cassation ruled that: **[Since Article 213 of the Code of Criminal Procedure has been stipulated that the order issued by the Public Prosecution that there is no reason to file a case in accordance with Article 209 - i.e. after the investigation conducted by it or by one of the judicial police officers based on its delegation - does not prevent returning to the investigation if new evidence appears in accordance with Article 197 before the end of the period set for the expiration of the criminal case, and the substance of the new evidence is that the investigator meets it for the first time after the report in the case that there is no reason to file it. Whereas this was the case, and it was established from the records of the contested judgment that after the papers were registered in the administrative complaints register and an order was issued to close them on 11/11/1995 - which in reality was an order stating that there was no reason to file a criminal case because the Public Prosecution had previously issued a delegation to the forensic laboratory to inspect the scene of the accident on 10/1/1995 and to conduct investigations into the incident, and on 8/1/1996 an investigation report was prepared into the incident, which resulted in what constituted new evidence that had not been presented to the Public Prosecution when it issued its previous order. This allows her to return to the investigation and gives her the right to file a criminal lawsuit against the perpetrator based on what appears from the evidence that was found before her. Thus, what the appellant raises in this regard becomes unsound.]** [1292]

The law did not specify a particular level of investigation required to consider an order issued to preserve the merits of a case, nor does it mandate that the order be reasoned in order for it to be binding. Therefore, a ruling that demands a certain amount of investigation to consider such

([1291] Appeal No. 23607 of 67 Q issued in the session of June 1, 1999 and published in the first part of Technical Office Book No. 50, page No. 348, rule No. 82.

([1292] Appeal No. 16701 of 66 Q issued in the session of July 9, 1998 and published in the first part of Technical Office Book No. 49, page No. 867, rule No. 112.

an order, and requires it to be reasoned in order for it to have binding effect, without the court examining the truth of the matter, is considered a legal error. [1293]

The preservation order issued by the Public Prosecution after it has carried out any of the investigation procedures is, in the correct law, an order that there is no reason to file a criminal case, and once it is issued, it has conclusive force against all the opponents in the case. The requirement of this conclusive force is that it is forbidden to return to the case except in the cases and in the manner decided by the legislator by law, even if the order comes in the form of administrative preservation and whether it is reasoned or not. [1294]

The plea of having previously issued an order stating that there is no reason to file a criminal case is a matter of public order and may be raised for the first time before the Court of Cassation. The Court of Cassation ruled that: [**It is clear from the texts of Articles 197, 209, and 213 of the Code of Criminal Procedure that as long as the order stating that there is no reason to file a criminal case has been issued by one of the investigating authorities, it is not permissible, while it remains in effect due to the absence of new evidence, to file a case for the same incident in which it was issued, because it has within the scope of its temporary authority what judgments have of the force of res judicata. This makes the plea of having previously issued one of the most special characteristics of public order, and it is permissible to raise it for the first time before the Court of Cassation, provided that the records of the judgment bear witness to its validity or are a candidate for that**] [1295]

B- Re-investigation after issuing an order that there is no grounds for filing a lawsuit

An order issued by the investigating judge stating that there are no grounds to file a lawsuit prevents the investigation from being resumed unless new evidence appears before the expiry of the period set for the lapse of the criminal lawsuit. New evidence includes witness testimony, reports and other papers that were not presented to the investigating judge, and which would strengthen evidence that was found insufficient or increase the clarification leading to the emergence of the truth. It is not permissible to return to the investigation except upon the request of the Public Prosecution. [1296]

The order issued by the Public Prosecution stating that there is no reason to file a lawsuit in accordance with Article 209 does not prevent returning to the investigation if new evidence

([1293] Appeal No. 2505 of 54 Q issued in the session of December 4, 1984 and published in the first part of Technical Office Book No. 35, page No. 863, rule No. 192.
([1294] Appeal No. 13476 of 64 Q issued in the session of March 5, 2000 (unpublished).
([1295] Appeal No. 1275 of year 39 Q issued in the session of October 13, 1969 and published in the third part of the Technical Office Book No. 20, page No. 1056, rule No. 208.
([1296] Article No. 197 of the Code of Criminal Procedure.

appears in accordance with Article 197. The order issued by the Public Prosecution stating that there is no reason to file a lawsuit after a judicial investigation does not prevent returning to the investigation and filing a criminal lawsuit if new evidence appears before the end of the period set for the expiry of the criminal lawsuit, or if it was issued by a member of the Public Prosecution and was cancelled by the Public Prosecutor or the first competent public attorney within three months from the date of its issuance, or if it was cancelled by the misdemeanor Appeals Court convened in the consultation chamber (in misdemeanors) or by the Criminal Court convened in the consultation chamber (in felonies) based on an appeal by the civil plaintiff. [1297]

The new evidence that ends the temporary validity of the order that there is no reason to file a lawsuit is that which the investigator encounters for the first time after the report in the lawsuit that there is no reason to file it, so the evidence that was previously presented before the issuance of the order is not valid, and it must be capable of strengthening the evidence that was previously available, and the investigator must not seek it in the same lawsuit back to the investigation. [1298]

The new evidence is that the investigator meets it for the first time after the report in the case that there is no reason to file it, and the result of that is that the order that there is no reason to file the criminal case is a temporary evidence that does not prevent returning to the criminal case if new evidence appears, and the criminal case does not expire as a final judgment, but rather the course of it is temporarily suspended until it lapses with the passage of time or new evidence appears that justifies returning to it before it lapses with the passage of time, and this is what distinguishes it from the evidence of the matter that has been finally ruled upon, which prevents returning to the case no matter what evidence appears in it. [1299]

The new evidence must be such as to strengthen evidence that was found insufficient or to increase the clarification leading to the emergence of the truth. [1300]

([1297] Article No. 213 of the Code of Criminal Procedure, Article No. 869 of the Judicial Instructions of the Public Prosecution.

([1298] Article No. 870 of the Judicial Instructions of the Public Prosecution.

([1299]) Appeal No. 6868 of 82 Q issued in the session of November 1, 2018 (unpublished), Appeal No. 9851 of 79 Q issued in the session of January 11, 2016 and published in Technical Office Book No. 67, page No. 105, Rule No. 10, Appeal No. 4858 of 82 Q issued in the session of January 1, 2013 (unpublished), Appeal No. 6176 of 58 Q issued in the session of January 10, 1989 and published in the first part of Technical Office Book No. 40, page No. 33, Rule No. 4, Appeal No. 706 of 43 Q issued in the session of December 16, 1973 and published in the third part of Technical Office Book No. 24, page No. 1223, Rule No. 248, Appeal No. 2674 of 32 Q issued in the session of December 3 For the year 1962 and published in the third part of the Technical Office Book No. 13, page No. 815, rule No. 197.

([1300] Appeal No. 7322 of 80 Q issued in the session of December 4, 2011 and published in Technical Office Book No. 62, Page No. 420, Rule No. 70.

The Court of Cassation ruled that: [**Article 213 of the Code of Criminal Procedure stipulates that the order issued by the Public Prosecution that there is no reason to file a lawsuit in accordance with Article 209, i.e. after the investigation conducted by it or by one of the judicial police officers upon its delegation - does not prevent returning to the investigation if new evidence appears in accordance with Article 197 before the end of the period set for the expiration of the criminal lawsuit. The Court of Cassation has determined the criterion for considering evidence new as the investigator's encounter with it for the first time after the report in the lawsuit that there is no reason to file it. New evidence includes witness testimony, reports, and other papers that were not presented to the investigator and are intended to strengthen evidence that was found insufficient or increase the clarification leading to the emergence of the truth. The investigating authority is the one that estimates that new evidence has this effect and that it permits the cancellation of the order that there is no reason to file a lawsuit, under the supervision of the court of subject matter, which must verify the emergence of new evidence following the order that there is no reason to file a lawsuit. The ruling issued in the subject matter of the lawsuit after its preservation must prove the availability of new evidence in order for the Court of Cassation to exercise its right to monitor, and it must inevitably Clarifying the new evidence that has emerged to determine whether the facts that were considered as new evidence are consistent with the text of the law or not . Failure to clarify this will result in the ruling being invalidated.]** [1301]

The accused's use of one of the receipts obtained from the crime of coercion to sign documents proving a debt that was the subject of a lawsuit in which an order was issued that there was no basis for filing the lawsuit, by filing a misdemeanor against the victim, and it was proven by a forensic report that his signature on it was written against his will, is new evidence that was not presented to the Public Prosecution when it issued the order that there was no basis for filing the criminal lawsuit. [1302]

C- Cancellation of the order that there is no basis for filing the lawsuit

The Public Prosecutor may cancel the aforementioned order within a period of three months following its issuance, unless a decision has been issued by the Criminal Court or the

([1301] Appeal No. 7322 of 80 Q issued in the session of December 4, 2011 and published in Technical Office Book No. 62, Page No. 420, Rule No. 70.

([1302] Appeal No. 5110 of 80 Q issued in the session of November 1, 2010 and published in Technical Office Book No. 61, Page No. 596, Rule No. 73.

Misdemeanor Court of Appeal, sitting in the deliberation chamber, as the case may be, to reject the appeal filed against this order. .[1303]

The Judicial Authority Law stipulates that each Court of Appeal must have a public attorney who, under the supervision of the Public Prosecutor, shall possess all the rights and powers granted to them by law. .[1304]

The consequence of this is that the Public Prosecutor of the Court of Appeal has, within his local jurisdiction, all the powers of the Public Prosecutor, whether those he exercises by virtue of his position or by virtue of his capacity. The heads of the Appeal Prosecution who work with the First Public Prosecutor have what the latter has in carrying out the work of the prosecution in accusing and investigating all crimes that occur within the jurisdiction of the Court of Appeal. This jurisdiction is based on a delegation from the First Public Prosecutor or his representative, a delegation that has become, in the manner established in practice, a presumption such that it cannot be denied except by an explicit prohibition. .[1305]

The Public Prosecutor or the First Attorney General of the Appeal Prosecution shall have the right to cancel the order for lack of justification within three months following its issuance. His decision in this regard is a judicial decision, which does not depend on following specific procedures. Rather, he may issue it on his own initiative or based on a grievance from the interested party. The condition for issuing the cancellation decision is that the order has not been appealed before the Misdemeanor Appeal Court convened in the advisory chamber and the appeal filed against it has been rejected. [1306]

If the order is issued by the Public Prosecutor stating that there is no basis, he may not revoke it, nor may he cancel the order issued by the First Public Prosecutor. However, if the order is issued by the Public Prosecutor, the Public Prosecutor may cancel it. [1307]

It follows that if the approval of the first public prosecutor of the appeals prosecution is issued to administratively file the papers after investigating them by the public prosecution, then he has issued an order that there is no reason to file a criminal case. If the victim appeals that order to the public prosecutor, and based on that appeal, the public prosecutor orders the appellant to be brought to criminal trial within the legally specified period, then the meaning of that is

(1303) Article No. 211 of the Criminal Procedure Code, and see in this regard: Appeal No. 5713 of the 66th year of the Q issued in the session of February 3, 2005 (unpublished).
(1304 Article No. 25 of the Judicial Authority Law.
(1305 Appeal No. 2804 of 57 Q issued in the session of November 1, 1987 and published in the second part of the Technical Office Book No. 38, page No. 913, rule No. 168.
(1306 Article No. 871 of the Judicial Instructions of the Public Prosecution.
(1307 Article No. 872 of the Judicial Instructions of the Public Prosecution.

that the public prosecutor cancels the public prosecutor's order: [**Since Article 211 of the Criminal Procedures Law allows the public prosecutor to cancel the order that there is no reason to file a criminal case within the three months following its issuance, unless a decision has been issued by the criminal court or the misdemeanor appeals court convened in a consultative chamber, as the case may be, to reject the appeal filed against this order, and although the principle is that the order issued by the public prosecutor to cancel the order that there is no reason to file a criminal case, such as issuing that order, must be explicit and recorded in writing, it may be inferred by inference from another action or procedure if that action or procedure inevitably and rationally results in that order, which is the case in the case The proposed Whereas that was the case, and it was clear from reviewing the details that the court ordered to be attached in order to investigate this aspect of the appeal that the Public Prosecution, after investigating the incident, sent the papers to the First Attorney General of the Appeal Prosecution..., who agreed to archive the papers administratively, and based on the victim's grievance to the Attorney General, the latter ordered on the date... By submitting the appellant to criminal trial, which clearly indicates that the Public Prosecutor has cancelled the order issued by the first attorney of the Appeal Prosecution that there is no reason to file a criminal case... Within the legally specified period - contrary to what the appellant claims - which makes the objection to the ruling in this regard invalid.**] [1308]

The Court of Cassation also ruled that: [**Since the legislator had empowered the Public Prosecutor alone - in accordance with Article 211 of the Code of Criminal Procedure - the right to cancel the order stating that there was no basis for filing a criminal case issued by members of the Public Prosecution within the three months following its issuance, and it was evident from reviewing the papers that the Public Prosecutor of the East Cairo General Prosecution had ordered, after a judicial investigation conducted by the Public Prosecution pursuant to its authority granted to it by law, to administratively archive the papers on 12/5/1993, the authorization of the competent Public Prosecutor on 12/7/1993 to archive the papers in the administrative complaints register was nothing more than an implementation of the aforementioned order of the Public Prosecutor. Since that was the case, and since the Public Prosecutor had not issued his decision to cancel that order on 3/7/1994, he would have issued it after the deadline stipulated in the aforementioned Article 211, and the order stating that there is no basis for filing** a **criminal lawsuit is still in effect and has not been cancelled.**] .[1309]

([1308] Appeal No. 11655 of 83 Q issued in the session of November 11, 2015 and published in Technical Office Book No. 66, Page No. 768, Rule No. 115.

([1309] Appeal No. 11135 of 65 Q issued in the session of February 28, 2005 and published in Technical Office Book No. 56, Page No. 166, Rule No. 23.

Whereas the legislator has empowered the Public Prosecutor alone - in accordance with Article 211 of the Code of Criminal Procedure - the right to cancel the order stating that there is no reason to file a criminal case issued by members of the Public Prosecution within the three-month period following its issuance, which means that the cancellation of this order by the head of the prosecution is without legal basis, and the order issued therein stating that there is no reason to file a criminal case is still valid and has not been cancelled. [1310]

If a decision is issued by the Public Prosecutor or the First Public Prosecutor at the Court of Appeal to cancel an order issued stating that there are no grounds for filing a lawsuit, the grounds mentioned in that decision must be investigated by another member of the General Prosecution, who is delegated by the Public Prosecutor for that purpose. The Public Prosecutor of the General Prosecution must also deal with the case himself thereafter, unless the cancellation decision has delegated him to send it to the office of the Public Prosecutor or the First Public Prosecutor at the Court of Appeal to deal with it. [1311]

The order that there is no reason to file a lawsuit due to lack of importance differs from a final judicial ruling. The order that there is no reason to file a criminal lawsuit due to lack of importance, in addition to not acquitting the accused - unlike a final judicial ruling - does not have absolute force. Rather, the Public Prosecutor can cancel it within the period of three months following its issuance, unless a decision has been issued by the Criminal Court or the Misdemeanor Appeals Court, convened in the advisory chamber, as the case may be, to reject the appeal filed against this order. The issuance of this order does not prevent the Public Prosecution from returning to the investigation if new evidence appears before the expiration of the period set for the expiration of the criminal lawsuit. [1312]

The Court of Cassation ruled that: [**Since the court had rejected the plea of inadmissibility of examining the case due to a previous order issued stating that there was no reason to file a criminal case by a public prosecutor who did not have the authority, based on its cancellation by a senior public prosecutor within the legally prescribed period, and it was clear from the official copies received by fax that the representative of the Shubra El-Kheima General Prosecution had issued his decision on 7/26/2013 to exclude the suspicion of a felony and to archive the papers administratively, which is in reality an order stating that there was no**

([1310]) Appeal No. 40620 of 59 Q issued in the session of June 10, 1996 and published in the first part of the Technical Office Book No. 47, page No. 742, rule No. 108, Appeal No. 3062 of 55 Q issued in the session of March 31, 1987 and published in the first part of the Technical Office Book No. 38, page No. 517, rule No. 85.

([1311] Article No. 873 of the Judicial Instructions of the Public Prosecution.

([1312]) The ruling of the Supreme Constitutional Court in 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.

reason to file a criminal case; Because it was issued after an investigation conducted by the Public Prosecution based on a complaint from the victim's father, since the criterion for determining the nature of the order issued to dismiss the complaint is the reality of the situation, not what the Public Prosecution stated or the description given to it. After that, on 8/31/2013, a decision was issued by the First Attorney General of the Tanta Appeal Prosecution to cancel that order. Since the Judicial Authority Law included the provision that every Court of Appeal shall have a public attorney who has, under the supervision of the Public Prosecutor, all his rights and powers stipulated in the laws, then the decision of the First Attorney General of the Tanta Appeal Prosecution issued on 8/31/2013 to cancel the order is correct in law, in accordance with the text of Article 211 of the Criminal Procedure Code.] [1313]

The cancellation of the order stating that there is no basis for filing a lawsuit must be issued by the competent authority within the three months following its issuance. If it is issued after the three-month period, the Public Prosecutor's cancellation of the decision issued stating that there is no basis for filing a criminal lawsuit has no effect, and it remains valid and produces its effects: [**Whereas the text of Article 211 of the Criminal Procedure Code states that the Public Prosecutor may cancel the aforementioned order within the three-month period following its issuance unless a decision has been issued by the Criminal Court or the Misdemeanor Appeals Court, convened in a consultative chamber, as the case may be, to reject the appeal filed against this order, and it was evident from reviewing the details that the court ordered to be attached to investigate the appeal that the Public Prosecution, after investigating the incident, sent the papers to the Attorney General of the Public Prosecution of ... requesting approval to exclude the suspicion of a public money crime and cancel the felony number and archive the papers administratively, so the latter issued a letter dated 7/17/1985 addressed to the Attorney General of the Public Prosecution of .... Including the order to exclude the suspicion of a public money crime from the papers, cancel the felony number, and archive the papers administratively, which reveals that on 7/17/1985 an order, was issued by the Attorney General of the Public Prosecution Office of... That there is no reason to file a criminal lawsuit regarding the misdemeanor in question - contrary to what the contested judgment went to - the Public Prosecutor ordered its cancellation on 10/23/1985 - exceeding the period specified in the law, and what the contested judgment went to regarding calculating this period from the date of issuance of the order of the partial prosecution representative on 8/3/1985 to close the papers is not correct - as this decision is nothing more than an implementation of the decision of the Public Prosecutor issued on 7/17/1985 revealing it - and therefore the**

([1313] Appeal No. 15382 of 85 Q issued in the session of March 19, 2016 (unpublished).

beginning of the three-month period stipulated for the Public Prosecutor must be calculated from the date of issuance of the first order, since that is the case, there is no effect of the Public Prosecutor's cancellation of the decision issued that there is no reason to file a criminal lawsuit in the case in question, which remains in effect and produces its effects, and since the contested judgment contradicted this view, it would have erred in applying the correct law, which necessitates its annulment and ruling that the criminal lawsuit before the appellants is inadmissible] [1314]

D- Announcing the preservation orders and the decision that there is no basis for filing a criminal case to the civil plaintiff.

The civil plaintiff must be notified of the preservation order or of the order that there is no reason to file a criminal case. In the event of his death, the notification shall be made to his heirs as a whole at his place of residence. He may appeal the order that there is no reason to file a criminal case unless it is issued in a charge directed at a public employee or worker or one of the law enforcement officers 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. The appeal shall be before the Criminal Court or the Misdemeanor Appeals Court - as the case may be - and the court's decision issued in this regard shall be final. .[1315]

The order must be announced that there is no reason to file a criminal case against the plaintiff in civil rights. If he has died, the announcement shall be made to his heirs in full at his place of residence. The announcement shall be made by a bailiff or by one of the public authority personnel. A copy of the announcement shall be delivered to the person concerned and the original shall be deposited in the case file after signing it with receipt. .[1316]

E- Comparison between the order to preserve and the order that there is no basis for filing a lawsuit

First: In terms of definition:

Order to save:

An administrative order to dispose of evidence issued by the Public Prosecution to temporarily disregard filing a lawsuit before the court of subject matter before taking any of the investigation procedures, and it has no binding force.

([1314] Appeal No. 1218 of 58 Q issued in the session of December 5, 1988 and published in the second part of the Technical Office Book No. 39, page No. 1216, rule No. 188.
([1315] Article No. 531 of the Judicial Instructions of the Public Prosecution.
([1316] Article No. 873 bis of the Judicial Instructions of the Public Prosecution.

Order that there is no basis for filing a lawsuit:

A judicial order to dispose of the investigation, issued by one of the investigative authorities (such as the Public Prosecution or the investigating judge), serves to dismiss the case before the court with jurisdiction over the matter. This order can only be issued after certain investigative procedures have been carried out. It is issued based on one of the legally prescribed reasons and holds a distinct form of authority.

Second: Who has the right to issue it?

Order to save:

It is issued by the Public Prosecution alone, by any of its members, regardless of his rank, taking into account that if the incident bears the suspicion of a felony, it may only be issued by the Attorney General. Violation of this does not result in nullity, but rather administrative accountability may be imposed for it.

Order that there is no basis for filing a lawsuit:

It is issued by one of the investigating authorities (Public Prosecution - Investigating Judge). If it is issued by the Public Prosecution and the incident bears the suspicion of a felony, it may only be issued by the Attorney General or his representative; otherwise it will be void and will not produce its legal effect.

Third: In terms of the extent of commitment to its cause

Order to save:

The Public Prosecution is not bound by his reasons.

Order that there is no basis for filing a lawsuit:

The investigating authority issuing it (the Public Prosecution - the investigating judge) is obligated to provide reasons for it.

Fourth: In terms of the reasons on which it is based

Order to save:

Legal reasons:

1- The incident is not punishable because the act does not constitute a crime.

2- Availability of one of the reasons for permissibility.

3- The availability of an obstacle to liability.

4- Availability of an excuse exempting from punishment (such as the excuse of reporting the crime)

5- Expiration of the criminal case:

The criminal case expires for substantive or procedural reasons:

Objective reasons:

A- Insufficient evidence

B- The incident is not true

C. Not knowing the doer

D- Lack of importance (such as taking into account family relations between the opponents, reconciliation between them, or the triviality of the harm resulting from the crime)

Procedural reasons

A- Failure to submit a complaint, request or permission

B- Dropping the complaint after submitting it

C- Loss of the right to complain or request

Order that there is no basis for filing a lawsuit:

The legislator did not differentiate between the Public Prosecution and other investigative authorities in terms of the ability or capacity to issue an order that there is no reason to file a criminal case, but he distinguished between them in two ways:

The first aspect: In terms of the reasons on which the order of no grounds is based (which is similar to the order to file), while he made these reasons absolute with respect to the Public Prosecution, the legislator has specified them with respect to other investigative authorities for two reasons, which are:

1- Legal reason: not criminalizing the incident.

2- Objective reason: insufficient evidence.

The second aspect: A special reason for the Public Prosecution (lack of importance). The Public Prosecution alone may issue an order that there is no reason to file the lawsuit based on lack of

importance. The legislator has granted it this right based on its discretionary authority. It may assess the appropriateness of filing the lawsuit or not filing it, according to the circumstances.

Fifth: In terms of the extent of the validity of each of them:

Order to save:

The order to close the case does not give the accused a right, nor does it bind the Public Prosecution, so it may withdraw from it as long as the case has not been dismissed. The injured party is not prevented from the right to file a direct claim, and the statute of limitations is not interrupted unless it is taken against the accused.

Order that there is no basis for filing a lawsuit:

It has temporary validity that remains in effect as long as the order is in effect and has not been legally repealed. Within the scope of this validity, it has the same force as judgments in terms of res judicata, subject to two combined conditions, which are:

1- Unity of the incident:

It is not permissible to re-initiate the lawsuit regarding the same incident. This means that it is possible to initiate it regarding another incident that was not included in the order without justification.

2- Opponents Unit:

It is not permissible to re-initiate the lawsuit against the same opponents unless the incident is different. The plea that it is not permissible to initiate a criminal lawsuit because an order was previously issued stating that there is no reason to file a criminal lawsuit is a plea related to public order. It may be raised before the court at any stage of the lawsuit, and the court will rule on it of its own accord even if none of the opponents raises it. It may be raised for the first time before the Court of Cassation.

Sixth: In terms of the extent to which the appeal is permissible:

Order to save:

The law does not permit an appeal against the order to close the case, while the civil claimant may disregard it and initiate the lawsuit through direct prosecution if its conditions are met.

Order that there is no basis for filing a lawsuit:

The law allows an appeal against the order that there is no basis for filing a lawsuit.

Seventh: In terms of the extent to which it is permissible to cancel it:

Order to save:

It may be cancelled without citing specific reasons.

Order that there is no basis for filing a lawsuit:

The law sets out the following reasons for annulling an order that there is no ground for filing a lawsuit:

1- The emergence of new evidence.

2- Cancel the order to appeal it.

3- The Public Prosecutor shall cancel the order as having no basis within the three months following its issuance, unless the court before which the order is appealed has ruled to reject the appeal against it.

Fifth: End of investigation and disposition of the case

A- The accused's lawyer shall be informed of the case file.

The case file shall be sent to the clerk's office of the Court of Appeal immediately. If the defendant's lawyer requests a period of time to review it, the president of the court shall set a period of time not exceeding ten days during which the case file shall remain in the clerk's office so that he may review it without it being transferred from this office.

The opponents must notify their witnesses whose names are not included in the aforementioned list, through a bailiff, to attend the session set for examining the case, while bearing the costs of the notification and depositing the expenses of the witnesses' travel. [1317]

B- Notifying witnesses to appear before the court

The case file shall be sent to the clerk's office of the Court of Appeal immediately. If the defendant's lawyer requests a period of time to review it, the president of the court shall set a period of time not exceeding ten days during which the case file shall remain in the clerk's office so that he may review it without it being transferred from this office.

([1317] Article No. 214 bis (a) of the Code of Criminal Procedure.

The opponents must notify their witnesses whose names are not included in the aforementioned list, through a bailiff, to attend the session set for examining the case, while bearing the costs of the notification and depositing the expenses of the witnesses' travel. [1318]

2 - 11 - 2 Referring the accused to court

The initial investigation is intended to verify evidence and establish whether a specific individual is responsible for the crime. When the investigator determines that there is enough evidence to confirm both the commission of the crime and its attribution to the accused, sufficient to file a criminal case, they issue an order to refer the case to the competent court. If the offense is a felony and the prosecution decides to proceed, it cannot simply refer the case to court based on the evidence alone; it must conduct its own investigation.

When filing a lawsuit, the following principles must be taken into account:

1- If the investigator finds that the evidence against the accused is sufficient to support his conviction, he orders the filing of a criminal case. Here it is noted that while the condition for a conviction is that conviction reaches the point of certainty, it is sufficient for the case to be filed that conviction reaches the point of probable cause.

2- If the crimes covered by the investigation are multiple, the rules of jurisdiction must be referred to regarding determining the competent court:

If the crimes are inseparably linked, then if jurisdiction is limited to courts of the same degree, the case is referred to the court with local jurisdiction in one of them. [1319]

If the crimes fall within the jurisdiction of courts of different degrees, they are referred to the highest court. [1320]

If certain crimes fall under the jurisdiction of ordinary courts and others fall under the jurisdiction of exceptional or special courts, the case shall be brought before the ordinary courts unless the law specifically provides otherwise. [1321]

If the crimes are simply linked, referring all crimes to one court is optional according to the established rulings of the Court of Cassation: **[What is meant by linked crimes are those that meet the conditions stipulated in Article 32 of the Penal Code, that is, the single act is multiple crimes or several crimes occur for one purpose and are linked to each other in a way that**

([1318] Article No. 214 bis (a) of the Code of Criminal Procedure.
([1319] Article No. 214 of the Code of Criminal Procedure.
([1320] Article No. 214 of the Code of Criminal Procedure.
([1321] Article No. 214 of the Code of Criminal Procedure.

cannot be divided, and the court must consider them all as one crime and rule with the penalty prescribed for the most severe of those crimes. As for the funds of simple linkage, where the conditions of Article 32 of the Penal Code are not met, then combining the multiple lawsuits is optional for the court of subject matter, and since the principle is that assessing the linkage of crimes is within the limits of the discretionary authority of the court of subject matter.] [1322]

3- The investigator must decide on all the charges covered by the investigation. If he is silent about taking action on one of them, then the matter does not go beyond one of two meanings:

First: The criminal case on this charge is still before the investigator.

Second: He issued an implicit order stating that there was no reason to file a criminal lawsuit, and this meaning cannot be reached unless the circumstances of the lawsuit reveal this action in a way that does not allow for any other interpretation.

First: The jurisdiction to file a criminal lawsuit against a public employee, worker, or law enforcement officer.

The third paragraph of Article 214 of the Code of Criminal Procedure stipulates that: "...the provisions of the last paragraph of Article 63 shall be observed in all cases...", and the third paragraph of Article 63 stipulates that: "...with the exception of the crimes referred to in Article 123 of the Penal Code, no one other than the Public Prosecutor, the Attorney General, or the Head of the Public Prosecution may file a criminal lawsuit against a public employee, worker, or one of the law enforcement officers for a felony or misdemeanor committed by him during the performance of his duties or because of them...[1323]

([1322]) Appeal No. 32788 of 85 Q issued in the session of November 25, 2017 (unpublished), Appeal No. 1976 of 49 Q issued in the session of February 28, 1983 and published in the first part of the Technical Office Book No. 34, page No. 283, rule No. 55, Appeal No. 1309 of 45 Q issued in the session of December 21, 1975 and published in the first part of the Technical Office Book No. 26, page No. 844, rule No. 186, Appeal No. 1904 of 35 Q issued in the session of March 29, 1966 and published in the first part of the Technical Office Book No. 17, page No. 395, rule No. 78

The Court of Cassation ruled that: [If the accused was charged with two charges, namely that he beat a person and caused him injuries that led to his death and beat another person lightly, and the two incidents occurred at the same time and place and for the same reason, and the prosecution separated them and presented the felony to the referring judge, who referred it to the criminal court and the misdemeanor to the misdemeanor court, which issued a ruling on it, then this would be a mistake, since as long as the two crimes are linked to each other in this indivisible connection, since they were organized by a single criminal thought and occurred in a single psychological revolution, which does not allow for them to be subjected to more than one penalty, which is the penalty prescribed for the more serious crime, then it is necessary, when each of the two cases has not been finally decided, to work to have them decided by a single court that has the power to rule on the crime whose penalty is more severe] Appeal No. 1687 of 18 Q issued in the session of March 2, 1949 and published in the first part of the collection of legal rules No. 7, page No. 782, rule No. 827.

([1323] Articles No. 63 and 214 of the Code of Criminal Procedure.

A criminal lawsuit must be filed against a public employee, worker, or law enforcement officer for a felony or misdemeanor committed by him during the performance of his duties or because of it by the Public Prosecutor, the Attorney General, or the Head of the Public Prosecution. [1324]

This means that it is not permissible to file a direct claim against a public employee, worker, or law enforcement officer for a felony or misdemeanor committed by him during the performance of his duties or because of them, with the exception of the crimes stipulated in Article 123 of the Penal Code, which is the use by the public employee, worker, or law enforcement officer of his job authority to stop the implementation of orders issued by the government or provisions

([1324]) Appeal No. 14376 of 64 Q issued in the session of October 25, 2000 and published in Technical Office Book No. 51, page No. 667, Rule No. 132, Appeal No. 422 of 62 Q issued in the session of January 22, 1997 and published in the first part of Technical Office Book No. 48, page No. 134, Rule No. 19, Appeal No. 608 of 60 Q issued in the session of January 5, 1997 and published in the first part of Technical Office Book No. 48, page No. 19, Rule No. 2, Appeal No. 5486 of 62 Q issued in the session of February 1, 1995 and published in the first part of Technical Office Book No. 46, page No. 291, Rule No. 41, Appeal No. 3494 of 59 Q issued in the session of May 27, 1991 and published In the first part of the Technical Office Book No. 42, page No. 897, rule No. 123, appeal No. 1201 for the year 59 Q issued in the session of June 1, 1989 and published in the first part of the Technical Office Book No. 40, page No. 602, rule No. 101, appeal No. 2125 for the year 50 Q issued in the session of February 9, 1981 and published in the first part of the Technical Office Book No. 32, page No. 147, rule No. 21, appeal No. 136 for the year 47 Q issued in the session of June 6, 1977 and published in the first part of the Technical Office Book No. 28, page No. 706, rule No. 148, appeal No. 712 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. 855, rule No. 201

The Court of Cassation ruled that: [Since the legislator did not allow the civil rights plaintiff in Article 232 of the Criminal Procedures Code to initiate a criminal lawsuit with respect to crimes committed by the employee during the performance of his job or because of it, and limited the right to initiate it to the Public Prosecution, provided that the Attorney General, the Public Prosecutor, or the Head of the Prosecution Office authorizes this, as required by the third paragraph of Article 63 of the same law], Appeal No. 7268 of 63 Q issued in the session of January 15, 2003 and published in Technical Office Book No. 54, page No. 91, Rule No. 7, Appeal No. 1601 of 45 Q issued in the session of February 2, 1976 and published in the first part of Technical Office Book 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 legal right to file it, and contrary to what is stipulated in Article 63 of the Criminal Procedure Code, then the court's connection to the case in this case is legally void and it has no right to address its subject matter. If it does, its ruling and the procedures based on it will be null and void. The Court of Appeal, when the matter is brought before it, does not have the right to address the subject matter of the case, considering that the door to trial is closed to it, which is a matter of public order because it relates to the jurisdiction of the court and its connection to an essential condition necessary to initiate the criminal case and to the validity of the court's connection to the incident. In this capacity, it may be raised for the first time before the Court of Cassation, provided that its components are clear from the contested ruling or the elements of this plea were included in the papers without the need for an objective investigation. Since that was the case, and it was established from the records of the initial ruling, the reasons for which were upheld by the contested ruling, and from the attached details, that the appellant was an employee of the local unit of the city of .... And that the crime attributed to him was committed by him during and because of his job, and that the criminal case was filed against him based on the request of the partial public prosecutor without the permission of the public prosecutor, the attorney general, or the head of the prosecution, in accordance with the provisions of the third paragraph of Article 63 of the aforementioned Criminal Procedures Law, then the objection raised by the appellant for the first time before this court regarding the inadmissibility of filing the case is acceptable, and the appealed judgment, in ruling on the subject of the case, has erred in applying the law, which must be overturned and corrected by canceling the appealed judgment and rejecting the case], Appeal No. 2248 of year 62 Q issued in the session of September 18, 2001 and published in Technical Office Book No. 52, page No. 636, Rule No. 115

The Court of Cassation ruled that the judgment granting the defendant the protection stipulated in Article 63 of the Criminal Procedures Law without disclosing the title of the work he is doing is flawed by a deficiency: [Since the appealed judgment stated that the criminal case was initiated against the respondent without following the procedures stipulated in Article 63 of the Criminal Procedures Law and granted him the protection stipulated in the aforementioned article without disclosing the purpose of the work he is doing, which is not sufficient to prove that the respondent is a public employee or public worker in order for the protection stipulated in the aforementioned article to be extended to him, the appealed judgment is flawed by a deficiency that is broad enough to appeal, which prevents the Court of Cassation from monitoring the application of the law in the correct manner and issuing an opinion on what the Public Prosecution raises regarding the claim of error in applying the law, this deficiency has precedence over the grounds of appeal related to violating the law], Appeal No. 14376 of Year 64 Q issued in the session of October 25, 2000 and published in Technical Office Book No. 51, page No. 667 Rule No. 132, Appeal No. 5486 of Year 62 Q issued in the session of February 1, 1995 and published in the first part of the Technical Office Book No. 46, page No. 291, Rule No. 41.

of laws and regulations, or to delay the collection of funds and fees, or to stop the implementation of a judgment or order issued by the court or any competent authority.

Likewise, the crime of a public employee intentionally refusing to implement a ruling or order mentioned above after eight days have passed since he was notified by a bailiff, if implementing the ruling or order falls within the employee's jurisdiction, whenever these crimes occurred during the performance of his duties or because of them.

The civil rights claimant may not file a lawsuit with the court by directly ordering his opponent to appear before it if the lawsuit is directed against a public employee, worker, or law enforcement officer for a crime committed by him during or because of his job. It is clear from this that the civil plaintiff does not have the right to initiate a criminal lawsuit directly in misdemeanors and violations with regard to crimes committed by the employee or those in his position during the performance of his job or because of it, and that the legislator has limited the right to initiate a criminal lawsuit in this case to the Public Prosecution alone, provided that permission is issued by the Attorney General, the Public Prosecutor, or the Head of the Prosecution in accordance with the provisions of Article 63 of the Code of Criminal Procedure. [1325]

The wisdom behind this is that the legislator has made it obligatory to present the subject of the lawsuit before it is submitted to the judiciary to a higher authority that can, with its expertise, assess the matter and examine it with more care and caution before filing the criminal lawsuit. These considerations also apply in themselves to preventing direct prosecution against public employees for crimes committed by them during or because of the performance of their duties. .[1326]

If the wisdom of the text - as previously mentioned - is to establish special protection for employees in order to preserve their proper performance of their job duties in the most complete manner and to take into account the proper conduct of work and to prevent harm to the public interest, then it follows that this protection applies to all crimes, whether they were intentional or committed negligently. .[1327]

([1325]) Appeal No. 19524 of 59 Q issued in the session of October 12, 1993 and published in the first part of the Technical Office Book No. 44, page No. 782, rule No. 120, Appeal No. 7323 of 54 Q issued in the session of January 29, 1985 and published in the first part of the Technical Office Book No. 36, page No. 186, rule No. 27, Appeal No. 1683 of 40 Q issued in the session of March 1, 1971 and published in the first part of the Technical Office Book No. 22, page No. 178, rule No. 43.

([1326]) Appeal No. 19816 of 62 Q issued in 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 Q issued in 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.

([1327]) The Court of Cassation ruled that: [The claim that the provisions of Article 63 of the Code of Criminal Procedure do not apply to crimes of negligence is refuted by two matters: The first is the generality of the text of the article, whether by the amendment made

The restriction on filing a criminal lawsuit is only fulfilled if the felony or misdemeanor was committed by the employee during the performance of his job or because of it, such that if one of these two circumstances is not present, there is no longer any reason to adhere to that restriction. [1328]

The condition for the application of this restriction is that the felony or misdemeanor was committed by the employee, user or law enforcement officer during the performance of his job and because of it: [**Since Article 63 of the Code of Criminal Procedure stipulated in its third paragraph that "except for the crimes referred to in Article 113 of the Penal Code, no one other than the Public Prosecutor, the Attorney General or the Head of the Public Prosecution may file a criminal lawsuit against a public employee, user or law enforcement officer for a**

by Law No. 121 of 1956 when the legislator extended the protection it bestowed on public employees, workers, and law enforcement officers with respect to all crimes, including felonies, misdemeanors, and violations, or by the amendment made by Law No. 107 of 1962 when violations were excluded from the list of those crimes, since when the law expresses the intent of the legislator, there is no room for a specification that does not have the explicitness of the text to support it. The second matter - is derived from the wisdom of the text, which - as stated in the explanatory memorandum accompanying Law 121 of 1956 - is to provide special protection for employees in order to preserve their proper performance of their job duties in the most complete manner and to take into account the proper conduct of work and to prevent harm to the public interest, which does not justify limiting protection to perpetrators of intentional crimes and limiting it to those who commit them negligently], Appeal No. 1813 of Year 35 Q issued in the session of February 15, 1966 and published in the first part of the Technical Office Book No. 17, page No. 152, Rule No. 27.

([1328]) Appeal No. 16077 of 59 Q issued in the session of January 17, 1991 and published in the first part of the Technical Office Book No. 42, page No. 98, rule No. 13, Appeal No. 943 of 44 Q issued in the session of October 20, 1974 and published in the first part of the Technical Office Book No. 25, page No. 680, rule No. 146

In that ruling, the Court of Cassation ruled that: [Since the contested ruling erred in law by stating that the administrative body's undertaking of a commercial activity deprives its employees of the protection granted to them by the aforementioned Article 63, it resulted in the appellant's mere violation of the route specified for him by the entity to which he belongs, severing his connection with public office without examining whether his violation of the route occurred during work or because of it, and was nothing more than a violation of the instructions of the entity to which he belongs, or whether what the appellant committed was neither during nor because of his work, and therefore the ruling is flawed by a deficiency that requires its annulment and referral.]

It also ruled that: [It is established that the restriction on filing a criminal lawsuit in accordance with the text of Articles 63/3 and 232/3 of the Code of Criminal Procedure is only fulfilled if the felony or misdemeanor was committed by the public employee or someone in his position during the performance of his job or because of it, such that if one of these two circumstances is not available, there is no longer any room for adherence to that restriction, and that the decision on that is one of the substantive matters that the court of subject matter is independent in deciding without objection as long as its reasoning is sound and based on a correct origin in the papers. Since that was the case, and the initial ruling was upheld for its reasons by the appealed ruling after it stated that the appellant works as a police officer in Cairo and had gone with a friend of his to the headquarters of the civil plaintiff in the district of the ..... Center. Because there was a dispute between the latter regarding the possession of agricultural land, then he assaulted the civil plaintiff with insults, then the judgment presented the last two arguments raised by the appellant and rejected them by saying, "..." "There is no doubt that what is attributed to the accused did not occur during the performance of his job, and it cannot be imagined that a public employee would be accused of committing a crime of slander or defamation against another in another city a great distance from his place of work, and then it would be said that if this accusation is true, it occurred from that employee due to the performance of his job, which all leads to the conclusion that the aforementioned second plea is also out of place in fact or law, and it must therefore be rejected, which is what the court rules - and for the same reasons for rejecting this plea, the court rejects the third plea of the accused by not accepting the case for filing it without the permission of the head of the prosecution in violation of the text of Article 63 of the Code of Criminal Procedure." Since that was the case, and since what the ruling stated above was correct in law, the accusation against it of an error in applying the law is without basis] Appeal No. 5194 of year 56 Q issued in the session of November 19, 1987 and published in the second part of the Technical Office Book No. 38, page No. 1008, rule No. 183

It also ruled that: [The appellant's refusal to accept the lawsuit because it was filed by someone without the right to do so is in violation of the provisions of Article 63 of the Code of Criminal Procedure, even if it is related to public order and may be raised for the first time before the Court of Cassation. However, the condition for this is that the elements of the defence are clear from the records of the contested ruling, or that the elements of this defence are contained in the papers without the need for an objective investigation that goes beyond its function. Since it is clear from the judgment records and the attached details to investigate the grounds of the appeal that they lacked a statement of the appellant's status and that he is an employee for whom the application of Article 63 of the Criminal Procedure Code is required in filing a criminal case with respect to them, then his objection in this regard is without basis and must be rejected] Appeal No. 667 of Year 49 Q issued in the session of January 6, 1980 and published in the first part of the Technical Office Book No. 31, page No. 35, Rule No. 6.

felony or misdemeanor committed by him during the performance of his job and because of it," it indicated in its explicit words and the meaning of its concept that the restriction on filing a criminal lawsuit is only fulfilled if the felony or misdemeanor was committed by him during the performance of his job and because of it, such that if one of these two circumstances is not available, there is no longer any adherence to that restriction.] [1329]

A public employee is one who is entrusted with permanent work in the service of a public facility run by the state or one of the persons of public law by occupying a position that is part of the administrative organization of that facility. In order for workers in the service of a public facility to acquire the status of public employee, the facility must be run by the state through direct exploitation. .[1330]

([1329]) Appeal No. 13563 of 62 Q issued in the session of February 7, 2002 and published in Technical Office Book No. 53, page No. 265, Rule No. 48, Appeal No. 30909 of 59 Q issued in the session of November 4, 1997 and published in the first part of Technical Office Book No. 48, page No. 1193, Rule No. 179, Appeal No. 2814 of 56 Q issued in the session of October 9, 1986 and published in the first part of Technical Office Book No. 37, page No. 723, Rule No. 137.

([1330]) Appeal No. 14376 of 64 Q issued in the session of October 25, 2000 and published in Technical Office Book No. 51, page No. 667, Rule No. 132, Appeal No. 12898 of 64 Q issued in the session of June 14, 2000 and published in Technical Office Book No. 51, page No. 507, Rule No. 99, Appeal No. 41037 of 59 Q issued in the session of January 11, 1998 and published in the first part of Technical Office Book No. 49, page No. 79, Rule No. 10, Appeal No. 41037 of 59 Q issued in the session of January 11, 1998 and published in the first part of Technical Office Book No. 49, page No. 79, Rule No. 10, Appeal No. 30909 of 59 Q issued in 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. 608 for year 60 Q issued in the session of January 5, 1997 and published in the first part of the Technical Office Book No. 48, page No. 19, rule No. 2, appeal No. 21484 for year 59 Q issued in 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, appeal No. 8951 for year 59 Q issued in the session of March 29, 1992 and published in the first part of the Technical Office Book No. 43, page No. 344, rule No. 48, appeal No. 3494 for year 59 Q issued in the session of May 27, 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 Q issued in the session of June 1, 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 Q issued in the session of October 9, 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 Q issued in the session of January 11, 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 employees, and therefore the protection provided for employees in Article 63 of the Code of Criminal Procedure does not apply to them: [Since the contested ruling had addressed the appellant's argument that the lawsuit was inadmissible because it was filed in a manner other than that prescribed by law, and had raised it on the basis that the editor-in-chief of the newspaper is not considered a public employee under Article 63 of the Code of Criminal Procedure, and therefore the protection provided for therein does not apply to him. Whereas, and the meaning of the texts of Articles Two and Three of Law No. 151 of 1964 regarding press institutions, and Article Six of Law No. 156 of 1960 regarding the organization of the press, is that press institutions are nothing more than private institutions, and the legislator saw that their establishment of joint-stock companies necessary to carry out their activity and organize their relationship with them should be in accordance with the rules established for public institutions, and he considered them to be in the same category as these institutions with regard to the criminal liability of their managers and employees and with regard to import and export. As for matters adjacent to these issues, press institutions are considered to be private law persons, and therefore their employees are not subject in their relationship with them to the provisions of the Labor Law, and they are not considered to be in the same category as public employees except in what is indicated in Article Three of Law No. 151 of 1964 referred to - as an exception to that general principle. Since this was the case, and since the appellant is not considered a public employee under Article 63 of the Code of Criminal Procedure, the protection stipulated therein, which is only granted to public employees, does not apply to him. The contested ruling, having reached this conclusion and rejected the objection of inadmissibility of the suit with respect to the appellant, has correctly followed the law] Appeal No. 20749 of the 4th year of the Q issued in 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 the 55th year of the Q issued in 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 Criminal Procedures Law did not provide the protection stipulated therein regarding the inadmissibility of filing a criminal lawsuit except by the Public Prosecutor, the Attorney General, or the Chief Prosecutor, except with respect to public employees or users, and no one else, for crimes committed during the performance of the job or because of it, and it was established that the public employee, by occupying a position, falls within the administrative organization of that facility, and whenever the legislator saw that certain persons should be considered as public employees in a place where it included a text, such as the case in the crimes

The reason for the ban on anyone other than the Attorney General, the Public Prosecutor or the Head of the Public Prosecution is only to file a criminal case, but its investigation, seizure and conduct of its procedures is not limited to those listed in Article 63 of the Criminal Procedures Law, but rather applies to all members of the Public Prosecution other than these: [**Since the contested ruling had presented the plea of inadmissibility of the criminal case for being filed in violation of the text of Article 63/3 of the Criminal Procedures Law and raised it in its statement: "Since Article 63/3 of the Criminal Procedures Law does not permit anyone other than the Attorney General, the Public Prosecutor or the Head of the Public Prosecution to file a criminal case against a public employee, public worker or one of the law enforcement officers for a felony or misdemeanor committed by him during the performance of his duties or because of it, since the reason for the ban on anyone other than the Attorney General, the Public Prosecutor or the Head of the Public Prosecution is only to file a criminal case, but its investigation, seizure and conduct of its procedures is not limited to those listed in the article, but rather applies to all members of the Public Prosecution other than these, and therefore**

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of bribery, embezzlement of state funds, and causing, by mistake, serious harm to funds and other crimes included in Chapters Three and Four of Book Two of the Penal Code, when it stated in the fifth paragraph of Article 119 bis thereof, that what is meant by public employee in the provisions of this chapter are the heads and members of boards of directors, managers, and all employees in entities whose funds were considered public funds in accordance with the previous article, which is Article 119 of the same law, the previous paragraph of which stipulated that what is meant by public funds in the application of the provisions of the aforementioned chapter is what is All or part of it is owned by companies, associations, economic units and establishments in which one of the entities stipulated in the previous paragraphs contributes, making them considered public employees in this specific field only and not in any other field, and it does not go beyond the scope of the third paragraph of Article 63 of the Code of Criminal Procedure in what it bestows of protection on the public employee or user.

Since it is evident 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, which prohibits the filing of a criminal case against a public employee or public worker for a crime committed by him during the performance of his job or because of it, except by the Public Prosecutor, the Attorney General, or the Chief Prosecutor, does not apply to him] Appeal No. 11884 of Year 64 Q, issued in the session of March 19, 2003, and published in Technical Office Book 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 to establish it - are not considered public employees: [Since the legislator, whenever he saw that certain persons should be considered public employees in a certain place, he included a text in it, as is the case in the crimes of bribery, embezzlement of state funds, causing serious harm to funds through gross negligence, and other crimes included in Chapters Three and Four of Book Two of the Penal Code, when he added a paragraph to Article 111 of the Penal Code by Law No. 120 of 1962, which stipulated that employees of companies in which the state or a public body has a share in its money, in any capacity whatsoever, shall be considered public employees in this area only, without any other, and it does not go beyond the scope of the third paragraph in Article 63 of the Code of Criminal Procedure in what it bestowed of special protection on the public employee or worker. Since this was the case, and since 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 - which is a joint-stock company according to Article 1 of the Minister of Finance's Decision No. 65 of 1975 - then what was attributed to the appellant of her committing the crimes of false reporting and slander against the respondent by virtue of her work does not fall under the protection stipulated in the third paragraph of Article 63 of the Criminal Procedures Code, and the appellant's objection in this regard is unsound], Appeal No. 7268 of 63 Q issued in the session of January 15, 2003 and published in Technical Office Book No. 54, page No. 91, Rule No. 7

The Court of Cassation also ruled that the protection of the public employee or public worker does not apply to workers in public sector companies, Appeal No. 16243 of the 63rd year Q issued in the session of May 25, 1999 and published in the first part of the Technical Office Book No. 50, page No. 332, Rule No. 77.

It also ruled that a conscript in the armed forces is not considered a public employee or worker and the protection provided for them by law does not apply to him, Appeal No. 30909 of 59 Q issued in 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 Q issued in 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 secondment of a public employee to an investment company and the occurrence of a crime in that company results in the employee not enjoying the protection stipulated by law, Appeal No. 608 of 60 Q issued in the session of January 5, 1997 and published in the first part of the Technical Office Book No. 48, page No. 19, Rule No. 2.

the plea raised by the first and second accused in this regard is without basis and worthy of rejection." Since that was the case, and since what the ruling stated above was correct in law, then the accusation that he made an error in applying the law is without basis] [1331]

The requirement of the permission of the Public Prosecutor, the Attorney General, or the Chief Prosecutor to file a criminal case is not a restriction on the Public Prosecution to initiate and file the case, but rather it determines a functional jurisdiction for the Public Prosecutor, the Attorney General, and the Chief Prosecutor that is not established for other members of the Public Prosecution, since procedural restrictions, including permission, are procedural obstacles that are removed by entities or individuals who do not have the jurisdiction to initiate or file the case. However, if the law specifies specific members from among the members of the Public Prosecution to initiate a procedure regarding a specific type of crime, then we are dealing with functional jurisdiction and not with procedural restrictions on the freedom of the Public Prosecution. Therefore, all investigation procedures, whether they affect or do not affect the person of the accused, may be taken by any member of the Public Prosecution competent to investigate without requiring prior permission from the Public Prosecutor, the Attorney General, or the Chief Prosecutor. [1332]

If a criminal case is brought by someone who does not have the legal right to bring it - contrary to what is stipulated in Article 63 of the Code of Criminal Procedure - then the court's connection to this case will be void and it will not have the right to address its subject matter. If it does, then its ruling and the procedures based on it will be null and void. [1333]

([1331]) Appeal No. 19478 of 70 Q issued in the session of November 15, 2007 and published in Technical Office Book No. 58, page No. 700, Rule No. 133, Appeal No. 1899 of 34 Q issued in the session of April 19, 1965 and published in the second part of Technical Office Book No. 16, page No. 368, Rule No. 75.

([1332] Appeal No. 22416 of 70 Q issued in the session of February 19, 2001 and published in Technical Office Book No. 52, Page No. 292, Rule No. 45

The Court of Cassation also ruled that: [It is established that in order to file a criminal lawsuit against an employee, public worker, or one of the law enforcement officers for a crime that occurred during the performance of the job or because of it - as stipulated in Article 63/3 of the Code of Criminal Procedure - it is not required that the Public Prosecutor, the Attorney General, or the Chief Prosecutor himself initiate it, but it is sufficient for one of them to authorize the filing of the lawsuit and assign one of his assistants to implement it. Upon issuance of the permit, the Public Prosecution regains its full freedom with regard to the procedures for filing and conducting the lawsuit. And when it is clear from reviewing the attached documents that the case papers were presented to the Chief Prosecutor of Giza, who authorized the filing of the criminal case against the appellant, then there is no blame on the competent public prosecutor if he subsequently orders the determination of the session in which the case will be presented to the court and initiates the procedures for summoning the attendance himself] Appeal No. 430 of year 41 Q issued in the session of June 13, 1971 and published in the second part of the Technical Office Book No. 22, page No. 467, rule No. 114, Appeal No. 1712 of year 29 Q issued in the session of March 21, 1960 and published in the first part of the Technical Office Book No. 11, page No. 273, rule No. 54.

([1333]) Appeal No. 25005 of 66 Q issued in the session of February 6, 2006 and published in the Technical Office Book No. 57, page No. 194, rule No. 23, Appeal No. 19816 of 62 Q issued in 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. 19891 of 59 Q issued in the session of January 16, 1994 and published in the first part of the Technical Office Book No. 45, page No. 98, rule No. 13, Appeal No. 19524 of 59 Q issued in the session of October 12, 1993 and published in the first part of the Technical Office Book No. 44, page No. 782, rule No. 120, Appeal No. 1842 of 58 Q issued in the session of July 6, 1994 1989 and published in the first part of the Technical Office Book No. 40, page No. 657, rule No. 111, appeal No. 4522 for year 57 Q issued in the session of February 22, 1988 and published in the first part of the Technical Office Book No. 39, page No. 338, rule No. 47, appeal No. 3241 for year 55 Q issued in the session of March 2, 1986 and published in the

The invalidity of the ruling resulting from the filing of a criminal lawsuit against an accused who does not have the legal right to file it, and in violation of the provisions of Articles 63 and 232 of the Code of Criminal Procedure, is related to public order because it is connected to an essential condition necessary for initiating a criminal lawsuit and for the validity of the court's connection to the incident. It can be raised at any stage of the lawsuit, and the court is obligated to rule on it on its own initiative. [1334]

It also follows from this that the accusation - of a felony or misdemeanor committed by him during the performance of his duties or because of it - by the representative of the Public Prosecution against the accused in the session before the court of first instance and his failure to object to that does not correct the procedures because the lawsuit was originally sought in the courtroom by an illegal means, and the subsequent indication by the head of the prosecution to file the lawsuit does not excuse that because this subsequent permission does not correct the previous invalid procedures. [1335]

Second: Referral to the District Court

If the Public Prosecution finds in the cases of violations and misdemeanors that the lawsuit is suitable to be filed based on the evidence collected, it shall order the accused to appear directly before the competent court. .[1336]

If the Public Prosecution finds, after investigation, that the incident is a felony, misdemeanor, or contravention and that the evidence against the accused is sufficient, it shall refer the case to the competent court. This shall be done in cases of contraventions and misdemeanors by ordering the accused to appear before the partial court, unless the crime is one of the misdemeanors that occur through newspapers or other means of publication - except for

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first part of the Technical Office Book No. 37, page No. 326, rule No. 67, appeal No. 7322 for year 54 Q issued in the session of January 29, 1985 and published in the first part of the Technical Office Book No. 36, page No. 182, rule No. 26, appeal No. 7323 for year 54 Q issued in the session of January 29, 1985 and published in the first part of the Technical Office Book No. 36, page No. 186, rule No. 27, Appeal No. 1817 of 51 Q issued in the session of December 1, 1981 and published in the first part of the Technical Office Book No. 32, page No. 1009, rule No. 176, Appeal No. 58 of 46 Q issued in the session of February 6, 1977 and published in the first part of the Technical Office Book No. 28, page No. 184, rule No. 40, 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. 1190 of 42 Q issued in the session of January 7, 1973 and published in the first part of the Technical Office Book No. 24, page No. 36, rule No. 9, Appeal No. 93 of 42 Q issued in the session of March 13, 1972 and published In the first part of the Technical Office Book No. 23, page No. 384, rule No. 85, appeal No. 1683 of year 40 Q issued in the session of March 1, 1971 and published in the first part of the Technical Office Book No. 22, page No. 178, rule No. 43, appeal No. 712 of 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. 855, rule No. 201.

([1334]) Appeal No. 1947 of 35 Q issued in the session of March 15, 1966 and published in the first part of Technical Office Book No. 17, page No. 317, rule No. 62, Appeal No. 1813 of 35 Q issued in the session of February 15, 1966 and published in the first part of Technical Office Book No. 17, page No. 152, rule No. 27, Appeal No. 1863 of 34 Q issued in the session of March 1, 1965 and published in the first part of Technical Office Book No. 16, page No. 179, rule No. 39.

([1335] Appeal No. 1863 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. 179, rule No. 39.

([1336] Article No. 63 of the Code of Criminal Procedure.

misdemeanors that harm individuals - in which case the Public Prosecution shall refer it directly to the criminal court. [1337]

If the investigation results in considering the incident a violation or misdemeanor, the investigator shall refer it to the district court. However, if the crime is one of the misdemeanors that occur through newspapers or other means of publication - except for misdemeanors that harm individuals - the case shall be referred to the criminal court. Article 155 of the Criminal Procedure Code stipulates that: "If the investigating judge deems the incident a violation, he shall refer the accused to the district court and release him if he is not imprisoned for another reason." Article 156 stipulates that: "If the investigating judge deems the incident a misdemeanor, he shall refer the accused to the district court unless the crime is one of the misdemeanors that occur through newspapers or other means of publication - except for misdemeanors that harm individuals, in which case he shall refer it to the criminal court." [1338]

When the Public Prosecution issues a decision to refer the case to the District Court, it must send all papers to the court clerk's office within two days, and notify the parties to appear before the court at the nearest session and at the appointed times. [1339]

Third: Referral to the Misdemeanor Court

If the Public Prosecutor considers that the incident is in fact a misdemeanor, he shall order the accused to be referred to the District Court, unless the crime is one of the misdemeanors committed through newspapers or other means of publication - except for misdemeanors that harm individuals, in which case he shall refer it to the Criminal Court. [1340]

Taking into account that the Public Prosecutor or the Attorney General (at the Court of Appeal) has the authority to refer the case to the Misdemeanor Court to rule on it in accordance with the provisions of Article 118 bis (a) of the Penal Code in the crimes stipulated in Chapter Four of the Penal Code, which deals with crimes of embezzlement of public funds, aggression against it, and treachery, according to what it deems to be the circumstances and conditions of the crime, if the subject of the crime or the damage resulting from it does not exceed five hundred pounds in value, to rule on it - instead of the penalties prescribed for it - with a prison sentence or one or more of the measures stipulated in Article 118 bis of the Penal Code. [1341]

([1337] Article No. 214 of the Code of Criminal Procedure.
([1338] Articles Nos. 155 and 156 of the Code of Criminal Procedure.
([1339] Article No. 157 of the Criminal Procedure Code, and Article No. 651 of the Judicial Instructions of the Public Prosecution.
([1340] Article No. 156 of the Code of Criminal Procedure.
([1341] Article 118 bis of the Penal Code states that: "Without prejudice to the provisions of the previous article, in addition to the penalties prescribed for the crimes stipulated in this chapter, a ruling may be issued with all or some of the following measures:
(1) Deprivation from practicing the profession for a period not exceeding three years.

It is noted that referring this type of felony to the misdemeanor court does not prevent the incident from being considered a felony, as Article 160 bis of the Criminal Procedure Code stipulates that: The Public Prosecutor or the Attorney General may, in the cases set forth in the first paragraph of Article 118 bis (a) of the Penal Code, refer the case to the misdemeanor courts to rule on it in accordance with the provisions of the aforementioned article. [1342]

Referring some felonies to the misdemeanor court in the cases specified in the first paragraph of Article 118 bis (a) of the Penal Code, in accordance with Article 116 bis of the Criminal Procedure Code, does not change their nature from a felony to a misdemeanor, and their status as a felony remains in effect. [1343]

Fourth: Referral to the Children's Court

If the accused in a felony is a juvenile, Article 122 of the Child Law states that: "The Child Court alone shall have jurisdiction to consider the matter of a child when he is accused of a crime or is exposed 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 provisions of the previous paragraph, the jurisdiction of the Criminal Court or the Supreme State Security Court, as the case may be, is 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." [1344]

In this regard, the Supreme Constitutional Court ruled that: [**Juvenile crime has a special nature and that the precautionary measures and penalties that may be imposed on them do not aim to inflict pain as much as they seek to correct it, since their falling into the abyss of crime is**

(2) Prohibition of engaging in the economic activity in connection with which the crime occurred for a period not exceeding three years.
(3) Suspending the employee from his work without pay or with reduced pay for a period not exceeding six months.
(4) Dismissal for a period of not less than one year and not more than three years, starting from the end of the execution of the penalty or its expiration 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 No. 118 bis (a) thereof stipulates that: "The court may, in the crimes stipulated in this chapter, according to what it deems to be the circumstances and conditions of the crime, if the money subject to the crime or the damage resulting from it does not exceed five hundred pounds in value, rule in it - instead of the penalties prescribed for it - a prison sentence or one or more of the measures stipulated in the previous article.
The court must also order confiscation and restitution, if appropriate, and a fine equal to the value of the money embezzled or seized, or the benefit or profit achieved.
([1342] Article No. 160 bis of the Code of Criminal Procedure.
([1343] Appeal No. 2053 of 52 Q issued in the session of May 18, 1982 and published in the first part of Technical Office Book No. 33, page No. 633, rule No. 128.
([1344] Article No. 122 of the Child Law.

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 juvenile accused of a felony differs from that of a non-juvenile 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 juvenile 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. However, in the event that a juvenile commits a felony in which a non-juvenile contributed, Article (122/2) stipulates that the criminal court or the Supreme State Security Court has jurisdiction to adjudicate this crime, but the text places reservations represented in that the juvenile's age exceeds fifteen at the time of committing the crime, and that it is necessary to file a criminal case against the child and those who contributed to the crime from among the non-juveniles, as it requires The court must examine - before issuing its ruling - the circumstances of the child from all aspects and may seek the assistance of any experts it deems appropriate in this regard. It goes without saying that a child cannot be subjected to a penalty that the Child Law excludes from being imposed on him according to his age. There is no doubt that the proper administration of criminal justice requires in this case that the trial be held before the Criminal Court or the Supreme State Security Court due to the unity of the incident. It was not at all logical for a non-juvenile in this case to be tried before the Juvenile Court, whose procedures aim to provide social care for the juvenile in order to reform him and preserve his future. Therefore, the legal status of a juvenile who commits a felony alone differs from that of a juvenile who is over fifteen years of age and commits the felony with a non - juvenile and it is necessary to file a criminal case against them together [1345] .

The Court of Cassation also ruled that: [**The legislator has singled out the Juvenile Court, and no other, to consider the matter of the child when he is accused of all crimes, provided that he committed them alone or contributed to them as a child, whether he was the principal perpetrator or an accomplice, with the exception of felonies committed by a child who is over fifteen years of age with someone other than the child, whether he was the principal perpetrator or an accomplice, whether the jurisdiction is vested in the Criminal Court or the Supreme State Security Court, as the Juvenile Court does not have jurisdiction to try him, but**

([1345]) The ruling of the Supreme Constitutional Court in 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.

rather the jurisdiction is vested in the court competent to consider felonies in accordance with the rules of jurisdiction established by law .]1346

Fifth: 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 committed through newspapers or other means of publication .1347 (.

The investigating judge also refers 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 orders the Public Prosecution to send the papers to it immediately. The Public Prosecutor must send the papers immediately to the competent Court of Appeal to set a session to consider them .1348

The criterion in determining the type of crime is the amount of punishment that the legislator has set for it: [**The meaning of Articles 215, 216, and 382 of the Code of Criminal Procedure in particular and the policy of procedural legislation in general is that the distribution of jurisdiction between criminal courts and summary trials is based on the type of punishment that threatens the offender initially for the charge attributed to him, according to whether it is a felony, misdemeanor, or contravention. The reliance in determining the type of jurisdiction was on the legal description of the incident as the case was filed, and the criterion in determining the type of crime, as stipulated in Articles 9, 10, 11, and 12 of the Penal Code, was the amount of punishment that the legislator has set for it. The penalty prescribed for the crime of premeditated murder stipulated in Article 234 of the Penal Code was life imprisonment or aggravated imprisonment. Therefore, this crime, in accordance with the text of Article 10 of the same law, is a felony crime, which originally requires that the court competent to try the accused be the felony court. Since the Public Prosecution had brought the second appellant with the first to the felony court on charges of premeditated murder, considering that he was present with The first appellant was at the crime scene to support him, and the court concluded that he was a murderer who had committed a felony, and therefore the criminal court is the one competent to try him and not the misdemeanor court as the appellants claimed in their appeal, and the court is not to be blamed for not rejecting this argument because it is clearly invalid**])1349 (.

(1346 Appeal No. 33784 of 68 Q issued in the session of May 17, 2001 and published in Technical Office Book No. 52, Page No. 506, Rule No. 90.
(1347 Article No. 156 of the Code of Criminal Procedure, and the first paragraph of Article No. 214 of the Code of Criminal Procedure.
(1348 Article No. 158 of the Criminal Procedure Code, and Article No. 650 of the Judicial Instructions of the Public Prosecution.
(1349 Appeal No. 6637 of 82 Q issued in the session of January 5, 2013 (unpublished).

The lawsuit is filed in criminal cases by referring it from the Public Prosecutor or his representative to the Criminal Court, and the parties are notified of this matter within ten days following its issuance. This results in the lawsuit leaving the possession of the Public Prosecution and entering the possession of the Criminal Court, which alone has the right to conduct the final investigation .[1350] (

The Public Prosecutor in this text means the Public Prosecutor of the General Prosecution, in addition to the Public Prosecutor of the Appeal Prosecution, by virtue of his jurisdiction stipulated in the Judicial Authority Law, which grants him the powers of the Public Prosecutor within his jurisdiction. Article 25 of the Judicial Authority Law states that: "Every Court of Appeal shall have a Public Prosecutor who, under the supervision of the Public Prosecutor, shall have all his rights and powers stipulated in the laws . "[1351]

The Public Prosecutor of the Court of Appeal has, within his jurisdiction, all the powers of the Public Prosecutor, and the heads of the Appeal Prosecution have what the Public Prosecutor has in carrying out the work of indictment and investigation in all crimes that occur within the jurisdiction of the Court of Appeal: [**Since the Judicial Authority Law stipulates that every Court of Appeal shall have a Public Prosecutor who, under the supervision of the Public Prosecutor, has all his rights and powers stipulated in the laws (Article 25), and the consequence of this is that he has, within his local jurisdiction, all the powers of the Public Prosecutor, whether those he exercises by virtue of his position or by virtue of his capacity, and the heads of the Appeal Prosecution who work with the First Public Prosecutor have what the latter has in carrying out the work of the prosecution in indictment and investigation in all crimes that occur within the jurisdiction of the Court of Appeal, and this power is based on a delegation from the First Public Prosecutor or his representative, a delegation that has become, in the manner established in practice, a presumption such that it cannot be denied except by an explicit prohibition**])[1352]

([1350] Article No. 214 of the Code of Criminal Procedure.
The Court of Cassation ruled that: [When the criminal case was filed against the respondent for accusing him of committing the misdemeanor of manslaughter, and during the trial session before the court of first instance, the public prosecutor directed two new charges against him, namely - that he possessed without a license a loaded firearm and ammunition used in this weapon - and the case was filed against the respondent for the last two felonies by someone who does not have the legal right to file it and contrary to what is stipulated in Article 214 of the Code of Criminal Procedure amended by Law No. 113 of 1957 regarding the necessity of filing the case in felony cases by the head of the Public Prosecution or his representative, then the Misdemeanor Court should not have addressed the subject of this case and should have ruled that it is inadmissible for filing it by someone who does not have the right] Appeal No. 821 of year 33 Q issued in the session of November 18, 1963 and published in the third part of the Technical Office Book No. 14, page No. 831, Rule No. 149.
([1351] Article No. 25 of the Judicial Authority Law.
([1352] Appeal No. 2804 of 57 Q issued in the session of November 1, 1987 and published in the second part of the Technical Office Book No. 38, page No. 913, rule No. 168.

The Public Prosecution's direct investigations and the Public Prosecutor's referral of the accused to the Criminal Court are derived from the law and not from the Public Prosecutor: [**Since it is clear from the texts 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 Code that the Public Prosecution, in its capacity as a representative of society, is the only one competent to initiate criminal proceedings - except for the cases specified in the law - and it alone is entrusted with their conduct, and that the Public Prosecutor is the one who exercises these powers himself, or through one of the members of the Public Prosecution - except for the powers entrusted to the Public Prosecutor individually - in their capacity as his agents, a legal agency proven by virtue of their positions, and derived from the texts of the law, and that after the Public Prosecution was granted the authority to investigate and replaced the investigating judge for considerations determined by the legislator, each member of it works within the limits of that authority, deriving his right not from the Public Prosecutor, but from the law itself, and this is what is inferred from the texts of the law in their entirety, and that the Public Prosecutor is the one judicially competent to refer felonies to the court Felonies based on a legal basis - as shown by the text of the second paragraph of Article 214 of the Code of Criminal Procedure. Since that was the case, and since both the public prosecutor who conducted the investigation and the public attorney who referred the appellants to the criminal court - in the case subject to the present appeal - derive their jurisdiction from the law and not from the public attorney - in the manner previously stated - which is what the appealed judgment concluded, then everything raised in this regard is not based on correctness**])[1353]

The Court of Cassation also ruled that: [**It is legally established that the jurisdiction of members of the Public Prosecution Office to investigate is an original jurisdiction that they do not derive from the Public Prosecutor, but rather derive it directly from the law**.][1354]

([1353] Appeal No. 34946 of 84 Q issued in the session of May 8, 2016 and published in Technical Office Book No. 67, Page No. 495, Rule No. 57.

([1354] 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

The Court of Cassation ruled that the cancellation of the presidential decree appointing the Public Prosecutor does not entail the invalidity of his actions and the actions of the members of the Public Prosecution: [Since it is clear from the texts 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 Code that the Public Prosecution, in its capacity as a representative of society, is the only one competent to initiate criminal proceedings - except for the cases specified in the law - and it alone is entrusted with exercising them, and that the Public Prosecutor is the one who exercises these powers himself, or through one of the members of the Public Prosecution - except for the powers entrusted to the Public Prosecutor individually - in their capacity as his agents, a legal agency proven by virtue of their positions, and derived from the texts of the law, and that after the Public Prosecution was granted the authority to investigate, and replaced the investigating judge for considerations determined by the legislator, therefore, each member must work within the limits of that authority, deriving his right not from the Public Prosecutor but from the law itself. This is what is inferred from the texts of the law in their entirety, and it is what is dictated by the nature of the investigation procedures, as they are among the works Purely judicial, in which it is not conceivable that any decision be issued based on a power of attorney or representation. Rather, as is the case with judgments, the source must have issued it personally and on his own initiative. The Public Prosecutor is also the one with judicial jurisdiction to refer felonies to the

The Court of Cassation ruled that it is established that the Public Prosecutor is the agent of the social body and his jurisdiction is a general jurisdiction, including the authority to investigate and accuse, and extends over the entire territory of the Republic and all crimes that occur, whatever they may be, and he has the right to exercise his jurisdiction himself, or to delegate - except for the powers assigned to him individually - to other members of the prosecution who are legally entrusted with assisting him or exercising them on his behalf, and he has the right to assign any member of the prosecution, regardless of his position, to investigate any case or carry out any judicial action that falls within his jurisdiction, even if it does not fall within, according to the type or geographic definition, within the jurisdiction of that member: [**Since it is clear from the texts of the first paragraph of Article 1 and the first paragraph of Article 2 and Article 199 of the Criminal Procedures Law and Articles 21, 23/1, 26 and 121 of the Judicial Authority Law issued by Presidential Decree Law No. 46 of 1972 that the Public Prosecution, in its capacity as a representative of society and its representative, is the only one competent to initiate criminal proceedings and is the only one entrusted with exercising them, and that the Public Prosecutor He alone is the agent of the social body and is the original in exercising these powers. His jurisdiction in this regard is general and includes the powers of investigation and accusation and extends over the entire territory of the Republic and over all crimes that occur therein, whatever they may be. In this capacity and as the agent of the group, he may exercise his powers himself or delegate, except for the powers assigned to him individually, to other members of the prosecution who are legally entrusted with assisting him in exercising them on his behalf. He has the right to delegate members of the public prosecution who work in his office or in any prosecution, whether it is specialized in a specific type of crime or partial or total, or in one of the appeal prosecutions, to investigate any case or carry out any judicial work that falls within his jurisdiction, even if it does not fall within the jurisdiction of that member according to the type or geographic definition.**

Since the first appellant does not dispute what the contested judgment has established, the first public prosecutor of the Supreme State Security Prosecution had been assigned, along with members of that prosecution, to investigate the incident that was the subject of the current lawsuit by the Public Prosecutor, and after that the first public prosecutor prepared a

Criminal Court based on a legal basis, as is clear from the text of the second paragraph of Article 214 of the Code of Criminal Procedure. Whereas, and since both the Public Prosecution Attorney who conducted the investigation and the Attorney General who referred the appellant to the Criminal Court - in the present case - derive their jurisdiction from the law, not from the Public Prosecutor - as previously stated - which is what the appealed judgment concluded, and since the ruling to cancel the Republican Decree issued to appoint the former Public Prosecutor does not entail the invalidity of his actions and the actions of the members of the Public Prosecution, but rather those actions and procedures remain based on their original validity, and thus remain valid and enforceable, unless it is decided to cancel or amend them by the legally competent authority, then what the appellant raises in regard to the above is not accompanied by correctness], Appeal No. 11246 for the year 84 Q issued in the session of December 8, 2014 and published in the Technical Office Book No. 65, page No. 949, Rule No. 126.

referral order that he presented to the Public Prosecutor, who approved it in writing, this means that the Public Prosecutor himself was the one who issued the referral order, and therefore the contested judgment, when it concluded by rejecting the plea of invalidity of the referral order, had hit upon the correct law and there is no reason to criticize it in this regard])[1355]

Filing a lawsuit before the Criminal Court is not achieved by merely issuing or referring it by the Public Prosecutor or his representative. Rather, the accused must be notified of the referral order within ten days following its issuance.[1356]

The Court of Cassation ruled that the First Public Prosecutor is a public prosecutor in terms of jurisdiction, as he is not distinguished from him by special powers, as the position of the First Public Prosecutor became - after the issuance of Law No. 138 of 1981 - a mere job grade, and each of them exercises his powers subject to the supervision of the Public Prosecutor. In addition, by virtue of the presidential hierarchy, whoever occupies a higher grade has the direct powers granted to his subordinates in his area of jurisdiction, and there is nothing in the law that prevents someone who occupies a higher grade than that of a public prosecutor from assuming the management of any general or specialized prosecution. Accordingly, it is permissible to delegate the duties of the First Public Prosecutor to the Court of Appeal with his approval: [**Since the contested ruling had addressed the objection raised by the appellant regarding the inadmissibility of the lawsuit due to the lack of legal connection between the court and it, and rejected it by saying: "It is responded to by saying that it is clear from the texts of the first paragraph of Article 1, the first paragraph of Article 2, and Article 199 of the Criminal Procedures Law and Articles 21, 23, 26, and 121 of the Judicial Authority Law that the Public Prosecution, in its capacity as a deputy, The Public Prosecutor alone is the agent of the social body and is the original in exercising these powers. His jurisdiction in this regard is general and includes the powers of investigation and accusation and extends over the entire territory of the Republic and all crimes that occur therein, whatever they may be. In this capacity, he may exercise his powers himself or delegate - except for the powers that have been assigned to him individually - to other members of the prosecution who are legally assigned to assist him in exercising them on his behalf. He has the right to delegate any member of any prosecution office to investigate any case or carry out any judicial action that falls within his jurisdiction, even if it does not fall within the jurisdiction of that member,**

([1355] 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.
([1356] Article No. 214 of the Code of Criminal Procedure.

according to the specific or geographical definition. Since this was the case and it was evident from reviewing 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 is evident from his visa dated 4/9/2006, and after the First Attorney General prepared the referral order to present it to the Attorney General, who approved it in writing on this date, this means that the Counsellor, the Attorney General himself, is the one who issued the referral order, and the court's connection to the case was valid and legal, and the argument raised by the defendant's defense in this regard is unsound." Whereas the judgment's response to the plea was correct in law, as it is clear from the texts of the first paragraph of Article 1, the first paragraph of Article 2, and Article 199 of the Criminal Procedure Code and Articles 21, 23, first paragraph, and 26 of the Judicial Authority Law issued by Presidential Decree Law No. 46 of 1972 that the Public Prosecution, in its capacity as a representative of society, is the only one competent to initiate criminal proceedings and is the only one entrusted with exercising them, and that the Public Prosecutor alone is the agent of the social body and is the origin of exercising these powers, and his jurisdiction in this regard is general and includes the powers of investigation and accusation and extends to the entire territory of the Republic and to all crimes that occur therein, whatever they may be, and he has, in this capacity and as the agent of the community, the right to exercise his powers himself or to delegate - except for the powers entrusted to him individually - to other members of the Public Prosecution who are legally entrusted with assisting him in exercising 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 appeal prosecutions to investigate any case or conduct any judicial work that falls within his jurisdiction, even if it does not fall within the jurisdiction of that member due to the specific type or geographic limitation, in addition to the fact that the first public prosecutor is a public prosecutor in terms of jurisdiction, as he is not distinguished from him by special powers, as the position of the first public prosecutor became - after the issuance of Law No. 138 of 1981 - a mere jo rank, and each of them exercises his powers subject to the supervision of the Public Prosecutor. In addition, by virtue of the presidential hierarchy, whoever occupies a higher grade directly possesses the powers granted to his subordinates in his area of jurisdiction, and there is nothing in the law that prevents someone who occupies a higher rank than the rank of public prosecutor from assuming the management of any general or specialized prosecution. The legislator took this view into account in the amendment contained in Law No. 142 of 2006 to Article 119 of the Judicial Authority Law, allowing the President of the Court

of Appeal to be delegated to carry out the work of the first public prosecutor with his approval, and the aforementioned defense of the appellant is nothing more than a legal defense that is clearly invalid and did not need To reply **to** [it1357]

If the referral order is issued and not notified to the accused, the case remains 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 texts of the first paragraph of Article 1, the first paragraph of Article 2, Article 199, and the second paragraph of Article 214 of the Code of Criminal Procedure that the Public Prosecution, in its capacity as a representative of society, is the only one competent to initiate criminal proceedings, except in the cases specified in the law, which it alone is entrusted with exercising, and that the Public Prosecutor is the one who exercises these powers himself, or through one of the members of the Public Prosecution, except for the powers entrusted to the Public Prosecutor individually, in their capacity as his legal representatives by virtue of their positions and derived from the texts of the law, and that after the Public Prosecution was granted the authority to investigate and replaced the investigating judge for considerations determined by the legislator, each member of it works within the limits of that authority, deriving it not from the Public Prosecutor but from the law itself, and this is what is inferred from the texts of the law in their entirety, and the Public Prosecutor is the one judicially competent to refer felonies to the Criminal Court based on a legal basis, as is clear from the text of the second paragraph of Article 214 of the Code of Criminal Procedure. Since that was the case, and since the Public Prosecution Attorney who conducted the investigation and the Attorney General who referred the appellants to the Criminal Court in the case under appeal at hand derive their jurisdiction from the law and not from the Attorney General in the manner previously stated, which is what the appealed judgment concluded, then everything raised in this regard is not based on correctness**] [)1358]

The referral order issued by the Public Prosecutor or his representative to the Criminal Court has a legal effect, which is that the case leaves the possession of the Public Prosecution and enters the possession of the Criminal Court. The Court may, in order to investigate evidence before it, delegate one of its members to investigate it, but it does not have the right to delegate the Public Prosecution to investigate because its jurisdiction has been terminated and its competence has ended.

([1357] Appeal No. 31343 of 77 Q issued in the session of February 3, 2008 and published in Technical Office Book No. 59, Page No. 100, Rule No. 17.
([1358] Appeal No. 30409 of 86 Q issued in the session of November 11, 2017 (unpublished).

When a referral order is issued by the Public Prosecutor, the Public Prosecution must notify the accused of it within ten days of its issuance. If it is not notified, the case remains in the possession of the Public Prosecution until the order is notified, and the accused is ordered to appear before the Criminal Court after the President of the competent Court of Appeal sets the session in which the case will be heard.)1359(.

The accused is also summoned to appear before the criminal court after the president of the competent court of appeal sets the session in accordance with the Judicial Authority Law. In this case, the summons to appear is merely an executive act.

Accordingly, the person accused of a felony and referred to the criminal court must be notified twice:

First: Notifying him of the referral order issued by the Public Prosecutor, which is devoid of the date of the session.

Second: Announcing the date of the session after it is 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:

First: Felonies, except for what the Public Prosecutor or the Public Attorney at the Court of Appeal deems necessary to refer to the District Court in accordance with Article 160 bis of the Procedures and Article 118 bis (a) of the Penal Code .1360

Second: Misdemeanors committed through 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, such as publishing an article insulting or slandering a public employee by attributing characteristics or facts related to the performance of his work.

Third: Misdemeanors related to felonies, whether the connection is simple or indivisible. If some crimes fall within the jurisdiction of ordinary courts and some fall within the jurisdiction of special courts, the lawsuit for all crimes shall be filed before ordinary courts unless the law provides otherwise. Paragraph 4 of Article 214 of the Code of Criminal Procedure states that: "...if the investigation includes more than one crime within the jurisdiction of courts of one degree and they are related, all of them shall be referred by one referral order to the court with jurisdiction in one of them. If the crimes fall within the jurisdiction of courts of different degrees,

(1359 Article No. 214 of the Code of Criminal Procedure.
(1360 See: Article No. 160 bis of the Code of Criminal Procedure, and Article No. 118 bis (a) of the Penal Code.

they shall be referred to the highest-level court. In cases of connection in which the lawsuit for all crimes must be filed before one court, if some crimes fall within the jurisdiction of ordinary courts and some fall within the jurisdiction of special courts, the lawsuit for all crimes shall be filed before ordinary courts unless the law provides otherwise . "[1361]

The principle is that it is established that the ordinary courts are the ones with general jurisdiction, while the State Security Courts are only exceptional courts. In cases of connection in which the lawsuit must be filed for all crimes before one court, if some crimes fall within the jurisdiction of the ordinary courts and some fall within the jurisdiction of special courts, the lawsuit for all crimes must be filed before the ordinary courts unless the law provides otherwise. The referral of some crimes punishable by general law to the State Security Courts does not deprive the ordinary courts of their jurisdiction to adjudicate these crimes .[1362]

The Court of Cassation also ruled that: [**It is established or the jurisdiction of the ordinary courts to rule on crimes that occur is an original general jurisdiction, and everything that limits its authority in this regard came by way of exception, and the exception must remain within its narrow limits and it is not correct to expand it or make an analogy with it. So when a case is brought before the ordinary courts with a criminal description that falls within its general jurisdiction, it must consider it and not relinquish its jurisdiction. Accordingly, the ordinary courts may not rule that they do not have jurisdiction unless the criminal description brought before them is outside its jurisdiction by virtue of a specific explicit text** .][1363]

The law obliges the Public Prosecutor to appoint a lawyer of his own accord for every person accused of a felony who has been referred to the Criminal Court if he has not appointed a lawyer to defend him. This is a rule related to public order .[1364] (.

(1361) Paragraph 4 of Article 214 of the Code of Criminal Procedure.

(1362) Appeal No. 17133 of 71 Q issued in the session of October 15, 2008 (unpublished), Appeal No. 25210 of 69 Q issued in the session of March 16, 2006 (unpublished), Appeal No. 21231 of 71 Q issued in the session of February 6, 2006 and published in Technical Office Book No. 57, page No. 198, Rule No. 24, Appeal No. 8744 of 66 Q issued in the session of April 22, 1998 and published in the first part of Technical Office Book No. 49, page No. 608, Rule No. 79, Appeal No. 21964 of 60 Q issued in the session of June 5, 1992 and published in the first part of Technical Office Book No. 43, page No. 604, Rule No. 90, Appeal No. 348 of 60 Q issued in the session of April 11, 1991, published in the first part of the Technical Office Book No. 42, page No. 619, rule No. 91, Appeal No. 154 for year 60 Q issued in the session of February 12, 1991, published in the first part of the Technical Office Book No. 42, page No. 303, rule No. 41, Appeal No. 29288 for year 59 Q issued in the session of October 11, 1990, published in the first part of the Technical Office Book No. 41, page No. 903, rule No. 158, Appeal No. 4209 for year 54 Q issued in the session of March 28, 1985, published in the first part of the Technical Office Book No. 36, page No. 493, rule No. 82.

(1363 Appeal No. 5061 of 79 Q issued in the session of November 22, 2010 and published in Technical Office Book No. 61, Page No. 637, Rule No. 82.

(1364) The second paragraph of Article No. 214 of the Criminal Procedure Code, and see the Court of Cassation's ruling in: Appeal No. 12393 of 85 Q issued in the session of November 14, 2015 and published in Technical Office Book No. 66, page No. 796, Rule No. 119.

Sixth: Referral to economic courts

The Court of Cassation ruled that economic misdemeanor courts are higher-level courts of first instance than the partial misdemeanor court. If the accusation brought against the accused includes two crimes subject to the jurisdiction of the economic court, this requires that it be competent to consider the other crime, regardless of the laws governing it, even if there is no connection between the crimes brought against the accused: [**Since the fourth paragraph of Article 214 of the Code of Criminal Procedure has established a general, original rule of the rules for regulating jurisdiction, the effect of which is that if the investigation includes more than one crime within the jurisdiction of courts of different degrees, they shall all be referred to the higher-level court, giving priority to the latter's jurisdiction over other courts of lower degrees. Whereas, the economic misdemeanor courts, according to their formation as stated in Law No. 120 of 2008 issued to establish them, are primary courts, and therefore they are of a higher degree than the misdemeanor court... Partial, and the accusation against the accused included the second and third crimes subject to the jurisdiction of the Economic Court and to which the Intellectual Property Rights Protection and Consumer Protection Laws apply, and therefore it is also competent, in accordance with the aforementioned Article 214, to consider the first crime, in order to give precedence to its jurisdiction over the lower court, regardless of the laws governing it and regardless of the existence of a connection between the crimes attributed to the accused or the absence of such a connection. Hence, the jurisdiction is vested in the Economic Misdemeanor Court... Then the request submitted by the Public Prosecution must be accepted and a ruling must be issued to appoint the Economic Court... A court** competent **to hear the** [case1365]

It also ruled that: [**It is established that the rules relating to the jurisdiction of criminal courts in criminal matters are all considered part of public order, given that the legislator, in his assessment of them, has based this on general considerations related to the proper administration of justice, and it is permissible to plead for violating them for the first time before the Court of Cassation or it may rule on it on its own initiative without a request, as long as this is in the interest of the convicted person, and the elements of the violation are established in the ruling. It was also established that the jurisdiction of the ordinary courts to rule on crimes that occur is an original general jurisdiction and everything that limits its authority in this regard came by way of exception, and the exception must remain within its narrow limits and it is not correct to expand it or make an analogy with it. Whenever a case is**

([1365] Appeal No. 351 of 82 Q issued in the session of July 13, 2014 and published in Technical Office Book No. 65, Page No. 588, Rule No. 71.

brought before the ordinary courts with a criminal description that falls within their general jurisdiction, they must consider it and not relinquish their jurisdiction. Accordingly, the ordinary courts may not rule that they do not have jurisdiction, unless the criminal description brought before them is outside their jurisdiction by virtue of a specific explicit text. Whereas, Law No. 120 of 2008 establishing economic courts stipulated in Article 4 that: "The primary and appellate circuits of the economic courts shall have exclusive jurisdiction, in terms of type and location, to hear criminal cases arising from the crimes stipulated in the following laws: 1-... 2-... 3-... 9- The Intellectual Property Rights Protection Law, which explicitly stated that the economic courts established in accordance with its provisions have exclusive and individual jurisdiction over the crimes mentioned in the Intellectual Property Rights Protection Law, in which no other court shares jurisdiction. The meaning of the text of the last paragraph of Article 214 of the Criminal Procedure Code was that: "In cases of connection in which the lawsuit must be filed for all crimes before one court, if some crimes fall within the jurisdiction of ordinary courts and some fall within the jurisdiction of special courts, the lawsuit for all crimes shall be filed before ordinary courts unless the law provides otherwise." Whereas, the misdemeanor of putting a counterfeit PlayStation into circulation, 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, which affects other crimes related to it that do not fall within their jurisdiction in the application of the rules of connection referred to in the last paragraph of Article 214 above and what is stated in the text of Article 4 above, and therefore the second-degree court should not have ruled to uphold the appealed judgment in what it ruled on the subject, but rather to rule to cancel it and to declare the lack of jurisdiction of the ordinary partial misdemeanor court to consider the case in application of the correct law. However, since it did not do so and ruled to uphold the appealed judgment, it would have erred in applying the law.[1366]

The Court of Cassation also ruled that the jurisdiction of the economic courts established in accordance with its provisions to consider the crimes included therein is an exclusive and individual jurisdiction that no other court shares with it. If a crime within the jurisdiction of the economic courts is brought before the regular courts, they must decide that they do not have jurisdiction to consider it. This does not change if that crime is linked to a crime with a more severe penalty that falls within their jurisdiction, because the coherence of the linked crime and its strong legal connection to the crime for which the most severe penalty is prescribed does not

([1366] Appeal No. 12307 of the 4th year of the Q issued in the session of April 27, 2014 and published in Technical Office Book No. 65, Page No. 310, Rule No. 35.

deprive it of its entity and does not prevent the court from addressing it and proving its attribution to the accused, whether proven or denied: [**Article 4 of Law No. 120 of 2008 establishing economic courts stipulates that "the primary and appellate circuits of the economic courts shall have exclusive jurisdiction, in terms of type and location, to consider criminal cases arising from the crimes stipulated in the following laws: (1)... (2)... (16) Telecommunications Regulatory Law. . ". It indicated the jurisdiction of the economic courts established under its provisions to consider the crimes included therein, with exclusive and individual jurisdiction that no other court shares with them. The last paragraph of Article 214 of the Code of Criminal Procedure stipulated that "if the investigation includes more than one crime within the jurisdiction of courts of one degree and they are related, all of them shall be referred by one referral order to the court with the jurisdiction of one of them. If the crimes are within the jurisdiction of courts of different degrees, they shall be referred to the highest-level court. In cases of connection in which the lawsuit must be filed for all crimes before one court, if some crimes are within the jurisdiction of ordinary courts and some are within the jurisdiction of special courts, the lawsuit for all crimes shall be filed before ordinary courts unless the law provides otherwise." Article 35 of the Law on Cases and Procedures for Appeal before the Court of Cassation issued by Law No. 57 of 1959, as amended, stipulated that "…the court may overturn the ruling in favor of the accused on its initiative if it becomes clear to it from what is established therein that it is based on a violation of the law or an error in its application or interpretation, or that the court that issued it was not constituted under the law and has no jurisdiction to adjudicate the case, or if a law is issued after the ruling being appealed that applies to the facts of the case." Whereas, and since it was decided or the jurisdiction of the ordinary courts to rule on crimes that occur is an original general jurisdiction, and everything that limits its authority in this regard came by way of exception, and the exception must remain within its narrow limits and it is not correct to expand it or make an analogy with it, so whenever a case is brought before the ordinary courts with a criminal description that falls within its general jurisdiction, it must consider it and not relinquish its jurisdiction, and accordingly, the ordinary courts may not rule that they do not have jurisdiction unless the criminal description brought before them falls outside their jurisdiction by virtue of a specific explicit text, and it was decided that the rules related to the jurisdiction of criminal courts in criminal matters are all considered public order in view of the fact that the legislator based its report on general considerations related to the proper conduct of social justice, and it is permissible to plead its violation for the first time before the Court of Cassation or it rules on it on its own without a request as long as this is in the interest of the convicted person and the elements of the violation are established in the ruling, and**

accordingly, if a crime from the crimes mentioned in Article Four of the aforementioned Law on the Establishment of Economic Courts is brought before the ordinary courts, it must decide that it does not have jurisdiction to consider it, and this does not change that the crime is associated with a crime with a more severe penalty that falls within In its jurisdiction, because the coherence of the linked crime and its strong legal connection to the crime for which the most severe punishment is prescribed does not deprive it of its entity and does not prevent the court from addressing it and proving its attribution to the accused, whether proven or denied. This view is supported by what is stated in the text of the last paragraph of Article 214 of the aforementioned Code of Criminal Procedure, and what is stated in the text of the aforementioned Article Four. Since this was the case, and the crime that was the subject of the first charge against the appellant was punishable under Articles 1, 11, 70, 71/1, and 3 of Law No. 10 of 2003 regarding communications, the Criminal Court should have ruled, in the application of the text of Article 4 of Law No. 120 of 2008 establishing the aforementioned economic courts, that it had no jurisdiction to hear the case. However, since it did not do so while it was not competent to hear it, it would have erred in applying the law, which necessitates the annulment of the appealed judgment and the ruling that that court had no jurisdiction to hear the case and the case was referred to the competent circuit of the Economic Court to adjudicate it .[1367]

Since the economic courts have jurisdiction, in terms of type and location, to consider criminal cases arising from crimes referred to in several laws - including crimes under the Consumer Protection Law and the Intellectual Property Rights Protection Law - if a crime of this description is brought before the regular courts, they must rule that they do not have jurisdiction to consider it. This does not change the fact that that crime is associated with a crime with a more severe penalty that falls within their jurisdiction.[1368]

The Court of Cassation also ruled that: [**It is established in the rulings of this court - the Court of Cassation - that the rules relating to jurisdiction in criminal matters are all matters of public order, given that the legislator, in his assessment of them, has based this on general considerations relating to the proper administration of justice. Since that was the case, and the records of the contested ruling had disclosed that the crimes attributed to the appellant were linked to each other in an inseparable way, which necessitated punishing him with the penalty for the most severe crime, under the text of Article 32 of the Penal Code. Whereas,**

([1367] Appeal No. 5061 of 79 Q issued in the session of November 22, 2010 and published in Technical Office Book No. 61, Page No. 637, Rule No. 82.

([1368]) Appeal No. 2533 of 80 Q issued in the session of June 14, 2010 (unpublished), Appeal No. 2105 of 80 Q issued in the session of May 10, 2010 (unpublished).

the crime of offering for sale an unknown commodity, punishable by Decision of the Minister of Supply and Internal Trade No. 113 of 1994, is the more severe crime in its penalty than the two crimes punishable by virtue of the provisions of Laws No. 82 of 2002 regarding the protection of intellectual property and Law No. 67 of 2006 regarding consumer protection, and therefore the penalty for this crime is the one that must be applied, and that crime is the jurisdiction of the ordinary courts, and therefore the jurisdiction to try the appellant is vested in the ordinary criminal judiciary, which is consistent with the rules of correct interpretation of the law, which require by virtue of rational necessity that the crime with the lesser penalty be followed by the crime with the more severe crime associated with it in the investigation, referral and trial and revolve around it, in accordance with the legal effect of the connection, considering that the penalty for the more severe crime is the one that must be applied to the two crimes according to Article 32 of the Penal Code. This is also supported by what Article 214 of the Code of Criminal Procedure stipulates in its last paragraph that in cases of connection in which the lawsuit for all crimes must be filed before one court if some of the crimes are within the jurisdiction of the regular courts, some of which are within the jurisdiction of special courts, shall be to file a lawsuit for all crimes before the regular courts unless the law provides otherwise. Since the law establishing the economic courts issued by Law No. 120 of 2008 referring some crimes to the economic courts was devoid, as was any other legislation, of any text on the economic courts' exclusive jurisdiction to adjudicate alone and not others in crimes related to those that they have jurisdiction to consider, and therefore the second-degree court had to rule to uphold the appealed judgment in what it ruled regarding the lack of jurisdiction of the Economic Misdemeanor Court in type to consider the lawsuit, in application of the correct law. However, since it did not do so and ruled to cancel it and return the lawsuit to the first-degree court to adjudicate the subject matter, and then consider the subject matter of the appeal, it would have erred in applying the law.[1369]

Seventh: Referring related crimes to the court with jurisdiction over one of them.

If the investigation includes more than one crime within the jurisdiction of courts of the same degree and they are related, they shall all be referred by one referral order to the court with the jurisdiction of one of them .[1370] (.

([1369] Appeal No. 32422 of 83 Q issued in the session of March 22, 2015 and published in Technical Office Book No. 66, Page No. 314, Rule No. 44.

([1370]) Article No. 214 of the Criminal Procedure Code, and see: Appeal No. 6176 of year 58 Q issued in the session of January 10, 1989 and published in the first part of Technical Office Book No. 40, page No. 33, Rule No. 4.

Eighth: Referring related crimes to the higher court

If the crimes fall within the jurisdiction of courts of different degrees, they are referred to the highest court .[1371] (.

The crime with the lesser penalty must follow the crime with the more severe penalty associated with it in the investigation, referral and trial. The rules of correct interpretation of the law require, according to rational necessity, that the crime with the lesser penalty follow the crime with the more severe penalty associated with it in the investigation, referral and trial and revolve around it in accordance with the legal effect of the connection, considering that the penalty for the more severe crime is the one that must be applied to both crimes in accordance with Article 32 of the Penal Code .[1372] (.

([1371]) Article No. 214 of the Code of Criminal Procedure, and the Court of Cassation ruled that: [Since the crime of rape by force is exclusively within the jurisdiction of the Criminal Court, which is the higher court than the District Court, which is competent to consider the crimes of simple assault and the use of cruelty also attributed to the appellant, the latter 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 Code of Criminal Procedure, amended by Law No. 170 of 1981, referring crimes that are within the jurisdiction of courts of different degrees to the higher court, which is a general rule that must be followed in criminal trials], Appeal No. 29741 of Year 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

The Court of Cassation ruled that: [Whereas the fourth paragraph of Article 214 of the Code of Criminal Procedure, although it stipulated a general original rule of the rules of regulating jurisdiction, which is that if the investigation includes more than one crime within the jurisdiction of courts of different degrees, they are all referred to the highest court, giving priority to the jurisdiction of the latter over other courts of lower degrees, it is also stipulated, according to the text of Article 397 of the same law, that if the accused is absent in a misdemeanor submitted to the criminal court, the procedures in force before the misdemeanor court shall be followed in his regard, and the judgment in absentia issued therein shall be subject to objection. Therefore, if the case is filed for a felony and a misdemeanor connected to it - as is the case in the current case - and an in absentia judgment is issued acquitting the accused of the felony and convicting him of the misdemeanor, only the latter remains and the rule of connection is removed from it, and the judgment in absentia issued therein shall not be dropped merely because the accused was arrested, and this judgment shall be subject to objection, and the appeal in this way shall be the only way to reconsider the case before the court, due to what is stipulated according to the text of the second paragraph of Article 454 of the Code of Criminal Procedure, that if A judgment has been issued in the subject matter of the criminal case, and it may not be reconsidered except by appealing this judgment through the methods stipulated by law. And since it is evident from reviewing the attached details that the appellant did not decide to object to the judgment in absentia issued against him for the misdemeanor of smuggling. The general rule regarding appeals was that the court would not consider an appeal that was not filed by its owner. It was not permissible for the court, when the case was brought to its court in an illegal manner, to return to consider it, and its connection to it in this case would be legally void, so it has no right to address its subject matter], Appeal No. 71 of Year 60 Q issued in the session of February 14, 1991 and published in the first part of the Technical Office Book No. 42, page No. 324, Rule No. 43.

([1372] Appeal No. 28440 of 59 Q issued in the session of May 17, 1990 and published in the first part of Technical Office Book No. 41, page No. 738, rule No. 129.

In the same ruling, the Court of Cassation ruled that: [The crime of possessing a gazelle horn knife without a license, attributed 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, and the jurisdiction to consider it is shared with the general judiciary, which has the original general jurisdiction, the partial state security courts stipulated in the Emergency Law, in accordance with the third paragraph of Article 1 of Presidential Decree No. (1) of 1981 and Article 7 of Law No. 62 of 1958 regarding the amended state of emergency, while the crime of theft on a public road with multiple and carrying a weapon, also attributed to the appellant and the other convict, is punishable by a felony, and it is not among the crimes that the Supreme State Security Emergency Courts have jurisdiction to consider, and therefore the statement that these courts have jurisdiction over it due to its connection to the crime of possessing a bladed weapon without a license, does not agree with the correct interpretation of Article 2 of Presidential Decree No. (1) of 1981. 1981, which stipulated that if a single act constitutes multiple crimes or if several crimes are committed that are linked to each other for a single purpose, and one of those crimes falls within the jurisdiction of the State Security Courts, then the Public Prosecution must submit the entire case to the State Security Courts (Emergency), and these courts shall apply Article 32 of the Penal Code. The rules of correct interpretation of the law require, by virtue of rational necessity, that the crime with the lighter penalty should follow the crime with the more severe penalty associated with it in the investigation, referral and trial and revolve around it in accordance with the legal effect of the association, considering that the penalty for the more severe crime is the one that must be applied to both crimes according to Article 32 of the Penal Code. Since the crime of theft in public with multiple and carrying a weapon mentioned above is competent to be heard by the criminal court alone, which is the highest court of the partial state security court (emergency), which shares with the

The Court of Cassation ruled that: [**What is meant by linked crimes are those that meet the conditions stipulated in Article 32 of the Penal Code, that is, that one act constitutes multiple crimes, or that several crimes occur for one purpose and are linked to each other in a way that does not accept division. The situation is the same if one of these crimes is committed by several persons, one or more of whom committed the crime that creates the case of linkage** .]1373

general judiciary the jurisdiction to hear the crime of possessing a bladed weapon without a license, also attributed to the other convicted person, then the latter crime must follow the former in the investigation, referral and jurisdiction to the trial, which is what is required by the text of Article 214 of the Criminal Procedure Code, amended by Law No. 170 of 1981, referring crimes that are within the jurisdiction of courts of different degrees, to the highest degree court, which is a general rule that must be followed in criminal trials. Since that was the case, and since the contested ruling was issued by the regular criminal court - which is competent to adjudicate it - then the objection to it If it is issued by a court that has no jurisdiction, it is baseless.

It also ruled that: [... Since the crime of assault resulting in a permanent disability mentioned above is only to be heard by the Criminal Court, which is the highest court in degree than the Partial State Security Court “Emergency” which shares with the general judiciary the jurisdiction to hear the crime of possessing a bladed weapon without a license also attributed to the respondent, the latter crime must be followed by the former in investigation, referral and jurisdiction for 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 within the jurisdiction of courts of different degrees to the highest court, which is a general rule that must be followed in criminal trials] Appeal No. 5919 of Year 56 Q issued in the session of March 16, 1987 and published in the first part of the Technical Office Book No. 38, page No. 447, Rule No. 69

In the same context, see: Appeal No. 3844 of 56 Q issued in the session of November 23, 1986 and published in the first part of Technical Office Book No. 37, page 960, rule No. 181, Appeal No. 3839 of 56 Q issued in the session of November 20, 1986 and published in the first part of Technical Office Book No. 37, page 916, rule No. 175, Appeal No. 3274 of 56 Q issued in the session of October 12, 1986 and published in the first part of Technical Office Book No. 37, page 740, rule No. 141, Appeal No. 7042 of 55 Q issued in the session of March 6, 1986 and published in the first part of Technical Office Book No. 37, page 349, rule No. 72, Appeal No. 5569 of 55 Q issued in the session of February 26, 1986, published in the first part of the Technical Office Book No. 37, page No. 316, rule No. 65, Appeal No. 1493 of year 54 Q issued in the session of November 21, 1984, published in the first part of the Technical Office Book No. 35, page No. 795, rule No. 179.

(1373) Appeal No. 61 of 88 Q issued in the session of November 25, 2018 (unpublished), Appeal No. 632 of 74 Q issued in the session of December 13, 2004 (unpublished), Appeal No. 20205 of 67 Q issued in the session of October 20, 1999 and published in the first part of the Technical Office Book No. 50, page No. 544, rule No. 123, Appeal No. 5522 of 59 Q issued in the session of December 25, 1989 and published in the first part of the Technical Office Book No. 40, page No. 1313, rule No. 213

The Court of Cassation ruled that: [It is legally established that the connection mentioned in the last paragraph of Article 214 of the Code of Criminal Procedure, which among other things results in the extension of local jurisdiction to facts that are not originally within the jurisdiction of the Public Prosecution and the local court. It means the connection according to its concept in Article 32 of the Penal Code, which is that the act is multiple crimes or several crimes are committed for one purpose and are linked to each other in an inseparable connection, which requires by virtue of rational necessity that the crime with the lighter penalty be followed by the crime with the more severe penalty associated with it in the investigation, referral and trial, considering that the penalty for the more severe crime is the one that must be applied to the two crimes according to the text of Article 32 of the Penal Code. As for the simple connection, where the conditions for applying this article are not met, it does not fall within the concept of the connection intended by the last paragraph of Article 214 of the Code of Criminal Procedure, which obviously requires that it does not result in the completion of the extension of the territorial jurisdiction of the investigating and ruling judiciary to include facts that it is originally not competent to, since that was the case, and it was proven from the minutes of the trial sessions that the defense attorney for the two appellants insisted on the lack of jurisdiction of the Public Prosecution and the Criminal Court.... The facts attributed to them, as they occurred outside their local jurisdiction, and the arrest warrant and the decision to refer them to the Criminal Court issued by the Public Prosecution Office were invalid. It was clear from the contested ruling that it relied in not accepting these pleas on the fact that the territorial jurisdiction of the investigating and ruling judiciary extends to include what occurs outside its local jurisdiction in the cases of indivisible connection and simple connection, in accordance with Article 214 of the Criminal Procedure Code. It was clear from the records of the contested ruling that the crimes attributed by the Public Prosecution to the appellants were crimes of indecent assault on a female, detaining her in circumstances not permitted by law, and physically torturing her. It added the charge of assault to the first, while the third and fourth accused were accused of assisting the appellants to flee from justice. Since this charge differs in its elements, date and place of occurrence, commission, and criminal intent from the crimes attributed to the appellants, which together do not constitute the criminal unity intended by the legislator in the ruling contained in the second paragraph of Article 32 of the Penal Code, nor moral plurality in the sense of The first paragraph of this article does not achieve the connection intended in the last paragraph of Article 214 of the Code of Criminal Procedure, and the simple connection does not fall within the meaning of the connection referred to in Article 214 of the aforementioned procedures. Given the above, the basis on which the judgment was based in rejecting the aforementioned plea is flawed by violating the law], Appeal No. 11796 for the year 72 Q issued in the session of December 16, 2002 and published in Technical Office Book No. 53, page No. 1143, Rule No. 192

Ninth: The presence of the accused is not required when the referral order is issued.

The accused don't need to be present. Therefore, if the accused is a fugitive and then appears or is arrested and an order for referral in absentia has been issued regarding him, the case will be heard in his presence, and then it will not return to the Public Prosecutor to deal with it again.

Tenth: Deciding on the matter of the accused's detention

The investigator shall decide in the order issued to file the case whether to continue the accused's pretrial detention or release him, or whether to arrest him and detain him on pretrial if he has not been arrested or has been released .[1374]

The Court of Cassation ruled that: [If a single act constitutes multiple crimes or crimes occur that are linked to each other for a single purpose - the link intended by the legislator in Article 32 of the Penal Code - and one of these crimes falls within the felonies stipulated in Article 214 of the Code of Criminal Procedure in its third paragraph added by Law No. 113 of 1957 - whatever the penalty prescribed for it in comparison to other crimes - the Public Prosecution may submit the entire case to the Criminal Court by ordering the accused to appear before it directly. Hence, what the appellants have delved into in particular regarding what they called the subsidiary crime and the subsequent crime and considering the crime of possessing a weapon as subsidiary to the crime of murder and integrated into it - what they have delved into in this regard is not consistent with the wording of the text nor the purpose of its author] 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

And it ruled that: [If a single act constitutes multiple crimes or crimes are committed that are linked together for a single purpose, and one of those crimes is a felony included in the felonies stipulated in Article 214 of the Criminal Procedure Code in its third paragraph - regardless of the penalty prescribed for it in comparison to other crimes - the Public Prosecution may submit the entire case to the Criminal Court by ordering the accused to appear before it directly. The situation is the same if one of the two crimes was committed by several persons, one or more of whom committed the crime that creates the case of connection, then the Public Prosecution may submit the entire case to the Criminal Court directly without dividing the case and referring one of the accused directly to the Criminal Court and the rest to the Indictment Chamber, due to the unity of the incident and the existence of a connection between all of them and to ensure the proper administration of justice] Appeal No. 1957 of year 30 Q issued in the session of February 6, 1961 and published in the first part of the Technical Office Book No. 12, page No. 174, Rule No. 27

On the other hand, the Court of Cassation ruled that the defendants' theft of different persons in different places and circumstances means that there is no connection: [Since the basis for applying the second paragraph of Article 32 of the Penal Code is that the crimes were organized into a single criminal plan with several complementary acts to each other such that they together form the criminal unit that the legislator meant in the ruling contained in the aforementioned paragraph, and that the principle is that assessing the existence of a connection between the crimes is within the discretionary authority of the court of subject matter, and whereas the facts, as proven by the contested ruling, indicate that the crimes committed by the appellants were committed against 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 connection between the crimes that are the subject of the current lawsuit and the other crimes that are the subject of the lawsuits referred to in the reasons for the appeal and which were considered with it in the session in which the contested ruling was issued, it also indicates that the reason in each of these lawsuits and the lawsuit in which an order was issued that there is no reason to file a criminal lawsuit is different due to the difference in the right violated On him in each of them, and therefore the objection to the judgment on the basis of an error in applying the law is invalid and the request of the defense of the appellants before this court to join this appeal to the other appeals being considered before different circuits becomes futile] Appeal No. 20205 of year 67 Q issued in the session of October 20, 1999 and published in the first part of the Technical Office Book No. 50, page No. 544, rule No. 123

The Court of Cassation ruled that the mere temporal connection between two crimes does not constitute a connection as defined in Article 32 of the Penal Code, Appeal No. 2203 of Year 32 Q issued in the session of February 11, 1963 and published in the first part of the Technical Office Book No. 14, page No. 113, Rule No. 24.

It also ruled that: [The seizure of the firearm and its ammunition in the defendant's home at the time he was found to be in possession of a narcotic drug does not make this latter crime inseparably linked to the felonies of possession of the weapon and ammunition within the meaning intended in the aforementioned Article 32, because the crime of possession of a narcotic drug is in fact a crime independent of these two felonies], Appeal No. 949 of 31 Q issued in the session of 29 January 1962 and published in the first part of the Technical Office Book No. 13, page No. 83, rule No. 22, Appeal No. 745 of 31 Q issued in the session of 30 October 1961 and published in the third part of the Technical Office Book No. 12, page No. 873, rule No. 173.

([1374] Article No. 159 of the Code of Criminal Procedure.

Eleventh: Conducting supplementary investigations after the referral order is issued

If, after the referral order is issued, something arises that requires additional investigations, the Public Prosecution must conduct them and submit the report to the court .[1375] (

Members of the Public Prosecution must complete the reports received from the police regarding the seizure of weapons, so that they include an accurate description of their condition and parts, especially the moving parts, with clarification of the numbers stamped on them and their suitability for use.)[1376]

If, after the issuance of the order to refer the case to the court, something occurs that requires conducting supplementary investigations, the Public Prosecution, as the original authority with general jurisdiction over the initial investigation, must conduct those investigations and submit the report to the court .[1377]

The result of referring the case from the investigating authority to the judges of the ruling is that the jurisdiction of the investigating authority has been removed, as the Public Prosecution may not investigate if it is related to the same accused that it has brought to trial and about the same incident. However, the Public Prosecution is not to be blamed for investigating the case if that investigation is specific to another accused or about another crime that originated from the case being heard before the court. The Court of Cassation ruled that: [**The investigation that the Public Prosecution does not have the authority to conduct is the one that is related to the same accused that it has brought to trial and about the same incident, because by referring the case from the investigating authority to the judges of the ruling, the jurisdiction of the investigating authority has been removed. However, if the action is specific to another accused who contributed to the occurrence of the incident, then the Public Prosecution, after submitting the case to the court - and indeed it is its duty - to investigate what arises during its course that it sees as a new crime, even if it originated from the case being heard. Therefore, what the appellant raises regarding the invalidity of the investigations conducted by the Public Prosecution with him after submitting the case to the court to try another defendant for the same crime, and what resulted from that in terms of the inadmissibility of relying on anything from it, is without merit,** as **long as it is proven that the appellant contributed to committing the crime** .[1378]

(1375 Article No. 214 bis of the Code of Criminal Procedure, Article No. 652 of the Judicial Instructions of the Public Prosecution.
(1376 Article No. 270 of the Judicial Instructions of the Public Prosecution.
(1377 Article No. 292 of the Judicial Instructions of the Public Prosecution.
(1378 Appeal No. 1899 of year 32 Q issued in the session of March 26, 1963 and published in the first part of Technical Office Book No. 14, page No. 235, Rule No. 48.

After submitting the case to the court, the member of the Public Prosecution must investigate any occurrences that arise during the case that he sees as a new crime, even if they originate from the case being considered. The court may add these investigations to the initial investigations so that each interested party may extract from them what he sees as in his interest .[1379]

Twelfth: Referral order

The referral order issued by the investigating judge must include the name, surname, age, place of birth, residence, and profession of the accused, as well as a statement of the incident attributed to him and its legal description .[1380]

The order issued by the Public Prosecutor or his representative to refer the case to the Criminal Court must also include the usual data in investigation disposal orders, namely the name, surname, age, place of birth, residence, and profession of the accused, a statement of the crime attributed to the accused with its constituent elements and all aggravating or mitigating circumstances of the penalty and the articles of the law to be applied. Omitting any of these data is a defect that does not invalidate it .[1381]

The legislator aimed, by requiring the data stipulated in Article 160 and the second paragraph of Article 214 of the Code of Criminal Procedure, to determine the identity of the accused and the charge brought against him.[1382]

The purpose of stating the articles of the law is to refer the accused to the crime and the punishment prescribed for it, which is something that can be reached from stating the charge. Therefore, any error or omission in mentioning these articles does not result in nullity.[1383]

The Court of Cassation ruled that: [**The contested ruling addressed the plea of invalidity of the referral order and the inadequacy of the prosecution's investigations, and responded to it in**

([1379] Article No. 293 of the Judicial Instructions of the Public Prosecution.
([1380] Article No. 160 of the Code of Criminal Procedure.
([1381] Article No. 214 of the Code of Criminal Procedure.
The Court of Cassation ruled that the referral order's omission of the accused's age and profession does not invalidate it: [The referral order issued by the referral advisor's omission of the accused's age and profession does not invalidate it, as they are not essential data in this order, since the law aimed, by requiring the data contained in Article 160 of the Criminal Procedure Code, to achieve two goals: identifying the identity of the accused against whom the order was issued and identifying the charge against him, which is achieved by mentioning the name of the accused, the incident attributed to him, and its legal description], Appeal No. 1314 of Year 53 Q issued in the session of October 3, 1983 and published in the first part of the Technical Office Book No. 34, page No. 785, Rule No. 154.
([1382] Appeal No. 4946 of 58 Q issued in the session of December 21, 1988 and published in the second part of the Technical Office Book No. 39, page No. 1353, rule No. 204.
([1383] Appeal No. 1509 of 14 Q issued in the session of January 29, 1945 and published in Technical Office Book No. 6, Part No. 1, Page No. 617, Rule No. 475.

both parts by saying: (As for the plea of invalidity of the referral decision for being based on unsound foundations, the response to that is that according to Article 214 in its second paragraph, which states that: - The lawsuit is filed in felony cases by referring it from the Public Prosecutor or his representative to the Criminal Court with an indictment report stating the crime attributed to the accused with its constituent elements and all aggravating or mitigating circumstances of the penalty and the articles of the law to be applied, and a list of the meaning of the witnesses' statements and the evidence is attached to it, and the Public Prosecutor shall appoint a lawyer of his own accord for each accused of a felony against whom an order has been issued to refer him to the Criminal Court if he has not appointed a lawyer to defend him, and the Public Prosecution shall notify the opponents of the order issued to refer him to the Criminal Court within ten days following its issuance.] Whereas this was the case and it was established to the court that the case in question was filed by the Chief Prosecutor, who was acting as the Public Prosecutor... . The East Prosecution Office of the College of... submitted to this court an indictment report in which it stated the crimes attributed to the accused with their constituent elements and all the aggravating and mitigating circumstances of the penalty as well as the articles of the law. It is attached to it a list of the meaning of the witnesses' statements and the evidence of proof and the appointment of the lawyers who have the role to defend the imprisoned accused. It notified the accused of the referral order within the legal period and attached to the case papers what indicates that. Therefore, the referral decision has been followed in accordance with the correct legal procedures and the argument raised in this regard is invalid .[1384]

According to Article 308 of the Procedures, 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 proven by the investigation or by the pleadings in the session .[1385]

The Court of Cassation ruled that: [**The legislator has specified in Articles 160 and 214/2 of the Criminal Procedure Code the data that must be included in the referral order. The legislator aimed to determine the identity of the accused and the charge against him. It was established that the referral order is an investigative act, and there is no room to subject it to the rules applicable to judgments. Therefore, the deficiency in the referral order does not invalidate**

(1384 Appeal No. 24057 of 84 Q issued in the session of February 5, 2015 (unpublished).

(1385 Article 308 of the Code of Criminal Procedure states 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 proven by the investigation or by the pleadings in the session, even if they were not mentioned in the referral order or the summons to appear.

It also has the right to correct any material error and remedy any oversight in the wording of the accusation, whether in the referral order or in the request to summon the person to appear.

The court must notify the accused of this change and give him time to prepare his defence based on the new description or amendment if he requests it."

the trial, nor does it affect the validity of its procedures. In addition, invalidating the order to refer the case to the court of subject matter after it has been contacted requires returning it to the referral stage, which is not permissible, considering that stage is nothing more than an investigative body, and the case may not be returned to it after it has entered the court's possession .]1386

The referral must be accompanied by a list of the meaning of the witnesses' statements and evidence.

The evidence - including the statements of prosecution witnesses - is based on what is stated in the investigations, not what the Public Prosecution includes in the list of prosecution witnesses .1387

Thirteenth: The obligation to attend

If the Public Prosecution finds in the cases of violations and misdemeanors that the case is suitable to be filed based on the evidence collected, it shall order the accused to appear directly before the competent court .1388

It is stipulated that the criminal case is not considered filed merely by the indication of the Public Prosecution or the authority that has the authority to refer it - to submit it to the court because the indication of that - or the order to do so - is nothing more than an administrative order to the office of the clerk of the Public Prosecution to prepare the summons paper to appear, so that if it is prepared and signed by the member of the Public Prosecution, then after its announcement under the law, all legal effects will result from it, including interruption of the statute of limitations, as it is one of the accusation procedures .1389

(1386 Appeal No. 5979 of 88 Q issued in the session of November 21, 2018 (unpublished)
It also ruled that: [It is established that the deficiency or error that mars the referral order in stating the name, surname, age, profession, and the jurisdiction of the source of that order to issue it, does not result in nullity, as long as it does not cast doubt on the person of the accused and his connection to the criminal case filed against him, because although Article 160 of the Criminal Procedure Code stipulates that the referral order shall include the name, surname, age, place of birth, and profession of the accused, it does not result in nullity due to an error in the referral order or a deficiency in it, as it is established in the rulings of this court that the referral order is final by nature, so there is no room to say that there is harm that requires its nullity, otherwise it would result in the case being returned to the investigation authority after it has been connected to the ruling, which is not permissible, and that all the accused has to do is request the court to complete what the referral order failed to state and present his defense regarding it before the court], Appeal No. 1455 of Year 57 Q issued in the session of November 11, 1987 and published in the second part of Technical Office Book No. 38 Page No. 935 Rule No. 172.

(1387) Appeal No. 7205 of 85 Q issued in the session of June 1, 2016 (unpublished), Appeal No. 2659 of 53 Q issued in the session of December 28, 1983 and published in the first part of Technical Office Book No. 34, page No. 1110, Rule No. 220.

(1388 Article No. 63 of the Code of Criminal Procedure.

(1389) Appeal No. 8325 of 60 Q issued in the session of February 8, 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 Q issued in the session of April 28, 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 Q issued in the session of April 26, 1992 and published in the first part of the Technical Office Book No. 43, page No. 465, rule No. 68.

The court's connection to the case without taking the summons procedures is void and it has no right to address its subject matter. If it does so, its ruling and the procedures based on it are void: [**It is established that if the criminal case was filed against the accused in violation of what is stipulated in Article 214 of the Code of Procedure, then the criminal court's connection to the case, in this case, is void and it has no right to address its subject matter. If it does so, its ruling and the procedures based on it are void. The appellate court, when the matter is referred to it, does not have the right to address the subject matter of the case and decide on it. Rather, it must limit its ruling to ruling on the invalidity of the appealed ruling and the inadmissibility of the case, considering that the door to trial is closed to it until the conditions imposed by the legislator for its acceptance are met. The invalidity of the ruling, for this reason, is related to public order because it is connected to an essential condition necessary for filing the criminal case and for the validity of the court's connection to the incident. It may be initiated at any stage of the case. Rather, the court must rule on it on its initiative**.][1390]

It is legally established that filing a civil lawsuit by way of direct prosecution before the criminal court results in the initiation of a criminal lawsuit accordingly, and the dispute in that lawsuit is established by properly charging the accused to appear before the court .[1391]

A- The right of detainees to a fair trial within a reasonable period of time or to be released.

Persons detained awaiting trial are entitled to have proceedings against them conducted with particular speed and urgency. Unless a detained person is brought to trial within a reasonable time, he or she is entitled to release pending trial.

The right to a trial within a reasonable time or to be released pending trial.

There are two sets of standards that require criminal proceedings to be completed within a reasonable time. The first set applies only to persons detained before trial. The second set of standards, which we deal with in Chapter 19, applies to everyone charged with a criminal offense, whether or not they are detained. Both sets are linked to the principle of the presumption of innocence and the interest of justice. Everyone detained on a criminal charge has the right to be tried within a reasonable time or to be released pending trial.[1392]

([1390] Appeal No. 15180 of 59 Q issued in the session of April 26, 1992 and published in the first part of Technical Office Book No. 43, page No. 465, Rule No. 68.

([1391] Appeal No. 1577 of 45 Q issued in the session of February 9, 1976 and published in the first part of Technical Office Book No. 27, page No. 183, rule No. 37.

([1392]) 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 Body of Principles, Section M(3)(a) of the Principles on Fair Trial in Africa, Article 25 of the American Declaration; see Article 60(4) of the Rome Statute.

Tomasi v. France (12850)/87) European Court 84 (1992); General Comment 32 of the Human Rights Committee, 61; Cagas and Others v. Philippines, Human Rights Committee, 1997/4/ 7 (2001) UN Doc. CCPR/C/73/D/788..

This right is based on the presumption of innocence and the right to liberty, which requires that detention be the exception and not last 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 to have his detention reviewed with particular speed .[1393]

Pre-trial detention shall not be used for punitive purposes.[1394]

Failure to comply with the requirement of a reasonable period of detention amounts to punishment without conviction, in contravention of the general principles of law recognized internationally .[1395]

Prolonged delays in bringing people to trial, resulting in longer periods of pre-trial detention, exacerbate already overcrowded conditions in detention facilities and may lead to conditions that violate international standards .[1396]

Release from pre-trial detention because trial proceedings have not commenced or been completed within a reasonable time does not mean that charges should be dropped. Such release is temporary until the trial begins, which must be held without undue delay.[1397]

Conditions may be imposed on such release, such as the availability of appropriate guarantees to ensure the person's appearance at the time of trial, if this appears necessary and proportionate in the particular case (such as bail, the requirement to prove regular presence or electronic tracking) .[1398]

What is meant by a reasonable period?

The reasonableness of pre-trial detention, under international law, is assessed on a case-by-case basis. (The jurisprudence of the European Court on this issue is often cited .)[1399]

([1393]) Barreto Leyva v. Venezuela, Inter-American Court (- 120 (2009) 122; Wimhoff v. Germany (2122)/64) European Court (1968) Law.5- 4.

([1394]) Principle 5 of the Principles on Persons Deprived of Liberty in the Americas.

López Álvarez v. Honduras, Inter-American Court 69 (2006); Perano Basso v. Uruguay (12.553), Inter-American Commission 84 (2009) and 141-147; Prosecutor v. Bemba (475) - 08/01 - 05/ICC-01), Single Judge of the International Criminal Court, Second Pre-Trial Chamber, Decision on the Provisional Release of Jean-Pierre Bemba Gombo (14 August 2009) 38 (2009).

([1395]) The case of “Institute for the Re-education of Juveniles” v. Uruguay, Inter-American Court, 229 (2004).

([1396]) See, for example, the concluding observations of the Committee against Torture: Bolivia, 95 (2001) UN Doc. A/56/44 (e)..

([1397]) See Wimhoff v. Germany (2122)/64, European Court, (1968) Law 5- 4.

([1398]) 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 on Fair Trial in Africa, and Rules 4 and 2(1) of the European Rules on Pre-trial Detention.

([1399]) European Court: Kalashnikov v. Russia (47095)/99), (2002) 114, Kudla v. Poland (30210)/96) Grand Chamber 110 (2000, Labita 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); Prosecutor v. Lubanga (824) - 06/01 -/04/ICC-01), Appeals Chamber of the International Criminal Court (13 February 2007) 124 (2007).

While it is the accused who must raise the issue, the burden of proof to justify the delay lies with the authorities.[1400]

The time frame for assessing the reasonableness of pre-trial detention begins when the suspect's deprivation of liberty begins and ends, at least for the purposes of complying with article 9(3) of the ICCPR and article 5(3) of the European Convention, with the issuance of the judgment by the court of first instance.[1401]

(Otherwise, the time frame for assessing whether criminal proceedings have been conducted without undue delay – under the standards applicable to every person charged with a criminal offense, whether or not in custody – extends until the final judgment, including the outcome of any stage of the appeal process.)

Each of the following factors should be taken into account when examining the reasonableness of the length of pre-trial detention :[1402] (.

* The complexity of the issue,

* Whether the authorities have shown “special care” in conducting the proceedings, taking into account the complexities and special features of the investigation.

* Whether the delays are due in large part to the behavior of the accused or the prosecution,

* The measures taken by the authorities to expedite the procedures)[1403]

Some countries have laws setting maximum periods of pre-trial detention and a person being held for a shorter period than permitted by national law before trial may be relevant to the assessment, but is not decisive in determining its reasonableness under international human rights law .[1404]

The Human Rights Committee has raised concerns about laws that set the maximum period of pretrial detention on the basis of the potential penalty for the alleged offense. Such laws focus on the potential penalty, rather than the need for legitimate interests, in determining the length of pretrial detention and the prompt bringing of the detainee before the courts. Such laws, and similar laws requiring mandatory detention pending trial, are inconsistent with the presumption

([1400]) Barroso v. Panama, Human Rights Committee, / UN Doc. CCPR.5/ 8 (1995) C/54/D/473/1991.
([1401]) Evans v. Trinidad and Tobago, Human Rights Commission,. UN Doc.2/ 6 (2003) CCPR/C/77/D/908/2000
Solmoz v. Türkiye (27561)/02, European Court (26- 23 (2007).
([1402] Principle 5 of the Principles relating to Persons Deprived of Liberty in the Americas.
([1403]) European Court: Kalashnikov v. Russia (47095)/99), (2002) 120- 114, O'Dowd v. United Kingdom (7390)/07) (70- 68 (2010).
([1404]) Mossaiev v. Russia (62936)/00), European Court 150 (2008).

of innocence, the presumption of release pending trial, and the right to trial within a reasonable time or to be released.[1405]

Factors relevant to determining the complexity of a case include the nature of the crime(s), the number of alleged offenders, and the legal issues involved.[1406] (

The complexity of the case alone does not decisively determine whether the length of pre-trial detention is reasonable.[1407] (

In assessing whether the accused has unduly delayed the proceedings, the fact that the accused has exercised his rights, including his right to remain silent, should not be taken into account.[1408] (

The length of pre-trial detention that is considered reasonable may be shorter than the delay that is considered reasonable before the start of the trial of a person who is not in detention since the aim of these standards is to limit the length of pre-trial detention .[1409] (

In the case of a man accused of a serious crime who had been detained for over 22 months before his trial began, the Human Rights Committee reiterated its previous view that, in cases involving serious charges that precluded him from obtaining a bail order from the court, the accused should be tried as expeditiously as possible. In its assessment that the accused's right to be tried within a reasonable time had been violated, the Committee took into account that he had been detained since the day of the crime, that the evidence on the facts was direct and conclusive and required little investigation by the police, and that the reasons given by the authorities to justify the delay – general problems and instability following a failed coup attempt – could not justify such a delay .[1410] (

The Human Rights Committee expressed concern about the length of pre-trial detention of persons accused of organized crime and terrorism-related offenses in France, which lasted for four years and eight months. Although detainees were allowed access to defense counsel and the practical basis for the need for continued detention was periodically reviewed by judges,

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([1405]) 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.

([1406]) Sixtus v. Trinidad and Tobago, Human Rights Committee, 2/ 7 (2001) UN Doc. CCPR/C/72/D/818/1998; Van der Tang v. Spain (92/19382), European Court (76- 72 (1995); see Lorenzi, Bernardini and Gritti v. Italy (13301)/87), European Court (17- 14 (1992).

([1407]) European Court: Asinov and Others v. Bulgaria (24760)/94, (1998) 158- 153; see Melassi v. Italy (10527)/83, (20- 15 (1987); see also Buchholz v. Germany (7759)/77, 55 (1981); Jaramillo and Others v. Colombia, Inter-American Court 156 (2008).

([1408]) Mamedova v. Russia (7064)/05), European Court 83 (2006).

([1409]) Haas v. Federal Republic of Germany (7412)/76), European Commission Report 120 (1977); Barreto Leyva v. Venezuela, Inter-American Commission (2009). 119.

([1410]) Sixtus v. Trinidad and Tobago, Human Rights Committee,. UN Doc.2/ 7 (2001) CCPR/C/72/D/818/1998.

the Committee considered that it was nevertheless difficult to reconcile this practice with the requirements of the right to a trial within a reasonable time .[1411] (

The African Commission found that the two-year delay without hearing a case or setting a date for the trial of the accused constituted a violation of Article 7(1)(d) of the African Charter .[1412]

She also explained that "States parties to the Charter (which does not allow for the suspension of this right) cannot rely on the political situation in their territory or the large number of cases before the Court to justify excessive delay" in the context of the detention of 18 journalists in Eritrea incommunicado, without trial, for more than five years .[1413]

The Inter-American Court has said that pretrial detention for a period of time equal to or greater than the sentence he faces remains, taking into account the presumption of innocence, disproportionate and ruled that pretrial detention for 16 days longer than the sentence he subsequently received (14 months in prison) exceeded reasonable limits .[1414]

Are the authorities acting in a manner that gives due diligence to the issues?

Authorities must act with "particular care" to ensure that persons detained pending trial are brought to trial within a reasonable time .[1415]

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. "[1416] .

However, the need to expedite the proceedings must be balanced against the need not to obstruct the authorities' efforts to exercise due diligence in carrying out their duties. No violation of the European Convention was found when a foreign national was detained before trial in a drug trafficking case for more than three years because the risk of his flight remained and because his continued detention for so long was not the result of any failure to exercise special care on the part of the authorities .[1417] (.

The European Court found that the authorities had violated the right to a trial within a reasonable time for a young man accused of at least 16 thefts and robberies after he had been

([1411]) Concluding observations of the Human Rights Committee: France,. UN Doc. 15 (2008) CCPR/C/FRA/CO/4.
([1412]) Annette Benyol (on behalf of Abdoulaye Mazou) v. Cameroon (39)/90), African Commission, Annual Report 10 (1996) - 1997) pp. 52-56 at p. 55.
([1413]) Article 19 v. Eritrea (275)/2003), African Commission, Annual Report.100- 97 (2007) 22.
([1414]) Barreto Leyva v. Venezuela, Inter-American Commission (123- 117 (2009).
([1415]) European Court: Stogmüller v. Austria (1602)/62), 5 (1969), O'Dowd v. United Kingdom (7390)/07) 68 - 70 (2010).
([1416]) Mamedova v. Russia (7064)/05), European Court 83 (2006).
([1417]) Van der Tang v. Spain (19382)/92, European Court (1995) 72-76.

held in pre-trial detention for two years. Although the government claimed the delay was due to the complexity of the case, the court found that almost no action had been taken for a full year – no new evidence had been collected and the suspect had only been questioned once .[1418]

The Human Rights Committee considered that a delay of approximately 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.[1419]

B- His data

The summons must state the charge and the articles of the law that stipulate the penalty. It is also assumed that the date of the session must be stated in the summons. Determining the charge and the date of the session are essential forms that result in nullity if they are violated because determining the purpose of the summons depends on these two statements. The statement of the charge must be clear and include its elements. If it is ambiguous, making it difficult to determine the crime attributed to him, then the announcement is null .[1420]

C- Its date

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 the road distance dates .[1421]

In the event of flagrante delicto, the summons to appear may be without a specific time. If the accused appears and requests a specific time to prepare his defense, the court shall authorize him to appear within the time period legally set for the crime he committed .[1422]

The law requires that the accused and witnesses be summoned to appear before the criminal court at least eight days before the session .[1423] (.

However, notifying the accused to attend the trial session before the criminal court less than the legally prescribed period of eight days before the session does not affect the validity of the notification and is not likely to invalidate it as a notification that meets the legal form. Rather, the accused may request a period to prepare his defense in order to fulfill his right within the

(1418) Asinov and Others v. Bulgaria (24760)/94, European Court (1998) 153-158.
(1419) Tisdale v. Trinidad and Tobago, Human Rights Commission,. UN Doc.3/ 9 (2002) CCPR/C/74/D/677/1992.
(1420) The second paragraph of Article No. 233 of the Code of Criminal Procedure.
(1421 Article No. 233 of the Code of Criminal Procedure.
(1422 Article No. 233 of the Code of Criminal Procedure.
(1423 Article No. 374 of the Criminal Procedure Code.

period specified by law, and the court must respond to his request, otherwise, the trial procedures will be invalid .[1424]

The dates for summoning the accused to appear before the referral stage and before the criminal court are set for the benefit of the accused himself. If he does not insist before the court of subject matter on not observing them, he is considered to have waived them because he has determined that his interest has not been affected as a result of violating them, so he is not permitted to insist later on the occurrence of this violation .[1425]

Care should be taken to study the records of the Immigration, Passports and Nationality Authority regarding crimes committed in violation of the provisions of Law No. 89 of 1960 regarding the entry, residence, and exit of foreigners in the territories of the Arab Republic of Egypt, and to submit them, and in the event that a lawsuit is filed against them, to the nearest session to avoid their escaping the implementation of the penalties imposed on them.[1426]

D- Announce it

The summons shall be served on the person to whom the summons is addressed or at his place of residence in the manner prescribed in the Code of Civil Procedure .[1427]

It is stipulated that the principle of announcing papers according to Articles 10 and 11 of the Code of Civil Procedure - to which the first paragraph of Article 234 of the Code of Criminal Procedure refers - is that they are delivered to the person himself or at his residence. If the bailiff does not find the person to be served at his residence, he must deliver the paper to his agent or servant or to whoever resides with him from among his relatives or in-laws. If he does not find anyone to whom the paper can be delivered or whoever he finds refuses to receive it, he must deliver it on the same day to the administration and notify the person to whom it is served by registered letter within twenty-four hours .[1428]

([1424]) Appeal No. 1831 of 66 Q issued in the session of February 8, 1998 and published in the first part of the Technical Office Book No. 49, page No. 220, rule No. 32, Appeal No. 23196 of 65 Q issued in 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 Q issued in 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 Q issued in 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.

([1425]) Appeal No. 1831 of 66 Q issued in the session of February 8, 1998 and published in the first part of the Technical Office Book No. 49, page No. 220, rule No. 32, Appeal No. 4403 of 63 Q issued in the session of March 19, 1995 and published in the first part of the Technical Office Book No. 46, page No. 576, rule No. 85, Appeal No. 723 of 50 Q issued in 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.

([1426] Article No. 1389 of the Judicial Instructions of the Public Prosecution.

([1427] Article No. 234 of the Code of Criminal Procedure.

([1428]) Appeal No. 1642 of 66 Q issued in the session of June 2, 2004 (unpublished), Appeal No. 1494 of 50 Q issued in the session of January 28, 1981 and published in the first part of the Technical Office Book No. 32, page No. 104, rule No. 13, Appeal No. 2052 of 48 Q issued in the session of March 4, 1979 and published in the first part of the Technical Office Book No. 30, page No. 321, rule No. 66, Appeal No. 1231 of 45 Q issued in the session of November 24, 1975 and published in the first part of the Technical Office Book No. 26, page No. 745, rule No. 164, Appeal No. 1046 of 42 Q issued in the session of April 22, 1973 and published in the second

When the notice is delivered to the police officer, the bailiff must send a registered letter to the person to whom the notice is delivered, informing him that the copy has been delivered to the administration, and must state this in detail in the original and copy of the notice, otherwise the notice will be invalid .[1429]

The refusal of the person present in the residence of the person to be notified to mention his name or the capacity that allows him to deliver the copy is considered a refusal that requires the delivery of the paper to the administrative authority because such refusal prevents the delivery of the copy to him in the manner prescribed by law .[1430]

It also ruled that: [**Article 234/1 of the Criminal Procedure Code stipulates that the summons paper shall be served on the person to whom the summons is served or at his residence in the manner prescribed in the Civil and Commercial Procedures Law. The place where the person practices his profession shall be considered his private residence in addition to his original residence to conduct any legal matter related to this profession. The appealed judgment ruled**

part of the Technical Office Book No. 24, page No. 538 Rule No. 111, Appeal No. 5 of Year 42 Q issued in the session of February 21, 1972 and published in the first part of the Technical Office Book No. 23, page No. 204, Rule No. 50

Article 10 of the Code of Civil Procedure states that: "The papers required to be served shall be delivered to the person himself or at his residence, and they may be delivered at the chosen residence in the cases specified by law."

If the bailiff does not find the person to be notified at his residence, he must deliver the paper to the person he declares to be his agent, or to be working in his service, or to be one of the spouses, relatives, or in-laws living with him.

Article 11 of the law states that: "If the bailiff does not find anyone to whom the paper can be delivered in accordance with the previous article, or if the person he finds among those mentioned therein refuses to sign the original to acknowledge receipt or to receive the copy, he must deliver it on the same day to the officer of the section, center, mayor, or sheikh of the town in whose district the addressee's residence is located, as the case may be, after signing the original to acknowledge receipt. The bailiff must, within twenty-four hours, send a registered letter to the addressee at his original or chosen residence, attaching another copy of the paper, informing him that the copy has been delivered to the administration. The bailiff must state all of this at the time in the original and two copies of the notice." The advertisement is considered to have produced its effects from the time the image is delivered 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 details that the clerk directed in... ... ... and... ... ... To the appellant's residence to notify him to attend the session... ... ... and... ... ... Which was set to consider his appeal objection, and he addressed his wife, who refused to mention her name and refused to receive it, so the announcement was delivered to the police officer, and the appellant was notified of this by registered letter in... ... ...and since this announcement is correct according to what is stipulated in Article 234/1 of the Code of Criminal Procedure and Articles 10 and 11 of the Code of Civil Procedure, the objection of invalidity to the judgment issued in the appellant's appeal objection on the grounds that it was null and void is without basis] Appeal No. 130 of Year 47 Q issued in the session of May 30, 1977 and published in the first part of the Technical Office Book No. 28, page No. 658, Rule No. 139, Appeal No. 130 of Year 42 Q issued in the session of March 26, 1972 and published in the first part of the Technical Office Book No. 23, page No. 461, Rule No. 102.

([1429] Appeal No. 460 of year 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. 738, rule No. 149

The Court of Cassation ruled that: [The Court of Cassation ruled that a copy of the notification must be delivered to the administrative authority in the event of refusal to receive it, without distinguishing between whether the person who refused was the person to be notified or another person stipulated in Article 12 of the Code of Civil Procedure. It also ruled that the original of the announced paper must include either the signature of the recipient of the copy or proof of the fact of his refusal and its reason in accordance with the fifth paragraph of Article 10 of the Code of Civil Procedure, as the failure of the addressee to sign does not necessarily indicate his refusal, but may be due to another reason, such as the bailiff's failure to perform his duty. Since the meaning of what was stated in the contested judgment was that the appellant refused to sign the original notification of the session in which the judgment was pronounced, and the minutes did not record the reason for the refusal, and he did not deliver a copy of the notification to the administration and send a registered letter to the appellant informing him that the copy had been delivered to the administration, then the appellant's notification of this session is invalid] Appeal No. 212 of year 33 Q issued in the session of March 26, 1963 and published in the first part of the Technical Office Book No. 14, page No. 260, Rule No. 53.

([1430] Appeal No. 374 of 42 Q issued in the session of May 29, 1972 and published in the second part of the Technical Office Book No. 23, page No. 810, rule No. 184.

that the criminal and civil suits were not acceptable on the basis that the summons of the third respondent to attend was invalid because he was served at his place of work. It would have erred in applying the law in a manner that prevented him from examining the subject of the two suits and the extent of the responsibility of the fourth respondent, which necessitates its annulment and the case be returned to the competent partial court to adjudicate the civil suit. [1431] .

If the search does not lead to knowing the place of residence of the accused, the notice shall be delivered to the administrative authority to which the last place of residence in Egypt belongs, and the place where the crime occurred shall be considered the last place of residence unless proven otherwise .[1432]

In cases of violations, the summons may be announced by public authority personnel, and this may also be the case in misdemeanor cases designated by the Minister of Justice by a decision issued by him after the approval of the Minister of the Interior .[1433]

The notification of detainees shall be made to the prison warden or his representative, and the notification of officers, non-commissioned officers and soldiers in the service of the army shall be made to the army administration.

The person to whom the copy must be delivered in the two cases mentioned must sign the original to that effect. If he refuses to deliver or sign, the judge of minor matters shall order him to pay a fine not exceeding five pounds. If he then persists in his refusal, the copy shall be delivered to the Public Prosecution Office at the court to which the clerk is affiliated, to deliver it to him or to the person to be notified personally .[1434] .

The notification of attendance before the court results in the parties having the right to review the case papers .[1435] .

([1431] Appeal No. 27327 of 64 Q issued in the session of May 2, 2002 (unpublished).
([1432] Article No. 234 of the Code of Criminal Procedure.
([1433] Article No. 234 of the Code of Criminal Procedure.
([1434] Article No. 235 of the Code of Criminal Procedure.
The Court of Cassation ruled that: [Since the court was satisfied with the validity of the testimonies submitted as proof of the first appellant's enlistment in the armed forces on the date of the session in which the contested ruling was issued, it was necessary for him to be notified of that session - in accordance with Article 235 of the Code of Criminal Procedure - to the Army Administration. And since it was clear from the paper announcing his appointment at the aforementioned session that the minutes stated that he had gone to ..... To notify the appellant of the session of ..... Since he did not find it and found his house closed, he announced it to the administration. This announcement is invalid, which invalidates the contested ruling because it is based on flawed procedures that would deprive the opponent of exercising his right to defense], Appeal No. 4361 of Year 56 Q issued in the session of April 27, 1987 and published in the first part of the Technical Office Book No. 38, page No. 653, Rule No. 112.
([1435] Article No. 236 of the Code of Criminal Procedure.

It is not permissible to announce judicial papers, whether criminal, civil or administrative, in foreign embassies, missions and consulates .[1436] (.

The Court of Cassation ruled that the original is that the accused is notified of the judicial papers in person. The exception is that he is notified of the judicial papers in the Public Prosecution Office instead of notifying the person to whom the notice is served or at his place of residence. This is an exception to the original, and it is required that the person requesting the notice conduct sufficient investigations that every diligent researcher is required to investigate the place of residence of the person to whom the notice is served. The investigations must be recorded in the paper so that the court can exercise its oversight. If the paper of the appellant's notice to the Public Prosecution Office is devoid of anything indicating that his place of residence was investigated before he was notified of the trial session in which the judgment in absentia was issued, then this results in the invalidity of the trial procedures and the invalidity of the judgment issued based on them .[1437] (.

([1436] Article No. 1397 of the Judicial Instructions of the Public Prosecution.

([1437]) Appeal No. 3678 of 74 Q issued in the session of March 6, 2013 and published in the Technical Office Book No. 64, page No. 322, rule No. 38, Appeal No. 4822 of 64 Q issued in the session of February 16, 2000 and published in the Technical Office Book No. 51, page No. 194, rule No. 37, Appeal No. 16529 of 63 Q issued in the session of November 15, 1999 and published in the first part of the Technical Office Book No. 50, page No. 590, rule No. 132, Appeal No. 24369 of 62 Q issued in the session of October 15, 1997 and published in the first part of the Technical Office Book No. 48, page No. 1102, rule No. 165, Appeal No. 676 of 52 Q issued in the session of May 10, 1982 And published in the first part of the Technical Office Book No. 33, page No. 566, rule No. 114

It also ruled that: [It is clear from reviewing the attached documents that they do not contain anything indicating that the appellant was notified of the session set for the hearing of the case in which the judgment in absentia was issued, a correct notification, which is also included in the statement received from the Court of ..... It was not possible for her to know whether the accused had been notified or not due to the lack of evidence for that in the criminal records of 1995, contrary to what the contested ruling stated. Therefore, this is in violation of what is required by the first paragraph of Article 234 of the Criminal Procedures Law, which stipulates that "the summons paper shall be notified to the person to whom the notification is made or at his place of residence in the manners legally prescribed in the Civil and Commercial Procedures Law." Therefore, the absence of notification at the session set for hearing the case inevitably leads to the invalidity of the judgment in absentia issued based on it], Appeal No. 10334 of 80 Q issued in the session of March 1, 2012 and published in the Technical Office Book No. 63, page No. 230, Rule No. 34

It ruled that: [Since it is clear from the attached details that the appellant was notified to attend the session of ..... And that the bailiff was satisfied with announcing it to the administration because there was no evidence of it, and since it was stipulated that the notification of the opponent to attend the opposition session must be in person or at his place of residence, and the notification procedures according to the text of Article 234 of the Code of Criminal Procedure were carried out in the ways stipulated in the Code of Civil Procedure, and Articles 10 and 11 of the Code of Civil and Commercial Procedure required that the papers required to be notified be delivered to the person himself or at his residence, and if the bailiff did not find the one required to be notified at his residence, he must deliver the paper to whoever he declares to be his agent or that he works in his service or that he is one of the spouses, relatives and in-laws living with him, and if the bailiff does not find anyone to whom the paper can be delivered according to what was mentioned or whoever he finds among them refuses to receive it, he must deliver it on the same day to the administration within whose jurisdiction the addressee's residence is located, and he must in all cases within twenty-four hours of delivering the paper to someone other than the addressee, send him a registered letter at his original or chosen residence informing him to whom the copy was delivered, and he must also indicate that All at the time in the original and copy of the announcement, since that was the case, and what the bailiff proved in the announcement paper regarding the lack of evidence against the appellant, is not sufficient to verify the seriousness of the procedures he took prior to the announcement, since it does not appear from his paper that the bailiff did not find the appellant residing in the aforementioned residence or found his residence closed or did not find anyone in it to whom it could be delivered or the refusal of those he found to receive it, then failure to prove that results in the invalidity of the summons paper in accordance with the text of Article 19 of the aforementioned Civil and Commercial Procedures Law, since it has been proven that there was a compelling excuse preventing the appellant from attending that session, which makes it inappropriate to rule on its subject in his absence without acquittal, or the appealed judgment, in ruling in the appellant's opposition by rejecting it based on this invalid announcement, has violated the right to defense, which renders it defective and requires its annulment and retrial] Appeal No. 19604 of year 65 Q issued in the session of January 4, 2005 and published in the Technical Office's letter Number 56 Page No. 49 Rule No. 5

And attendance before the criminal court only requires the accused to attend without requiring his lawyer to be notified: [**It is established that Articles 374 and 378 of the aforementioned law do not require, with regard to attendance before the criminal court, anything other than the accused being notified to attend the trial session without requiring his lawyer to be notified of it. Therefore, what the appellant complains about regarding the hearing of the case on a day other than the day set for it - assuming that this is correct - and without notifying his lawyer of it is not sound** .][1438]

The invalidity aspects related to the procedures for summoning the person to appear and its timing are not part of public order. If the accused attends the session in person or through a representative, he cannot claim this invalidity .[1439]

H- Its effects

The following results from initiating a criminal case in misdemeanors and violations by means of a summons to appear:

The criminal dispute has been concluded, and the lawsuit is therefore within the court's jurisdiction.

The case is taken out of the hands of the Public Prosecution, and it does not have the right to initiate any action in it, whether in its capacity as the accusing authority or in its capacity as the

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It ruled that: [Since it was stipulated that the notification of an opponent to attend the opposition session must be in person or at his place of residence, and the notification procedures according to the text of Article 234 of the Code of Criminal Procedure are carried out in the ways stipulated in the Code of Civil Procedure, and Articles 10 and 11 of the Code of Civil and Commercial Procedure require that the papers required to be notified be delivered to the person himself or at his residence, and if the bailiff required to be notified is not found at his residence, he must deliver the paper to the person he declares to be his agent or that he works in his service or that he is one of the spouses, relatives and in-laws living with him, and if he does not find anyone to whom the paper can be delivered according to what was mentioned or the person he finds refuses to receive it, he must deliver it on the same day to the administrative authority in whose jurisdiction the addressee's residence is located, and in all cases, he must, within twenty-four hours of delivering the paper to someone other than the addressee, send him a registered letter at his original or chosen residence informing him of the person to whom the copy was delivered, and he must state all of this at the time in the original and copy of the notification. Whereas that was the case, and what the clerk proved in the notice paper regarding the lack of evidence against the appellant is not sufficient to ascertain the seriousness of the procedures he took prior to the notice, since it does not appear from his paper that the clerk did not find the appellant residing at the aforementioned address, or that he found his residence closed, or that he did not find anyone to whom it could be delivered, or that those he found refused to receive it, then failure to prove that results in the invalidity of the summons paper in accordance with the text of Article 19 of the Civil and Commercial Procedures Law, and the appealed judgment, in ruling in the appellant's objection to reject it based on this invalid notice, has violated the right to defense], Appeal No. 133 of Year 62 Q issued in the session of February 2, 2002 and published in Technical Office Book No. 53, page No. 170, Rule No. 28.

([1438]) Appeal No. 31477 of 70 Q issued in the session of March 6, 2008 and published in Technical Office Book No. 59, page No. 187, Rule No. 30, 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.

([1439]) Appeal No. 7268 of 63 Q issued in the session of January 15, 2003 and published in the Technical Office Book No. 54, page No. 91, rule No. 7, Appeal No. 8334 of 61 Q issued in the session of February 22, 1998 and published in the first part of the Technical Office Book No. 49, page No. 286, rule No. 45, Appeal No. 4403 of 63 Q issued in the session of March 19, 1995 and published in the first part of the Technical Office Book No. 46, page No. 576, rule No. 85, Appeal No. 9532 of 60 Q issued in the session of December 5, 1991 and published in the second part of the Technical Office Book No. 42, page No. 1284, rule No. 178, Appeal No. 7382 of 54 Q issued in the session of April 13, 1988 And published in the first part of the Technical Office Book No. 39, page No. 602, rule No. 90, appeal No. 831 of year 52 Q issued in the session of March 16, 1982 and published in the first part of the Technical Office Book No. 33, page No. 370, rule No. 75.

investigating authority. However, the Public Prosecution, in its capacity as the investigative authority, has the right to take whatever it deems necessary, either by itself or through the judicial police officer, and submit the investigative report to the court .[1440]

The connection of the ruling authority to the case nullifies the right of the prosecution to conduct an investigation into it with respect to the accused brought to trial for the same incident. As a result, the decision of the prosecution issued after the court's connection to the case has no binding force .[1441]

Members of the Public Prosecution who conduct proceedings before the courts must expedite the settlement of cases involving foreigners, in order to avoid delaying their travel and to facilitate the implementation of the rulings issued against them .[1442]

2 - 11 - 3 Cases and papers sent to the Public Prosecutor, the Assistant Public Prosecutor and the First Public Prosecutors

First: Cases sent to the Public Prosecutor

The cases and papers indicated below, accompanied by memoranda of opinion, shall be sent to the Technical Office of the Public Prosecutor through the Office of the Assistant Public Prosecutor or the Appeal Prosecutions, as the case may be.

1- Felony and misdemeanor cases in which public employees of the rank of Director General or above are accused, or during or because of their duties, as well as all felony and misdemeanor cases in which police officers, armed forces officers, or lawyers are accused, and in which it is deemed necessary to bring them to criminal trial or send them for disciplinary accountability.

2- Cases and complaints related to a member of the judiciary.

3- The lawsuits and requests that the Public Prosecutions deem necessary to submit to the Supreme Constitutional Court, which fall within the jurisdiction of that court in accordance with

(1440 The Court of Cassation ruled that: [Article 558 of the Code of Criminal Procedure stipulates that: "If all or some of the investigation papers are lost before a decision is issued, the investigation shall be repeated in respect of the lost papers, and if the case is brought before the court, it shall undertake whatever investigation it deems appropriate." It indicated that the jurisdiction to reinvestigate lost documents is vested, as a general principle, in the party in whose possession the case is. If the case is brought before the court, it is the competent court - and no other - to conduct the investigation, in view of the separation between the investigative authority and the ruling authority, as it is one of the original guarantees that must be surrounded by criminal trials. The case is not considered to have entered the possession of the criminal court unless it is brought before it in accordance with Article 214 of the Criminal Procedures Law by referral decision] Appeal No. 612 of Year 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. 622, Rule No. 124.

(1441 Appeal No. 1577 of 45 Q issued in the session of February 9, 1976 and published in the first part of Technical Office Book No. 27, page No. 183, rule No. 37.

(1442 Article No. 1393 of the Judicial Instructions of the Public Prosecution.

Articles 25 and 26 of its Law No. 48 of 1979, accompanied by official copies of the two rulings in which the dispute or contradiction occurred.

4- Cases in which the accused have been held in pretrial detention for three months to take the necessary measures to complete the investigation.

5- Memoranda relating to cases in which the Public Prosecution has authorized the monitoring of wired and wireless conversations or has obtained permission for that from the district judge, as well as cases in which it has been found that the monitoring was carried out without permission from the judiciary, provided that these memoranda are sent when dealing with the cases related to them to take the necessary action regarding them.

6- Memoranda relating to cases in which the Public Prosecution deems it necessary, or in which the accused or civil claimants request, to appoint a judge to investigate the facts.

7- Requests to lift the immunity of members of the People's Assembly and the Shura Council, the cases in which they are accused, as well as the papers for implementing the rulings issued against them, in order to take the necessary action regarding them.

8- Notifications that he deems necessary to send to the Chairman of the Parties Affairs Committee regarding inspection procedures taken at the headquarters of political parties, except in the case of flagrante delicto of a felony or misdemeanor.

9- Copies of direct lawsuits if the accused is a minister, governor, holds an equivalent position, or is a member of the People's Assembly or Shura Council.

10- Urgent memoranda regarding foreign defendants who are in pretrial detention, to notify the Ministry of Foreign Affairs to inform the relevant consulates.

11- Memoranda of foreigners accused in felony cases and misdemeanor cases of assault on persons and property, whom the Public Prosecution deems to be included on the lists of those banned from travel.

12- Cases related to foreigners if the Public Prosecution decides to dismiss cases of their entry or residence in the Arab Republic of Egypt and their exit from it in violation of the law.

13- Notification of the investigation procedures taken by the Public Prosecution in crimes of foreign political service, as well as the cases related to it after completing the investigation.

14- Notification of the arrest, detention or criminal proceedings against a member of the foreign consular corps.

15 - Cases relating to crimes not related to the official work of members of the foreign consular corps in which it is deemed necessary to take any action against them, such as arresting them, searching them and their residences, seizing their private correspondence, or ordering them to appear in order to obtain an opinion on what follows.

16- Direct lawsuits against members of the foreign consular corps that relate to their official work to seek an opinion on what follows.

17- Forms of enforcement by physical coercion of judgments issued with fines or expenses against a member of the consular corps to take the necessary action regarding them.

18- Notifications of incidents occurring to members of the foreign political and consular corps or to their employees and subordinates, to be followed by detailed reports on those incidents and what the investigation reveals.

19- All correspondence addressed to foreign political and consular representation missions shall be contacted through the technical office of the Attorney General.

20- Papers related to criminal, civil and commercial matters relating to non-Egyptian technical and administrative employees in diplomatic missions or non-Egyptian private servants working for members of those missions to seek an opinion on what follows regarding considering their enjoyment of immunity in each individual case.

21- Notifications of crimes of defamation and slander committed against ministers and those of their rank.

22- Papers for addressing ministers and those of their rank, heads of judicial bodies, the head of the Audit Bureau, and heads of bodies and departments referred to in Article 184 of the Penal Code to proceed with investigation procedures and file a criminal lawsuit in cases where the law requires filing a complaint or obtaining evidence or a request.

23- Requesting inclusion in the lists of those banned from travel and anticipating the arrival of (A), and requests to lift the ban on those banned from travel and notifying what is being done in their cases to consider lifting the danger, as well as court decisions issued to remove the names of the accused included in the list of those banned or to permit them to travel.

24- Cases in which it is deemed necessary to refer the matter to more than one forensic doctor to participate in examining the case and expressing an opinion on it, provided that these cases are sent accompanied by a detailed memorandum of the facts of the case and the technical opinions expressed therein.

25- Cases related to tourism companies in which it is deemed necessary to issue a decision to suspend the activity of any of them when a criminal case is filed against them on charges of committing any act that would harm the security of the state or its national economy.

26- Memoranda related to cases of illicit gain that are revealed to members of the Public Prosecution while carrying out their duties, and which require notifying the Illicit Gains Administration at the Ministry of Justice.

27- Requests for publication bans as deemed appropriate by the Attorneys General.

28- Cases in which there is a dispute over jurisdiction between the appeal prosecution offices.

29- Requests to review judicial rulings, stating the legal grounds on which they are based.

30 - Investigations conducted by the Public Prosecution Offices into the aforementioned requests for reconsideration, by order of the Public Prosecutor after their completion.

31- Cases in which the death penalty has been sentenced in absentia, in order to submit them to the President of the Republic through the Minister of Justice to consider issuing an order for pardon or commutation of the sentence within fourteen days, in accordance with Article 470 of the Code of Criminal Procedure.

32- Cases in which it is permissible to appeal by way of cassation in the interest of the law in final rulings, in the cases specified in Article 250 of the Code of Civil Procedure.

33- Matters that require special laws to be referred to the Public Prosecutor.

34- Copies of reports of lawsuits to dismiss judges and members of the Public Prosecution and their litigation, and the documents related thereto.

35- Cases in which it appears from the investigation that an officer or public employee is to blame for something he did or made an effort that deserves praise and appreciation, and it is necessary to report this to the party to which he belongs.

36- Issuing cases that are deemed to be preserved in the National Centre for Judicial Studies Museum .[1443] (.

The cases and papers indicated below, accompanied by opinion memoranda, are sent to the technical office of the Public Prosecutor directly through the general prosecution offices.

([1443] Article No. 939 of the Judicial Instructions of the Public Prosecution.

1- Investigations into election crimes, once completed, in order to take action.

2- Notifying of terrorist incidents and crimes that affect national unity, as well as the investigations conducted into them, immediately upon their completion.

3- Issues requested by the People's Assembly and the Shura Council.

4- Petitions of lawsuits and warnings that are submitted or directed to the Public Prosecution or one of its members or employees due to the performance of the job.

5- Memoranda regarding notifying the Journalists Syndicate regarding the investigation of a journalist in publishing crimes, to assign the necessary members to attend the investigation.

6- Pictures of direct lawsuits in publishing crimes if the accused is a journalist.

7- Memoranda on the facts referred to the Public Prosecution in matters related to the General Secretariat of the Presidency of the Republic and its employees, accompanied by copies of the minutes and decisions issued in this regard.

8- Brief notes on cases of public interest and those that the public prosecutors deem necessary to inform the public prosecutor of.[1444]

Second: Cases sent to the Assistant Attorney General

The cases and papers indicated below, accompanied by opinion memoranda, shall be sent to the Office of the Assistant Public Prosecutor through the Appeal Prosecutions or the General Prosecutions - as the case may be -:

A- Cases sent through the appeal prosecution offices, except for those cases that fall within the jurisdiction of the appeal prosecution offices headed by assistant public prosecutors:

1- Felony and misdemeanor cases in which public employees of the rank of Director General or above are accused during or because of their jobs, and all felony and misdemeanor cases in which police officers, armed forces officers, or lawyers are accused. The technical office of the Public Prosecutor shall send to the Public Prosecutor's Office those of these cases that it deems appropriate to bring them to criminal trial or to send them for disciplinary accountability.

2- Cases and complaints related to a member of the judicial bodies who is not a member of the judiciary.

B- Cases sent through the general prosecution offices:

([1444] Article No. 940 of the Judicial Instructions of the Public Prosecution.

1- Issues of collecting penalties.

2- The papers related to the conditional release if it is deemed to be cancelled, provided that a memorandum containing the reasons for the cancellation is attached to it.

3- Complaints submitted regarding conditional release to be considered, examined and the necessary action taken regarding them.

4- Cases related to prisoners escaping from prisons after being placed in them.

5- Cases of mentally ill defendants who are required to be sent to places designated for their observation or detention in accordance with Articles 1314 to 1332 of these instructions.

6- The papers of those sentenced to a custodial sentence who become insane and whose execution of these sentences has not yet begun, provided that the aforementioned convicts are sent with them to be sent to mental and psychological health hospitals to examine their condition.

7- Correspondence related to mental and psychological health hospitals and orders of placement in them to take the necessary action regarding them, as well as decisions issued to release the accused detained in the aforementioned hospital in accordance with the provisions of Articles 1333 and 1334 of these instructions.

8- Requests to postpone the implementation of a custodial sentence if the convict becomes insane before the start of the implementation, in accordance with Article 1460 of these instructions.

9- Requests to postpone execution if the convicted person is afflicted with an illness that threatens his life in and of itself or due to execution, in accordance with Article 1462 of these instructions.

10- Requests for the extradition of accused persons or persons convicted of felonies or misdemeanors who reside in a foreign country, accompanied by the documents stipulated in Article 1712 of these instructions.

11- Requests received from a foreign country to extradite an accused or convicted person residing in Egypt.

12- The provisions required to be implemented with regard to members of the armed forces to be sent to the branches of those forces to take the necessary action regarding them.

13- Prison inspection reports conducted by members of the Public Prosecution, copies of which must be sent to the First Public Prosecutors of the Appeal Prosecutions.

14- Grievances submitted by convicts due to their placement in one prison instead of another.

15- Papers related to the transfer of persons sentenced to hard labour from prisons to public prisons for health reasons, as well as those related to their return to prisons after the reasons for the transfer have ceased.

16- Requests to question the accused and witnesses residing abroad, with the preparation of a memorandum stating the facts of the case and what is requested therein, with the mention of the data capable of identifying the person to be questioned and his place of residence.

17- Papers to be announced abroad in accordance with the provisions of Articles 218 to 234 of the written, financial and administrative instructions issued in 1995.

18- Papers for implementing judgments in accordance with the Agreement on the Implementation of Judgments signed on June 9, 1958 between Egypt and other Arab League countries.

19- Expressing an opinion on matters related to implementation that are unclear to members of the Public Prosecution.

20- Misdemeanors and traffic violations of any of the Prime Minister, his deputies, ministers and those of similar rank, deputy ministers, members of the People's Assembly and Shura Council, and members of the judiciary.

21- Requests to assign witnesses from members of the foreign political and consular corps to hear their statements before the courts, accompanied by memoranda that include the subject of the case in which testimony is required and the extent to which it relates to their official duties.

22- Requests to assign members of the foreign political and consular corps to perform expert work, whether in criminal or civil matters, to obtain an opinion on what should be followed in this regard.

23- Papers received from the offices of the court clerks and clerks relating to members of the foreign political and consular corps .[1445]

([1445] Article No. 941 of the Judicial Instructions of the Public Prosecution.

Third: Cases and papers sent to the First Public Prosecutor

The following cases and papers shall be sent to the first public prosecutors of the appeal prosecutions - through the public prosecutors of the general prosecutions - to be disposed of by them, unless they deem it necessary to seek the opinion of the public prosecutor:

1-...

2- Cases in which members of the boards of directors of companies subject to the provisions of the Public Business Sector Law are interested in committing the crimes referred to in Articles 116 bis, 116 bis "A", and 116 bis "B" of the Penal Code, except for what falls within the jurisdiction of the Supreme Public Funds Prosecution.

3- Criminal cases in which a verdict of acquittal was issued.

4- Cases in which the general prosecutions or the public funds prosecutions in the appeal prosecutions see the need to appeal by cassation, taking into account obtaining in a timely manner the negative certificate stipulated in Article (34) of Law No. 75 of 1959, as amended, regarding cases and procedures for appeal before the Court of Cassation, if there is a place for that, and each case shall be sent within the ten days following the deposit of the judgment issued therein, accompanied by a memorandum of the grounds for appeal.

5- Cases in which it is deemed necessary to refer the matter to the Court of Cassation to request the appointment of the competent court when a dispute arises over jurisdiction.

6- Cases in which he deems it appropriate to authorize the appeal of the rulings issued therein within the appeal period set for the Public Prosecutor in Article (406/2) of the Code of Criminal Procedure, with a memorandum attached to each case with the grounds for appeal.

7- Cases in which he deems it appropriate to appeal the orders issued by the investigating judge, except for the order issued by him for the temporary release of the accused in pretrial detention, provided that the case is sent within three days at most from the date of issuance of the order, accompanied by a memorandum of the grounds for appeal.

8- Felonies in which the report finds that there is no reason to file a criminal case due to lack of importance or because the administrative penalty is sufficient.

9- Felonies in which the Public Prosecution's order that there is no reason to file a criminal case after a judicial investigation is deemed to be cancelled, or a preservation order issued by the Public Prosecutor is to be reversed.

10- Cases in which there is a dispute over jurisdiction between two general prosecution offices that are subordinate to one appeal prosecution office.

11- Papers for transferring those sentenced to hard labor from prisons to the prosecution offices and courts. If the case is postponed, there is no need to repeatedly address the First Public Prosecutor regarding the prisoner's presence unless he finds circumstances that require it.

12- Requests for permission to visit prisoners inside prisons outside of regular visiting hours, provided that this is limited to cases of urgent necessity and is within the narrowest limits.

13- Requests for permission from the real estate notary to go to one of the prisons to document a power of attorney or any other transaction and have it signed by the convicted person, which are submitted to the public prosecution offices with a statement of the purpose of the request to consider it in accordance with the provisions of Article (25) of the Penal Code, in order to ensure the interests of the convicted person and protect his money.

14- Cases related to requests for rehabilitation and the rulings issued therein.

15- Hisbah lawsuits in personal status matters.

16- Cases, correspondence, and other papers that the general instructions for the prosecutions stipulate should be sent to other prosecutions or parties through the First Public Prosecutor of the Appeal Prosecution.[1446]

Requests to obtain an order from the Cairo Court of Appeal to review any data or information related to the accounts, deposits, trusts or safes stipulated in Articles One and Two of Decree Law No. 205 of 1990 regarding the confidentiality of bank accounts and transactions related thereto shall be sent to the First Public Prosecutor of the Cairo Appeal Prosecution in cases where the aforementioned law permits this .[1447]

Public prosecutors may refer to the first public prosecutors of the appeal prosecution offices to seek their opinion on any case that they deem to be of particular importance in relation to its circumstances or to those to whom it relates, even if it does not fall within the cases previously stated.

The first public prosecutors of the appeal prosecutions, in turn, may refer to the Public Prosecutor in each of these cases if they deem it necessary .[1448]

([1446] Article No. 942 of the Judicial Instructions of the Public Prosecution.
([1447] Article No. 943 of the Judicial Instructions of the Public Prosecution.
([1448] Article No. 944 of the Judicial Instructions of the Public Prosecution.

2 - 11 - 4 Dealing with juvenile cases within the framework of international conventions

Vocational education, in-service training, refresher courses, and other appropriate educational methods are used to achieve and maintain the necessary professional competence for all personnel dealing with juvenile cases, and juvenile justice personnel are a reflection of the diversity of juveniles coming into contact with the juvenile justice system. Efforts are being made to ensure fair representation of women and minorities in juvenile justice bodies.

The authorities competent to deal with cases may be composed of people with very different backgrounds (judicial officers in the United Kingdom of Great Britain and Northern Ireland and in areas affected by the "common law" system, legally trained judges in countries using Roman law and in areas affected by it; in other areas, private individuals or jurists, elected or appointed, members of local councils, etc.). All of these require a minimum level of training in the branches of law, social sciences, psychology, criminology and behavioral sciences. This is as important as the organizational specialization and independence of the competent authority.

Social workers and probation officers may not, in practice, require a professional qualification as a prerequisite for any job involving juvenile offenders, and so in-service vocational education is the minimum qualification required.

Professional qualifications are an essential element in ensuring that juvenile justice is administered impartially and effectively. Accordingly, it is necessary to raise the level of qualifications required for the appointment of staff, to upgrade their level and to provide them with professional training, and to provide them with the means to enable them to carry out their functions to the best of their ability.

In order to achieve neutrality in the administration of juvenile justice, all forms of discrimination, whether political, social, sexual, racial, religious, cultural or any other kind, should be avoided in the selection, appointment and promotion of juvenile justice personnel, as recommended by the Sixth Conference. In addition, the Sixth Conference called on Member States to ensure fair and equitable treatment of women as criminal justice personnel, and recommended that special measures be taken to appoint, train and facilitate the promotion of women personnel in the administration of juvenile justice .[1449]

([1449]) Rule No. 22 of the Beijing Rules.

2 - 12 Appeal against orders to dispose of the case

2 - 12 - 1 Orders that may be appealed

The law has organized the procedures for monitoring the orders issued by the investigating authority, allowing appeal within certain limits before the Court of Misdemeanor Appeals - held in the deliberation chamber - or before the Criminal Court held in the deliberation chamber - and based on that, these two bodies are considered second-degree investigative judiciary.

As for investigation procedures in the narrow sense, such as inspection, search and interrogation, the decision issued to conduct them independently may not be appealed, all of this without prejudice to the right of the parties to appeal them before the court of subject matter.

The law does not treat opponents equally in the right to appeal investigation orders, but rather distinguishes the Public Prosecution with broader rights than the rights of the accused and the civil plaintiff.

First: 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 his own initiative or at the request of the parties .[1450]

The prosecution may appeal - even in the interest of the accused - all orders issued by the investigating judge, whether on his own initiative or based on a request from the parties. The appeal is made by a report from the clerk's office, and Form No. 5 (S) Prosecution is used for this purpose .[1451]

Accordingly, the Public Prosecution may appeal all orders issued by the investigating judge, such as those issued regarding jurisdiction or the lack of grounds for filing a lawsuit, or the temporary release of the accused in a felony. Since the legislator has appealed the order of the temporary release of the accused in a felony, the consequence of this is that it is not permissible to appeal the temporary release of the accused in a misdemeanor .[1452]

The member of the Public Prosecution who decided to appeal the order issued by the investigating judge must attach to the appeal report a comprehensive memorandum signed by him and must take the initiative to send the case file to the General Prosecution. This

([1450] Article No. 161 of the Code of Criminal Procedure.
([1451] Article No. 653 of the Judicial Instructions of the Public Prosecution.
([1452]) The first paragraph of Article No. 164 of the Code of Criminal Procedure.

Prosecution must, as soon as the case reaches it, notify the parties to appear before the Misdemeanor Appeals Court, convened in the consultation chamber, to consider the appeal as soon as possible, or before the Criminal Court, convened in the consultation chamber, on the day it sets to consider the appeal .[1453]

If the investigation requires it, the Public Prosecution may appeal the order issued by the partial judge or by the Misdemeanor Appeals Court in the advisory chamber to release the accused in pretrial detention. It alone may appeal the order issued in a felony to temporarily release the accused in pretrial detention .[1454]

The Public Prosecution may appeal the order issued by the investigating judge to refer the case to the district court, considering the incident a misdemeanor or violation, in order to prevent the case from being heard before an incompetent court .[1455]

Second: Orders that the civil rights claimant may appeal

The civil rights claimant may appeal the orders issued by the investigating judge stating that there is no basis for filing a lawsuit unless the order was issued in a charge against a public employee, worker, or law enforcement officer for a crime committed by him during the performance of his duties or because of them, unless it is one of the crimes referred to in Article 123 of the Penal Code .[1456]

If the civil plaintiff challenges an order issued in a charge against an employee for committing it during or because of his job, it must be ruled that the appeal is not permissible. The Court of Cassation ruled that: [**The legislator, by Law No. 121 of 1956, which amended Article 210 of the Code of Criminal Procedure, prohibited the right to appeal orders issued by the investigating judge or the Public Prosecution that there is no reason to file a lawsuit for one of these crimes. It also suspended the right to file a lawsuit directly. It is not consistent with this prohibition that the right to appeal by cassation remains in its original permissibility concerning orders issued by the Indictment Chamber and related to decisions that there is no reason to file a lawsuit. Rather, this prohibition must extend for the same reason that the legislator stated in the explanatory memorandum to Law No. 121 of 1956 - which is "to provide employees with special protection that protects them from the machinations of**

([1453] Article No. 657 of the Judicial Instructions of the Public Prosecution.
([1454] Articles Nos. 164 and 205 of the Code of Criminal Procedure.
([1455]) The second paragraph of Article No. 164 of the Code of Criminal Procedure.
([1456] Articles Nos. 162 and 210 of the Code of Criminal Procedure
The Supreme Constitutional Court had issued its ruling on 12/2/2007 in Appeal No. 163 of Year 26 Q. The constitutionality of the unconstitutionality of the first paragraph of Article 210 of the Code of Criminal Procedure, in what it includes of limiting the right to appeal the order issued by the Public Prosecution that there is no reason to file a lawsuit due to lack of importance, to the plaintiff in civil rights, without the accused.

individuals against them and their natural tendency to complain about them" - to appeal by cassation as well, as long as The legislator intended to block the way to object to orders, as there is no reason to file a lawsuit with respect to public employees and within the scope of the crimes referred to in the text, and as long as the appeal by the normal way and the extraordinary way meet when responding to that reason that the legislator intended with this amendment to protect public employees from the excesses of litigation])[1457]

It is not permissible to appeal any orders issued by the Public Prosecution Office stating that there is no reason to file a lawsuit due to lack of importance or because the administrative penalty is sufficient. Because it is only a suspension of investigation at a certain stage.

The civil claimant may appeal the order issued by the Public Prosecution rejecting the acceptance of 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 has completed the civil claim procedures, has the right to appeal the order issued to reject the acceptance of this civil claim - and by virtue of this capacity, he has all the rights of the opponents during the consideration of the appeal)[1458]

As for other investigation orders that the law allows the civil plaintiff to appeal, he may only appeal them if his civil claim is acceptable before the investigating authority, because that depends on the acceptance of his civil claim.

Third: Orders that the accused and the person responsible for civil rights may appeal

This right is only proven for the accused, i.e. the person against whom the criminal case was brought. However, if the person is still suspected and has not yet been charged, he has no right to file this appeal, otherwise it will be inadmissible due to lack of standing.

The law only allows the accused and the person responsible for civil rights to appeal one type of investigation order, which is the order related to matters of jurisdiction. It is the same whether the investigation order is issued with jurisdiction or without jurisdiction. If the investigator is not competent to investigate, all the procedures he carries out implicitly include an order of jurisdiction that may be appealed. Article 163 of the Code of Criminal Procedure states that: “All parties may appeal orders related to matters of jurisdiction, and the appeal shall not stop the

([1457] Appeal No. 1186 of 27 Q issued in the session of June 24, 1958 and published in the second part of the Technical Office Book No. 9, page No. 710, rule No. 179.
([1458] Article No. 199 bis of the Code of Criminal Procedure.

course of the investigation." A ruling of lack of jurisdiction does not invalidate the investigation procedures ."[1459] (.

In this regard, jurisdictional issues mean everything related to functional, type, personal or local jurisdiction. As for other defenses related to the expiration of the criminal case due to the statute of limitations, a final judgment, or otherwise, they are not related to jurisdiction.

Otherwise, the accused may not appeal investigation orders, such as an order to refuse his temporary release, an order to return seized items, a refusal to seek the assistance of an expert, or an order to refer him to trial.

However, if the accused is referred to an incompetent court, the latter may not appeal the referral order on the grounds that it was issued in one of the matters of jurisdiction, because what is meant by these matters is what relates to the jurisdiction of the investigator himself to investigate, not the jurisdiction of the entity to which the case is referred.

The Supreme Constitutional Court ruled that granting the right to appeal the order of no grounds for filing a lawsuit to the civil plaintiff, without the accused, constitutes a waste of the principle of equality: [**The civil plaintiff and the accused are two parties in a single criminal dispute - regardless of the opinion on the nature of that dispute - which means that both are considered to be in an identical legal position in this regard. If the legislator grants the civil plaintiff the right to appeal the decision of no grounds and deprives the accused of it - this is a waste of the principle of equality, which contradicts the text of Article (40) of the Constitution. Moreover, depriving the accused of appealing the decision of no grounds for filing a lawsuit confiscates his constitutional right to appear before his natural judge and wastes his right to litigate to obtain fair judicial satisfaction... Confiscating the accused's right to appeal the decision of no grounds for filing a lawsuit due to its lack of importance would make him - in certain cases - threatened with its cancellation and re-investigation with him at any time, which involves a real change - not just a theoretical change - in the legal position, under which he loses Guarantees to defend himself, and he is unable to resort to his natural judge, in addition to the fact that the accused has the right to struggle to clear his name and defend his reputation and esteem. The way and means to** do **this is a fair trial in which a final judicial ruling is issued** .[1460] (.

([1459] Article No. 163 of the Code of Criminal Procedure.
([1460]) The ruling of the Supreme Constitutional Court in 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.

2 - 12 - 2 Appeal Procedures

First: Report on the appeal

The appeal is made by filing a report with the clerk's office .[1461]

Second: Appeal deadline

The period for appealing investigation orders shall be ten days unless the order being appealed is an order issued in a felony for the temporary release of the accused who is in pretrial detention, in which case the period for appeal shall be twenty-four hours. In this case, it is the same whether the order is issued by the investigating judge or by the partial judge in the case of an investigation by the Public Prosecution .[1462]

This period begins from the date of issuance of the order if the appellant is the Public Prosecution, and begins from the date of its announcement for the remaining parties .[1463]

The Court of Cassation ruled that when the law requires notification to take action or start a period, no other method is sufficient. And since that was the case, and Article 210 of the Code of Criminal Procedure authorizes the civil rights claimant to appeal the order stating that there is no basis for filing a criminal case within a period of ten days from the date of its notification, and the papers were devoid of anything indicating that the civil rights claimant had been notified of the aforementioned order until he decided to appeal it, then the appealed judgment, in concluding that the civil rights claimant's appeal against the aforementioned order had been filed within the legal period, would have been correct in law .[1464]

Third: Jurisdiction to consider the appeal

The appeal shall be submitted to the Misdemeanor Appeals Court, sitting in the deliberation chamber, unless the appealed order states that there is no right to file a lawsuit in a felony, in which case the appeal shall be submitted to the Criminal Court, sitting in the deliberation chamber .[1465] (.

The criterion for determining the type of crime (felony or misdemeanor) is what the investigator concludes when conducting the investigation under the supervision of the appellate body, not what is included in the report of the crime.

([1461] Article No. 165 of the Code of Criminal Procedure.
([1462] Articles No. 166 and 205 of the Code of Criminal Procedure, and Article No. 655 of the Judicial Instructions of the Public Prosecution.
([1463] Articles Nos. 166 and 210 of the Code of Criminal Procedure.
([1464] Appeal No. 933 of 45 Q issued in the session of June 22, 1975 and published in the first part of Technical Office Book No. 26, page No. 554, Rule No. 124.
([1465] Article No. 167 of the Criminal Procedure Code, Article No. 656 of the Judicial Instructions of the Public Prosecution.

It is noted that the Misdemeanor Court, sitting in the deliberation chamber, is the only competent authority that the legislator has entrusted with appealing 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 conducted the investigation was an advisor in accordance with Article 65, the appeal shall be before the Criminal Court convened in the advisory chamber .[1466]

Fourth: Effects of appeal

The advisory chamber is considered a second instance of the investigative judiciary, i.e. an appellate body for the orders it issues.

The appellate jurisdiction of the advisory chamber includes orders that may be appealed before it, whether in misdemeanor or felony cases, noting that an order that there is no basis for filing a criminal case in a felony may be appealed before the criminal court convened in the advisory chamber.

This body must decide on the appeal urgently, and as an investigative court, it is subject to the rules to which this court is subject, and therefore its procedures are conducted in private and in the presence of the opponents.

This authority has absolute authority to assess the validity of the grounds for appeal, whether legal or substantive, and is not restricted by the reasons presented by the appellant. Its appellate jurisdiction requires that it have the authority to conduct a supplementary investigation to verify the validity of the reasons for the appeal, which is dictated by its function and nature as a second-degree investigative judiciary. Article 166 of the Criminal Procedure Code stipulates that: "The appeal period shall be ten days from the date of issuance of the order with respect to the Public Prosecution and from the date of its announcement with respect to the remaining parties, except for the cases stipulated in the second paragraph of Article (164) of this law. The period for the Public Prosecution to appeal a temporary release order shall be twenty-four hours, and the appeal must be decided within forty-eight hours from the date of its submission. The accused may appeal at any time. If a decision is issued to reject his appeal, he may file a new appeal every time a period of thirty days has passed from the date of issuance of the rejection decision . "[1467]

([1466] Article No. 167 of the Code of Criminal Procedure.
([1467] Article No. 166 of the Code of Criminal Procedure.

The principle is that the criminal case before this appellate body should be determined by its facts and opponents, without prejudice to the authority of this body to give the correct legal description and add complementary facts to it that give it the correct legal description.

If the appeal is limited to some of the charges for which an order was issued stating that there is no basis for filing a lawsuit, then the appeal is limited to these charges alone and to the accused alone, and does not extend to the rest of the charges or the rest of the accused. In this case, this order becomes partially final with respect to the accused who were not included in the appeal, and this order cannot be cancelled with respect to them except by the Public Prosecutor if new evidence becomes available.

When the advisory chamber cancels the order that there is no basis for filing a lawsuit, it must return the case, specifying the crime it constitutes and the acts committed in the text of the law applicable to it, in order to refer it to the competent court .[1468]

When the appellate body verifies that the form of the appeal is available and legally permissible, it shall decide on it as follows:

1- In matters of jurisdiction:

If the deliberation chamber finds that the investigator is not competent, it shall rule that he is not competent. However, if it finds that the investigator is competent to consider the investigation, it shall reject the appeal on the merits.

Since the rules of jurisdiction are part of public order, it is permissible to argue that the investigator does not have jurisdiction to investigate during the consideration of an appeal filed against one of his other orders.

2- Regarding the matter of not having a face:

There is no difficulty if the appellate body (the misdemeanor and felony advisory chamber) finds that the investigator did not make a mistake in issuing this order. In this case, it rules to reject the appeal.

If the appellate body decides to cancel the order because it was issued without a substantive reason, this means that there is sufficient evidence against the accused to bring him to trial.

According to Article 167 of the Procedures, the Chamber returns the case, specifying the crime for which it was sentenced and the acts committed in the text of the law applicable to it, in order

([1468] Article No. 167 of the Code of Criminal Procedure.

to refer it to the competent court. In this case, the Public Prosecution has no choice but to issue a referral order in the implementation of the ruling of the Advisory Chamber .[1469]

The law stipulates that if the appeal filed by the civil plaintiff against the order issued is rejected as lacking grounds, the party to which the appeal is filed may rule that the accused be entitled to compensation arising from filing the appeal if there is a reason for that. It is, of course, imperative that the accused civilly claim this compensation and that the abuse of the civil plaintiff's right to appeal be proven .[1470]

3- 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 interests of the investigation so require .[1471]

4- Non-acceptance of the civil claim:

If the chamber finds that the Public Prosecution has erred in not accepting the civil claim, it shall decide to accept his claim, and acceptance shall have effect as soon as he files his civil claim before the investigating authority and completes the necessary procedures for it.

Fifth: Deciding on the appeal

The rulings issued by the advisory chamber are final in all cases .[1472] (.

The principle is that appealing investigation orders does not affect the course of the investigation or the implementation of these orders .[1473] (.

As for temporary release in a felony, the legislator has exempted from this the order issued by the investigating judge in a felony for the temporary release of the accused who is in pretrial detention, as he stipulated that this order may not be implemented before the expiry of the appeal period or before a decision is made on it if it is filed within this period, and if the appeal is not decided within three days from the date of the report, the release order must be implemented immediately .[1474] (.

In this last case, the accused is considered released by force of law unless an order is issued for his pre-trial detention by the party to which the order is appealed. This is without prejudice to the investigator's authority to remand him in custody if the evidence against him becomes

([1469] Article No. 167 of the Code of Criminal Procedure.
([1470] Article No. 169 of the Code of Criminal Procedure.
([1471] Article No. 143, 168 of the Code of Criminal Procedure.
([1472] Article No. 167 of the Code of Criminal Procedure.
([1473] Article No. 163 of the Code of Criminal Procedure.
([1474]) Paragraph 3 of Article 168 of the Code of Criminal Procedure.

stronger, if he violates the conditions imposed on him in the release order, or if circumstances arise that require this custody [1475].

If the advisory chamber, upon appeal of the release order, sees fit to cancel this order, it may order the accused's detention to be extended for successive periods, each of which does not exceed forty-five days, if the interests of the investigation so require [1476].

This means that the authority to extend pretrial detention lies with the advisory chamber alone 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 whose total does not exceed forty-five days [1477].

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 basis of the actual facts.

It goes without saying that 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 stating that there is no reason to file a criminal case, then appealing the release order does not entail a stay of its implementation.

If the appeal filed by the civil rights claimant against the order issued stating that there is no basis for filing the lawsuit is rejected, the party to which the appeal is filed may rule that the accused be liable for compensation arising from filing the appeal if there is a basis for that [1478].

The Court of Cassation ruled that the decisions issued by the Misdemeanour Appeals Court, sitting in the advisory chamber, regarding the appeals submitted to it against the orders issued by the investigating judge and the Public Prosecution, that there is no reason to file a criminal case are final decisions and may not be appealed by way of cassation [1479].

It ruled that the criterion for determining whether the appeal is against a judgment, a decision, or an order related to an investigation or referral is the reality of the situation, not what the issuing authority says about it or what it describes as: [**...and it was clear from the papers that**

([1475] Article No. 150 of the Code of Criminal Procedure.
([1476] Articles Nos. 143 and 168 of the Code of Criminal Procedure.
([1477] Article No. 202 of the Code of Criminal Procedure.
([1478] Article No. 169 of the Code of Criminal Procedure.
([1479]) Appeal No. 2591 of 5 Q issued in the session of October 18, 2015 and published in Technical Office Book No. 66, page No. 692, Rule No. 102, Appeal No. 34648 of 77 Q issued in the session of November 15, 2014 and published in Technical Office Book No. 65, page No. 838, Rule No. 106.

the appellant, in his capacity as a civil rights claimant, had appealed the Public Prosecution's order that there was no basis for filing a criminal case, issued on.... In a felony case before the Criminal Court, what is issued by that court in this case is, in reality, a decision related to an investigation act pursuant to Articles 167 and 210 of the Criminal Procedure Code after its amendment by Decree-Law No. 170 of 1981 mentioned above, and not a ruling in the legal sense contained in Article 30 of the Law on Cases and Procedures for Appeal before the Court of Cassation])1480 (.

2 - 13 Judicial delegation and extradition of criminals

2 - 13 - 1 Judicial delegation

Judicial delegation is an aspect of international cooperation between judicial bodies. Countries have been keen to organize a set of procedures that govern delegation and what is related to it, preferring to establish the rules of justice while preserving its independence and extending its sovereignty over its territory. Egypt has entered into a special agreement with the countries of the Arab League on judicial declarations and delegations, which was approved by Law No. 30 of 1954 .1481

Each of the countries bound by the League of Arab States Agreement on Judicial Notices and Letters may request any of its countries to undertake on its territory any judicial procedure related to a case under consideration .1482 (.

If it is required to question an accused or a witness residing outside the borders of Egypt, the competent prosecution must prepare a memorandum with the facts of the case and what it requests, stating the information capable of identifying the person to be questioned and his place of residence, and send it to the office of the First Public Prosecutor to issue a decision to delegate the competent judicial authority in that country and take what is necessary to implement that .1483

(1480) Appeal No. 3718 for year 65 Q issued in the session of March 9, 2005 and published in the Technical Office Book No. 56, page No. 190, rule No. 27, Appeal No. 13325 for year 60 Q issued in the session of September 22, 1999 and published in the first part of the Technical Office Book No. 50, page No. 453, rule No. 105, Appeal No. 45090 for year 59 Q issued in the session of May 17, 1998 and published in the first part of the Technical Office Book No. 49, page No. 713, rule No. 91, Appeal No. 7276 for year 54 Q issued in the session of April 23, 1985 and published in the first part of the Technical Office Book No. 36, page No. 581, rule No. 102, Appeal No. 7276 for year 54 Q issued in the session of April 23, 1985 1985 and published in the first part of the Technical Office Book No. 36, page No. 581, rule No. 102, appeal No. 6840 for the year 53 Q issued in the session of March 14, 1984 and published in the first part of the Technical Office Book No. 35, page No. 274, rule No. 56.

(1481) Article No. 1707 of the Judicial Instructions of the Public Prosecution, and see: Appeal No. 1745 of Year 30 Q issued in the session of June 13, 1961 and published in the second part of the Technical Office Book No. 12, page No. 671, Rule No. 131.

(1482 Article No. 6 of the Arab League Agreement on Judicial Advertisements and Delegations.

(1483 Article No. 1708 of the Judicial Instructions of the Public Prosecution.

Countries shall respond to the request for delegation even if there are no international agreements between them in this regard, based on the principle of international courtesy. The delegation may include all investigation procedures, such as hearing witnesses, interviews, appointing experts, seizing objects, searching, and interrogating the accused. However, it is not permissible to request in the judicial delegation the detention of the accused to be interrogated, because this procedure is only taken upon extradition .[1484]

The provisions of the agreement concluded between the countries of the League of Arab States, signed on June 9, 1953, which was actually put into effect with respect to Egypt, the Hashemite Kingdom of Jordan, and the Kingdom of Saudi Arabia, are observed. They are summarized as follows:

(First) Each of the States bound by this Agreement may request any of them to conduct on its territory on its behalf any judicial procedure related to a pending case.

(Second) The competent judicial authority shall implement the requested delegation in accordance with the legal procedures followed by it. However, if the requesting state wishes to implement the delegation in another way, its wish shall be granted unless this conflicts with the laws of the state requested to implement the delegation.

(b) The judicial authority shall be informed of the place and time of execution of the delegation so that the interested party may appear in person if he so wishes or appoint someone to represent him.

(c) If it is not possible to execute the delegation or if the delegation relates to a subject or procedure that is not permitted by the law of the requested State, the requested State shall notify the requesting authority, stating the reasons.

(d) The requested State shall bear its fees, except for the fees of experts, which the requesting State shall pay and a statement thereof shall be sent with the delegation file. However, the requested State shall collect on its own behalf, in accordance with its laws, the fees prescribed for the papers submitted during the execution of the delegation.

(Thirdly) The judicial procedure carried out by a judicial delegation in accordance with the above provisions shall have the same legal effect as it would have if it had been carried out before the competent authority in the requesting state.

([1484] Article No. 1709 of the Judicial Instructions of the Public Prosecution.

(Fourth) It is not permissible to demand that the subjects of the state requesting judicial action in a country of the League be required to provide a fee, security or guarantee that is not required of the subjects of that country. Likewise, it is not permissible to deprive them of the right to legal assistance or exemption from judicial fees that these subjects enjoy .[1485]

The law does not require that the sending of the delegation papers after their execution be in a specific manner, although custom has been established that it be through the Ministry of Foreign Affairs. It does not constitute an infringement of any of the accused's rights to hand over the investigation papers to the requesting party without the mediation of the Ministries of Justice and Foreign Affairs. The Court of Cassation ruled that: [**The law does not require that the sending of the delegation papers after their execution be in a specific manner, although custom has been established that it be through the Ministry of Foreign Affairs. The Chief Prosecutor receiving the investigation papers directly from the military judge in Syria without the mediation of the Ministries of Justice and Foreign Affairs does not prejudice any of the rights of the** accused .[1486]

The request for judicial delegation shall be submitted through diplomatic channels and shall be implemented as follows:

A- The competent judicial authority shall implement the requested delegation in accordance with the legal procedures followed by it. However, if the requesting state wishes to implement the delegation in another manner, its wish shall be granted unless this conflicts with the laws of the implementing state.

B- The requesting authority shall be informed of the place and time of execution of the delegation so that the interested party may attend in person if he wishes or delegate someone to represent him.

C- If the delegation relates to a subject or procedure that is not permitted by the law of the requested state, or if execution is impossible, in both cases the requested state shall notify the requesting authority of this, stating the reasons.

D- The State requested to implement the delegation shall bear its fees, except for the experts' fees, which the requesting State shall pay and a statement thereof shall be sent with the delegation file. However, the State requested to implement the delegation shall collect, on its

([1485] Article No. 1710 of the Judicial Instructions of the Public Prosecution.
([1486]) Article No. 1711 of the Judicial Instructions of the Public Prosecution, Appeal No. 1745 of Year 30 Q issued in the session of June 13, 1961 and published in the second part of the Technical Office Book No. 12, page No. 671, Rule No. 131.

own behalf and in accordance with its laws, the fees prescribed for the papers submitted during the implementation of the delegation.)1487(.

The judicial procedure carried out by a judicial delegation in accordance with the above provisions shall have the same legal effect as if it were carried out before the competent authority in the requesting State.)1488(.

Nationals of the State requesting judicial action in a country of the League may not be required to provide a fee, security or guarantee that is not binding on nationals of that country. They may not be deprived of the right to legal assistance or exemption from legal fees that these people enjoy .1489

The Court of Cassation ruled that failure to respond to the defendant's request to take judicial representation procedures does not constitute a violation of the defendant's right to defense as long as the judgment's ruling was not based on evidence related to any of the details for which representation was requested: [**Since the appellant's objection to the judgment for not responding to his request to take judicial representation procedures was rejected by what is established that although the law requires hearing and investigating the defendant's defense, if the court has clarified the incident or the matter required to be investigated is not productive in the case, then it may disregard it with an explanation of the reason for that, and the contested judgment had expressed its reassurance and reliance on the evidence presented in the case inside the country, and concluded that there was no room to respond to the judicial representation request as long as its ruling was not based on evidence related to any of these details for which representation was requested, then the claim of insufficiency and violation of the right to defense is not acceptable**])1490

It also ruled that the witness's residence abroad does not prevent him from being heard, even through judicial delegation: [The **fact that the witness resides in Lebanon does not detract from the necessity of hearing the witness, as long as it has not been proven to the court that she**

(1487 Article No. 7 of the Arab League Agreement on Judicial Advertisements and Delegations

The Court of Cassation ruled that in the event of a severance of political relations between two countries, it is impossible to request judicial delegation through diplomatic channels: [The request for judicial delegation shall be through diplomatic channels, as stipulated in Article 7 of the Agreement on Judicial Declarations and Delegations concluded between the Arab States on September 14, 1952, signed by the Kingdom of Saudi Arabia on May 23, 1953, and by the United Arab Republic on June 9, 1953, the ratification documents of which were deposited with the General Secretariat on April 5, 1954 and May 15, 1954. It is self-evident that when delegation cannot be requested except through diplomatic channels, its request is impossible in the event of a severance of political relations between the two countries], Appeal No. 40 of Year 35 Q issued in the session of February 13, 1969 and published in the first part of the Technical Office Book No. 20, page No. 337, Rule No. 54.

(1488 Article No. 8 of the Arab League Agreement on Judicial Notices and Commissions.

(1489 Article No. 9 of the Arab League Agreement on Judicial Notices and Commissions.

(1490 Appeal No. 1450 of 57 Q issued in the session of October 20, 1987 and published in the second part of the Technical Office Book No. 38, page No. 804, rule No. 146.

was prevented from doing so after she was legally notified, especially since the court could have heard her through judicial delegation . [1491]

2 - 13 - 2 Extradition of criminals

Extradition is considered an act of sovereignty, an experiment of the executive authority originally competent to take its measures, and the intervention of the judicial authorities in this procedure is nothing more than a contribution on their part to an administrative procedure - as a precaution - without this intervention giving the procedure any judicial character. Therefore, temporary arrest in preparation for extradition is not governed by the rules regulating ordinary arrest supervised by the judicial authority.

Egyptian legislation lacks a law regulating extradition procedures, and the extradition of criminals in “Egypt” is subject to the prevailing custom among countries in this regard. The instructions of the Ministry of Justice, communicated to the prosecution offices in Criminal Circular No. 8 dated March 2, 1901, regulated the subject of extradition in a manner that does not conflict with the rules of international custom in this regard. The provisions of this circular must be followed in cases that are not governed by the rules contained in the treaties to which “Egypt” is bound.

(Fatwa of the General Assembly of the Advisory Section for Fatwa and Legislation of the State Council in the session of October 14, 1957, File 13/2/11, communicated to the Public Prosecution Office in the Ministry of Justice’s letter No. 5-1/53 (618) dated October 16, 1957)

It should be noted that the provisions contained in the aforementioned publication that conflict with the sovereignty of the state over all those residing within its territory are considered a copy and shall not be recognized.

The courts and employees entrusted with criminal investigations derive their authority from the laws and higher orders. Since penal laws are local and do not extend beyond the borders of the country in which they were issued, the judicial authority competent to consider felony and misdemeanor cases is the courts of the country in which these felonies and misdemeanors occurred, not the courts of the country in which the accused are, unless the law provides otherwise. There is no text in Egyptian laws that authorizes the courts or employees entrusted with criminal investigations to rule on felonies and misdemeanors that occur abroad when their perpetrators are present in Egypt.

([1491] Appeal No. 1391 of 39 Q issued in the session of October 13, 1969 and published in Part Three of Technical Office Book No. 20, Page No. 1069, Rule No. 210.

Based on the above, a person accused of a felony or misdemeanor committed abroad cannot be arrested in Egypt except through an administrative process, and the purpose of his arrest is to send him to the competent court abroad, or in other words, to hand him over to the relevant governments.

The accused may be administratively arrested in three cases:

1- If the accused is a foreigner enjoying international privileges.

2- If he is a subject of the Ottoman Empire.

3- If he is a foreigner who does not enjoy international privileges)[1492]

(1492 Article No. 1716 of the Judicial Instructions of the Public Prosecution.

The State Council ruled that: [Mr. Minister of Justice

We have reviewed your letter dated February 6, 1957 regarding the nature of the procedures for extraditing foreign criminals and the extent of the Egyptian police's authority to temporarily arrest them in preparation for their extradition.

The facts of the matter are summarized in that the Fatwa and Legislation Department of the Ministry of Foreign Affairs issued a fatwa on December 29, 1956, stating that the arrest procedures referred to are among the preliminary procedures for requesting extradition, and are among the details that extradition treaties - whether bilateral or multilateral - often specify and clarify. However, the absence of such treaties did not prevent some countries, indeed many of them, from permitting this procedure if the country requesting extradition submits a request for it, if the legal system of the country requested to carry out the arrest permits this.

The fatwa stipulated that in cases other than those regulated by special treaties to which Egypt is a party, the matter is governed by the provisions of the Constitution and the Code of Criminal Procedure, according to which persons may not be detained for more than 24 hours, and at the end of this period they must be released or brought before the judicial authority.

You have sent a memorandum containing the Public Prosecution's opinion on the matter and you request that the matter be presented to the General Assembly of the Advisory Division to express an opinion.

In response, we would like to inform you that this subject was presented to the General Assembly at its session held on October 2, 1957, and it was decided that extradition - which is the state's abandonment of a fugitive criminal in its territory to the state most worthy, according to the rules of international jurisdiction, of considering his crime and trying him or executing the sentence against him - is considered in this capacity a necessary penalty for the rules of international jurisdiction, and therefore, from the point of view of the state to which extradition is requested, it is an act of sovereignty - as it is an act of international cooperation in combating crime and striking at the hands of criminals.

Whereas, considering extradition as an act of sovereignty entails that the executive authority in the requested State is the one originally competent to take its measures, and if the judicial authorities intervene in these measures, this is nothing more than a contribution on their part to an administrative procedure - as a precaution - without this intervention giving the procedure any judicial character. Accordingly, temporary arrest in preparation for extradition is not governed by the rules regulating ordinary arrest supervised by the judicial authorities.

Whereas extradition takes place either in accordance with the rules of international custom, or in accordance with the provisions of a treaty concluded by two or more countries, or in accordance with the provisions of a domestic law regulating its procedures and conditions.

Whereas the legislation in Egypt lacks a law regulating the procedures for the extradition of criminals, and the treaties to which Egypt is bound in this regard are limited to the Egyptian-Sudanese Agreement concluded between the Egyptian and Sudanese governments on May 17, 1902, and to the extradition agreement between the countries of the Arab League, which was issued by Law No. 83 of 1954, therefore the extradition of criminals in Egypt - in cases other than these - is subject to the prevailing custom among countries in this regard. The instructions of the Ministry of Justice regarding the administrative arrest of the accused and their extradition to the governments that requested them and notified to the prosecution offices were organized by Criminal Circular No. 8 dated March 2, 1901. These instructions have regulated the subject of extradition of foreign criminals in a manner that does not conflict with the rules of international custom in this regard.

Whereas the sixth paragraph of Article Two of this circular stipulates that "the person whose extradition is requested may be temporarily arrested based on a notification of a ruling to imprison him or of a ruling against him in the cases stipulated above, even if the notification is telegraphic, and upon the arrival of the papers related to the extradition request, they shall be examined in the usual ways. If these papers are not received within a period of one month, the person shall be released." Article Five also stipulates that "upon the arrest of the person whose extradition is requested, he shall be immediately interrogated about the charge against him and the measures taken against him. If it appears that all the conditions necessary for his extradition have not been met, he shall be released. It is necessary, as a precaution, for the interrogation to take place in the presence of one of the members of the Public Prosecution, who must write a report on it, indicating that the first text is specific to the temporary arrest that precedes and paves the way for extradition, while the second text regulates the procedures for the arrest following the submission of the extradition request.

If the extradition of an accused or convicted person in a felony or misdemeanor who resides in a foreign country is requested, the competent prosecution must send the extradition request to the office of the First Public Prosecutor, accompanied by the following documents:

(a) If the extradition request is submitted during the investigation:

1- Two copies of the arrest warrant or detention order.

2- Comparison sheet.

3- A copy of the police report, the prosecution investigation report, and the referral advisor's report.

4- A memorandum of the evidence of the accusation and a summary of the witnesses' testimony.

5- A copy of the texts of the relevant articles in the Penal Code and the Code of Criminal Procedure.

6- Investigation papers indicating the presence of the accused in the foreign country.

(b) In the event that the extradition request is submitted at the trial stage:

1- A copy of the felony or misdemeanor case.

2- A copy of the minutes of the criminal or misdemeanor court session.

3- Two original copies of the arrest warrant issued by the Public Prosecution.

4- A copy of the provisions of the law under which the accused is to be tried.

5- Investigation papers indicating the presence of the accused in the foreign country.

(c) In the event that a conviction has been issued in the case:

1- A copy of the felony or misdemeanor case.

At this stage, the Public Prosecution intervenes as a member of the executive authority, without its intervention changing the nature of the arrest as a mere administrative ruling. These provisions included in the aforementioned circular differ from the rules included in the Code of Criminal Procedure regarding the organization of ordinary arrest, which are appropriate to the nature of the arrest." To hand over criminals as shown above.

Therefore, the opinion of the General Assembly of the Advisory Section concluded that the temporary arrest of foreign criminals whose extradition is requested is originally governed by the rules contained in the treaties to which Egypt is a party, if any, and other than that, the rules of international custom apply.

The instructions of the Ministry of Justice communicated to the Public Prosecutions in Criminal Circular No. 8 dated March 2, 1901, organized the subject of extradition of criminals, which does not conflict with international custom in this regard. Therefore, these instructions must be applied to cases of temporary arrest of foreign criminals in preparation for their extradition, without the rules of ordinary arrest stipulated in the Code of Criminal Procedure.

2- A copy of the minutes of the criminal or misdemeanor court session.

3- Two original copies of the arrest and summons order issued by the Public Prosecution based on a decision of the Misdemeanour Appeals Court held in the deliberation chamber or based on an in absentia ruling.

4- A copy of the ruling.

5- Investigation papers indicating the presence of the accused in the foreign country.

6- A copy of the notice of the judgment in person if the request calls for the delivery of the convicted person in absentia, or the certificate indicating that the judgment has become enforceable if it was in person.

In all the above-mentioned cases, all documents must be marked as being identical to the original, approved by the Public Prosecutor or the competent Chief Prosecutor, and stamped with the seal of the Prosecution.

In all cases, a photograph of the accused must be attached whenever possible, and the Office of the First Attorney General shall take the necessary measures. In no case may the Ministry of Foreign Affairs or the Ministry of Justice be contacted directly in this regard .[1493]

The provisions of the agreement concluded between the governments of Egypt and Sudan, ratified on May 17, 1902, regarding the extradition of fugitive criminals, shall be observed and implemented as follows:

1- The Public Prosecution may request the following fugitive criminals:

(First) Anyone who has evidence of having committed a felony or misdemeanor punishable by imprisonment for a period of at least six months, provided that he has been ordered to be detained pending trial for this crime.

(Secondly) Every prisoner who escapes from prison, provided that he has been placed there in execution of a sentence issued against him in accordance with the law. A prisoner who escapes from prison is considered to be one who escapes while on his way to it in execution of an order issued to place him there.

(Thirdly) Whoever has been sentenced to a felony penalty or imprisonment for a period of at least six months, if the judgment was pronounced in the presence of the accused, it must be enforceable, and if it was pronounced in his absence, the accused must have appeared at least

([1493] Article No. 1712 of the Judicial Instructions of the Public Prosecution.

once before the court, the investigating judge or the prosecution, or been notified in person by a summons to appear, or notified in any other way to appear before the court, or the judgment was announced to him in person at the appropriate time in which he could file an objection or appeal.

2- The extradition request shall be accompanied by the documents proving the escape of the prisoner if the request is for an escaped prisoner, or a copy of the minutes of the session or the minutes of the investigation proving the presence of the accused, or a copy of the summons to appear before the court and announced to him personally, or a copy of the paper announcing the judgment to him personally if the request is for the extradition of the person convicted in absentia, or a certificate proving that the judgment has become enforceable if the judgment is in his presence.

3- If the Public Prosecution is unable to send all or some of the requested documents with the request, it shall send it accompanied by a memorandum stating the reason for not sending those documents, which must be sent later as soon as possible.

4- In implementing the provisions of the aforementioned agreement, it should be noted that the Sudanese Embassy in Cairo has replaced the representative of the Sudanese government.

It is also necessary to take into account the repeal of any texts that conflict with the state's sovereignty over all residents in its territory as a result of the cancellation of foreign privileges .1494

Since the agreement concluded between the governments of Egypt and Sudan was ratified by the Council of Ministers on May 17, 1902, and published in the Official Gazette as well as in the Egyptian Collection of Laws and Decisions, it is a law of the state.

The 1902 Agreement is a treaty concluded between Egypt and Sudan, and neither country may renounce its provisions by a unilateral act, in accordance with the provisions of international public law regarding treaties. When a judge in each of the two countries is asked to rule on a case in which the defendant resides in the country of the other country, he must verify that his notification was made in accordance with the provisions of that agreement of his own accord, even if its provisions contradict his domestic law, whether the domestic law was issued before the conclusion of the treaty or after its conclusion.

([1494] Article No. 1713 of the Judicial Instructions of the Public Prosecution.

There is no room to say that the 1902 agreement concluded between the governments of Egypt and Sudan is limited to the announcement of papers related to criminal matters, since the text of the agreement's title and the texts of its first, fourth and twenty-second articles are explicit in the generality of their texts and their inclusion of all civil and commercial lawsuits, personal status lawsuits and criminal lawsuits alike.

The failure of the Sudanese courts to take into account the provisions of the 1902 Agreement in announcing the lawsuit, which requires the Egyptian courts to issue an order to implement the judgment issued therein, would not make this judgment binding before the Egyptian courts, because it would be based on procedures that contravene the law applicable in Sudan in this case, which is the 1902 Agreement, and thus it would be a void judgment, and the rule of reciprocity accepted in the jurisprudence of private international law would not apply to it.)1495(.

If the Sudanese government requests the arrest of a Sudanese in Egypt according to the law, the specialized prosecution must demand the charge against him as soon as he is arrested, then send him with the report to the office of the first attorney to take the necessary action regarding him .1496

The provisions of the agreement signed on 6/9/1953 between Egypt and other Arab League countries shall be observed in the extradition of criminals, with respect to the countries that have actually implemented it, namely Egypt, the Hashemite Kingdom of Jordan, and the Kingdom of Saudi Arabia, noting that Egypt approved this agreement by Law No. 83 of 1954 with the following two reservations:

(First) Egypt's refusal to specify the crimes for which extradition is mandatory, as stipulated in Article 4, namely crimes of assault on kings and heads of state, their wives or their ancestors, crimes of assault on crown princes, crimes of premeditated murder, and terrorist crimes.

(Second) Replacing the word "detention" with the word "imprisonment" in Article Eleven and not mentioning arrest.

The provisions of this agreement shall be implemented as follows:

(First) Extradition shall be obligatory if the person whose extradition is requested is being pursued, accused or convicted of a felony or misdemeanor punishable by imprisonment for a period of one year or a more severe penalty in the laws of both the requesting and requested

(1495 Appeal No. 137 of 22 Q issued in the session of March 8, 1956 and published in the first part of Technical Office Book No. 7, page No. 274, Rule No. 39.
(1496 Article No. 1714 of the Judicial Instructions of the Public Prosecution.

States, or if the person whose extradition is requested for such a crime has been sentenced to imprisonment for a period of at least two months, if the crime was committed in the territory of the requesting State. If the crime was committed outside the territory of the two States, extradition shall not be obligatory unless the laws of the two States punish the same act if committed outside their territory, and if the act is not punishable in the laws of the requested States, or if the penalty prescribed for the crime in the requesting State has no equivalent in the requested State, extradition shall not be obligatory unless the person requested is a national of the requesting State or a national of another State that prescribes the same penalty (Articles 2 and 3 of the Agreement).

(Secondly) Extradition shall not be made for political crimes. The determination of whether the crime is political or non-political is left to the requested state, provided that extradition is obligatory for the following crimes:

1- Crimes of assault on kings, heads of state, their wives, their ancestors or descendants.

2- Crimes of assault on crown princes.

3- Intentional murder.

4- Terrorist crimes (Article 4 of the Agreement).

The reservation referred to in this article of the instructions shall be observed with regard to Article 4 of the Agreement.

(Thirdly) Extradition shall not take place if the person whose extradition is requested has previously been tried for the crime for which his extradition is requested and is innocent or has been punished or is under investigation or trial for the same crime for which his extradition is requested in the countries to which extradition is requested.

If the person whose extradition is requested is under investigation or trial for another crime in the requested state, his extradition shall be postponed until his trial is completed and the sentence imposed on him is executed. However, the requested state may temporarily hand him over for trial on condition that he is returned to the state that permitted his extradition after the trial is completed and before it is executed against him (Article 5 of the Agreement).

(Fourth) Extradition shall not take place if the crime or punishment has lapsed by the passage of time according to the law of one of the two countries requesting extradition or the one requested to extradite, unless the country requesting extradition does not take into account the principle of lapse by the passage of time and the person whose extradition is requested is one

of its nationals or a national of another country that does not take into account this principle (Article 6 of the Agreement).

(Fifth) Extradition requests shall be submitted through diplomatic channels and shall be decided upon by the competent authorities in accordance with the laws of each country.

The extradition request shall be accompanied by the documents specified in Article 1712 of these instructions and a full statement of the identity of the person being sought, accused or convicted and his description, as well as documents proving the nationality of the person whose extradition is requested if he is a national of the requesting state. All extradition papers shall be certified by the Minister of Justice in the requesting state or his representative (Articles 8, 9 and 10 of the Agreement).

The requirements of Article 1712 of these instructions shall be observed regarding sending all the aforementioned papers to the Office of the Public Prosecutor to take the necessary action regarding them.

(Sixth) Everything in the possession of the person whose extradition is requested shall be handed over to the requesting state upon his arrest, as well as anything that may be used as evidence of the crime, to the extent permitted by the laws of the country to which extradition is requested (Article 12 of the Agreement).

(Seventh) A person shall not be tried in the requesting state except for the crime for which his extradition request was submitted, the acts connected to it, and the crimes he committed after his extradition. However, if he had the means to leave the territory of the extradited state and did not benefit from them within thirty days, he may be tried for the other crimes (Article 14 of the Agreement).

(Eighth) If the provisions of the aforementioned agreement conflict with the provisions of a bilateral agreement to which two of the contracting states are bound, these two states shall apply the provisions that are most conducive to the extradition of the criminal (Article 18 of the agreement)[1497]

The Egyptian Bureau of the International Criminal Police prepared a draft of the procedures to be undertaken by the Egyptian police in the event of the arrest of international criminals in preparation for their extradition. The General Assembly of the Advisory Section for Fatwa and Legislation at the State Council approved this draft in its session held on January 22, 1958.

([1497] Article No. 1715 of the Judicial Instructions of the Public Prosecution.

The Egyptian Bureau of the International Criminal Police, through the Egyptian police authorities, shall arrest the foreign criminal whose extradition is requested, detain him under custody for a period of seven days, seize whatever is in his possession, and interrogate him, in the event of the arrival of a telegram or letter from the General Secretariat of the International Criminal Police Organization .[1498]

Egypt concluded an agreement with Palestine in 1922, and the State Council ruled that it no longer had a legal existence as of May 15, 1948, the date of the end of the British Mandate over Palestine, because after that date no recognized legitimate government had been established in Palestine that could demand the continuation of the provisions of the previously concluded treaty.

(Fatwa No. 156 published in the Fatwa Collection of the Opinion Section - First Three Years, p. 163).

(b) Arrival of an international bulletin from the International Criminal Police Organization “with a red flag”.

(c) The arrival of a telegram or letter from any national office.

These documents must clearly state the nature of the charge committed, the party that issued the arrest warrant, and that the extradition of the criminal will be requested.

The judicial authority in the country requesting extradition must send a telegram supporting the extradition request within one week from the date of arrest of the person whose extradition is requested. If this telegram does not arrive within the aforementioned period, he shall be released.

The Egyptian police may place the foreigner whose extradition is requested under custody for a period of one month until the extradition papers arrive through diplomatic channels. If the required papers do not arrive at the end of the period, he shall be released.

It is preferable that the telegram be worded as follows:

"Please arrest.... . In preparation for his delivery, he was born on ..... date ..... And his nationality is.... . Wanted based on an arrest warrant issued by..... In his country.... On the date of ..... and please seize any documents, jewelry, and money in his possession (mention the items in detail) and will request their extradition through diplomatic channels."

([1498]) Article No. 1717 of the Judicial Instructions of the Public Prosecution, (File No. 17/2/11, reported to the Public Prosecution by the Ministry of Justice’s letter No. 5-1/53 (53) dated February 1, 1958).

These procedures do not prejudice the right of the Egyptian police to intervene in any case that it is exposed to in this regard .[1499]

The provisions of the agreement concluded between Egypt and Iraq and signed on April 20, 1931 shall be observed until the provisions of the agreement concluded between the Arab League countries are put into effect for Iraq. If that is done, the provisions of whichever agreement facilitates the extradition of the criminal shall be applied in accordance with what is stipulated in Article 1433 of these instructions.)[1500](.

Extradition shall be obligatory if the person whose extradition is requested is being pursued, accused or convicted of a crime among the crimes stipulated if he committed this crime in the territory of the requesting state and the requested state. Extradition shall not be obligatory unless the laws of the two states punish the same act if it is committed outside their territories. The Arab League Convention on the Extradition of Criminals permits the request for extradition whether the person whose extradition is requested has been convicted or the criminal case is under investigation .[1501]

For extradition to take place, the crime must be a felony punishable by imprisonment for a period of one year or a more severe penalty under the laws of both the requesting and requested countries, or the person whose extradition is requested for such a crime must have been sentenced to imprisonment for a period of at least two months.

However, if the act is not punishable under the laws of the requested state, or if the penalty prescribed for the crime in the requesting state has no equivalent in the requested state, then extradition is not obligatory unless the person requested is a national of the requesting state or a national of another state that prescribes the same penalty .[1502]

The basis for qualifying and describing the act for which extradition is requested is the legal provisions requested by the requesting state and the reality of the situation, not what the person whose extradition is requested sees or believes.

Extradition shall not be made in political crimes, and the determination of whether the crime is political is left to the requested state, provided that extradition is obligatory in the following crimes:

([1499] Article No. 1718 of the Judicial Instructions of the Public Prosecution.
([1500] Article No. 1719 of the Judicial Instructions of the Public Prosecution.
([1501]) Article No. 2 of the Extradition Agreement.
([1502]) Article No. 3 of the Extradition Agreement.

1- Crimes of assault on kings, heads of state, their wives, their ancestors or descendants.

2- Crimes of assault on crown princes.

3- Intentional murder crimes.

4- Terrorist crimes)[1503] (.

Extradition shall not take place if the person whose extradition is requested has previously been tried for the crime for which his extradition is requested and has been acquitted, punished, or is under investigation or trial for the same crime for which his extradition is requested in the requested State.

If the person whose extradition is requested is under investigation or trial for another crime in the requested State, his extradition shall be postponed until his trial is completed and the sentence imposed on him is executed. However, the requested state may temporarily hand him over for trial, provided that he is returned to the state that permitted his extradition after the trial is over and before the sentence is executed against him .[1504]

Extradition shall not take place if the crime or punishment has lapsed by prescription according to the law of one of the two States requesting or requested to extradite, unless the State requesting extradition does not take into account the principle of lapse by prescription and the person whose extradition is requested is one of its nationals or a national of another State that does not take into account this principle .[1505]

The requested State may refuse to extradite if the person to be extradited is one of its nationals, provided that it undertakes to prosecute him and seeks assistance in this regard from the investigations conducted by the requesting State. Neither of the contracting parties shall extradite its nationals. However, each of the two States undertakes, within the limits to which its jurisdiction extends, to bring charges against any of its nationals who commits a crime in the country of the other State punishable by a felony or misdemeanor in the two States, if the other State directs to it through diplomatic channels a request to do so accompanied by the files, documents, objects and information in its possession. The requesting State shall be informed of what is done regarding its request .[1506] (.

([1503]) Article No. 4 of the Extradition Agreement.
([1504]) Article No. 5 of the Extradition Agreement.
([1505] Article No. 6 of the Extradition Agreement.
([1506]) Article No. 7 of the Extradition Agreement, and see Article No. 41 of the Legal and Judicial Cooperation Agreement between the Governments of the Arab Republic of Egypt and the United Arab Emirates, signed in Cairo on 2/5/2000, which Egypt approved by Presidential Decree No. 464 of 2000.

The Court of Cassation ruled that: [**The principle is that caution must be exercised in interpreting criminal legislation and the side of accuracy must be adhered to in that, by taking its wording beyond what it can bear - and it was evident from the explicit wording of Articles (41, 42/9) of the aforementioned treaty, which, with the provisions it included, became an effective law - that the undertaking to conduct the investigation contained in Article (41) based on the request of the state on whose territory the crime occurred from the other state requested to extradite the accused who holds its nationality did not include an order of obligation, but rather it is a regulatory procedure that does not result in a violation of nullity, but rather included a call for the two states that signed the agreement to coordinate to ensure the effectiveness of the provisions of the treaty. This is indicated and confirmed by what was stated in the text of the ninth paragraph of Article (42) of the aforementioned agreement regarding the impermissibility of extraditing the accused if the state requested to extradite, as is the case in the appeal presented - had exercised its right to conduct the investigation or trial without waiting for the aforementioned request because it is obvious that the extradition request precedes the request to conduct the investigation or trial. This is also confirmed by the fact that the Emirati side sent to the Egyptian side all the papers, documents, evidence and technical reports that resulted from the investigation Conducted by Dubai Public Prosecution under the judicial delegation in.... Therefore, all investigations conducted by the technical office of the Attorney General are valid procedures that are free from** invalidity .[1507]

Extradition requests shall be submitted through diplomatic channels and shall be decided upon by the competent authorities in accordance with the laws of each country .[1508]

The decision to determine the competent authority in the requesting state to initiate criminal proceedings on the charge attributed to the accused does not fall within the scope of the formal or substantive extradition conditions in accordance with the Arab League Agreement.

Delivery requests shall be accompanied by the following documents:

([1507] Appeal No. 10664 of 79 Q issued in the session of March 4, 2010 and published in Technical Office Book No. 61, Page No. 215, Rule No. 27.

([1508] Article No. 8 of the Extradition Agreement

The meaning of Articles 39, 40 and 42 of the Legal and Judicial Cooperation Agreement between the Government of the United Arab Emirates and the Government of the Arab Republic of Egypt is that the extradition court must verify the availability of the formal and substantive conditions for the extradition request, including the condition that the person requested for extradition has been sentenced by the courts of the requesting state to a custodial sentence of no less than six months. If the extradition court finds that this ruling has been issued, it is not required to discuss its validity or erroneousness in terms of the rules of trial procedures or issuing the ruling, or to submit the charge for which extradition is requested for investigation and discussion in terms of the availability of its elements or evidence proving or denying it or the validity of its attribution. This is something that the person whose extradition is requested can raise and adhere to before the courts of the requesting state in accordance with its procedural and substantive laws, considering that the extradition court is a mechanism for international cooperation in combating crime, and not as a court that transcends national sovereignty.

(a) If the request is for a person under investigation, it shall be accompanied by an arrest warrant issued by the competent authority, specifying the type of crime and the article punishable by it, and if possible, a certified copy of the legal text applicable to the crime shall be attached to it, and an official copy of the verification papers shall also be attached to it, certified by the judicial body that has taken it over or that has the papers.

(b) If the application is for a person who was sentenced in absentia or in person, an official copy of the ruling must be attached to it .[1509]

It is sufficient for the documents and papers attached to the extradition request to be official, that they be certified with the seal of the judicial authority that conducted the investigation, the court that issued the ruling, or the competent administrative body, and that they be exchanged through diplomatic channels, without requiring certification by diplomatic authorities .[1510]

The extradition request must be accompanied by an arrest warrant specifying the type of crime and the article punishable by law, a certified copy of the legal text applicable to the crime, and an official copy of the investigation papers certified by the judicial body that conducted the investigation or that has the papers, if the request is specific to a person under investigation .[1511]

In all cases, the extradition request must be accompanied by a full statement of the identity of the person being sought, accused or convicted and his description. The request must also be accompanied by documents proving the nationality of the person whose extradition is requested, if he is a national of the requesting state.

All delivery documents shall be certified by the Minister of Justice in the requesting State or his representative .[1512]

Although the Arab League Convention on the Extradition of Criminals concluded between Arab countries in 1952 stipulates in its tenth article that all extradition papers must be certified by the Minister of Justice in the requesting state, it also permits the delegation of certification to someone who takes the place of the minister.

([1509]) Article No. 9 of the Extradition Agreement.

([1510]) And since the principle stipulated in Article No. 19 of the Judicial Authority Law is that the language of the courts is Arabic and the court must hear the statements of the parties or witnesses who do not know it through a translator after taking an oath, then the documents and papers attached to the extradition request must be accompanied by a translation into Arabic, in a way that allows understanding and obtaining the reality of the extradition request and its evidence and the extent to which it meets the conditions and validity of its procedures based on the extradition request and its attachments. If this is achieved, then it is no longer required that the translation be formulated in literary eloquence or be free of grammatical errors.

([1511] It is sufficient to mention the article punishing the crime in the extradition request, even if the crime for which extradition is requested is not mentioned.

([1512] Article No. 10 of the Extradition Agreement.

An exception may be made for the delivery request to be made by mail, telegram or telephone. In this case, the requested state must take the necessary precautions to monitor the wanted person until he is contacted and may be arrested and detained provisionally ("detained"), provided that the period of his detention ("detention") does not exceed thirty days, after which he shall be released if the complete file requesting his extradition or a request to extend the period of his detention ("detention") for a maximum of thirty more days is not received during that period. The period of provisional detention shall be deducted from the sentence imposed in the requesting state. However, when the request is made by telegram or telephone, the authority requested to extradite may, when necessary, take the initiative to verify its validity by inquiring from the authority that issued the request .[1513]

Everything in the possession of the person whose extradition is requested shall be handed over to the requesting State upon his arrest, as well as anything that may be used as evidence of the crime, to the extent permitted by the laws of the country to which extradition is requested .[1514]

If the requested State receives several requests from different States regarding the extradition of the same accused for the same crime, priority in extradition shall be given to the State whose interests were harmed by the crime, then to the State in whose territory the crime was committed, then to the State to which the person whose extradition is requested belongs.

If the extradition requests are for different crimes, priority shall be given to the state that requested extradition before others .[1515]

A person shall not be tried in the requesting State except for the crime for which his extradition was requested, the acts connected therewith, and the crimes committed after his extradition. However, if he had the means to leave the territory of the country to which he surrendered and did not benefit from them within thirty days, then he may be tried for other crimes .[1516]

The State bound by the extradition agreement undertakes to facilitate the passage of extradited criminals through its territory and to guard them, upon submission of a copy of the extradition decision .[1517]

([1513] Article No. 11 of the Extradition Agreement.
([1514] Article No. 12 of the Extradition Agreement.
([1515] Article No. 13 of the Extradition Agreement.
([1516] Article No. 14 of the Extradition Agreement.
([1517] Article No. 15 of the Extradition Agreement.

The requesting State shall pay all expenses incurred in executing the extradition request and shall also pay all expenses incurred in returning the extradited person to the place where he was at the time of his extradition if his non-responsibility or innocence is proven [1518] (.

Judgments imposing a penalty restricting freedom, such as imprisonment, detention, or hard labor, may be executed in the country in which the convicted person is located, based on a request from the country that issued the judgment, provided that this requires the approval of the country from which execution is requested. The country requesting execution shall bear all expenses required to execute the judgment [1519].

Extradition under the Convention against Torture

Article 3 of the Convention against Torture states that: "1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights ."[1520]

Article No. 22 thereof states that: "1. Any State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. The Committee shall not receive any communication if it concerns a State Party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication submitted under this Article if it is anonymous or if it considers that it constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of a State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the

([1518] Article No. 16 of the Extradition Agreement.
([1519] Article No. 17 of the Extradition Agreement.
([1520] The Arab Republic of Egypt has approved the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the United Nations General Assembly on December 10, 1984, pursuant to Presidential Decree No. 154 of 1986 issued on April 6, 1986, and published in the Official Gazette on January 7, 1988.

Convention. The State receiving the said notice shall, within six months, submit to the Committee written explanations or statements clarifying the matter and the remedies, if any, that have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications submitted by any individual under this Article unless it has verified that:

(a) The same matter has not been, and is not being, examined under any other procedure of international investigation or settlement,

(b) That the individual has exhausted all available domestic remedies. This rule shall not apply where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who has been the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining the reports submitted to it under this Article.

7. The Committee shall transmit its views to the State party concerned and to the author of the communication.

8. The provisions of this Article shall enter into force when five States Parties to this Convention have made declarations under paragraph 1 of this Article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. Any declaration may be withdrawn at any time by notification addressed to the Secretary-General. Such withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article. No further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration."

The principle of prohibition of torture, defined in Article 3 of the Convention, is absolute. Article 2(2) of the Convention states that "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." The Committee against Torture also notes that other acts

of ill-treatment are also prohibited and that the prohibition of ill-treatment is also non-derogable .[1521]

Another absolute principle is the principle of "non-refoulement" of a person to another State when there are substantial grounds for believing that he would be in danger of being subjected to torture .[1522]

Each State Party shall apply the principle of non-refoulement in any territory under its jurisdiction or any area under its control or authority, or on board a ship or aircraft registered in the State Party, to any person, including persons seeking or in need of international protection, without any form of discrimination and regardless of the nationality or statelessness of the person concerned or his or her legal, administrative or judicial status under ordinary law or emergency law. As the Committee against Torture notes in paragraph 7 of its General Comment No. 2, the concept of "any territory under its jurisdiction" includes 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 a State party .[1523]

There is an obligation not to refoulement whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in the country to which he or she faces deportation, either as an individual or as a member of a group that may be in danger of being subjected to torture in the country of destination. The practice followed by the Committee against Torture in this context is to establish the existence of "substantial grounds" whenever the risk of torture is "foreseeable, personal, present and real ."[1524] .

Any person who is found to be in danger of being subjected to torture if deported to a particular State should be allowed to remain in the territory under the jurisdiction, control or authority of the State party concerned for as long as the risk exists and the person concerned should not be detained without proper legal justification and without guarantees. Detention should always be an exceptional measure based on an individual assessment and subject to regular review. Furthermore, a person at risk should never be deported to another State where he or she may

([1521]) See general comment No. 2 (2007) on the implementation of article 2, paras. 3, 6, 19 and 25.

([1522]) See Tapia Baez v. Sweden (CAT/C/18/D/39/1996), para. 14-5; Núñez Chibana v. Venezuela (CAT/C/21/D/110/1998), paras. 5-6; Aguiza v. Sweden (CAT/C/34/D/233/2003), paras. 13-8; and Singh Sugi v. Canada (CAT/C/39/D/297/2006), paras. 10-2. Abdusametov and Others v. Kazakhstan (CAT/C/48/D/444/2010), para. 13-7; and Nasirov v. Kazakhstan (CAT/C/52/D/475/2011), para. 11-6.

([1523]) See General Comment No. 2 (2007), para. 16.

([1524]) See: Tapia Paez v. Sweden, 14-5; Dadar v. Canada (CAT/C/35/D/258/2004), para. 8-4; and T. A. v. Sweden (CAT/C/34/D/226/2003), para. 7-2; and n. Q. v. Switzerland (CAT/C/44/D/356/2008), para. 7-3; and Subakaran R. Thirugnanasampanthar v. Australia (CAT/C/61/D/614/2014), para. 8-3.

subsequently face deportation to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture .[1525] (.

The State party should examine each case individually, in an impartial and independent manner, through administrative and/or judicial authorities, in accordance with fundamental procedural guarantees, in particular ensuring a prompt and transparent process, a review of the expulsion decision and a suspensive effect of appeal. In each case, the person concerned should be informed in a timely manner of the intended expulsion. Mass deportation, without an objective examination of individual cases with regard to personal risk, should be considered a violation of the principle of non-refoulement .[1526]

States parties should not adopt deterrent measures or policies, such as indefinite detention in poor conditions, refusal to process asylum applications or unnecessarily prolonging them, or reducing funds allocated to programmes to assist asylum seekers, which force persons in need of protection under article 3 of the Convention to return to their country of origin despite the personal risk of being subjected there to torture or other cruel, inhuman or degrading treatment or punishment .[1527]

Article 16 of the Convention against Torture stipulates the obligation of States Parties to prevent acts of cruel, inhuman or degrading treatment or punishment (ill-treatment) that do not amount to torture as defined in Article 1 of the Convention .[1528] (.

States parties should consider whether the nature of other forms of ill-treatment to which a person facing deportation is at risk is likely to change to constitute torture, before making an assessment of each case in relation to the principle of “non-refoulement” .[1529]

The Committee against Torture considers that severe pain or suffering cannot always be assessed objectively. It depends on the negative physical and/or mental consequences that the violent or harmful acts cause to each individual, taking into account all the circumstances

(1525) See: Amy v. Switzerland (CAT/C/18/D/34/1995), para. 11; concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), para. 26; concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/CO/5), para. 30; concluding observations on the sixth and seventh periodic reports of Sweden (CAT/C/SWE/CO/6-7), para. 10; general comment No. 1 (1997) on the implementation of article 3, paragraph 2; Avedis Hamayak-Kurban v. Sweden (CAT/C/21/D/88/1997), para. 7; and see Z. T. v. Australia (CAT/C/31/D/153/2000), para. 6-4; concluding observations on the combined fifth and sixth periodic reports of Greece (CAT/C/GRC/CO/5-6), para. 19; concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), para. 15...

(1526) See: Tapia Aguiza v. Sweden, para. 13-8.

(1527) See: Concluding observations on the combined fifth and sixth periodic reports of Greece (CAT/C/GRC/CO/5-6), para. 19.

(1528) See General Comment No. 2 (2007), paras. 3 and 6.

(1529) (CAT/C/GC/4, 4 September 2018, 15).

relevant to each case, including the nature of the victim's treatment, gender, age, health condition, vulnerability and any other conditions or factors .[1530] (

In order to fully implement Article 3 of the Convention, States Parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of non-refoulement, including:

(a) Ensure that each person concerned has the right to have his or her case examined individually and not collectively and to be fully informed of the reasons for being subjected to proceedings that may lead to a deportation decision and of the rights afforded by law to appeal against such a decision ;[1531]

(b) Providing the person concerned with access to a lawyer, free legal assistance, where appropriate, and to representatives of relevant international protection organizations ;[1532]

(c) to conduct administrative or judicial proceedings concerning the person concerned in a language which that person understands or with the assistance of interpreters and translators ;[1533]

(d) Referring a person who claims to have been subjected to previous acts of torture to free medical examinations, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) ;[1534] (

(e) To ensure that the person concerned has the right to appeal against a deportation order to an independent administrative and/or judicial body within a reasonable time from the date of notification of such order, with the appeal having suspensive effect on the enforcement of the order ;[1535] (

([1530]) See General Comment No. 2 (2007), para. 21.

([1531]) See: concluding observations on the combined fifth and sixth periodic reports of Italy (CAT/C/ITA/CO/5-6), para. 21; concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7 and CAT/C/FIN/CO/7/Corr.1); concluding observations on the seventh periodic report of Switzerland (CAT/C/CHE/CO/7); and concluding observations on the third periodic report of Belgium (CCPR/C/ISR/CO/3), para. 22.

([1532]) See: Concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7 and CAT/C/FIN/CO/7/Corr.1), and concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), para. 15. See also Kwame Mubongo and Others v. Morocco, paras. 11-3 and 11-4.

([1533]) See: Concluding observations on the combined third to fifth periodic reports of Latvia (CAT/C/LVA/CO/3-5 and CAT/C/LVA/CO/3-5/Corr.1).

([1534]) See: Concluding observations on Cabo Verde in the absence of a report (CAT/C/CPV/CO/1); Concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), para. 18; and Concluding observations on the combined sixth and seventh periodic reports of Denmark (CAT/C/DNK/CO/6-7), para. 23. See also Ali Fadel v. Switzerland (CAT/C/53/D/450/2011), paras. 7-6 and 7-8; and M. for. and others v. Denmark (CAT/C/59/D/634/2014), paras. 9-8.

([1535]) See: concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7 and CAT/C/FIN/CO/7/Corr.1); concluding observations on the third periodic report of Slovenia (CAT/C/SVN/CO/3), para. 17; concluding observations on the second periodic report of Tajikistan (CAT/C/TJK/CO/2), para. 18; see also concluding observations on the combined fifth and sixth periodic reports of

(f) Provide effective training to all personnel dealing with persons subject to deportation procedures on respect for the provisions of article 3 of the Convention, with a view to avoiding decisions that are inconsistent with the principle of non-refoulement ;[1536]

(g) Provide effective training for medical and other personnel dealing with detainees, migrants and asylum seekers in identifying and documenting signs of torture, taking into account the Istanbul Protocol .[1537] (

The term "diplomatic assurances", used in the context of the transfer of a person from one State to another, refers to a formal commitment by the receiving State that the person concerned will be treated in accordance with conditions determined by the sending State and in accordance with international human rights standards .[1538] (

The Committee against Torture considers that diplomatic assurances provided by a State Party to the Convention to which a person is to be deported should not be used as a loophole to undermine the principle of non-refoulement set out in article 3 of the Convention, when there are substantial grounds for believing that the person would be in danger of being subjected to torture in that State .[1539]

The Committee against Torture considers that the word "remedy" in article 14 includes the concepts of "effective remedy" and "reparation". Thus, the concept of comprehensive reparation involves restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full range of measures necessary to provide redress for violations under the Convention .[1540] (

States parties should recognize that victims of torture or other cruel, inhuman or degrading treatment or punishment suffer physical and psychological harm that may require the ongoing availability and accessibility of specialized rehabilitation services. After medical documentation of this health condition and its need for treatment, they should not be transferred to a country

Greece (CAT/C/GRC/CO/5-6), para. 19; and concluding observations on the combined fifth and sixth periodic reports of Italy (CAT/C/ITA/CO/5-6), para. 21(c).

([1536]) See: Concluding observations on the second periodic report of the Plurinational State of Bolivia (CAT/C/BOL/CO/2); and Concluding observations on the combined fourth and fifth periodic reports of Bulgaria (CAT/C/BGR/CO/4-5), para. 16.

([1537]) See: Concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), para. 18.

([1538]) (CAT/C/GC/4, 4 September 2018, 19).

([1539]) See Agiza v. Sweden, para. 13-4; Tursunov v. Kazakhstan (CAT/C/54/D/538/2013), paras. 9-10; and H. Y. v. Switzerland (CAT/C/61/D/747/2016), para. 10-7. See also the concluding observations on the combined third to fifth periodic reports of the United States of America (CAT/C/USA/CO/3-5), para. 2; the concluding observations on the fourth periodic report of Morocco (CAT/C/MAR/CO/4), para. 9; the concluding observations on the fifth periodic report of Germany (CAT/C/DEU/CO/5), para. 25; and the concluding observations on the second periodic report of Albania (CAT/C/ALB/CO/2), para. 19.

([1540]) See general comment No. 3 (2012) on the implementation of article 14, paragraph 2.

where appropriate medical services for their rehabilitation are not available or guaranteed [1541] (.

States Parties may consider that there is a conflict between the obligations they have assumed under article 3 of the Convention and the obligations they have undertaken under a bilateral or multilateral extradition treaty, particularly when the treaty was concluded prior to ratification of the Convention with a State that is not a party to the Convention, i.e. when it is not yet bound by the provisions of article 3. In this case, the relevant extradition treaty should apply in accordance with the principle of non-refoulement [1542] (.

The Committee against Torture recognizes that the time frame for surrendering a person for the purpose of criminal prosecution or to serve a sentence is a crucial factor for a State to respect its obligations under both the Convention and an extradition treaty to which it is a party, when it concerns a person who has made a communication under article 22 of the Convention based on the principle of "non-refoulement". The Committee against Torture therefore requests any State party faced with such a situation to inform the Committee against Torture of any potential conflict between its obligations under the Convention and its obligations under an extradition treaty from the start of the individual complaint procedure in which the State party is involved so that the Committee can seek to give priority consideration to that communication before the time limit for mandatory extradition has arrived. However, the State party concerned must recognize that the Committee against Torture can only give priority to the consideration and decision on such a communication during its sessions [1543] (.

Furthermore, States parties to the Convention which subsequently consider concluding or adhering to an extradition treaty should ensure that there is no conflict between the Convention and that treaty and, if there is a conflict, should include in the notification of accession to the extradition treaty the provision that the Convention shall prevail in the event of a conflict [1544] (.

Article 3 of the Convention, which provides protection against expulsion for persons who risk being subjected to torture in the State to which they are to be deported, should not prejudice article 16(2) of the Convention, particularly when the person subject to expulsion enjoys additional protection, under international instruments or national law, against being deported

(1541) (CAT/C/GC/4, 4 September 2018, 22).
(1542) (CAT/C/GC/4, 4 September 2018, 23).
(1543) (CAT/C/GC/4, 4 September 2018, 24).
(1544) (CAT/C/GC/4, 4 September 2018, 25).

to a State where he or she would be in danger of being subjected to cruel, inhuman or degrading treatment or punishment .[1545] (.

Article 3(2) of the Convention provides that, for the purpose of determining whether there are grounds for believing that a person would be in danger of being subjected to torture if expelled, returned or extradited, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights .[1546] (.

In this regard, the Committee against Torture notes that cruel, inhuman or degrading treatment or punishment, whether or not amounting to torture, to which a person or his or her family has been subjected in the State of origin or to which they will be subjected in the State to which the individual is being deported, constitutes an indication that the person would be in danger of being subjected to torture if deported to one of those States. States Parties should take this reference into account as an essential element in justifying the application of the principle of non-refoulement .[1547]

The Committee against Torture draws the attention of States parties to some non-exhaustive examples of human rights situations that may constitute an indication of a risk of torture and which they should take into account in their decisions on the removal of a person from their territory and in applying the principle of non-refoulement. States Parties should take into account in particular:

(a) Whether the person concerned has previously been arbitrarily arrested in his/her State of origin without a judicial order and/or whether he/she has been deprived of the fundamental guarantees for detainees in police custody, such as :[1548]

([1545] States Parties to the Convention that are also parties to other relevant treaties may find in the following instruments examples of other international provisions directly relevant to the application of the principle of non-refoulement in cases where a person risks being subjected to torture or other ill-treatment in the country to which he or she is being deported:
(a) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 56(3));
(b) International Convention for the Protection of All Persons from Enforced Disappearance (art. 16(1));
(c) Convention relating to the Status of Refugees (Article 33(1));
(d) Charter of Fundamental Rights of the European Union (Article 19(2));
(e) Inter-American Convention to Prevent and Punish Torture (last paragraph of article 13);
(e) The American Convention on Human Rights (Article 22(8) and (9));
(z) African Charter on Human and Peoples' Rights (Article 12(3));
(h) The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (Articles II (3) and V (1)).

([1546]) See: G. R. for. v. Sweden, para. 6-3; and h. M. H. E. v. Australia (CAT/C/28/D/177/2001), para. 6-5; and S. for. A. v. Canada, (CAT/C/37/D/282/2005), para. 7-1; and T. E. v. Canada (CAT/C/45/D/333/2007), para. 7-3; and A. M. A. v. Switzerland (CAT/C/45/D/344/2008), para. 7-2; and E. your. and. v. Finland (CAT/C/54/D/490/2012), paras. 9-3 and 9-7...

([1547]) (CAT/C/GC/4, 4 September 2018, 28).

([1548]) See: Ali Fadel v. Switzerland, paras. 7-7 and 7-8.

1- Notifying the person in writing and in a language he understands of the reasons for his arrest ;[1549]

2- The person shall reach a member of his family or a person of his choice to inform him of the arrest ;[1550]

3- The person shall obtain the services of a lawyer free of charge when necessary, and upon request, he shall obtain the services of a lawyer of his choice and at his own expense to defend him;)[1551] (.

4- The person's access to an independent physician for examination and health treatment or, for this purpose, access to a physician of his choice at his own expense ;[1552]

5- Access to an independent specialized medical body to verify the person's allegations that he was subjected to torture ;[1553]

6- Access to a competent and independent judicial institution entitled to issue a ruling on the person's claims regarding treatment during detention within the time frame specified by law or within a reasonable time frame assessed for each individual case ;[1554]

(b) Whether the person has been the victim of cruel treatment or excessive use of force by public officials on the basis of any form of discrimination in his or her State of origin or will face such cruel treatment in the State to which he or she is being deported ;[1555]

(c) Whether the person has been or will be a victim of violence in his or her State of origin or in the State to which he or she is being deported, including gender-based or sexual violence, in public or private places, gender-based persecution or genital mutilation, which may amount to torture, without the intervention of the competent authorities of the State concerned to protect the victim ;[1556]

(1549) See: Sylvie Bakato-Bia v. Sweden (CAT/C/46/D/379/2009), paras. 2-2 and 10-5; and Ali Fadel v. Switzerland, paras. 7-7...
(1550) See: Ramiro Ramírez Martínez and Others v. Mexico (CAT/C/55/D/500/2012), para. 17-5; and Patrice Gahungo v. Burundi (CAT/C/55/D/522/2012), para. 7-6.
(1551) See: Tony Shahin v. Sweden (CAT/C/46/D/310/2007), para. 9; and Nasirov v. Kazakhstan, paras. 2-2, 11-6 and 11-9.
(1552) See: Ramiro Ramírez Martínez and Others v. Mexico, para. 17-5; Patrice Gahungo v. Burundi, para. 7-7; and X v. Burundi (CAT/C/55/D/553/2013), para. 7-5.
(1553) See: Compay Price Magloire Gbadjavi v. Switzerland (CAT/C/48/D/396/2009), paras. 2-1 and 7-5 to 7-8; and Ali Fadel v. Switzerland, paras. 2-4 and 7-6 to 7-8.
(1554) See: Ramiro Ramírez Martínez and Others v. Mexico, paras. 17-5 and 17-6; Patrice Gahungo v. Burundi, paras. 7-7; and X v. Burundi, paras. 7-5 and 7-6.
(1555) See: F. your. v. Denmark (CAT/C/56/D/580/2014), paras. 7-5 and 7-6.
(1556) See: Sylvie Pacatto-Pia v. Sweden, paras. 10-5 to 10-7.

(d) Whether the person has been sentenced in the State of origin or will be sentenced in the State to which he or she is being deported in a judicial system that does not guarantee the right to a fair trial ;[1557]

(e) Whether the person concerned has been detained or imprisoned in the State of origin or would be detained or imprisoned, if removed to a State, in conditions amounting to torture or cruel, inhuman or degrading treatment or punishment ;[1558]

(f) Whether the person concerned would face corporal punishment if he or she were deported to a State whose national law permits corporal punishment but which amounts to torture or cruel, inhuman or degrading treatment or punishment according to customary international law, the jurisprudence of the Committee against Torture and other recognized international and regional mechanisms for the protection of human rights ;[1559]

(g) Whether the person concerned would be deported to a State in respect of which there are allegations or credible evidence of genocide, crimes against humanity or war crimes within the meaning of articles 6, 7 and 8 of the Rome Statute of the International Criminal Court ;[1560]

(h) Whether the person concerned will be deported to a State party to the Geneva Conventions of 12 August 1949 and their Additional Protocols and there are allegations or evidence that there is a violation of Article 3 common to the four Geneva Conventions of 12 August 1949 and/or Article 4 of the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), in particular: (i) Article 3(1)(a) of the four Geneva Conventions; (ii) Article 4(1) and (2) of Protocol II ;[1561]

([1557]) See: Agisa v. Sweden, para. 13-4; and Ali Fadel v. Switzerland, paras. 7-8.

([1558]) See: Tony Shahin v. Sweden, para. 9-5; and Tursunov v. Kazakhstan, para. 9-8.

([1559]) See: Ruba Al-Hajj Ali v. Morocco (CAT/C/58/D/682/2015), paras. 8-5 to 8-8.

([1560]) See, for example, the concluding observations on the combined fourth and fifth periodic reports of Croatia (CAT/C/HRV/CO/4-5), para. 11; and the concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/CO/3), para. 16.

([1561]) Although the Committee did not directly quote the provisions of the Geneva Conventions and their Additional Protocols, it referred in its jurisprudence to cases covered by those provisions, in the concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4, paras. 12 and 23-26); and the concluding observations on the combined fifth and sixth periodic reports of Italy (CAT/C/ITA/CO/5-6), paras. 20-23, among other references.

Article 3(1)(a) of the four Geneva Conventions provides that in the case of armed conflict not of an international character, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, is prohibited and shall remain prohibited with respect to persons taking no active part in the hostilities. See: Concluding observations on the fourth periodic report of the Russian Federation (CAT/C/RUS/CO/4), para. 24; and Concluding observations on the sixth periodic report of Ukraine (CAT/C/UKR/CO/6), para. 11.

Article 4(1) of the Second Protocol, adopted in ? June 1???, that all persons who do not take a direct part or who are no longer taking part in the hostilities (with reference to armed conflicts referred to in paragraph 2 of the Geneva Conventions and Article 1 of their Additional Protocols), whether or not their freedom has been restricted, have the right to respect for their person, their honour, their religious convictions and practices. Article 4(2) of the Protocol provides that the following acts against the persons referred to in article 4(1) are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life and physical or mental health of persons, in particular murder and cruel treatment such as torture, mutilation or any form of corporal punishment; (b) collective

(i) Whether the person concerned will be deported to a State which there are allegations or evidence of violating Article 12 of the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) ;[1562]

(j) Whether the person concerned will be deported to a State where there are allegations or evidence of a violation of Articles 32 or 45 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention); or Article 75(2) of the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) ;[1563]

(k) Whether the person concerned will be deported to a State where he or she would be deprived of the inherent right to life, including being subjected to extrajudicial execution or enforced disappearance, or where the death penalty is practiced and is considered by the State Party carrying out the deportation to be a form of torture or cruel, inhuman or degrading treatment or punishment, in particular :[1564]

(i) If the latter has abolished the death penalty or imposed a moratorium on its execution ;[1565]

1- If the death penalty is imposed for crimes that the State Party carrying out the deportation does not consider to be the most serious crimes ;[1566]

2- If the death penalty is carried out for crimes committed by persons under the age of eighteen, or on pregnant women, nursing mothers, or persons with severe mental disabilities ;[1567]

(l) The State party concerned should also assess whether the circumstances and methods of application of the death penalty and the length of time and conditions spent on death row by

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punishments; (c) hostage-taking; (d) acts of terrorism; (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) slavery and the slave trade in all their forms; (g) pillage; (h) threats to commit any of the foregoing acts. See: Concluding observations on the initial report of Lebanon (CAT/C/LBN/CO/1), para. 11; and Concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), para. 12.

([1562] Article 12 of the Third Geneva Convention provides, inter alia, that a Detaining Power may transfer prisoners of war only to a State party to the Convention, and only after the Detaining Power has satisfied itself of the willingness and ability of the State concerned to apply the Convention. See: Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 17.

([1563] Article 45 of the Fourth Geneva Convention provides, inter alia, that a Detaining Power may transfer prisoners of war only to a State Party to the Convention, and only after the Detaining Power has satisfied itself of the willingness and ability of the State concerned to apply the Convention.

Article 75(2) of Additional Protocol I provides that the following acts shall be prohibited at any time and in any place whatsoever, whether committed by civilian or military agents: (a) violence to the life, health or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental; (iii) corporal punishment; (iv) mutilation; (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault; (c) the taking of hostages; (d) collective punishments; (e) threats to commit any of the foregoing acts. See: Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 34.

([1564]) See: Concluding observations on the second periodic report of Belgium (CAT/C/BEL/CO/2), para. 10.

([1565]) See: Ruba Al-Hajj Ali v. Morocco, paragraphs 8-5 to 8-8.

([1566]) See: X v. Switzerland (CAT/C/53/D/470/2011), paras. 7-8; and Asghar Tahmaurisi v. Switzerland (CAT/C/53/D/489/2012), paras. 7-5.

([1567]) See: Concluding observations on the second periodic report of Afghanistan (CAT/C/AFG/CO/2), para. 34(c).

persons may amount to torture or cruel, inhuman or degrading treatment or punishment for the purpose of applying the principle of "non-refoulement" ;[1568]

(m) Whether the person concerned will be deported to a State where reprisals amounting to torture have been or will be committed against the person, against members of his family or against witnesses to his arrest and detention, such as acts of violence and terrorism against them or the disappearance, killing or torture of family members or witnesses concerned ;[1569]

(n) Whether the person concerned will be deported to a country where he or she is exposed or will face a risk of being subjected to slavery, forced labour or human trafficking ;[1570]

(o) Whether the person concerned is under the age of 18 and will be deported to a State where his or her fundamental rights as a child have already been and/or will be violated, creating irreparable harm, such as recruitment as a combatant participating directly or indirectly in hostilities or providing sexual services)[1571]

States Parties should also refrain from deporting individuals to another State when there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment by non-State entities, including groups that unlawfully carry out acts that cause severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial effective control, is unable to prevent their acts or is unable to combat their impunity .[1572]

The Committee against Torture considers that it is the responsibility of the author of a communication to present a comprehensive argument for the complaint concerning an alleged violation of article 3 of the Convention so that the Committee, from a prima facie impression or, where appropriate, from subsequent communications, considers it relevant for consideration under article 22 of the Convention and that it meets each of the requirements set out in rule 113 of the Committee's rules of procedure .[1573]

A State Party's obligations under the Convention apply from the date of entry into force of the Convention for that State Party. However, the Committee against Torture will consider communications concerning alleged violations of the Convention that occurred before the State

([1568]) See the concluding observations on the combined third, fourth and fifth periodic reports of the Republic of Korea (CAT/C/KOR/CO/3-5), para. 30(b).
([1569]) See: Hossein Khademi and Others v. Switzerland (CAT/C/53/D/473/2011), paras. 7-4 to 7-6; and Nasirov v. Kazakhstan, paras. 11-9; see N. A. A. v. Switzerland (CAT/C/60/D/639/2014), paras. 7-7 to 7-11.
([1570]) See: Tony Shahin v. Sweden, para. 9-5.
([1571]) See: Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 34.
([1572]) See: S. Q. Scientific v. Australia (CAT/C/22/D/120/1998), paras. 6-8 and 6-9; and M. your. M. v. Australia (CAT/C/60/D/681/2015), paras. 8-9.
([1573]) (CAT/C/GC/4, 4 September 2018, 31).

party recognized the competence of the Committee against Torture under article 22 of the Convention by means of a declaration under article 22 if the effects of those violations persist after the State party's declaration and if those effects could in themselves constitute a violation of the Convention .[1574]

Referring to article 22(5)(a) of the Convention, which provides that the Committee against Torture shall not consider any individual communication under this article unless it has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement, the Committee against Torture considers that "same matter" should be understood to mean that it concerns the same parties, the same facts, and the same substantive rights .[1575] (According to article 22(5)(b) of the Convention, the complainant must have exhausted all available domestic remedies, provided by law and in practice, that provide effective relief. Article 22(5)(b) further provides that this rule does not apply if the application of the remedies is unreasonably prolonged or unlikely to bring effective relief to the person who is the victim of the violation of the Convention. In the context of article 3 of the Convention, the Committee against Torture considers that the exhaustion of domestic remedies means that the complainant has sought remedies that are directly related to the risk of being subjected to torture in the country to which he will be deported, and not remedies that could allow the complainant to remain in the sending State party for other reasons .[1576]

The Committee against Torture also considers that effective remedies in implementing the principle of non-refoulement should be an appeal capable of preventing, in practice, the deportation of the complainant when there are substantial grounds for believing that he would personally be in danger of being subjected to torture if deported to another country. Appeal should be a legal right, not a privilege granted by the relevant authorities as a gift, and should be available in practice without any obstacles of any kind.)[1577](.

Where the Committee, or members designated by the Committee, request the State party concerned to consider urgently, once the expulsion decision by the domestic authorities is enforceable according to the information available, taking such interim measures as the Committee against Torture considers necessary to avoid irreparable harm to the victim or

([1574]) See: N. Z. v. Finland (CAT/C/53/D/495/2012), para. 12-3.
([1575]) See: A. A. v. Azerbaijan (CAT/C/35/D/247/2004), paras. 6-8; and E. E. v. the Russian Federation (CAT/C/50/D/479/2011), para. 8-4; and n. for. v. the Russian Federation (CAT/C/56/D/577/2013), para. 8-2; and M. T. v. Sweden (CAT/C/55/D/642/2014), para. 8-3; and Mr. O. v. Sweden (CAT/C/56/D/643/2014), para. 6-4.
([1576]) See: Mr. Y. v. Canada (CAT/C/55/D/512/2012), para. 7-2; and Ms. Olga Shestakova v. Russian Federation (CAT/C/62/D/712/2015), para. 6-4., A. E. v. Switzerland (CAT/C/14/D/24/1995), para. 4; and Evloev v. Kazakhstan (CAT/C/51/D/441/2010), paras. 8-6. And the case of W. A. Dr. v. Canada (CAT/C/53/D/520/2012), para. 7-4.
([1577]) See: W. A. D v. Canada, para. 7-4; and C. your. v. Canada (CAT/C/56/D/562/2013), para. 9-2.

victims of an alleged violation of article 3 of the Convention, in accordance with rule 114 of the Committee's rules of procedure, the State party should comply with the request of the Committee against Torture in good faith .[1578]

Failure by the State party to comply with the request of the Committee against Torture would constitute a serious prejudice and impediment to the effectiveness of the deliberations of the Committee against Torture and would cast serious doubt on the State party's willingness to implement article 22 of the Convention in good faith. Accordingly, the Committee against Torture decided that failure to comply with its request for interim measures constituted a violation of article 22 .[1579]

With regard to the application of article 3 of the Convention to the merits of a communication submitted under article 22 of the Convention, the burden of proof lies with the author of the communication, who must present a prima facie case, i.e. submit evidence-based arguments showing that the risk of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they are unable to detail their case, for example, if they have demonstrated that it is impossible for them to obtain documentation relating to their alleged torture or if they are deprived of their liberty, the burden of proof is reversed and it is up to the State party concerned to investigate these allegations and verify the veracity of the information on which the communication is based. It is the responsibility of the State party, at the national level, to assess, through administrative and/or judicial procedures, whether there are substantial grounds for believing that the complainant faces a foreseeable, present, personal and real risk of being subjected to torture in the State to which he will be deported .[1580]

The State party should provide the person concerned with basic guarantees and safeguards during the assessment procedure, particularly if the person is deprived of liberty or in a situation of particular vulnerability, such as an asylum seeker, an unaccompanied minor, a woman subjected to violence or a person with disabilities (protection measures) .[1581]

([1578]) (CAT/C/GC/4, 4 September 2018, 36).

([1579]) See Kalinichenko v. Morocco (CAT/C/47/D/428/2010), paras. 13-1, 13-2 and 16; Tursunov v. Kazakhstan, para. 10; X v. Russian Federation (CAT/C/54/D/542/2013), paras. 9-2 and 12; and D. E. Q. v. Hungary (CAT/C/56/D/671/2015), paras. 9.1 to 9.3, s. T. v. Australia (CAT/C/61/D/614/2014), paras. 9 and 10; and X v. Russian Federation, para. 12.

([1580]) See Sivagnaratnam v. Denmark (CAT/C/51/D/429/2010), paras. 10-5 and 10-6 and Mr. A. R. v. the Netherlands (CAT/C/31/D/203/2002), para. 7-3; Arthur Kasumbula Kalonzo v. Canada (CAT/C/48/D/343/2008), para. 3; X v. Denmark (CAT/C/53/D/458/2011), para. 3; and W. A. Dr. v. Canada, para. 8-4; and T. Z. v. Switzerland (CAT/C/62/D/688/2015), para. 8-4.

([1581]) See: Concluding observations on the fourth periodic report of the Netherlands (CAT/C/NET/CO/4), para. 7; and Concluding observations on the fourth periodic report of Cyprus (CAT/C/CYP/CO/4), paras. 13 and 14.

Guarantees and safeguards should include the provision of linguistic, legal, medical, social and, where appropriate, financial assistance, as well as the right to challenge a deportation decision within a reasonable time, for any person experiencing vulnerability and stress with a suspensive effect on the implementation of a deportation order. In particular, an examination by a qualified doctor should always be ensured, including, at the request of the complainant, to prove the acts of torture suffered, regardless of the authorities' assessment of the credibility of the allegation, so that the authorities deciding on a particular case of refoulement can complete the assessment of the risk of torture on the basis of the results of medical and psychological examinations, beyond reasonable doubt .[1582]

Torture victims and other vulnerable individuals often suffer from post-traumatic stress disorder, which can result in a wide range of symptoms, including involuntary avoidance and disassociation. These symptoms can affect a person's ability to reveal all relevant details or convey a consistent narrative throughout the proceedings. To ensure that victims of torture or other vulnerable persons have access to effective remedies, States parties should refrain from using a standardized credibility assessment process to determine the validity of a non-refoulement request. With regard to possible factual inconsistencies and discrepancies in the author's allegations, States parties should be aware that complete accuracy can rarely be expected from victims of torture .[1583]

In order to determine whether there are substantial grounds for believing that a particular person would be in danger of being subjected to torture if deported, the Committee against Torture considers it essential that there exists in the State concerned a consistent pattern of gross, flagrant or mass violations of human rights, as referred to in article 3(2) of the Convention. These violations include, but are not limited to:

(a) The widespread practice of torture and the impunity of its perpetrators;

(b) Harassment of and violence against minorities;

(c) Cases that contribute to genocide;

(d) The prevalence of gender-based violence;

([1582]) See: M. for. and others v. Denmark, para. 9-8.

([1583]) See: Alain v. Switzerland (CAT/C/16/D/21/1995), para. 11-3; Keisuke v. Sweden (CAT/C/16/D/41/1996), para. 9-3; Heiden v. Sweden (CAT/C/21/D/101/1997), paras. 6-6 and 6-7; and K. T. And you. M. v. Sweden (CAT/C/37/D/279/2005), para. 7-6; and E. your. and. v. Finland, para. 9-6; and M. for. and others v. Denmark, para. 9-6.

(e) The widespread use of prison sentences and sentences against persons exercising their fundamental freedoms;

(e) Cases of international and non-international armed conflicts[1584]

The Committee against Torture assesses "substantial grounds" and considers that the risk of torture is foreseeable, personal, present and real when the very existence of the facts relating to the risk would, at the time of its decision, affect the complainant's rights under the Convention if he or she were to be deported. Personal risk indicators may include, but are not limited to:

(a) The ethnic origin of the complainant;

(b) The political affiliation or political activities of the complainant and/or members of his family;

(c) Arrest and/or detention without guarantee of fair treatment and trial;

(d) Judgment in absentia;

(e) Sexual orientation and gender identity;

(e) desertion from armed forces or armed groups;

(z) Previous exposure to torture;

(h) Detention without contact or any other form of arbitrary or unlawful detention in the country of origin;

(i) Secretly fleeing the country of origin following threats of torture;

(i) Religious affiliation;

(k) Violations of the right to freedom of thought, conscience and religion, including violations relating to the prohibition of conversion to a religion other than that declared to be the religion of the State, where such conversion is prohibited and punishable in law and in practice;

(l) the risk of being expelled to a third country where the person would face a risk of being subjected to torture;

([1584]) See: X v. Kazakhstan (CAT/C/55/D/554/2013), para. 12-7., b. Q. for. what. your. v. Canada (CAT/C/55/D/505/2012), para. 8-3., Subarkaran R. Thirugnanasampanthar v. Australia, paras. 8-7, Concluding observations on the initial report of Iraq (CAT/C/IRQ/CO/1 and CAT/C/IRQ/CO/1/Corr.1), paras. 11 and 12, c. your. v. Canada, paras. 10.5 and 10.6, Abed Azizi v. Switzerland (CAT/C/53/D/492/2012), paras. 8.5 to 8.8, Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 22...

(m) Violence against women, including rape[1585]

In assessing whether there are “genuine grounds”, the Committee against Torture will take into account the human rights situation in a State as a whole rather than in a particular region. A State Party is responsible for any territory under its jurisdiction, control or authority. The concept of “local risk” does not provide measurable criteria and is not sufficient to completely eliminate the personal risk of torture .[1586]

The Committee against Torture does not consider the so-called “internal flight alternative”, i.e. the transfer of a person or victim of torture to a part of a State where the person would not be at risk of torture, as reliable or effective as in other parts of the same State .[1587]

In assessing whether there are “genuine grounds”, the Committee against Torture considers that the receiving State must have demonstrated that it has taken certain fundamental measures to prevent and prohibit torture throughout the territory under its jurisdiction, control or authority, such as clear legislative provisions on the absolute prohibition of torture and its punishment by appropriate penalties, measures to end impunity for acts of torture, violence and other unlawful practices committed by public officials, and the prosecution and, if found guilty, punishment of public officials alleged to have committed acts of torture or other ill-treatment in a manner commensurate with the gravity of the crime committed .[1588]

Both parties may provide all relevant information to demonstrate the relevance of their information provided under Article 22 of the Agreement to the provisions of Article 3. The following information will be relevant but not comprehensive:

(a) Whether there is evidence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights;

(b) Whether the complainant has been subjected to torture or ill-treatment by, or at the instigation of, a public official or any other person acting in an official capacity, or with the

(1585) See: Z. v. Denmark (CAT/C/55/D/555/2013), paras. 5-2 and 7-8; and M. for. and others v. Denmark, paras. 2-1, 2-2 and 9-7, T. Dr. v. Switzerland (CAT/C/46/D/375/2009), paras. 7-8; Nasirov v. Kazakhstan, paras. 7-6 and 11-9; Agiza v. Sweden, para. 13-4; Ali Fazil v. Switzerland, para. 7-8; Utam Mondal v. Sweden (CAT/C/46/D/338/2008), para. 7-7; Dadar v. Canada, para. 8-5; Abdussametov and others v. Kazakhstan, para. 13-8; Abid Azizi v. Switzerland, paras. 3-2 and 8-8; General Comment No. 1 (1997) on the implementation of article 3, paragraph 2; and Avedis Hamayak-Kurban v. Sweden (CAT/C/21/D/88/1997), para. 7; and Z. T. v. Australia (CAT/C/31/D/153/2000), para. 6-4; concluding observations on the combined fifth and sixth periodic reports of Greece (CAT/C/GRC/CO/5-6), para. 19; concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), para. 15, i. your. and. v. Finland, paras. 9-6 and 9-7.

(1586) See: Uttam Mondal v. Sweden, para. 7-4...

(1587) See: M. your. M. v. Australia, paras 8-9.

(1588) See: concluding observations on the combined fifth and sixth periodic reports of Argentina (CAT/C/ARG/CO/5-6), paras. 9–12 and 30; and concluding observations on the sixth periodic report of Bulgaria (CAT/C/BGR/CO/6), paras. 7, 8, 11 and 12.

consent or acquiescence of such official (consent) in the past, and if so, whether in the recent past;

(c) Whether there is medical, psychological or other independent evidence to support the complainant's claim that he has been subjected to torture or ill-treatment in the past, and whether such torture has had subsequent effects;

(d) Whether the State party has ensured that the complainant facing deportation from the territory under its jurisdiction, control or authority has access to all legal and/or administrative safeguards and guarantees provided by law, in particular an independent medical examination to assess his claims that he has been previously subjected to torture or ill-treatment in his country of origin;

(e) Whether there is any allegation or credible evidence that the complainant's relatives and/or relatives of another person have been or will be subjected to threats, reprisals or other forms of sanctions amounting to torture or other cruel, inhuman or degrading treatment or punishment in connection with the communication submitted to the Committee;

(f) Whether the complainant has engaged within or outside the State concerned in political or other activity which appears to place the complainant in a situation exposing him to the risk of torture if he is expelled, returned or extradited to the State concerned;

(g) Whether the complainant, if returned to the State to which he is being deported, would be in danger of being returned to another State where he would be in danger of being subjected to torture;

(h) Whether there is any evidence regarding the credibility of the complainant, taking into account the physical and psychological vulnerability of the majority of complainants, such as asylum seekers, former detainees and victims of torture or sexual violence, which leads to some inconsistencies and memory gaps in the information they provide;

(i) Whether the complainant has established the general veracity of the allegations, taking into account any discrepancies that may exist in the presentation of the facts .[1589]

The Human Rights Committee has stated that it is a violation of article 6 of the Covenant to deport, extradite or transfer a person from a country where the death penalty has been abolished to another country where he or she may face the death penalty, unless he or she has effective and credible assurances that the death penalty will not be imposed.

([1589]) See: S. for. A. v. Canada, para. 7-5.

The actual or threatened resumption of the use of the death penalty in one State may oblige other States to require specific assurances that it will not be applied to nationals who have already been transferred, or to refrain from any form of deportation, extradition or transfer for which credible assurances cannot be obtained.

The resumption of the use of the death penalty in one State may have a detrimental effect on its citizens accused of committing a crime in another State, because it may lead to it ceasing to require such guarantees for crimes punishable by death in both States .[1590]

2- 14 The role of the Public Prosecution in organizing lists of terrorist entities and terrorists

2-14-1 Preparing the list of terrorist entities

The Public Prosecution prepares a list called the "List of Terrorist Entities," on which it includes the terrorist entities that the competent circuit of the Cairo Court of Appeal decides to include on the list, and those regarding which final criminal rulings are issued granting this description.

The Public Prosecution also prepares another list called the "Terrorist List," on which the names of terrorists are included, if the aforementioned department decides to include them on it, and also if a final criminal judgment is issued regarding any of them to give him this description.

The same provisions as those stipulated for the list of terrorist entities apply to this list .[1591]

One or more criminal circuits of the Cairo Court of Appeal, determined annually by the court's general assembly, which is held in the consultation chamber, shall have jurisdiction to consider requests for inclusion on the lists of terrorist entities and terrorists. The application for listing shall be submitted by the Public Prosecutor to the competent department, accompanied by the investigations, documents, inquiries or information supporting this application. The listing request for entities and individuals whose business is not directed to the Arab Republic of Egypt shall be based on a request submitted to the Public Prosecutor by the Ministry of Foreign Affairs in coordination with the Ministry of Justice, or by the state's security agencies to the Public Prosecutor. The competent department shall decide on the application for inclusion with a reasoned decision within seven days from the date of submitting the application to it, including the necessary documents .[1592]

(1590) General Comment No. 36, paras. 30 and 34, submissions from Australia, Azerbaijan, Colombia, Ireland, Slovakia, South Africa, Switzerland, and the United Kingdom, communication from the Commission on Human Rights of the Philippines; and Commission on Human Rights of the Philippines, "Advisory on Overseas Filipino Workers on Death Row", 8 October 2018, Death penalty and 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, 42.

(1591 Article No. 2 of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists.

(1592 Article No. 3 of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists, amended by Law No. 11 of 2017.

2 - 14 - 2 Duration of inclusion in the lists of terrorist entities and terrorists and their renewal

Inclusion on either list shall be for a period not exceeding five years. If the listing period expires without a final ruling being issued to impose a criminal description on the listed or terrorist entity, the Public Prosecution must resubmit the matter to the aforementioned circuit to consider extending the listing for another period. Otherwise, the name of the entity or natural person must be removed from the list from the date of expiry of that period. During the listing period, the Public Prosecutor may, in light of the justifications he provides, request the competent circuit of the Cairo Court of Appeal to remove the name of the entity or natural person listed on either list .[1593]

2 - 14 - 3 Publishing the listing decision in the Egyptian Gazette

The decision to include a person on either list, the decision to extend its duration, and the decision to remove a person's name from either list shall be published in the Egyptian Gazette, free of charge .[1594]

2 - 14 - 4 Effect of publishing the listing decision

The following effects shall be imposed by force of law upon the publication of the listing decision, and throughout its duration, unless the competent circuit of the Cairo Court of Appeal decides otherwise:

First: Regarding terrorist entities:

1- Banning the terrorist entity and stopping its activities.

2- Closing the places designated for him and banning his meetings.

3- Prohibiting the financing or collection of funds or things for the entity, whether directly or indirectly.

4- Freezing the funds or other assets owned by the entity or its members, whether owned entirely by the entity or in the form of a share in a joint ownership, and the proceeds generated from them, or controlled directly or indirectly by the entity, and the funds or other assets of the persons and entities operating through it.

5- Prohibition of joining the entity, calling for it, promoting it, or raising its slogans.

([1593] Article No. 4 of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists, amended by Law No. 11 of 2017.
([1594] Article No. 5 of the Law on Regulating Lists of Terrorist Entities and Terrorists, amended by Law No. 14 of 2020.

Second: Regarding terrorists:

1- Inclusion on travel ban and watch lists, or preventing a foreigner from entering the country.

2- Withdrawing or cancelling the passport, or preventing the issuance or renewal of a new passport.

3- Loss of the condition of good reputation and conduct necessary to assume public, parliamentary or local positions and jobs.

4- Not to be appointed or contracted to public positions or to public sector companies or the public business sector, as the case may be.

5- Suspension from work with half pay.

6- Freezing the funds or other assets owned by the terrorist, whether in full or in the form of a share in a joint ownership, and the proceeds generated from them, or controlled directly or indirectly by him, and the funds or other assets of persons and entities operating through him.

7- Prohibiting the practice of all civil or advocacy activities under any name.

8- Prohibiting the financing or collection of funds or things for the terrorist, whether directly or indirectly, and prohibiting the receipt or transfer of funds, as well as other similar financial services.

9- Suspending membership in professional unions, boards of directors of companies, associations, institutions, any entity in which the state or citizens have a share, boards of directors of clubs and sports federations, and any entity designated for the public benefit. In all cases, the rights of third parties in good faith shall be taken into account when implementing the effects resulting from the publication of listing decisions issued in accordance with the provisions of this article. All state authorities, bodies, agencies and agencies, each within the limits of its jurisdiction, are obligated to implement and enforce the aforementioned effects, and to notify the relevant parties at home and abroad to implement the effects of inclusion on either list .[1595]

([1595] Article No. 7 of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists, amended by Law No. 14 of 2020.

2 - 14 - 5 Appealing the decision issued regarding listing

The interested parties and the Public Prosecution may appeal the decision issued regarding inclusion on any of the two aforementioned lists within sixty days from the date of publication of the decision before the Criminal Division of the Court of Cassation, which is determined annually by the General Assembly of the Court, in accordance with the usual appeal procedures.

The concerned parties may include in the appeal a request to allow the exclusion of some amounts from the frozen funds or other assets to meet their requirements for expenses required to purchase food, rent, medicines, medical treatment, or other expenses .[1596]

2 - 14 - 6 Management of frozen funds and assets

In cases where the nature of the frozen funds or other assets requires the appointment of someone to manage them, the court's decision must specify who will manage these funds or other assets after taking the opinion of the Public Prosecution. The person appointed to manage the funds or other frozen assets shall take the initiative to inventory them in the presence of the concerned parties, a representative of the Public Prosecution, or an expert appointed by the court. The person appointed to manage the funds or other assets is obligated to preserve them and manage them well, and to return them with their collected yield in accordance with the provisions stipulated in the Civil Code regarding agency in management, deposit and custody work, in the manner regulated by a decision issued by the Minister of Justice .[1597] (

2- 14-6 Seizing funds or assets obtained from the activities of terrorists or terrorist entities

If serious information or evidence is available regarding the existence of fixed or movable funds obtained from the activities of any terrorist or terrorist entity, whether listed or not on the lists of terrorist entities and terrorists, or used to finance it in any way or to finance its affiliates or those associated with it, the Public Prosecutor may order the seizure of these funds or other assets and prevent their owners or holders from disposing of them. The order of seizure and prevention of disposal shall be submitted to the department stipulated in Article (3) of this law within one month from the date of its issuance, to consider its confirmation, cancellation, or amendment .[1598]

([1596] Article No. 6 of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists, amended by Law No. 14 of 2020.
([1597] Article No. 8 of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists, amended by Law No. 14 of 2020.
([1598] Article No. 8 bis of Law No. 8 of 2015 regulating lists of terrorist entities and terrorists, amended by Law No. 14 of 2020.

2 - 15 One of the accused was placed in a mental health facility.

In the event that a decision is issued by the Public Prosecution or a judicial ruling to place one of the accused in a mental health facility for examination, the Regional Council for Mental Health shall appoint a three-member committee of doctors registered with it to examine the psychological and mental condition of the person being placed in custody in accordance with the content of the decision or ruling. The judicial authority must be notified of a report on the psychological and mental condition that includes the result of the evaluation within the period specified by the decision of the judicial authorities. It may request an additional period if necessary, provided that the report includes the following:

1- The psychological or mental state of the depositor at the time of committing the crime in terms of the extent of awareness or choice.

2- The psychological or mental state of the depositor at the time of the evaluation.

3- The proposed treatment plan)[1599] (

In all cases, the placement may not be terminated or the patient granted leave for treatment except after referring to the judicial authority ordering the placement, and the placement decision must be evaluated at least once a year.

The court or the Public Prosecution may also, in cases of minor misdemeanors and violations, authorize the regional mental health councils to terminate the placement or to grant leave for treatment without referring to them. The patient placed for treatment under judicial rulings or orders shall enjoy all the rights of patients stipulated by law .[1600]

In the event that the inmate suffers from an organic disease, the facility manager may permit him to leave with the police for treatment in a specialized hospital. In this case, the police are obligated to guard him throughout the period of his treatment and return him to the place of deposit .[1601]

Depositor's rights for treatment by court order

A person admitted for treatment by judicial orders shall be treated as an involuntary patient about treatment in all respects. The admission for treatment may not be terminated or the patient granted treatment leave except after referring to the judicial authority ordering the admission and based on the recommendation of the National Council for Mental Health. The

([1599] Article No. 24 of Law No. 71 of 2009 regarding the issuance of the Mental Health Care Law.
([1600] Article No. 25 of Law No. 71 of 2009 regarding the issuance of the Mental Health Care Law.
([1601] Article No. 26 of Law No. 71 of 2009 regarding the issuance of the Mental Health Care Law.

reasons and justifications for the admission decision must be reviewed at least once a year by a committee formed by the National Council for Mental Health .[1602]

The depositor for evaluation shall enjoy the following rights under judicial rulings or orders :[1603]

1- Receive due care in a safe and clean environment.

2- Prohibiting the restriction of his freedom in violation of the provisions of this law.

3- Be aware of the name and job title of all members of the treatment team that cares for him at the facility.

4- Refusing to discuss or treat him with any member of the treatment team, provided that this right is met within the available capabilities.

5- The treatment provided to him must be in accordance with the medical standards in force and recognized in scientific circles.

6- The necessity of obtaining the approval of the Scientific Research Ethics Committee before being subjected to any clinical research.

7- In the event of approval to undergo scientific experiments and research, he shall receive a full explanation of the purpose of the experiment, provided that experiments are prohibited on patients subject to decisions of compulsory admission and treatment.

8- Protecting the confidentiality of information related to him and his medical file and not disclosing that information for purposes other than therapeutic purposes except in the following cases:

- Requesting information from a judicial authority.

- There is a strong possibility of serious harm or serious injury to the patient or others.

- Cases of child abuse or suspected abuse.

The right of the National Council for Mental Health to form a technical committee of specialized doctors to review patient records.

9- Protecting his privacy, personal belongings and place of residence in the facility.

([1602] Article No. 23 of the Minister of Health and Population's Resolution No. 128 of 2010 regarding the issuance of the executive regulations of the Mental Health Patient Care Law.

([1603] Article No. 22 of the Minister of Health and Population's Resolution No. 128 of 2010 regarding the issuance of the executive regulations of the Mental Health Patient Care Law.

The Council may temporarily withhold this right for therapeutic reasons, and the patient has the right to appeal this procedure in accordance with the provisions of this law and its executive regulations.

10- Complaining about any procedure in accordance with the rules and procedures specified in the executive regulations of this law.

11- Meeting his visitors or refusing to meet them unless the meeting conflicts with the treatment plan, after obtaining permission from the competent judicial authority.

12- Enabling him to meet with his lawyer, after obtaining permission from the competent judicial authority.

13- Protection from economic and sexual exploitation, physical and psychological harm, and degrading treatment .[1604]

([1604] Article No. 36 of the Minister of Health and Population's Resolution No. 128 of 2010 regarding the issuance of the executive regulations of the Mental Health Patient Care Law.

Chapter Three: Administration of the Public Prosecution, Supervision and Inspection of its Work, and Disciplining its Members

3 - 1 Prosecution Administration

3 - 1 - 1 General Provisions

The Attorney General of the General Prosecution distributes judicial work to the members of the General Prosecution.

The head of the partial prosecution or its director also distributes the work among its members .[1605]

The head of the criminal division of the General Prosecution distributes work among the employees of the General Prosecution, and this distribution is not considered effective until it is approved by the Attorney General of the General Prosecution.

The head of the partial prosecution or its director shall distribute work among the employees of that prosecution in cooperation with the head of the criminal department therein, as he is the direct head of the employees of the prosecution.

In all cases, the competent administrative inspector may submit to the Attorney General of the General Prosecution or to the Head of the Partial Prosecution or its Director a reasoned memorandum stating what he sees fit to make in terms of modifications to the work distribution as a result of his observations during the inspection. The contents of this memorandum shall be recorded in the work distribution log, whether the required modification has been made or not .[1606]

A register shall be prepared in each prosecution office, recording the distribution of work between the prosecution members and the criminal department employees, and any change that occurs shall be noted therein, along with the date of its implementation, as well as the notes related to the status of the written work .[1607]

The public prosecutors of the general prosecution offices may not issue decisions to transfer or second some employees from one department to another of the three prosecution departments

([1605] Article No. 1720 of the Judicial Instructions of the Public Prosecution.
([1606] Article No. 1721 of the Judicial Instructions of the Public Prosecution.
([1607] Article No. 1722 of the Judicial Instructions of the Public Prosecution.

(criminal, personal status, guardianship of the person, and personal status, guardianship of money).

Their suggestions in this regard are sent to the General Department of Public Prosecutions before deciding on them, to ensure the smooth running of the work .[1608]

The Attorney General of the General Prosecution shall determine the places of residence of the clerks of the prosecutions affiliated with him, and transfer and delegate them within the limits of his regional jurisdiction, as well as appoint the heads of the criminal divisions in the partial prosecutions, and the General Administration of the Prosecutions shall be notified of the decisions issued in this regard. As for the appointment of administrative inspectors and heads of divisions in the appeal and general prosecutions, it shall be by decision of the Attorney General, and the first public prosecutors at the courts of appeal and the lawyers working for the general prosecutions shall send their proposals in this regard to the aforementioned administration, taking into account seniority and competence .[1609]

A criminal registrar shall be appointed in each general or partial prosecution. This appointment shall be made by the public prosecutor of the competent general prosecution and the General Administration of Prosecutions shall be notified thereof .[1610]

Official working hours outside of Ramadan: from 8:00 a.m. to 2:00 p.m. in summer and winter. Christian workers may work late on Sundays until 10:00 a.m.[1611] (.

The head of the criminal department shall monitor the attendance and departure of the prosecution employees at work during official times, and have each of them sign in the special register upon his attendance and upon his departure.

The head of the pen must record in the register any violation of official deadlines, as well as all types of vacations, and notify the Attorney General of the General Prosecution or the head of the partial prosecution or its director - as the case may be - of any violation. The attendance and departure register shall be in the custody of the head of the criminal pen, and he must present it to whoever requests it from him, and also present it to the administrative inspector if he requests it .[1612]

([1608] Article No. 1723 of the Judicial Instructions of the Public Prosecution.
([1609] Article No. 1724 of the Judicial Instructions of the Public Prosecution.
([1610] Article No. 1725 of the Judicial Instructions of the Public Prosecution.
([1611] Article No. 1726 of the Judicial Instructions of the Public Prosecution.
([1612] Article No. 1727 of the Judicial Instructions of the Public Prosecution.

The head of the partial prosecution or its director must review daily the register designated for recording telephone signals that reach the prosecution from the presidency or other parties and that is assigned to the head of the criminal department, in order to be aware of what has been received, especially signals ordering the preparation of reports of appeals in cassation or appeals against rulings or requests to send cases and papers .[1613]

Telegrams should only be used in cases of extreme necessity, and must always be supported by official letters issued on the same day they are sent .[1614]

Applications submitted by members of the Public Prosecution wishing to install service or home telephones shall be sent to the Telecommunications Authority after the approval of the Public Prosecutor .[1615]

The judicial year begins on the first of January of each year, and the prosecution offices must conclude the work of the completed judicial year and indicate this in the tables and books, with the signature of the Attorney General of the General Prosecution or the Head of the Partial Prosecution or its Director - as the case may be - and of the Head of the Criminal Pen and the competent clerk, and then it must be stamped with the seal of the prosecution .[1616]

The heads of the partial prosecutions or their directors are responsible for the administrative work in them. They must sign the letters received by the prosecution and the letters written to the authorities, and the disbursement forms. They must not leave this to other members except in cases of extreme necessity. Special attention must be given to correspondence received confidentially .[1617]

The members of the Public Prosecution shall carefully monitor the preparation of the lists and their sending to the competent authorities on the sixth day of the month following the month for which they were prepared .[1618]

It should be noted that the signatures on the documents sent abroad that require authentication should be from the same heads of the prosecution whose signatures were previously notified to the General Administration of Courts, and not from the public prosecutors .[1619]

([1613] Article No. 1728 of the Judicial Instructions of the Public Prosecution.
([1614] Article No. 1729 of the Judicial Instructions of the Public Prosecution.
([1615] Article No. 1730 of the Judicial Instructions of the Public Prosecution.
([1616] Article No. 1731 of the Judicial Instructions of the Public Prosecution.
([1617] Article No. 1732 of the Judicial Instructions of the Public Prosecution.
([1618] Article No. 1733 of the Judicial Instructions of the Public Prosecution.
([1619] Article No. 1734 of the Judicial Instructions of the Public Prosecution.

Members of the Public Prosecution must take care not to sign criminal judgment execution forms unless they are stamped with the Public Prosecution seal on glue, as required by Article 127 of the Criminal Procedure Code regarding arrest warrants.[1620]

Members of the Public Prosecution must sign the following papers:

1- Investigation reports and everything related to them, including arrest, detention and release orders, adjournment and registration decisions, description and preservation, references to sessions and memoranda sent in cases to seek opinions, witness lists in felonies, references to the completion of the investigation and all decisions with a judicial formula.

2- Disposing of the evidence and books related to implementing these actions.

3- Appeal and cassation appeal reports and memoranda stating the reasons for that.

4- Implementation models, whether the judgments are in person or in absentia, and it should be noted that the signature is on the original and copies.

5- Signing petitions submitted to the Public Prosecution.

6- Disbursement form.

7- Letters sent to other parties)[1621] (.

The public prosecutors of the general prosecutions, as well as the heads of the partial prosecutions or their directors, each in his own capacity, shall inspect the work of the criminal registry at least once a month, especially the work of the schedules, the preparation of the records of precedents, the sending of the cases appealed against by appeal and cassation on time, the inventory of the rulings, the cash register, the items and the statements received regarding them, the work of the seized goods store, and the marking of the schedules and special registers with what indicates that, with a warning to complete any deficiencies they find.

When inspecting the work of the partial criminal office, a detailed report shall be prepared on the results of the inspection, including the names of the criminal office employees, a statement of the work assigned to each of them, and observations on their work. The report shall be sent to the Judicial Inspection Department of the Public Prosecution through the Attorney General of the General Prosecution, along with the monthly statements .[1622] (.

([1620] Article No. 1735 of the Judicial Instructions of the Public Prosecution.
([1621] Article No. 1736 of the Judicial Instructions of the Public Prosecution.
([1622] Article No. 1737 of the Judicial Instructions of the Public Prosecution.

The heads of the partial prosecutions or their directors must review the reports and petitions that are submitted to the prosecution themselves and not leave them to the clerks to summarize them. They may order that they be referred to judicial police officers to collect evidence therein unless their subject matter requires that the prosecution undertake their investigation.

It should be noted that if it becomes clear from reviewing the complaint that it does not involve a crime, the member of the Public Prosecution shall mark it in the administrative complaints register and order it to be archived without the need to question the party to the dispute. If there is doubt about the existence of a crime, the member of the Public Prosecution shall question the complainant personally or send the complaint to the police to question him and deal with the papers thereafter in light of what appears.

It should be noted that if it becomes clear from reviewing the complaint that it does not involve a crime, the member of the Public Prosecution shall mark the administrative complaints register and order it to be archived without the need to question the complainant in person or send the complaint to the police to question him and deal with the papers thereafter in light of what appears.

If, upon reviewing the evidence conducted in the complaint, it becomes clear that there is no crime in the matter, the member of the Public Prosecution shall indicate that it shall be administratively closed without taking any action in it .[1623]

The requested copies of the investigation or investigation report or other papers shall be received with the permission of the head of the partial prosecution or its director. The condition for issuing this permission is that the applicant has standing in the case, that his request is related to it, and that the investigation into it has actually been completed. If the applicant has no apparent interest in obtaining the requested copy, or the investigation has not been completed, or the request is related to the administrative papers attached to the case file, or the investigation has a special matter, whether concerning the subject of the case or the status of the parties therein or other considerations, the opinion of the Attorney General of the General Prosecution shall be sought.

As for the copies of the aforementioned papers that are requested in cases that are still being heard in the sessions, they are given with the judge's permission.[1624]

([1623] Article No. 1738 of the Judicial Instructions of the Public Prosecution.
([1624] Article No. 1739 of the Judicial Instructions of the Public Prosecution.

Members of the Public Prosecution may not allow criminal office employees to take papers, cases, or notebooks to their homes .[1625]

If a government agency or other body requests information about a member of the Public Prosecution or its employees, this must be reported to the Public Prosecutor so that he can respond to the requesting party as he sees fit .[1626] (

Public Prosecution employees are advised not to visit the centre or the bodies affiliated with foreign entities unless they have obtained written approval from the Ministry of Justice Security Office .[1627] (

Members of the Public Prosecution must extend a helping hand to administrative inspectors when they visit the Public Prosecutions to inspect the clerical, financial and administrative work therein, so that they can carry out their duties with ease. They may not be prevented in any way from doing so in accordance with the guidelines issued to them by their leadership.

It is taken into consideration that the administrative inspector has the right to review all schedules, books, papers and cases that fall within the inspection period, as well as to examine attendance and departure books and work distribution books, and to conduct administrative investigations against negligent employees of the criminal department that is being inspected. The members of the Public Prosecution must assign employees to complete the delayed work that the administrative inspectors inform them of, and to set a specific deadline for its completion, and to consider the matter of anyone who neglects or refuses to complete that work and take disciplinary measures against him, and assign the negligent employee to complete it even after his disciplinary action, and his matter is reconsidered if his neglect or refusal is repeated.

The head of the partial prosecution or its director must also pay attention to what is included in the administrative inspection reports to determine the status of work in the prosecution and take the necessary measures to ensure that the observations or recommendations contained therein are completed .[1628]

Security procedures shall be observed in the Public Prosecution Offices and Courts, and the responsibility for supervision day and night shall be distributed among all employees of the Public Prosecution Office in rotation, in return for each of them being given an additional

([1625] Article No. 1740 of the Judicial Instructions of the Public Prosecution.
([1626] Article No. 1741 of the Judicial Instructions of the Public Prosecution.
([1627] Article No. 1742 of the Judicial Instructions of the Public Prosecution.
([1628] Article No. 1743 of the Judicial Instructions of the Public Prosecution.

monthly wage. The General Administration of Public Prosecutions shall be provided with a list at the beginning of each month of the names of the employees who are responsible for security day and night, specifying the responsibility. The heads of the criminal divisions shall bear responsibility for laxity in implementing this and responsibility for delaying sending the aforementioned lists .[1629] (.

The heads of the criminal divisions, after referring to the employee status record, prepare periodic reports on the adequacy of all employees in the prosecution offices in accordance with the regulations established in this regard. The reports are then presented to the public attorneys or heads of the general or partial prosecution offices or their directors - each in his own capacity - for approval or amendment in the margin of the report. They are then sent to the General Administration of Prosecutions to be presented to the Personnel Affairs Committee.

As for the reports related to the heads of criminal divisions, they are prepared by the heads of partial prosecutions, their directors, public prosecutors, or heads of general prosecutions - as the case may be - and then sent to the General Administration of Prosecutions .[1630]

3 - 1 - 2 Inspection of correctional centers

The Public Prosecution shall supervise reform and rehabilitation centres and other places where criminal sentences are executed, provided that the Public Prosecutor shall inform the Minister of Justice of any observations that appear to the Public Prosecution in this regard .[1631]

All members of the Public Prosecution and the presidents and deputies of the courts of first instance and appeal may visit the public and geographical reform centres located within their jurisdiction. And to ensure that there is no illegal detention. They have the right to review the books of the correctional center and the arrest and detention orders and to take copies of them and to contact any prisoner and hear from him any complaint he wants to present to them. The director and employees of the correctional center must provide them with all assistance to obtain the information they request. Article No. 42 of the Criminal Procedures Law stipulates that: “Members of the Public Prosecution and heads and deputies of the primary and appellate courts may visit the public and central prisons located within their jurisdiction and ensure that there is no one imprisoned illegally. They have the right to review the prison books and the arrest and detention orders and to take copies of them and to contact any prisoner and hear

([1629] Article No. 1744 of the Judicial Instructions of the Public Prosecution.
([1630] Article No. 1745 of the Judicial Instructions of the Public Prosecution.
([1631] Article No. 27 of the Judicial Authority Law.

from him any complaint he wants to present to them. The director and employees of the prisons must provide them with all assistance to obtain the information they request ."[1632]

The Public Prosecutor and his representatives within their jurisdiction have the right to enter all places of the reform center at any time to verify that the orders of the Public Prosecution and the investigating judge in the cases he is assigned to investigate and the decisions of the courts are being implemented in the manner specified therein, and that no inmate is being held illegally, and to verify that no inmate is employed who has not been sentenced to employment except in the cases specified by law, and to isolate each category of inmates from the other category and treat them in the manner prescribed for their category, and that the records imposed in accordance with the law are used in a regular manner. In all cases, the reform center shall take into account the provisions of the laws and regulations and take what they deem necessary regarding any violations that occur.

They may accept complaints from inmates and examine records and judicial papers to verify their conformity with the prescribed forms.

The director of the reform and rehabilitation centre must provide them with all the information they request regarding the task they are entrusted with .[1633]

The presidents and deputies of the courts of appeal and the courts of first instance and the investigating judges have the right to enter at any time the correctional centres located within the jurisdiction of the courts in which they work, and the president and deputies of the Court of Cassation have the right to enter all correctional centres, and the management of the correctional centre must report the observations that are recorded to the Director General .[1634]

The public prosecutors of the general prosecutions or their representatives must inspect the geographical correctional centres located within the jurisdiction of each of them.

The heads of the partial prosecutions or their directors must also conduct surprise inspections of the geographical correctional centres affiliated with them at least once a month.

As for the places designated for detaining detainees, specified by a decision of the Minister of the Interior, Article 1 of the Law Regulating Correctional Centers has limited the right to enter places of detention issued by a decision of the Minister of the Interior to the Public Prosecutor or his representative from the heads of the prosecution. Whereas Article 85 of the same law

([1632] Article 42 of the Code of Criminal Procedure.
([1633] Article No. 85 of the Law Regulating Community Reform and Rehabilitation Centers, amended by Law No. 106 of 2015.
([1634] Article No. 86 of the Law Regulating Community Reform and Rehabilitation Centers.

stipulated the right of the Public Prosecutor and his deputies within their jurisdiction to enter all places of the correctional center at any time. It is not permissible to enter it except for those delegated by the Public Prosecutor for that purpose from among the public attorneys or heads of the partial prosecutions therein or its director, who shall notify the Public Prosecutor through the public attorneys or heads of the general prosecutions of what these places are in their districts.

Each of them shall examine the records in the correctional centre and review the arrest and detention orders to verify their conformity with the prescribed forms.

They must also accept guest complaints.

The director of the reform center and his employees must provide them with the information they request in this regard .[1635]

The President of the Child Court, or the judges or expert he delegates from the court, shall visit observation homes, training and rehabilitation centres, social care institutions, specialized hospitals, penal institutions and other entities that cooperate with the Child Court and are located within its jurisdiction, at least once every three months, to verify that they are carrying out their duties in rehabilitating the child and helping him to reintegrate into society. The President of the Child Court may send a report with his observations to the competent General Committee for Child Protection to implement its requirements .[1636]

The Military Prosecution supervises military prisons .[1637]

Military court judges and heads of military trial units representing the military prosecution have the right to enter military prisons located within their jurisdiction at any time .[1638]

The public prosecutors of the general prosecutions or their representatives must inspect the public correctional centres located within the jurisdiction of each of them, and the heads of the partial prosecutions or their directors must inspect the geographical correctional centres affiliated with them, provided that this is done at least once every month, and on a surprise basis. They may examine the records and review the arrest and detention orders to verify their conformity with the prescribed forms and accept the complaints of the inmates. The director of

(1635 Article No. 1 bis of the Law Regulating Community Reform and Rehabilitation Centers, added by Law No. 57 of 1968, and Articles Nos. 1747 and 1750 of the Judicial Instructions of the Public Prosecution.
(1636 Article No. 134 of the Child Law.
(1637 Article No. 32 of the Military Judiciary Law.
(1638 Article No. 55 of the Internal Regulations of Military Prisons.

the correctional centre and his employees must provide them with the data they request in this regard .[1639]

- Judicial inspection procedures

In the inspection procedures of correctional centres, whether public or geographical, the following should be taken into account:

1- The orders of the Public Prosecution and the investigating judge in the cases he is assigned to investigate, and the decisions of the courts, shall be implemented in the manner specified therein.

2- There is no person who is an illegal inmate.

3- Not to employ an inmate against whom a judgment has not been issued to employ him, except in the cases specified in the law.

4- Isolating each category of inmates from the other category and treating them in the same manner as their category.

5- That the records imposed by law are used in a regular manner, and that the provisions of laws and regulations are generally observed, and that what is deemed necessary is taken with regard to any violations that occur .[1640]

The most senior member of the prosecution shall inspect the correctional centres and places of detention, and this shall be done by reviewing the orders of imprisonment or detention or written orders of deposit for the detainee or the execution forms, and verifying the existence of a summary of them in the records of the correctional centre and requesting copies of the detention order if it is found that it does not exist. If the member of the prosecution finds that he has been unlawfully imprisoned or detained, he shall order his immediate release after writing a report in which he records the incident and specifies in the report the time and date of the procedure and the person and signature of the recipient of the release order. Likewise, if the member of the prosecution finds that he has been imprisoned or detained in a place other than his designated place, he shall immediately write a report of the incident and order that he be deposited in the designated place, with this being recorded in the report, specifying in it the time and date of the procedure and the person and signature of the recipient of the deposit order.

([1639] Article No. 1747 of the Judicial Instructions of the Public Prosecution.
([1640] Article No. 1748 of the Judicial Instructions of the Public Prosecution.

The member of the Public Prosecution shall complete the preparation of the inspection report upon his return to the headquarters of the Public Prosecution, including the crimes and violations he observed, provided that he takes the initiative to notify the Attorney General of the General Prosecution of those violations and crimes and send the inspection report to him. The Attorney General shall assign one of the members of the General Prosecution to conduct the investigation into the crimes and violations included in the inspection report, and shall send the case, accompanied by the opinion, to the Assistant Attorney General through the First Attorney General of the Appeal Prosecution.

It is sufficient for the member of the Public Prosecution to sign the books of the reform center or place of detention, indicating that the inspection was conducted, in the event that the inspection he conducted did not result in any observations .[1641]

The Public Prosecutor shall assign one of the members of the General Prosecution Office to conduct the investigation into the crimes and violations contained in the inspection report referred to in the previous article, and shall send the case, accompanied by the opinion, to the Assistant Public Prosecutor through the First Public Prosecutor of the Appeal Prosecution Office .[1642]

The prosecution is responsible for inspecting correctional centres and detention centres on a regular basis and without prior announcement of visits. Its inspection of police stations is supposed to be carried out immediately upon receiving information about illegal practices in a police station or point, as part of unannounced inspection visits. If the prosecution receives a report that a citizen's rights have been violated in any detention centre subject to judicial inspection, it must investigate this information immediately.

The UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2001) state that: "Even in the absence of express complaints, an investigation must be undertaken if there are other grounds to believe that torture or ill-treatment has occurred . "[1643]

([1641] Article No. 1749 of the Judicial Instructions of the Public Prosecution.
([1642] Article No. 1749 bis of the Judicial Instructions of the Public Prosecution.
([1643]) Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading punishment "Istanbul Protocol" , August 9, 1999
The United Nations General Assembly, in its resolution 55/89 of 22 February 2001, drew the attention of Governments to the aforementioned principles (the Istanbul Principles) arising from the Istanbul Protocol.

Under Egyptian law, the prosecution is the only body authorized to inspect places of detention. Its authority extends only to recognized places of detention, and thus not to state security detention centers, the existence of which the government continues to deny.

Detainees are at greater risk of torture when they are held outside of any legal review. The United Nations Human Rights Committee has concluded that prolonged incommunicado detention amounts in itself to inhuman and degrading treatment .[1644]

3 - 1 - 3 Treasury inspection

The Public Prosecution supervises the work related to court money .[1645]

The members of the prosecution must inspect the court treasury and all its contents of money, valuable papers and precious items three times a month and note this in the treasury book (General Administration of Administration, Supplies and Treasury), provided that this is done suddenly .[1646]

The heads of the partial prosecutions or their directors, each according to his jurisdiction, shall monitor the first clerks of the courts' deposit of the proceeds into the treasury of the general court on Thursday of every week, regardless of the value of the sums, and this shall be indicated in the inventory report .[1647]

Employee salaries shall not be disbursed except on the first day of the month unless the Ministry of Finance decides otherwise, taking into account not stating orally or in writing anything to the contrary .[1648]

3 - 1 - 4 Financial Affairs

The following shall be observed with regard to the residences attached to the court complexes designated for the residence of the judge and the public prosecutor:

The upper floor is allocated to the judge and the lower floor to the member of the prosecution. The fee for using the housing and rest areas is determined at a rate of 10% per month from the beginning of the linking of the job of the judge or member of the prosecution for the part occupied by the judiciary or the heads for the part occupied by the members of the prosecution. It is deducted from the salary of the most senior judge and deputy prosecutor in the district

(1644) [Polay Campos v. Peru, communication No 577/1994(CCPR/C/61/D/577/1994), para. 8.4 and Steve Shaw v. Jamaica, communication No. 704/1996 (CCPR/C/62/D/704/1996), paras. 2.5 and 7.1]..
(1645 Article No. 28 of the Judicial Authority Law.
(1646 Article No. 1751 of the Judicial Instructions of the Public Prosecution.
(1647 Article No. 1752 of the Judicial Instructions of the Public Prosecution.
(1648 Article No. 1753 of the Judicial Instructions of the Public Prosecution.

court. The fee for using the housing includes the price of water and lighting, the expenses of draining wells and toilets, planting and trimming the gardens surrounding the housing areas, workers' wages, as well as the fee for using furniture for furnished rest areas .[1649]

Judiciary and prosecution personnel who are called up to the army (reserve officer) are entitled to the work nature allowance stipulated by Republican Decree No. 2182 of 1962 .[1650]

The following must be noted regarding the transportation expenses and travel allowance for members of the Public Prosecution, without prejudice to the provisions of the regulations on travel allowance and transportation expenses:

(First) Transportation expenses:

1- The basic principle of transportation - whether for pleading before criminal courts or to the headquarters of the General Prosecution or the Appeal Prosecution or the Office of the Public Prosecutor or for inspection of the prosecution offices - is to use public transportation such as railways and cars, whether within or outside cities.

2- As an exception to this, it is permitted to use taxis for the transportation of the Public Prosecutor or the Chief Prosecutor for surprise inspections of the prosecution offices and their return to the workplace if the use of public transportation results in a significant disruption to the workflow.

3- Members of the Public Prosecution, regardless of their ranks, may not move to the headquarters of the General Prosecution, the Appeal Prosecution, or the Office of the Public Prosecutor except based on a written summons delivered to those requested to attend, explaining the reason for the move, provided that this is limited to cases of extreme necessity in which the work cannot be performed without moving. If reasons prevent him from writing a detailed memorandum of this summons, the summons or memorandum must be attached to the form for disbursing the travel expenses.

(Second) Transportation expenses:

1- The basic principle regarding the work carried out by members of the Public Prosecution, regardless of their ranks, outside their workplaces is that it be carried out on the same day on which the transfer and return take place, in order to avoid paying travel allowance.

2- As an exception to this, overnight stays outside the workplace are permitted in the following:

([1649] Article No. 1765 of the Judicial Instructions of the Public Prosecution.
([1650] Article No. 1766 of the Judicial Instructions of the Public Prosecution.

(a) Technical inspection of the work of members of the Public Prosecution.

(b) Going to the general prosecution offices, the appeal prosecution offices, the Public Prosecutor's Office, or the surprise inspection of the prosecution offices if travelling to them requires a period exceeding two hours.

3- The written summons to attend or the memorandum referred to in the third paragraph of the first must include a statement of the reason for the overnight stay and its duration, and this must be accompanied by a travel allowance disbursement form.

4- The Director of Judicial Inspection shall specify the period of time required for overnight stay to conduct a surprise or technical inspection in a memorandum attached to the disbursement papers.

(Thirdly) The following shall be observed with regard to transportation expenses and travel allowance:

1- Approves forms for disbursing transportation expenses and travel allowances in preparation for disbursing their value:

(a) The Public Prosecutor or the competent Chief Prosecutor with regard to forms for members of the Public Prosecution.

(b) The competent public prosecutor with regard to the forms of the heads of the prosecution.

(c) The Director of Judicial Inspection, with regard to the judicial inspectors' forms, and any members of the Public Prosecution summoned by the Inspection Department or the Public Prosecutor's Office.

2- A register shall be prepared in both the Public Prosecutor's Office and the Appeal Prosecutions to record all data related to the transportation expenses and travel allowances paid to members of the Public Prosecution in the circuit, under the supervision of the competent Public Prosecutor. He shall take the necessary measures to follow the previous rules as well as the provisions of the Transportation Expenses and Travel Allowance Regulations, while notifying the Public Prosecutor's Office of any violations of the above.)1651(.

The travel allowance referred to in the previous paragraph shall be due to members of the prosecution if the pleading before the criminal courts requires the presence of the member of the prosecution at the court headquarters in the morning before the court convenes, and it is

(1651 Article No. 1767 of the Judicial Instructions of the Public Prosecution.

likely that moving from the city in which his workplace is located to the one in which the court convenes will result in his being late for appearing before it at the appointed time for its convening as a result of compelling circumstances on the road, which may require him to spend the night in the city in which the court convenes on the night of the session he is assigned to attend, even if the distance between the two sides does not exceed thirty kilometers and they are connected by government railway lines, or fifteen kilometers and they are connected by narrow-gauge railway lines, public cars or taxis, in the event that the Attorney General of the General Prosecution declares the availability of compelling circumstances that justify the payment of the travel allowance in accordance with the special regulations.

The travel allowance stipulated by law for members of the prosecution and investigation clerks is due in the event of moving to investigate criminal incidents from the official workplace in the city to the places where those incidents occurred outside its borders if he spends at least seven hours between two o'clock in the afternoon and seven o'clock in the morning. The seven hours include the time required to go and return between the original place of residence and the place of the mission, regardless of the distance between the place of the incident and the original place of residence in the city, provided that the public prosecutor or the head of the prosecution approves the availability of compelling reasons in accordance with the special regulations [1652] (
.

Absolute economy should be observed in all movements and they should be reduced whenever possible, and taxis should not be used except in cases that require speedy movement [1653] (.

The Public Prosecutor or the Head of the Partial Prosecution shall have the authority to approve waiving the collection of amounts due to the government in fees and attorneys' fees up to two pounds, and to the Attorney General or the Head of the General Prosecution up to fifty pounds, and to the Undersecretary of the Ministry of Justice up to one hundred pounds, and anything in excess of that shall be submitted to the Ministry of Treasury, after ensuring that the conditions stipulated in the financial regulations for the budget and accounts have been met. The aforementioned waiver system shall not apply to criminal fines because they are subject to the statute of limitations stipulated in Article No. 528 of the Code of Criminal Procedure [1654] (.

([1652] Article No. 1768 of the Judicial Instructions of the Public Prosecution.
([1653] Article No. 1769 of the Judicial Instructions of the Public Prosecution.
([1654] Article No. 1770 of the Judicial Instructions of the Public Prosecution.

3 - 2 Judicial inspection of the work of the prosecution offices

Inspection of the work of members of the Public Prosecution is the responsibility of the Judicial Inspection Department of the Public Prosecution, which is attached to the Office of the Public Prosecutor and is subject to his supervision .[1655]

The Judicial Inspection Department is responsible for inspecting the work of the heads of the prosecution, their deputies, assistants and assistants, for all data that leads to knowing the degree of their competence and the extent of their keenness to perform the duties of their job and its requirements, investigating the complaints submitted against them, examining the requests submitted by them, and also knowing the extent of their supervision of the work of the prosecution employees working under their management, taking into account that the inspector is prior in the order of seniority of those whose work is being inspected .[1656]

The Public Prosecutor, Assistant Public Prosecutors, the Director of Judicial Inspection, and the First Public Prosecutors, each within his area of jurisdiction, may direct observations to members of the Public Prosecution, whether in relation to their judicial or administrative actions, their care for their work, or their conduct and behaviour.

The assistant public prosecutors, the first public prosecutors and the public prosecutors must send a copy of these observations to the Judicial Inspection Department, and the member of the Public Prosecution may object to these observations within fifteen days from the date of notification.

These objections shall be decided upon by a committee headed by the Public Prosecutor, a member of the Director of Judicial Inspection, and his first deputy. If one of them is absent, or if he is prevented from doing so, or if he apologizes, he shall be replaced by someone who is doing his job. The note shall be deposited in the confidential file of the member of the Public Prosecution in the event that there is no objection to it or its approval, with him being notified of that.[1657]

The Director of Judicial Inspection appoints the prosecution offices that conduct urgent surprise inspections in order to determine the extent of their members' keenness to carry out their job duties. He appoints for this purpose whomever he deems appropriate from the inspectors, and the inspector submits an urgent report on the result.[1658]

([1655] Article No. 1778 of the Judicial Instructions of the Public Prosecution.
([1656] Article No. 1779 of the Judicial Instructions of the Public Prosecution.
([1657] Article No. 1776 of the Judicial Instructions of the Public Prosecution.
([1658] Article No. 1777 of the Judicial Instructions of the Public Prosecution.

The inspection shall be conducted at the office of the Public Prosecutor or by going to the place of work of the inspecting member.[1659]

The inspection shall examine the work performed by the member of the Public Prosecution during the period specified by the Director of Inspection. The inspector shall prepare a report in two parts, the first of which shall include the judicial and administrative observations that appeared to him during the inspection, and the second part shall include his opinion on the competence of the member of the Public Prosecution and the extent of his care for his work. The inspector shall include in his report, in addition to any observations he may encounter, a statement of the work performed by the member that is worthy of mention, in order to form a complete picture of his competence.[1660]

Inspection reports shall be submitted to one or more committees formed by a decision of the Public Prosecutor, each of which shall consist of at least three public prosecutors or those of similar rank. If the reports are related to heads of public prosecution, the committee shall be chaired by the Director of Judicial Inspection or one of his first deputies or those of similar rank. In the absence of the chairman of the committee or one of its members or if he is prevented from doing so, he shall be replaced by someone who will carry out his work.[1661]

The committee shall examine the report to assess the degree of competence of the members of the Public Prosecution. To this end, it may ask the inspector or the member of the Public Prosecution to clarify what it deems necessary or take what is necessary to complete the elements of the assessment or to re-inspect or continue the inspection of the member's work.[1662]

The report shall be deposited in the confidential file of the member of the Public Prosecution, and a copy thereof shall be notified to the member, including the grade, by registered letter with acknowledgement of receipt, provided that he has the right to object to it within fifteen days from the date of notification.[1663] .

The objections raised by the member shall be considered within the prescribed fifteen-day period, and the committee shall decide what it deems appropriate regarding them. The objections and the committee's opinion shall be placed in the member's file, with an indication on the original report of what may be excluded or edited from comments or what the committee

([1659] Article No. 1780 of the Judicial Instructions of the Public Prosecution.
([1660] Article No. 1781 of the Judicial Instructions of the Public Prosecution.
([1661] Article No. 1782 of the Judicial Instructions of the Public Prosecution.
([1662] Article No. 1783 of the Judicial Instructions of the Public Prosecution.
([1663] Article No. 1784 of the Judicial Instructions of the Public Prosecution.

deems appropriate to acknowledge or raise the degree of sufficiency, and the member shall be notified of its decision .[1664]

If the aforementioned period expires without an objection or the committee has finished deciding on the objection, the Public Prosecutor shall notify the Minister of any of the heads of the prosecution or distinguished agents whose competence has been determined to be average or below average, in implementation of the provisions of Article 79 of the Judicial Authority Law No. 46 of 1972, which states that: "The Minister of Justice shall notify any of the members of the judiciary and public prosecution who have been rated average or below average of their competence, as soon as the competent inspection department has finished assessing their competence." Anyone who has been notified has the right to appeal the assessment within fifteen days from the date of notification.

The Minister of Justice shall also - before presenting the draft judicial movement - notify, at least thirty days beforehand, the members of the judiciary and the Public Prosecution whose turn has come and who were not included in the judicial movement for a reason unrelated to the efficiency reports that were decided in accordance with Article (81) or the deadline for filing a complaint against them, and shall state in the notification the reasons for the omission. Anyone who has been notified has the right to appeal within the period stipulated in the previous paragraph.

The notification referred to in the two previous paragraphs shall be made by registered letter with acknowledgment of receipt. "[1665]

The Court of Cassation ruled that the appeal against the assessment of competence in the inspection report is limited to those whose competence was assessed as below average: [**The appeal against the assessment of competence is only for those whose competence was assessed as average or below average, and they alone are required by the Judicial Authority Law to be notified of the assessment of competence and are permitted to appeal the report. As for those whose competence was assessed as above average, they are not notified of the assessment of their competence, and therefore they do not have the right to appeal it before the Supreme Judicial Council even if they were informed of it**])[1666]

([1664] Article No. 1785 of the Judicial Instructions of the Public Prosecution.
([1665] Article No. 79 of the Judicial Authority Law, and Article No. 1786 of the Judicial Instructions of the Public Prosecution.
([1666] Request No. 19 of 79 Q issued in the session of February 23, 2010 and published in Technical Office Book No. 61, Page No. 43, Rule No. 7.

3 - 3 Disciplining members of the Public Prosecution

In dealing with offenses committed by members of the Public Prosecution Service that merit disciplinary action, the law or regulations based on law must be based, and complaints against them, alleging that they have clearly exceeded the scope of professional standards, must be dealt with promptly, fairly and within appropriate procedures. They have the right to a fair trial. The decision is subject to independent review.

Disciplinary measures taken against members of the Public Prosecution shall ensure that assessments and decisions are made on objective grounds. These procedures shall be determined in accordance with the law, codes of professional conduct and other established ethical standards and rules.[1667]

3 - 3 - 1 Disciplinary jurisdiction

Members of the Public Prosecution are subordinate to their superiors and the Attorney General, and the Minister of Justice has the right to monitor and supervise the Public Prosecution and its members .[1668]

Disciplining members of the Public Prosecution at all levels shall be the responsibility of a disciplinary board composed of:

- The oldest president of the Courts of Appeal who is not a member of the Supreme Judicial Council...as president.

- The two most senior judges of the Court of Cassation and the two most senior vice-presidents of the Court of Appeal...Members

In the absence of the president or one of the members or if he is unable to do so, the person next in seniority shall take his place .[1669]

3 - 3 - 2 Disciplinary penalties that may be imposed on members of the Public Prosecution

The disciplinary penalties imposed on members of the Public Prosecution are the same penalties that may be imposed on judges, namely reprimand and dismissal .[1670]

([1667]) Guidelines on the Role of Prosecutors, paragraphs 21, 22.
([1668] Article No. 125 of the Judicial Authority Law.
([1669] Articles Nos. 98 and 127 of the Judicial Authority Law.
([1670] Articles 108 and 128 of the Judicial Authority Law.

3 - 3 - 3 Sending a warning to the Public Prosecution member

The Public Prosecutor may issue a warning to a member of the Public Prosecution who commits a minor breach of his duties after hearing his statements. The warning may be verbal or written. The Public Prosecution member may object to the warning issued to him in writing by submitting a request to the Supreme Judicial Council within two weeks from the date of notification. The Council may investigate the incident that was the subject of the warning, or it may delegate one of the members to do so after hearing the statements of the member of the Public Prosecution. It may uphold the warning or consider it as if it had not occurred, and it shall communicate its decision to the Minister of Justice. The person who issued the warning may not participate in considering the objection, and he shall be replaced by the person next in seniority to him. If the same violation is repeated or continues after the warning becomes final, a disciplinary action shall be filed .[1671]

The Court of Cassation has determined that transferring a Public Prosecution member from their workplace after a complaint is filed against them does not constitute a penalty. Additionally, a warning may be issued following the transfer. As stated in Articles 38 and 116 of the Judicial Authority Law, individuals who assume judicial or Public Prosecution positions must possess good conduct and a solid reputation. If the applicant, assuming the lease contract between them and the complainant is fictitious, engaged in actions that could circumvent the law, such behavior is deemed unacceptable for judiciary or Public Prosecution members. They are expected to demonstrate integrity and avoid actions that could compromise trust in them. The transfer, therefore, is not punitive but rather a measure to protect the individual from embarrassment and safeguard their reputation while the complaint is under investigation. **Therefore , directing the warning to him is in its place, and the request becomes baseless and must be rejected** .[1672]

The Court of Cassation ruled that the Public Prosecutor, Assistant Public Prosecutors, the Director of Judicial Inspection, the First Public Prosecutors, and the Public Prosecutors, each within his jurisdiction, may direct observations to members of the Public Prosecution regarding their judicial or administrative actions, their care for their work, or their conduct and behavior: [**The text in the third paragraph of Article 122 of the Judicial Authority Law No. 46 of 1972, replaced by Law No. 35 of 1984, which states that "the system for the Public Prosecution Inspection Department and its jurisdictions shall be issued upon a proposal from the Public**

([1671] Article No. 126 of the Judicial Authority Law.
([1672] Request No. 101 of 52 Q issued in the session of January 18, 1983 and published in the first part of Technical Office Book No. 34, page No. 14, rule No. 4.

Prosecutor and with the approval of the Judicial Council," indicates that the legislator authorized the Minister of Justice to establish the rules regulating the work of the Public Prosecution Inspection Department and to determine its jurisdictions upon a proposal from the Public Prosecutor and after the approval of the Judicial Council. Pursuant to this legislative authorization, the Minister of Justice issued a decision "regulating the system and jurisdiction of the Judicial Inspection Department at the Public Prosecution" dated October 19, 1963, published in the Egyptian Gazette, Issue No. 84, dated October 28, 1963, and Article 15 thereof, replaced by the Minister of Justice's decision No. 2592, states: 126, supplemented on June 2, 1992, which states that "the Public Prosecutor, the Assistant Public Prosecutors, the Director of Judicial Inspection, the First Public Prosecutors, and the Public Prosecutors, each within his area of jurisdiction, have the right to direct observations to members of the Public Prosecution, whether in relation to their judicial or administrative actions, their care for their work, their conduct, or their behavior." This means that, according to the rulings of this court, the Public Prosecutor, the Assistant Public Prosecutors, the Director of Judicial Inspection, the First Public Prosecutors, and the Public Prosecutors, each within his area of jurisdiction, have the right to direct observations to members of the Public Prosecution, whether in relation to their judicial or administrative actions, their care for their work, their conduct, or their behavior. Since the contested ruling contradicted this view and held that the Public Prosecutor alone has the right to direct observations to members of the Public Prosecution, without the others listed in Article 15 of the aforementioned Judicial Inspection Administration Regulations of the Public Prosecution, and based on that, its ruling to cancel the observation directed by the Assistant Public Prosecutor, the Director of Judicial Inspection, to the respondent, it has erred in applying the law .[1673]

3 - 3 - 4 Filing a disciplinary action

The Public Prosecutor shall initiate the disciplinary action on his own initiative, or upon the proposal of the Minister of Justice. The Public Prosecutor may suspend from work the member of the Public Prosecution who is being investigated, and in this case, all his financial dues shall be paid to him, until the disciplinary case is decided .[1674]

([1673] Request No. 518 of 82 Q issued in the session of March 25, 2014 and published in Technical Office Book No. 65, page No. 20, rule No. 3.

([1674] Article No. 129 of the Judicial Authority Law.

3 - 3 - 5 Suspension from work

First: Permissible suspension from work

The Public Prosecutor may suspend from work the member of the Public Prosecution who is being investigated, and in this case, all his financial dues shall be paid to him until the disciplinary case is decided.[1675]

Second: Mandatory suspension from work

The imprisonment of a member of the Public Prosecution based on an order or ruling shall necessarily result in his suspension from performing his duties for the period of his imprisonment.

The Disciplinary Board may order the suspension of a member of the Public Prosecution from carrying out his duties during the investigation or trial procedures for a crime committed by him, whether on its initiative or based on a request from the Minister of Justice, the Public Prosecutor, the President of the Court, or based on a decision of the General Assembly.

Suspension does not result in the member of the Public Prosecution being deprived of his salary for the period of suspension. However, the Disciplinary Board may deprive him of half of his salary.

The Council may at any time reconsider the matter of the endowment and the salary.[1676]

3 - 3 - 6 Jurisdiction to adjudicate misdemeanors or felonies that may be committed by members of the Public Prosecution

The Supreme Judicial Council shall, upon the request of the Public Prosecutor, appoint the court that shall have the power to adjudicate misdemeanors or felonies that may be committed by members of the Public Prosecution, even if they are not related to their duties, as an exception to the general provisions of jurisdiction concerning place.[1677]

([1675] Article No. 129 of the Judicial Authority Law.
([1676] Articles 97 and 130 of the Judicial Authority Law.
([1677] Articles 95 and 130 of the Judicial Authority Law.

conclusion

In the previous guide, we examined the vital role of the Public Prosecution in representing society through criminal proceedings. As a cornerstone of the judiciary, the Public Prosecution investigates, initiates, and prosecutes cases under the powers granted by law. We outlined its structure, the appointment of its members, its functions, and its powers, including specialized prosecutions, the responsibilities of its members, and its authority in investigations, inspections, and evidence seizure. We also addressed its discretionary powers in case management. The guide further covered the administration of the Public Prosecution, including oversight, inspection of its activities, and disciplinary procedures for its members. By presenting these elements, we highlighted its commitment to maintaining judicial integrity and accountability.

We hope this guide supports Public Prosecution members in fulfilling their duties within the framework of the Constitution and the law, ensuring justice and the guarantees of a fair trial.