

ESTIMATING THE GUARANTEES OF PROCEDURAL LEGITIMACY IN ARTICLE 100 OF THE JORDANIAN CODE OF CRIMINAL PROCEDURE

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Abstract- *The Code of Criminal Procedure is one of the laws that regulates rights and freedoms, and a means to achieve criminal justice based on a balance between freedom and other rights of the individual on the one hand, and the right of society on the other hand, within the framework of the principle of the rule of law. This law dealt with invalidity as one of the penalties that may result in a breach of the procedural rule, and among those rules is what was decided by Article 100 of the aforementioned law, which regulates the procedures that the judicial police officer must take in the cases in which the defendant is arrested. It explicitly stipulates that its provisions must be observed under pain of nullity.*

In view of what the determination of this penalty may entail in judicial applications in terms of affecting the right or interest protected under the rules of the Penal Code, the researchers used the descriptive and analytical approach, and compared it with the corresponding in the Egyptian legislation to clarify its role in ensuring the effectiveness of the management of Criminal justice, and in ensuring the principle of penal procedural legitimacy.

The study showed how stringent the legislator is in determining the invalidity just because of violating a procedural and formal rule that is nothing more than an organizational rule, represented in not organizing the arrest report, which may lead to impunity for the accused, and as a result, the loss of an objective right related to the victim, and violating the public right of the society, and the imbalance of criminal justice. The study concluded with a number of results and recommendations.

Keywords: *Criminal legitimacy, procedural legitimacy, procedural legitimacy, procedural action, procedural penalty, invalidity.*

INTRODUCTION

The success of the legislator in developing a penal code that aimed at protecting the public interest in this law requires the development of an effective procedural organization that guarantees the realization of this protection. It also ensures that the goal of punishment is achieved. There is no doubt that the Criminal Procedure Code undertakes this task¹, as the constitutional legitimacy of both laws is based on the protection provided by each of the rights and freedoms guaranteed by the constitution.

In order to establish a fair balance between protecting freedom and protecting society, it is necessary to draw a legal scope for the freedom of the individual, through certain rules that ensure that he is not sacrificed, and that the minimum level of his freedom is preserved to the extent that does not conflict with the interest of society, in compliance with the principle of legitimacy in Law, to achieve procedural legitimacy in the Code of Criminal Procedure.

In order to ensure the proper administration of this justice and respect for the rights and freedoms of the accused, the rules of this law have been characterized as binding rules, and the procedural penalty is the most important manifestation of its obligatory nature. The Article 100 of the aforementioned law - the subject of our study - decided nullity as a procedural penalty in case that the judicial police officials did not carry out the required procedures represented in organizing the arrest report.

¹ The Jordanian Code of Criminal Procedure for the year 1961, issued in the Official Gazette No. 1539 dated 03/16/1961 on page 311 and its amendments No. 32 of 2017.



Problem of the Study:

In view of the exaggeration in the application of the procedural penalty stipulated in Article 100 of the Jordanian Code of Criminal Procedure, which has been shown by judicial practical applications, and the effects related to the results of judgments issued by courts, the problem lies in studying this penalty as a result of the invalid procedural work and its effect in ensuring the effectiveness of criminal justice based on a balance between rights and freedoms on the one hand and achieving the public interest on the other hand.

Purpose of the Study:

The research aims to study the procedural penalty resulting from the failure of the judicial police officers to undertake the procedural work stipulated in Article 100 mentioned, in terms of its nature, causes, and effects, and to which extent it can achieve criminal justice based on the aforementioned balance, with clarification of some Jordanian Cassation Court's decisions related to the application of the aforementioned Article.

Significance of the Study:

The sound legal basis for the procedural penalty depends on the legality of the procedures on which it was built, and this requires that the evidence on which the court bases the conviction verdict be correct and not tainted by invalidity. The importance of this research comes from studying and analyzing the aforementioned Article 100, which establishes a procedural penalty in the event that the judicial police officer fails to perform the procedural work as required by this article, and the consequent impact of this penalty that would destroy the evidence derived from violating the procedure, and the real danger that may entail represented in the prejudice of the substantive right that the criminal litigation aims at and an imbalance in criminal justice.

Research Methodology:

The researchers used the descriptive analytical approach in studying the text of the aforementioned Article 100, and what our study required in reviewing the provisions of other articles of the same law dealing with the part decided by the aforementioned Article, and comparing it - where necessary - with its counterpart in the Egyptian Code of Criminal Procedure.

The Study Plan:

The research was divided into an introduction and two sections: the procedural work stipulated in Article 100 of the Code of Criminal Procedure in the first topic, and the procedural penalty decided by the same article in the second topic, and a conclusion that includes our findings and recommendations, as follows:

The First Topic: The Penal Procedural Work in Article 100 Of The Code of Criminal Procedure.

The First Requirement: The Nature of Procedural Work.

The Second Requirement: The Relationship Between the Legality of the Procedural Work and The Judgment Of Conviction.

The Second Topic: The Procedural Penalty in Article 100 Of The Code of Criminal Procedure.

The First Requirement: Invalidity (What It Is and Its Causes).

The Second Requirement: The Effects of the Invalidity of The Arrest Report.

The First Topic

The Penal Procedural Work in Article 100 Of The Code of Criminal Procedure

Infringement of rights and freedoms through criminalization and punishment is not manifested in practice except through penal procedures that may affect one of these rights and freedoms. Due to the possibility that the freedom of the accused may be compromised, the balance between the protection of rights and freedoms on the one hand and achieving the public interest on the other hand must be ensured in all these procedures. In this section, we deal with the procedural work stipulated in the aforementioned Article 100, which obligated the judicial police officers to undertake it under penalty of invalidity. Thus, this topic was divided into two requirements: **The First Requirement:** The Nature of Procedural Work.

The Second Requirement: The Relationship Between the Legality of the Procedural Work and The Judgment Of Conviction, as follows:



The First Requirement

The Nature of the Procedural Work and Its Divisions

The procedural work is defined as the legal work on which the law has a direct impact on the establishment of the litigation, its modification or termination². In this requirement, we discuss the characteristics of the penal procedural work and its divisions in the first section, and in the second section we deal with organizing the arrest report, as it is the procedural work stipulated in the aforementioned Article 100, as follows:

The First Section: Characteristics of The Procedural Work and Its Divisions:

The penal procedural work has many characteristics³, including:

First: The procedural work is a legal work and has its own purpose. The legal work is also the work stipulated by the legislator, explicitly or implicitly, so that failure to complete this work will have a direct or indirect impact on the course or termination of the litigation as long as it is related to it.

Second: The law gives direct effects to the procedural action in the emergence, course, modification or expiration of the criminal litigation.

Third: The penal procedural work is part of the criminal litigation, such as submitting defenses and requests, or preceded it, such as reporting an accident, or contemporary to it, such as the plaintiff's waiver of his complaint before the police officers.

The procedural work can be divided as follows:

First: In terms of the importance of the impact of the procedural work. The procedural work can be divided in terms of the importance of the effect resulting from it into essential and non-essential actions. The essential work is the one that the law must take into account and its failure leads to failure to non-achieving its purpose in the ordinary course. As for the non-essential procedure, it is the one whose violation does not result in the non-achievement of its purpose and invalidity⁴.

The Jordanian legislator has adopted the Code of Criminal Procedure in order to distinguish between the essential procedure and the non-essential secondary procedure by nullifying it as a penalty resulting from violating the essential procedure without the non-essential procedure⁵.

In all cases, the procedural work is carried out in accordance with the form determined by the law to have its legal effects, otherwise it is a null act that has no effect⁶.

The Second Section

Organizing an Arrest Report

Human freedom is one of the natural rights, and it is a protected right that cannot be violated except in cases limited and specified by law. Therefore, Article 7 of the Jordanian Constitution⁷ stipulates that personal freedom is inviolable⁸.

Arresting the accused - as a measure of deprivation of liberty - means depriving him of his freedom of movement, even for a short period. Therefore, it involves detaining him for a period of time to prevent him from escaping, in preparation for his statements to be heard by the competent authority, or in preparation for taking some action against him⁹. In order to balance the state's right to punishment and the accused's right to freedom, the law gives this procedure certain guarantees in terms of the authority that it may undertake and in terms of its reasons and duration, and therefore

² Dr. Mamoun Salmeh, *Criminal Procedures in Egyptian Legislation*, Dar Al-Fikr Al-Arabi, Cairo 1986, Part One, p.39

³ Dr. Louay Jamil Haddadin, *The Theory of Invalidity in the Code of Criminal Procedure, a comparative study*, Department of the National Library, Amman, first edition 2000, pp. 75-78. And see Dr. Muhammad Subhi Najm, *A Brief in the Code of Criminal Procedure*, Dar Al-Thaqafa, third edition, 2016, pp. 47-48

⁴ Dr. Abdel-Hamid Al-Shawarbi, *Criminal Invalidity*, Manshaat Al-Maarif Alexandria, 1982, pg. 26 et seq.

⁵ See Article 7 of the Jordanian Code of Criminal Procedure.

⁶ Dr. Mohammad Subhi Najm, *ibid*, p.50

⁷ Constitution of the Hashemite Kingdom of Jordan 1952 with its amendments until May 5, 2016

⁸ Corresponding to it is Article 54 of the Egyptian Constitution 2014 amended on April 23, 2019. It is also stipulated in Article 346 of the Jordanian Penal Code No. 16 of 1960 and its amendments No. 10 of 2022.

⁹ Dr. Hassan Al-Jokhadar, *Preliminary Research or Inference in the Criminal Procedure Code, a comparative study*, Dar Al-Thaqafa, Amman, first edition, 2012, p. 162 and p. 212 and beyond, and see Dr. Mohammad Subhi Najm, *ibid*, p. 220.



the hour of completion of the arrest must be indicated in the report against him¹⁰. The defendant may not be arrested except in the cases specified by law¹¹.

According to Article 100 of the Jordanian Code of Criminal Procedure, the judicial police employees must, in cases in which the defendant is arrested, organize a special report, which has been called the arrest report, provided that this report includes the name of the employee who issued the arrest warrant and who carried it out, in addition to the name of the defendant, the date of his arrest, his place and reasons, the time and date of detention of the defendant, and the place of arrest or detention, as well as the name of the person who initiated the preparation of the report and listening to the statements of the defendant, in addition to the signature of the bailiff of the aforementioned and the defendant, and in the event of his refusal to sign, this shall be indicated in the minutes, indicating the reason.

The aforementioned article also required the judicial police officer to hear the defendant's statement immediately after his arrest, and to send him within twenty-four hours to the competent public prosecutor with the report.

By reviewing Article 36 of the Egyptian Code of Criminal Procedure, which corresponds to Article 100 of the Jordanian Code of Criminal Procedure, we find that the Egyptian legislator did not stipulate the preparation of a report as required by our legislator, and as a result it did not stipulate a procedural penalty of invalidity for not organizing a report as our legislator decided explicitly. Rather, the Egyptian Court of Cassation ruled that nullity does not ensue because a report of the procedure was not issued¹².

The researchers believe that the organization of the report is, in fact, a procedure whose purpose is to document what the judicial police officer has undertaken in terms of procedures and collection of information, and therefore its goal is to prove the procedures that take place in writing, and to preserve the information or evidence of the case, provided that no exaggeration should be made in the case relying on this report to prove this information or evidence because its proof does not depend on issuing a report of it. Thus, according to the principle of freedom of proof in the criminal law, the judicial police officer may testify about what happened before the investigation authority or the court, and then leave the matter to the court to decide accordingly its personal conviction.

The Second Requirement

The Relationship Between the Legality Of The Procedural Work And The Judgment Of Conviction.

Procedural legitimacy is described as a governing principle of the Code of Criminal Procedure. It is a sure guarantee for the rule of law that corresponds in its importance to the legitimacy of crimes and penalties in the Penal Code, or what is called objective legitimacy, which alone is not sufficient to protect human freedom in the face of control. What is their use if it is possible to arrest the accused, search his person or residence, or detain him arbitrarily and in a way that degrades his dignity and robs him of his freedom? Therefore, it was necessary to have a Code of Criminal Procedure that undertakes the task of arbitration, defining and organizing the procedures to be taken before the accused and organizing them in a manner that guarantees respect for rights and freedoms in order to consolidate the principle of procedural legality, as the second complementary link for the first link of the penal legitimacy represented by the objective legitimacy¹³.

Procedural legitimacy is not characterized by obligatory force unless it is formulated in a constitutional framework. The constitution is the tool for this legitimacy, and it is the one that draws its limits and obliges the legislator to follow them. Thus, the law is responsible for regulating the

¹⁰ See Article 99 of the Jordanian Code of Criminal Procedure. Corresponding to it is Article 35 of the Egyptian Code of Criminal Procedure (according to the latest amendments to Law No. 95 of 2003 promulgated by Law No. 150 of 1950).

¹¹ Revocation of November 15, 1981, A Set of Provision, S 32, No. 146, p.843. Referred to by Dr. Ahmed Fathi Sorour, *ibid*, p. 564.

¹² Dr. Mahmoud Nageeb Hosni, *Explanation of the Code of Criminal Procedure*, revised by Dr. Fawziah Abdel Sattar, Dar Al-Nahda Al-Arabiya, fourth edition, 2011, part 1 item 18, pp. 22-23. And see Dr. Abdul Raouf Mahdi, *Explanation of the General Rules of Criminal Procedure*, Dar Al-Nahda Al-Arabiya, 2011, p.38.

¹³ Dr. Noman Ahmed Al-Khatib, *The Complete in the Constitutional System*, House of Culture, third edition, 2022, p.89



exercise of these rights¹⁴. The Jordanian constitution affirms that the accused is innocent until proven guilty by a final judgment¹⁵.

And in compliance with the constitutional text, the Code of Criminal Procedure has also established this principle in an explicit text¹⁶, as this principle is considered the basis of procedural legality. It is a guarantee of the personal freedom of the accused and all other human rights. The judicial guarantee is represented in Criminal procedures in the independence of the judiciary as the natural guardian of freedoms, which is a constitutional value confirmed by the constitutions and international covenants related to human rights¹⁷. Based on this, the state may not seriously infringe on the freedom of the accused by exercising its authority in punishment except after a fair trial and after the issuance of a ruling by the competent judiciary. There is no punishment without a criminal case, and there is no punishment without a judicial ruling¹⁸.

As for procedural legality, it is a description of the proper application of the law in accordance with the principles of procedural legality. Procedural legality is not achieved if each procedure is not carried out in accordance with what is stipulated in the law or in accordance with what is achieved with the guarantees of the principle of “presumption of innocence of the accused”. Procedural legality is the principle, and procedural legality is the applied aspect of this principle. The non-application of provisions that guarantee procedural legality entails a procedural penalty in accordance with what is stipulated in the law, such as the stipulation of the invalidity of a procedure that violates the law¹⁹.

Based on the foregoing, the sound legal basis for the judgment depends on the relationship between the judgment and the legality of the procedures on which it was based. This necessitates that the evidence upon which the judgment of conviction is based be correct and not tainted by invalidity. If the evidence is illegal because it results from invalid procedures, then the court may not rely on it in constructing its ruling, and the court must conclude this invalidity if the rights and freedoms violated by procedures derive their protection from the constitution. As for the guarantees related to the organization of the evidence, not its legality, they are legislative which does not reach the rank of those rights and freedoms, but it merely includes guidance for the authority based on the evidence²⁰.

An important consequence that follows from the importance of the relationship between the ruling and the legality of the procedural actions upon which it was built is represented in the commitment of the trial court to cause the judgment so that the Court of Cassation can extend its control over it and ascertain the extent of compliance with the legality relationship between the judgment and the procedures upon which it was based²¹.

The Jordanian Court of Cassation considered the arrest report a legal guarantee for the accused, through which the judicial control is extended to track the movement of the accused for the purposes of monitoring the validity of the legal procedures taken against him and the soundness of the circumstances surrounding the organization of his testimonies²².

The Second Topic

¹⁴ Article 4/101 of the Jordanian Constitution. The Universal Declaration of Human Rights promulgated by the General Assembly of the United Nations in 1948 CE stipulated in Article 1/11. This principle is also confirmed by the International Covenant on Civil and Political Rights in Article 2/14, as stipulated in Article Six of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

¹⁵ See Article 147 of the same law

¹⁶ See Articles 27, 97 and 101 of the Jordanian Constitution, and Article 10 of the Universal Declaration of Human Rights stipulates that every person has the right to a fair and public trial before an independent and impartial court. And see Omar Fakhri Al-Hadithi, *The Right of the Accused to a Fair Trial*, a comparative study, Dar Al-Thaqafa, Amman, second edition, 2010, p. 98 .

¹⁷ Dr. Ahmed Fathi Sorour, *ibid*, p.139

¹⁸ Omar Fakhry Al-Hadithi, *ibid*, p. 189

¹⁹ Dr. Ahmed Fathi Sorour, *ibid*, p.487

²⁰ See Dr. Hassan Bashit Khawain, *Guarantees of the Accused in the Criminal Case*, a comparative study, Dar Al-Thaqafa, Amman, second edition 2010, p. 167

²¹ Decision of the Jordanian Criminal Court of Cassation No. 2273/2021, a five-member panel dated 21/9/2021, Adalah Center publications.

²² Dr. Ahmed Fathi Sorour, *ibid*, p.474.



The Procedural Penalty in Article 100 Of the Code of Criminal Procedure

The rules of the Code of Criminal Procedure are distinguished in that they include a penalty of a special nature that protects them with the aim of respecting the rights and freedoms of the accused in addition to ensuring the proper administration of criminal justice. The procedural penalty is of an objective nature, i.e. it affects the procedural work itself or the right to undertake it²³. Because invalidity is the penalty that determined by Article 100 of the Jordanian Code of Criminal Procedure, we will confine ourselves in our study to dealing with this penalty, so this topic has been divided into two requirements, in which we deal with the procedural penalty, which is invalidity in terms of its nature, reasons and types in the first requirement, and we deal with the effects of the invalidity of the arrest report in the second requirement, as follows:

The First Requirement Invalidity (Its Nature and Causes)

Procedural rules have been legislated in order to achieve certain goals related to the principles of procedural legitimacy. Because the court's judgements of conviction are based on legitimate criminal procedures the penalty for its illegality lead to the penalty of invalidity, so invalidity is known as a procedural penalty that responds to the procedural work that violates some procedural rules, and thus wasting its legal effects²⁴. We discuss the causes and types of invalidity in the following two sections:

Section One: Reasons for Invalidation:

Four legal doctrines have emerged in determining the causes of invalidity, namely:

- The doctrine of absolute invalidity²⁵, also called the formal doctrine. According to this doctrine, any violation of any of the rules of criminal procedures that regulate the criminal litigation entails invalidity.
- The stipulated doctrine of invalidity: it requires that the legislator is the one who determines the reasons for invalidity, so he explicitly decides invalidity in the cases in which he considers the rights and freedoms to prevail.
- Doctrine of self-invalidity: Its implication is that the invalidity is decided by simply not observing certain conditions in the procedures without stipulating the invalidity explicitly, but rather the matter is left to the judiciary to assess the extent of proportionality between the seriousness of the violation and the public interest or rights and freedoms.
- Doctrine of invalidity without harm: according to which invalidity is not decided unless the judge deems that the defect has affected the party claiming invalidity.

The Code of Criminal Procedure dealt with invalidity in Article Seven. According to the aforementioned Article 7, the first cause of invalidity is represented in the cases explicitly stipulated by the law, and there is no difficulty in determining invalidity in such cases, but the difficulty may arise regarding what is called self-invalidation, which is based on a breach of the essential guarantee guaranteed by the law in procedural work, whether it is a guarantee of rights and freedoms or a guarantee of the public interest. There is no doubt that the purpose of the procedure is to guarantee to preserve the public interest or protects rights and freedoms in accordance with the procedural legitimacy, and therefore the breach of this guarantee constitutes a fundamental defect that would lead to invalidity²⁶. As for the regulatory guidelines, they do not imply the protection of the aforementioned guarantees, but rather serves as rules for regulating matters and their proper conduct, and protects other rights related to the organization of evidence, not its acceptance or legality, and therefore does not entail invalidity²⁷.

²³ Dr. Abd al-Hamid al-Shawarbi, *ibid*, p.5

²⁴Dr. Louay Jamil Haddadin, *ibid* , p. 293.

²⁵ See Article 7 of the Jordanian Code of Criminal Procedure

²⁶ Dr. Ahmed Fathi Sorour, *ibid*,p. 490

²⁷ Decision of the Jordanian Criminal Court of Cassation No. 1670/2015, a five-member panel dated 30/5/2015, Adalah Center publications.



By reviewing Article 100 of the Jordanian Code of Criminal Procedure, we find that it explicitly stipulates the determination of invalidity in the cases in which the defendant is arrested without organizing the record to which it refers, which is the arrest report, or without including in that report the data or information mentioned in the same Article. This was confirmed by the Jordanian Court of Cassation in many of its decisions²⁸.

The Second Section: Types of Invalidity

Adherence to invalidity is to waste the legal effect of the invalid procedure, so how to adhere to it is one of the most important aspects of distinguishing between the two types of invalidity: absolute invalidity, and relative invalidity, so it is necessary to go through them before stating the implications in case of the invalidity of the arrest report, as follows:

First: Absolute Invalidity

It is the invalidity related to public order, which is the penalty that results from violating the rules related to essential procedures which have to do with the public order²⁹. This is in cases where the provisions of the law related to judicial guarantee are not observed as an element of procedural legitimacy. It can be said that the guarantees derived from the constitution are considered part of public order, as the constitution affirms in its texts respect for personal freedom based on the presumption of innocence, and respect for judicial guarantee. The invalidity related to public order may not be waived explicitly or implicitly, and it may be upheld for the first time before the Court of Cassation³⁰.

Second: Relative Invalidity: It is the invalidity that results from not observing the procedural provisions related to the interest of the litigants, i.e. the invalidity that results from a rule not related to public order. The Code of Criminal Procedure guarantees the person concerned to uphold the invalidity resulting from the violation of the guarantee legally established in his interest, and the right to defend invalidity is forfeited if he does not adhere to it by waiving it explicitly or implicitly³¹. It is not permissible to uphold it for the first time before the Court of Cassation³².

By reviewing some of the decisions of the esteemed Jordanian Court of Cassation, we find that it - at times - considered the argument raised regarding the violation of the provisions of Article 100 of the Code of Criminal Procedure represented in seizing the accused's statement before organizing the arrest report as a motive related to public order. In other decisions, it considered that the arrest report is only a legal guarantee for the accused for the purposes of extending judicial control over tracking the movement of the accused and the proper conduct of the investigation with him at other times³³.

The researchers believe that the legislative guarantees in the aforementioned Article 100 of Code of Criminal Procedure do not reach the rank of rights and freedoms as objective guarantees that have a constitutional value. Rather, they are guarantees related to organizing the evidence, proving the case, and collecting information, and they are not related to its legality as well as they involve mere instructions for the authority responsible for listing and preserving the data and information. Therefore, the invalidity decided by this article is not related to public order. Although it facilitates the extension of judicial control over the procedures taken against the accused by the judicial police, it does not deviate from the fact that it is a purely regulatory procedure. However, the matter in which there is no difference is that violating the provisions of this Article leads to invalidity, given that invalidity here is established by the text of the law.

²⁸ Dr. Medhat Al-Husseini, *Invalidity in Criminal Matters*, University Press House, Alexandria 1993, p.34

And see Dr. Mahmoud Najeed Hosni, *Criminal Procedures*, *ibid*, p.348

²⁹ See Articles 2/7, 171, 237, 265-290 of the Jordanian Code of Criminal Procedure

³⁰ See Article 3/7 of the Jordanian Code of Criminal Procedure

³¹ Dr. Mohammad Subhi Najm, *ibid*, p. 391

³² See Decision of the Jordanian Criminal Court of Cassation No. 930/2017, a five-member panel dated 11/5/2017, and its Decision No. 2273/2021, a five-member panel dated 21/9/2021, and its decision No. 957/2020, a five-member panel dated 25/6/2020, Adalah Center publications

³³ Dr. Mohammad Subhi Najm, *ibid*, p. 394



If we read the content of the data that the aforementioned Article required to be included in the arrest report, and understand the purpose behind it, we will find that The legislator wanted to ensure that the arrest of the person arrested was not arbitrary, by the fact that the person who issued the arrest warrant was legally competent to issue it, and that the arrest warrant was justified and reasoned to be carried out in accordance with the cases specified by the legislator, in addition to ensuring that the freedom of the arrested person was not restricted by Judicial police officers for more than the period specified by the legislator, which is 90 hours, and to ensure that his statements are heard immediately after his arrest and after that he is given to the Public Prosecution within the period specified by law.

The question that arises here is: What is the ruling if the other papers - except for the aforementioned arrest report - that were organized by the judicial police officers contain all the aforementioned data? What if the arrest incident was documented according to a legally correct arrest, indicating the time and date of the arrest, and signed by the person who made the arrest, and it was based on reasons that legally justify the arrest? What if the arrest warrant was notarized in writing and signed by the legally authorized person to issue the arrest warrant? What if the time and date of seizing the statement was clear and specific, leaving no room for doubt that it was seized immediately after the time and date of arresting the defendant or the accused? What if the time and date of keeping the accused with the judicial police officer was documented in writing by virtue of a retention memorandum that includes all information related to the defendant or the accused in terms of personal data, the charge, or the reasons for arresting and keeping him, and that negates any suspicion that may revolve around the detention of his freedom? What if the papers included a written document documenting the time and date of his referral to the Public Prosecution, and that the referral took place within the legal period specified in the aforementioned article? In sum, what if all the legal actions - related to which data are to be recorded in the aforementioned report - that were undertaken by the judicial police officer, and which constitute procedural actions related to the rights and freedoms of the accused, were carried out in accordance with the legitimate procedural principles and the legal controls that govern them primarily?

Therefore, the researchers believe, and in line with the legal logic, and because the essential procedure devolves to the guarantee that preserves the public interest or protects rights and freedoms, while the non-essential procedure denotes its implication to the guarantee that aims to organize the procedure with the intent of guidance, the proof of the aforementioned legal facts and actions the aforementioned - with the information it may contain that may be the basis for evidence on which the court ruling is based - does not depend on writing and organizing a report therein as required by the aforementioned article. In this way, it is possible to prove all the procedural actions taken by the judicial police employees in different records, each of which documents the procedure it included, in a way that achieves the guarantees set by the law to protect personal freedom and in a way that enables the judicial authority to extend its control over the legality of these procedures, and thus -for the sake of justice - it is safer not to waste the effect of the information contained in those procedural actions just because of not initiating a regulatory procedure represented in issuing the report mentioned in the aforementioned article, as long as the procedures that must be proven in it have basically been carried out in accordance with what is required by the principle of procedural legality and are consistent, as a result, with criminal legality.

The Second Requirement

The Effects of The Invalidity Of The Arrest Report.

Invalidity does not have effects unless it is decided by a judicial ruling, even if it is related to public order. The rule is that when it is decided to invalidate the procedure, its legal effects cease to exist, as if it did not happen, provided that invalidity does not affect the validity of the evidence separate from the invalid procedure³⁴. That is because invalidity as a procedural penalty does not affect the procedural work except as a result of the defect that affected its validity. So, its effect does not

³⁴ See Article 4/7 of the Jordanian Code of Criminal Procedure



extend except to the actions that follow it and consequent upon it, that is, for which the invalidity of the previous work is considered as a defect in its validity. As for the previous works that were undertaken independently of the invalid work, the effects of invalidity do not extend to them³⁵. When it is decided that the procedures are invalid, its effect will be invoked against all the litigants without regard to those who adhered to the invalidity. And if the invalidity is related to public order, then it includes all procedures that involve the defect of not respecting the procedural rule and what is built on it³⁶.

In application of the provisions of Article 100 of the Code of Criminal Procedure, the failure to organize the arrest report, or its failure to include some of the data contained therein, such as the absence of the time, place and date of the arrest warrant, the name of the investigator, and other data stipulated therein, would lead to invalidity, and consequently The invalidity of this record is the invalidity of the subsequent procedures based on it³⁷. This was confirmed by the Jordanian Court of Cassation in many of its decisions and rulings³⁸.

Despite our belief in the rule of law and the obligation to abide by its provisions, and the need for all procedural actions to be characterized by legitimacy, the practical application of the procedural penalty contained in Article 100 of the Code of Criminal Procedure shows the extent of the danger that may affect the substantive right that the criminal litigation aims to protect : the right that is considered the subject of protection established by the Penal Code. In other words, this procedural work would sacrifice the penal protection established under the substantive rules of the Penal Code in favor of the formal rules in the Criminal Procedure Code.

Undoubtedly, the risk appears clearly if the subject of criminal protection is related to human life. If the evidence presented in the criminal case that was instituted in connection with a murder was limited to the confession of the accused to the judicial police officer, and the revealing of the evidence that includes the representation of the accused of his crime based on his confession, and at the same time, the judicial police officer neglected to organize the report mentioned in the aforementioned article, so what is the fate of the victim if the procedural penalty (invalidity) is applied - in this case because the report was not organized in the manner depicted in the aforementioned article or there was a lack of data that was supposed to be included in it? Will this penalty maintain a balance between personal freedom on the one hand and the right of society and the public interest on the other hand?

A review of the decisions of the Jordanian Court of Cassation related to the applications of Article 100 mentioned above³⁹ shows the extent of exaggeration in determining the invalidity resulting from not organizing the aforementioned arrest report, or simply because it is devoid of some data required to be included in it. As a result, the conviction was overturned in favor of the accused at the expense of the substantive right in the Penal Code, which means the accused's impunity, the loss of the victim's right, and thus the imbalance of criminal justice.

CONCLUSION

Results:

- The balance between rights and freedoms and the safety and interest of society is an indispensable necessity. It is a governing principle of criminal procedures that cannot be deviated from, as it is a sure guarantee of the rule of law.

³⁵ Dr. Ahmed Fathi Sorour, *ibid*, p.517

³⁶ See Jordanian Criminal Court Decision No. 1003/2020, a five-member panel dated 20/5/2020, and its Resolution No. 500/2021, a three-member panel , dated 11/1/2021 Adalah Center publications.

³⁷ We have already mentioned that Article 36 of the Egyptian Code of Criminal Procedure, which corresponds to Article 100 of the Jordanian Code of Criminal Procedure⁵⁴, did not require a report to be drawn up as mandated by our legislator.

³⁸See Jordanian Criminal Court Decision No. 1003/2020, a five-member panel dated 20/5/2020, and its Resolution No. 500/2021, a five-five panel dated 3/5/2021 and its Resolution No. 3799/2020, a five-member panel dated 28/2/2021, and its Resolution No. 373/2018, a five-year panel dated 1/2/2018, and its Resolution No. 251/2021 a three-member panel , dated 11/1/2021 Adalah Center publications.

³⁹ See Jordanian Criminal Court Decision No. 172/2019, a five-member panel dated 7/3/2019, and its Resolutions mentioned above.



- Invalidity is the procedural penalty stipulated in Article 100 of this law is considered invalid in the event that the arrest report is not prepared by the judicial police officer in the cases in which the accused is arrested. The invalidity of the arrest report results in the invalidity of the procedures based on it.

- The sound legal basis for the judgment depends on the relationship between the judgment and the legality of the procedures on which it was based. This requires that the evidence on which the conviction judgment is based be correct and not tainted by invalidity. The court must conclude this invalidity if the rights and freedoms violated by the procedure derive their protection from the constitution. As for the guarantees related to the organization of the evidence and not to its legality

- as the case with the arrest report - they are legislative guarantees that do not reach the level of those rights and freedoms, but rather they merely contain instructions for the directory-based entity.

- The researchers believe that the Jordanian legislator has been strict in determining the invalidity for violating a formal rule that is nothing more than an organizational procedure to facilitate the judiciary's oversight of the procedures that have been taken by the judicial police officers, and does not affect the rights and freedoms guaranteed by the constitution. This procedure, which usually takes only a few minutes to be completed, and overlooking or neglecting it may be a reason for demolishing the efforts made by the judicial police employees that may have lasted for months or years in order to collect the evidence necessary to build the foundations of the case, especially when those procedural actions - prior to organizing the aforementioned report - have been taken into account in the legal guarantees as we mentioned above. So , the result in judicial applications is the loss of the objective right of the victim, and the prejudice to the public interest for the sake of the guarantees established for the accused who will escape punishment despite his confession and his representation of his crime, because the judiciary will issue a verdict of his innocence - restricted by the application of a formal rule in accordance with the provisions of the aforementioned Article 100 - just because the case file is devoid of the aforementioned report or one of its data, especially when there is no other evidence on which the judiciary relies in issuing a judgment of conviction other than the confession that was declared invalid and the invalidity of the other procedures built on it.


RECOMMENDATIONS:

- Legislators should consider the results that the aforementioned Article 100 applications may really lead to, and reformulate them in a way that achieves the desired goal of applying the rules of the Code of Criminal Procedure represented in preserving the balance between protecting the personal rights and freedoms of the accused on the one hand, and the right of society or the public interest, and the right of the victim in particular on the other hand so that the invalidity is not found if the goal wanted by the legislator is achieved in the event that all procedural actions in cases of arrest are carried out according to the principle of legality procedurally, and the case file contains papers that document the agreement of those actions with the principle of legality.

- In the presence of the text of the aforementioned Article 100 , and since the judge undertakes the task of interpreting the penal rules to determine the truth of their content as an expression of the will of the legislator to achieve criminal justice, and to guarantee rights and freedoms, adhering to the principle of criminal legality. The correct method of interpretation of the legislator's will mustn't rely on mere linguistic clarity that may not agree with the true thought of the law. The esteemed Jordanian Court of Cassation - while it is in the process of extending its control over the legality of the procedures on which the trial court based its judgment of conviction - should take into account that the preparation of the arrest report as the procedural work stipulated in the aforementioned article is a formal procedure related to the organization of the evidence, not its legality, and that the rule that its inclusion is a rule of guidance and instruction, not a rule that includes a fundamental procedural act that constitutes a violation of rights and freedoms.

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International Agreements

- *The Universal Declaration of Human Rights promulgated by the United Nations General Assembly 10/ 12/ 1948*
- *The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 AD.*
- *The International Convention on Civil and Political Rights of 1966 AD.*

Legislations

First: Jordanian Legislation:

- *The Constitution of the Hashemite Kingdom of Jordan 1952 with its amendments until May 7, 2016 AD.*
- *The Jordanian Code of Criminal Procedure for the year 1961, issued in the Official Gazette No. 1539 dated 3/ 16/ 1961 on page 311 and its amendments No. 32 of 2017 AD.*
- *Penal Code No. 16 of 1960 and its amendments No. 10 of 2022 AD.*

Second: Egyptian legislation:

- *The Egyptian Constitution of 2014, amended on April 23, 2019.*
- *The Egyptian Criminal Procedure Code (according to the latest amendments to Law No. 95 of 2003) Promulgated by Law No. 150 of 1950.*

Judicial Decisions

- *Decisions of the Jordanian Court of Cassation, Adalah(Justice) Center publications.*