

The Guarantee of the Interrogation of the Defendant Before the Public Prosecutor According to the Jordanian Criminal Procedures Law No. 9 of 1916, as Amended by Act No.32 of 2017

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Article Info	Abstract
<p>Article History</p> <p>Received: September 20, 2020</p> <p>Accepted: November 06, 2020</p> <hr/> <p>Keywords Criminal, Public, Crime, Law</p> <p>DOI: 10.5281/zenodo.4253990</p>	<p><i>The right of defense is a constitutional right. Since the Criminal Procedures Law requires the Public Prosecutor to inform the defendant, and before proceeding with the interrogation, he has the right to hire an attorney. If the defendant does not have the ability to hire an attorney, especially in certain cases, some of which are concerning to the jurisdiction of the Great Criminal Court for crimes in which the penalty is death, or more than five-year imprisonment, an attorney is hired to him at public expense. One of the most important results is that the Jordanian legislator stipulates in Article No. 112 of the Jordanian Criminal Procedures Law that the Public Prosecutor shall start the interrogation in case that he has a summons or warrant within 24 hours. However, the Jordanian legislator did not specify the time period spent by the Public Prosecutor in the interrogation of the defendant. One of the most important recommendations is that I hope the interrogation of the defendant does not exceed 3 straight hours because prolonged interrogation leads to the defendant's exhaustion which some jurisprudence consider it as a moral coercion.</i></p>

1. Introduction

The general principle is the Public Prosecutor's obligation to undertake certain procedures during the interrogation of the defendant in the pre-trial stage, and failure to do so will result in the invalidation of these procedures. Moreover, the principles of justice state that acquitting 100 accused is better than convicting one person. The law also stipulated many principles in order to guarantee the freedom of individuals and not to accuse them of allegations inconsistent with the facts, as the Penal Code stipulated the principle of the legality of the crime, the punishment, and the Jordanian legislator when the crime occurred. It has identified some means to protect individuals and not accuse them in vain. Rather, it made the task of the Prosecutor and the judicial police officials to ascertain the circumstances of the crime, protect the rights of individuals and try to uncover the circumstances of the crime by collecting evidence, matching them to the facts, matching the witnesses' statements to them, and interrogating the defendants within the guarantees granted to them.

These procedures include the interrogation; as it is necessary for every defendant to be interrogated to support the evidence of his innocence or conviction by showing the circumstances of the crime through his confession. The aim of the interrogation is to reach the truth. Nevertheless, that shall be in accordance with the limits of the law because there are guarantees for the defendant during the interrogation that should not be violated, because the interrogation procedures reflect Jordan's image and its justice before the whole world. With justice, the countries will prosper, thrive and develop.

Some countries use modern technological means to physically and psychologically torture the defendant during the interrogation to push them to confess. These means are inconsistent with human dignity. The fair judiciary condemns these acts and revokes all confessions in violation of the law because most of the state constitutions, international charters and declarations of human rights prohibit interrogation in this way and considered it a punishable offense.

The Significance of the Research:

The Jordanian legislator has established certain procedures for the Public Prosecutor during the interrogation of the defendant, which the Public Prosecutor shall abide by them. Failure to do some of them results in the complete invalidation of the interrogation procedures of the defendant. Moreover, the Public Prosecutor shall not violate the guarantees set by the law for the defendant during the investigation. Hence, the importance of interrogating the defendant appears through a balance between the rights of the defendant and the interest of the investigation.

Research Problem:

Interrogation is a serious procedure because on the basis of this interrogation, innocence or conviction of the accused entails. Therefore, research and focus shall be made, especially in the guarantees of interrogation and

not to prejudice them, and to clarify the theoretical and practical reality of the interrogation according to the Jordanian Criminal Procedures Law.

Research Methodology:

The research will be addressed through an analytical study of the Jordanian Criminal Procedures Law and the decisions of the Jordanian Court of Cassation.

Chapterization:

There is a difference between the following terms: The defendant is the person against whom the prosecution is held. He may be called the defendant after the interrogation by the Public Prosecutor and the defendant characterization of the crime, and the Public Prosecutor confirmation of his characterization of the crime by calling the defendant a misdemeanor in case that he suspects him. The defendant may be called so if accused of a felony. Accordingly, the study will be chapterized as follows: Chapter 1: The definition and the form of the interrogation

Chapter 2: The guarantees of the interrogation

Chapter 1: The definition and the form of the interrogation:

First of all, there is a great principle in all Criminal Laws, which is that the accused is presumed innocent until proven guilty. This principle must be applied in all stages of the trial, especially in the interrogation of the competent Public Prosecutor, because it is considered one of the most important stages of the trial. This interrogation is relied upon in all stages of the trial, whether upon trial, appeal or discrimination of the decision. Thus, it is the key to acquittal or convict the defendant.

The First Topic: The definition of the interrogation and the silence of the defendant during his interrogation:

Section A: The definition of the interrogation:

Interrogation has a great legal value, and this is why many jurists have defined interrogation although at different words, the content is the same. Moreover, the interrogation is distinguished from other reforms in the Code of Criminal Procedure, especially the question and confrontation.

The Jordanian legislator in the Criminal Procedures Law No. 9 of 1961 and amended by Law No. 32 of 2017 did not define interrogation, nor did the Jordanian Court of Cassation. Therefore, it was necessary to resort to jurisprudence to define this important legal term in the theoretical and practical reality in the Jordanian Courts.

The interrogation is: the discussion of the defendant in detail about the accusation against him and confronting him with this existing evidence in order to obtain a confession from the defendant that he committed the crime or denied committing it. (Al-Kilani, 1995) (1)

It is defined as: The accused being discussed in the charges against him as evidence or denial, through which the accused acknowledges or denies that. The interrogation namely carries two attributes, it is a procedure of collecting evidence against the accused in case of admission, and it is a means of defense for the accused upon denial that enables him to present what evidence he has to prove his innocence, such as documents and defense witnesses. (Abdullatif, 2009) (2)

It is defined as: It is discussing the accused and confronting him with the evidence against him in detail, with the aim of clarifying the case circumstances and materials, removing ambiguity, uncovering the truth, and requiring him to respond to them, deny them, or acknowledge them. (Al-Bahr, 1998 and Al-Amoush, 2000) (3)

After mentioning these definitions of interrogation, it can be said that interrogation is: It is discussing the defendant about what is charged to him and confronting him with the evidence against him in order to obtain a confession from him about the crime charged to him or a denial of committing it.

Section B: The silence of the defendant during his interrogation or confrontation:

The basic rule is that the silence of the defendant does not refer to a presumption against him, because the defendant may see in his silence a way to defend his right that he exercised. He may consider giving a statement to protect his right and the defense he has given.

The Jordanian legislator did not single out special stipulations dealing with the right of the defendant to remain silent during his interrogation. Otherwise, it is understood from some stipulations in the Jordanian Criminal Procedures Law that it considered that the right of the defendant to remain silent is at the trial stage according to Article No. 175 of the Jordanian Criminal Procedures Law: 1- After hearing the prosecution evidences the court might decide that there is no case against the accused and issue its final judgment accordingly or it might ask the accused if he/she wishes to give a statement defending him/her. If such statement was given by the accused, the prosecution representative shall have the right to cross examine the accused statement.

As for the investigation stage, the defendant is not permissible to do so because interrogation is a means of investigation whose goal is to reach the truth according to Article No. 63 of the Jordanian Criminal Procedures Law: 1- When the defendant appears before the public prosecutor, the later has to verify his/her identity and read on him/her the charges and request his/her answer to such charges. The public prosecutor shall warn the defendant that he/she has the right not to answer any question except in the presence of an attorney. Such

warning by the public prosecutor has to be documented in the investigation minutes and if the defendant refused to appoint an attorney or if the attorney he/she named refused to attend the proceedings within the next twenty-four hours, the investigation shall be conducted without the presence of an attorney.

2- In cases of urgency and where it is feared that the evidence will be lost and based on a reasoned decision, it is allowable to ask the defendant about the charges against him/her before inviting his/her attorney to attend. If such procedure was followed the defendant's attorney shall have the right to review his/her client's affidavit.

3- If the defendant gives any testimony, it has to be documented (written down) by the clerk, who has to read it to the defendant in order to sign it with his/her signature or finger print. Such testimony (affidavit) shall be certified by the public prosecutor and the clerk. If the defendant refused to sign such document with his signature or finger print, the clerk has to document his/her refusal in the minutes and state the reasons behind such refusal before signing it by the public prosecutor and the clerk.

It is utilized from the provisions of Article No. 63 of the Criminal Procedures Law in that the public prosecutor failure to adhere to the rules stated in paragraphs (1, 2 and 3) of this article shall result in the nullification of the testimony given by the defendant. Referring to the statements of the defendant (the distinguished accused) taken before the public prosecutor, in which he confessed what was charged against him, and since the testimony he gave was signed by him and by the court clerk, and also signed by the public prosecutor, and accordingly, this statement is not tainted with nullity. (Jordanian Court of Cassation Ruling No. 359/2010) (4)

The right to silence for the defendant at the trial stage may relate to the crime and how it was committed without extending to the personal data of the defendant. In these circumstances, he has no room to refrain from responding to the questions charged against him related to proving his identity. (Al-Dirawi, 2005) (5)

The Second topic: The form of the interrogation:

Jordanian law did not specify in the Criminal Procedures Law a specific form of interrogation, but rather some of that was left to the discretion of the public prosecutor, the judiciary, and the jurisprudence. The Jordanian courts, not a while ago, adopted a specific form.

Section A: Oral interrogation and the interrogatory:

1- Oral interrogation

It shall be in the way whereby the judicial official hears the statements of the defendant and the answers given by the defendant are recorded in special minutes for that, and then within twenty-four hours this report is sent to the competent public prosecutor according to Article No. 100 of the Jordanian Criminal Procedures Law. Whereas, the public prosecutor may direct the defendant with written or oral questions or offer him something and ask him for clarifications about them verbally because the notes or documents presented to the defendant may support or refute the evidence against him/her. The interrogation shall take place in the official State language, and if the defendant is a foreigner and is ignorant of the language in which the investigation is being conducted, an interpreter shall be appointed to help him understand the crimes charged against him, the questions and observations, and direct his answers from him in all sincerity and honesty. The interpreter shall take an oath, because if it is not taken into account, the action/s taken shall be null and void. The indicted and the public prosecution representative might request the dismissal of the appointed interpreter provided that they provide the reasons behind such request and the court shall decide on such matter. The interpreter shall not be chosen from among the witnesses or members of the judicial panel presiding over the case even such selection shall render all actions and procedures taken as null and void even if it was approved by the indicted and the public prosecution. If the indicted person or the witness were deaf and mute and does not know how to write, the presiding judge shall appoint a specialized interpreter who knows how to communicate with such persons using the signals or any other technical method. If the deaf and mute indicted person or witness knows how to write, the court's clerk shall write down to him/her the court's questions and notes and then hand it to him/her in order to respond to it by writing. The court's clerk shall perform such procedure during the hearing session. Articles No. 227, 228, 229, 230 and 231 of the Jordanian Criminal Procedures Law have affirmed this.

2- The interrogatory

Article No. 100 of the Jordanian Criminal Procedures Law has defined the rules that shall be observed in instances where the defendant is arrested, and this special minutes has specific data that includes a number of matters, then this minutes is sent to the public prosecutor shall interrogate the defendant. The public prosecutor must prove in the minutes the date and time that the defendant appeared before him for the first time. All the statements that has been cast by their owners must be recorded in the form of first person, word for word, and this should be in the hearing of the accused, who has the right to comment at once. The public prosecutor shall personally dictate the clerk the question and the answer of the defendant without leaving the clerk to record what he hears on his own. He shall avoid all delusions that may taint his words or any ambiguity surrounding his words. The minutes shall be written in the official State language. This is the special minutes stipulated in Article No. 100/1, paragraph A of the Jordanian Criminal Procedures Law which shall include some data, including:

A) Date: It is an important factor of the interrogation, as it helps to prove that the formalities related to the interrogation were taken on the legal date. The day, month and year shall be mentioned, and the time and place of arrest or detention shall be specified.

B) Preamble: The name of the official who issued the arrest warrant and in addition to the name of the official who executed it. The name of the person who initiated the drafting of the minutes and hearing the defendant.

C) Content of the minutes: It shall record all the notes related to the defendant, his status, clothes, injuries and traces that he has, the three names of the defendant, the date of his arrest, his location and his reasons.

D) Signatures: Sign the report by the person who initiated the drafting of the minutes and the defendant. In case the defendant refused to sign, his/her refusal shall be indicated in the minutes with the reasons behind such refusal.

The minutes shall be sufficient in itself to confirm that all the procedures and formalities related to the interrogation have been fulfilled in the required legal manner, yet it remains subject to the discretion of the competent court, the Jordanian Court of Cassation.

It was stated in the Jordanian Court of Cassation Ruling: In instances where the defendant is arrested according to article (100) of this law, the judicial police official has to perform the following under the penalty of nullifying the procedures taken by him/her: Prepare and sign a special report (minutes) that should be notified to the dependent or his/her representative attorney, if any. The report shall contain the following: The name of the official who issued the arrest warrant and in addition to the name of the official who executed it. The name of the defendant, the date and place of his arrest and the reasons behind such arrest. The date and time of booking the defendant at the detention place. The name of the person who initiated the drafting of the report and hearing the defendant. Sign the report by the persons mentioned. Hearing the defendant's testimony immediately after arresting him/her, so that the court can control the integrity of the proceedings taken against the defendant, including the integrity of his statements before the police. Whereas the case folder was devoid of the drafting of the record required by the aforementioned Article No. 100, which prevented the court from controlling the integrity of the proceedings surrounding the statements of the defendant before the police, the affidavit taken by the police is nullified and shall be excluded from the evidence as well as the evidence report that was subsequently excluded. (Jordanian Court of Cassation Ruling No. 445/2010) (6)

Section two: Time of interrogation and method of recording statements of the defendant:

1- Time of Interrogation

There is a hearing for the defendant after being arrested and it shall be sent to competent Public Prosecutor within twenty-four hours from preparing the minutes as per Article 1/100; paragraph B of the Jordanian Criminal Procedures Law as this is in line with the defendant interest and defense. Further sayings are that the Public Prosecutor may delay the interrogation at its absolute discretion if such delay enables him of collection and disclosure of evidence which is not lie in compliance with Jordanian Criminal Procedures Law according to Article no.112 which states that: 1. The public prosecutor shall immediately integrate the defendant who has been asked to attend through a request for attendance warrant while he/she has to interrogate the summoned defendant within twenty four hours after booking him/her into the holding cell. 2. If the defendant stayed for more than 24 hours at the holding cell, the official shall take him/her to the Public Prosecutor for interrogation.

It was stated in the Jordanian Court of Cassation Decision: According to District Court Act no.17 for 1959 amended for 2014, the legislator authorizes the members of judicial police in respect to cases within the jurisdiction of State security court to hear the statements of the defendant within a period not exceeding 7 days from the date of arrest mentioned in arrest record. This authorization is an exception of what is stated in Article no.100 of Jordanian Criminal Procedures Law which provides that the defendant shall be interrogated during 24 hours from being arrested. It is mentioned in the Arrest record that the defendant Jousef was arrested on 22/6/2020 and was interrogated on 25/6/2008 which means within the legal period determined. Hereby, the arrest proceedings shall be taken and the defendant shall be interrogated in accordance to Article no.7/J of the law of the State Security Court. (Jordanian Court of Cassation Decision No. 1770/2009-five-memeber body) (7) According to Article no. 113 which states that: If the defendant is detained based on a summon warrant and stayed at the holding cell for more than twenty-four hours without being interrogated or brought before the public prosecutor according to what is stated in the previous article, his detention shall be considered as an arbitrary act and the official responsible shall be prosecuted for the commission the crime of illegal detention stated in the Penal Code.

It was stated in the Jordanian Court of Cassation Ruling: Detention of the accused by General Intelligence for more than 50 days after being interrogated is considered an arbitrary act according to Article no.113 and contrary to Article no.100 of the Jordanian Criminal Procedures Law. This questions the validity and the integrity of the proceedings taken lately at that time, but it does not affect the results of the case as long as the accused admitted adjusting the explosive devices at his/her house. (Jordanian Court of Cassation Decision, 380/1998) (8)

It was stated in the Jordanian Court of Cassation Ruling: According to Article 63 of the Jordanian Criminal Procedure Law, the Public Prosecutor shall interrogate the defendant after 24 hours to give him\her time to

appoint an attorney; and according to Article 100, the Public Prosecutor shall interrogate the defendant within 24 hours after being released from the judicial police which shall release the defendant within 48 hours after being arrested. The non-compliance with the procedures by security agencies and Public prosecutor who decided the detention of the defendant contravenes the Jordanian Criminal Procedure Law and detention of one month is considered illegal act. If arresting the defendant from the date of arrest till the date of release determined by the Public prosecutor is for the detention purposes, this period shall be calculated and deducted from punishment period in order for application of the principle of fairness so that the defendant will not be unreasonably harmed and to rectify the error in investigation proceedings. (Jordanian Court of Cassation Ruling No. 148/1995 Five-Member Body) (9)

The prolonged interrogation is more likely to affect negatively the defendant psyche, and there is no limit of time determined for the interrogation, the point is the effect of the interrogation on the defendant mental powers. The interrogation shall provide all the guarantees so that the defendant freedom is not violated. If the Public Prosecutor deliberately prolong the interrogation in order to stress and force the defendant into a confession under pressuring conditions, he/she is not lie in conformity with his/her duty. The matter that affect his/her procedural capacity in respect of interrogating the defendant. Determining the effect of the prolonged interrogation is subject to the discretion of competent court; knowing that the judgment is not based on the time of the interrogation itself, but on the mere feelings of stress and exhaust by the accused. It is a psychological capacity that differs from one person to another. The Jordanian legislator does determine when the interrogation shall begin as stated in Article 112 of the Jordanian Criminal Procedures Law without referring to the end time of the interrogation. (Ahmed, 2003) (10)

2- The method of recording the defendant statements

The Public Prosecutor ask the clerk to record the defendant statements during the interrogation, but the Public Prosecutor shall determine what should be recorded by the clerk, not the clerk himself. The public prosecutor shall give the defendant the freedom to speak normally and to mention details of the incident except when the defendant deviates from the subject the crime they are investigating, the public prosecutor, here, shall address specific questions, and the defendant shall respond clearly without addition or omission. The same wording used in recording the defendant statements shall be adopted by the judge; also testimony shall be concluded by the signature of the judge, the public prosecutor, and the defendant. If the defendant refuses to sign on the testimony, this shall be recorded on the minute according to Article 100/1a/5 of the Jordanian Criminal Procedures Law. As the defendant testimony is of great importance, the public prosecutor shall ask to be recorded in the words uttered by the defendant, and both the public prosecutor and the defendant shall sign on it at the end of interrogation according to Article 63/3 of the Jordanian Criminal Procedures Law which states that: 3- If the defendant gives any testimony, it has to be documented (written down) by the clerk, who has to read it to the dependent in order to sign it with his/her signature of finger print. Shall testimony (affidavit) shall be certified by the public prosecutor and the clerk. If the defendant refused to sign such document with his signature or finger print, the clerk has to document his/her refusal in the minutes and state the reasons behind such refusal before signing it by the public prosecutor and the clerk.

It was stated in the Jordanian Court of Cassation Ruling: It is utilized from the provisions of Article No. 63 of the Criminal Procedures Law in that the public prosecutor failure to adhere to the rules stated in paragraphs (1, 2 and 3) of this article shall result in the nullification of the testimony given by the defendant. Referring to the statements of the defendant (the distinguished accused) taken before the public prosecutor, in which he confessed what was charged against him, and since the testimony he gave was signed by him and by the court clerk, and also signed by the public prosecutor, and accordingly, this statement is not tainted with nullity. (Jordanian Court of Cassation Ruling No. 359/2010) (11)

Article 216 of the Jordanian Criminal Procedures Law, paragraph 2, states: If the indicted confessed to the charge, the presiding judge shall order that such confession be documented in words that are similar to the words used in phrasing the confession. This applies to the interrogation of the public prosecutor and the trial phase before the judge.

It was stated in the Jordanian Court of Cassation Ruling: any legal provision shall not allow the Public Prosecution to dismiss the prosecution witness's call, and the confession that the court was satisfied with and depending on it, dismissed the witness's call was brief and unclear and does not clarify the elements of the crimes attributed to the accused person until Article 216/2 of the Code of Principles is applied Criminal trials that allowed the court to satisfy with the accused person 's confession. (Jordanian Court of Cassation Ruling No. 1208/2002) (12)

Section C: The Judicial discussion and amnesty offer to the defendant 1- The Judicial discussion

The statement of the defendant may conflict with the statements of other defendants or with other testimonies, and in this case the public prosecutor may take his decision to conduct the discussion and means confronting the defendant with other defendants or witnesses, In this confrontation, some consider that it shall be deemed a judgmental interrogation because it leads to confronting the defendant with what is against it in the statements

of the defendants and the witnesses, Moreover, it may be accompanied by a discussion of the public prosecutor with it about the matters and facts stated in its statements that contradict the statements of others and mentioned in the discussion is organized in a record called the judicial discussion. The report shall be signed by the public prosecutor and participants in the discussion, including the defendant and witnesses. Article 70 of the Jordanian Criminal Procedures Law confirmed this by saying: 1-The public prosecutor in the presence of his/her clerk shall hear each witness separately and he/she might make the witnesses confront each other if the investigation requires doing this. 2-If a confrontation takes place with the participation of the defendant, the ruling of interrogation shall apply to it.

It was stated in the Jordanian Court of Cassation Ruling: the accused person, suspect person, or defendant shall have the right to deny the accusation on its own in the manner appropriated to achieve its innocence or lack of responsibility, It is not permissible to swear an oath because the legal oath of the accused person or suspect person is to tell the truth and only the truth without any addition or omission in accordance with Article 70 of the Criminal Procedures Law, but it obligates the accused person or suspect person to be honest in his statements. And any lying under oath exposes the accused person or suspect person to criminal liability and prosecution in accordance with Article 225 of the Criminal Procedures Law and Article 214 of the Penal Code, Accordingly, the admission of the suspects person under oath by forgery and authorized the hand over and carried out the customs smuggling shall be deemed null and be excluded from the count of evidence if the suspects had no choice when giving his defense statement except to repeat what was stated in his testimony under oath and that it is considered a moral coercion that resorted to by the public prosecutor The investigator in the case. (Jordanian Court of Cassation ruling No. 168/2000) (13)

2- The amnesty offer to the defendant

in the event that, the crime is vague and dangerous, and there may be only simple evidence against some of the defendants who participated in its commission, and to uncover the real perpetrators and their roles in it, Some jurisprudence shall allow the public prosecutor to offer amnesty to any defendant after obtaining the approval of the court for reasons recorded in the minute, provided that the crime is a felony, with the intention of obtaining its testimony against the other perpetrators, provided that the defendant (the accused person) submits a true and complete statement about it. If he accepts that His testimony is heard and his capacity remains defendant (accused person) until an award is issued in the case. As for the defendant (the accused person)'s entitlement to an amnesty, it depends on the validity and completeness of the information it provided in its testimony. If the defendant (the accused person) does not submit the correct and complete statement, whether by concealing an act or any matter of importance or by making false statements, the right to amnesty will be forfeiture by an award of the Criminal Court, moreover, measures shall be taken against him for the crime for which he was offered an amnesty or any other related crime, and his statements are considered evidence of him. If the criminal court finds that the statement presented to him is true and complete, it will decide to suspend legal proceedings against him and release him (Khalil, 1996) (14). The Jordanian legislator shall not allow the public prosecutor to offer an amnesty to the defendant according to Article 61 of the Jordanian Criminal Procedures Law by stating that: The public prosecutor if he/she finds out that the complaint is not sufficiently reasoned or that the perpetrator is unknown or the attached papers do not sufficiently support the complaint, has the right to initiate the investigation in order to identify the perpetrator and in order to achieve this, he/she has the right to hear the person or persons indicated in the complaint according to the provisions stated in article (68) and the articles that follows. 2- The public prosecutor is entitled to preserve the papers in any of the cases mentioned in the previous paragraph, and his/her decision in this regard shall be subject to the supervision of the Attorney General in accordance with the provisions of Article 130 and the following of this code, and therefore the Criminal Procedures Law shall not state an explicit provision exempting the defendant, contrary to what the legislator stipulated in a number of Jordanian codes that exempt from punishment.

Chapter 2: The guarantees of the interrogation

Interrogation is an important and dangerous matter whose aim is to reach the truth. Therefore, guarantees shall be taken into account in the interrogation, which are for the people who are being interrogated, where the appropriate conditions for the investigation are provided, without pressure on the accused person or influencing him/her, and the guarantees of the interrogation can be defined as: The set of procedures specified by the laws that guarantee the rights of the accused person during the investigation stages. Violation of these guarantees usually results in the nullity of the investigation.

First Topic: The claim of the defendant's attorney to attend and to review the personal documents:

Whatever the crime attributed to the defendant, the public prosecutor may not interrogate the defendant or confront other defendants or witnesses except after inviting his/her attorney to attend, if any, and the defendant shall announce the name of his/her attorney. If he/she refuses to appoint an attorney or does not attend within twenty-four hours, the interrogation shall be carried out separately from the attorney, and Article 63/1 of the Jordanian Criminal Procedures Code has confirmed the foregoing same. And if there are more than one attorney chosen by the defendant, his/her advocacy of one of them is sufficient, and the attorney may not speak without

the public prosecutor's permission, If the attorney is not allowed, this shall be proven in the minute and he/her has the right to object for some questions or how to direct it. he/her also has the right to ask questions or make comments. If the public prosecutor refuses to direct these questions to the defendant, it shall be proven in the minute along with the reasons for not directing it. Article 65 of the Jordanian Criminal Procedures Law has confirmed the same. (Al-Jokhdar, 2008) (15)

Consequently, the cases of interrogating the defendant without calling his/her attorney are:

A) The case of speeding up due to fear of losing evidence, and the assessment of the reasons for speeding up shall be handled to the public prosecutor under the supervision of the trial judge.

B) the defendant's refusal to authorize an attorney.

C) the defendant does not authorize an attorney within twenty-four hours.

Article 36/ 1 and 2 of the Jordanian Criminal Procedures Law has affirmed the above.

In the cases stipulated by the code, if the defendant is not given awhile to appoint an attorney within twenty-four hours, and if his/her attorney is not summoned to attend, then the interrogation will be null and the consequent evidence of its invalidity as being related to the freedom of defense and the original guarantees guaranteed by the code for the rights of the defendant and in the interest of the right of defense and confirmation of the integrity of the investigation procedures.

It was stated in the Jordanian Court of Cassation Ruling: If the public prosecutor justifies his decision to interrogate the defendant without the presence of an attorney because of being the date an official holiday and the circumstances of the investigation, this is a valid justification for his interrogation without the presence of an attorney and is consistent with the text of Article 63/2 of the Criminal Procedures Law, which stipulates that in cases of urgency and where it is feared that the evidence will be lost and based on a reasoned decision, it is allowable to ask the defendant about the charges against him/her before inviting his/her attorney to attend; his confession does not violate the law. (Jordanian Court of Cassation Ruling No. 483/2003 Public Authority) (16)

It was stated in the Jordanian Court of Cassation Ruling: Article 63/2 of the Criminal Procedures Law gives the public prosecutor the right to interrogate the defendant without the presence of his attorney due to fear of losing evidence, and since the public prosecutor has used his right stipulated in this article, his interrogation of the defendant in the manner in which it was carried out does not violate law. In addition, the defendant did not appoint an attorney to defend him after the public prosecutor interrogated him and after he was referred to the court where he was tried for what was charged against him and until the issuance of the ruling against the defendant, although he could have appointed an attorney to defend him, but he did not. (Jordanian Court of Cassation Ruling No. 574/2000 Five-Member Body) (17)

It was stated in the Jordanian Court of Cassation Ruling: In cases of urgency and where it is feared that the evidence will be lost and based on a reasoned decision, it is allowable to ask the defendant about the charges against him/her before inviting his/her attorney to attend, according to Article 63/2 of the Criminal Procedures Law. Whereas the Public Prosecutor found that the investigation requirements required to expedite the interrogation of the accused without attendance of their attorney, this did not violate the law. (Jordanian Court of Cassation Ruling No. 52/1999) (18)

It was stated in the Jordanian Court of Cassation Ruling: Article No. 63 of the Criminal Procedures Law stipulates that the public prosecutor shall warn the defendant that he/she has the right not to answer any question except in the presence of an attorney. It stipulates in the following paragraph of the same Article that in cases of urgency and where it is feared that the evidence will be lost and based on a reasoned decision, it is allowable to ask the defendant about the charges against him/her before inviting his/her attorney to attend. (Jordanian Court of Cassation Ruling No. 13/1980 Five-Member Body) (18)

It was stated in the Jordanian Court of Cassation Ruling: In cases of urgency and where it is feared that the evidence will be lost and based on a reasoned decision, it is allowable to ask the defendant about the charges against him/her before inviting his/her attorney to attend. In this case, the defendant testimony is legal, and the court has the right to take it into consideration through ruling. (Jordanian Court of Cassation Ruling No. 102/1967) (19)

Likewise, the Jordanian legislator allowed the attorney of the defendant to review the documents before the interrogation procedures, and this review should be at an appropriate time before the interrogation. The public prosecutor has the right not to allow the attorney to review the investigation in case he deems it necessary, deciding on the secrecy of the interrogation, but after the completion of the interrogation, the attorney shall review them. (Abo El-Rous, 2005 and Al-Ahmed, 2008) (20)

This is what was confirmed by Article No. 64 of the Jordanian Criminal Procedures Law, stipulating: 1- The defendant and the person responsible for compensation in addition to the plaintiff in the civil claim and their representatives, all have the right all the investigation procedures except the hearing of witnesses. They are not allowed to speak unless the public prosecutor gives them permission. If the public prosecutor does not permit, this shall be recorded in the minutes.

2- All persons stipulated in the first paragraph of this article have the right to review all the investigations which were done during their absence.

3- The public prosecutor has the right to decide to conduct the investigation without the presence of the above mentioned persons in cases of urgency or when he/she deems that such decision is important for the sake of revealing the truth. The public prosecutor's decision is not subject for any review and he/she is obliged after the end of such investigation to make it available for the related persons for their review.

Second Topic: The attorney's role during the interrogation:

The amendments to the Criminal Procedures Law shall be done in accordance with the amended Code No. 32 of 2017 to enhance the powers and the role of the attorney in the interrogation of the public prosecutor when the provision of Article 63 bis was added in five paragraphs, It talks about important guarantees such as the attorney's right to see all investigation and that the interrogation shall be nullified in the event that the attorney's request is rejected, but it can be said that the request to see the investigation work must be in writing, and I see what prevents the request from being verbally in order to achieve the principle of speedy procedures, If the public prosecutor rejects the verbal request, then the attorney submits the request in writing so that the attorney in the future can nullify the interrogation, and that the attorney shall have the right to view all investigation except for the testimonies of witnesses, and this is something that is contrary to the role of the true attorney who always seeks to achieve justice and is part of the judicial authority and a helping tool. (Article 63/1 bis)

Likewise, there is an important right for the defendant in cases whose sentence is more than ten years, that the attorney must attend all interrogation sessions, If the defendant is not able to appoint an attorney, the public prosecutor shall appoint an attorney for him/her. This is evidence of the importance of the interrogation and its role in acquitting or convicting the accused person, and it is an important guarantee stipulated in the Jordanian Criminal Procedures Law. (Article 63/2 bis)

Likewise, the defendant shall have the right to contact his/her attorney a day before the interrogation, but it is better that the period is not less than three days so that the attorney can devote himself/herself to that day to attend this interrogation, there will be no protest from the attorney for this short period unless the attorney is notified of the session's date previously, then the attorney cannot protest because he/she knows in advance of the date. (Article 63/3 bis).

Likewise, the public prosecutor shall make sure, in each new interrogation, of the defendant's agreement to the subsequent interrogation without the presence of an attorney and record it that in the minutes for being official and legal, It is not challenged except by the authenticity, and in all cases if the above is not applied, the interrogation shall be deemed null, and this is something that Jordanian law is proud of as an affirmation of the sacred right of defense. (Article 63/4 bis)

Likewise, it is the general principle that the public prosecutor may not terminate the investigation unless interrogating the defendant, unless the public prosecutor is unable to do so due to his/her escape or if the public prosecutor found that the evidence gathered is sufficient to avoid a trial, regardless of the interrogation. (Article 63/5 bis).

Conclusion

Interrogation is one of the most important investigation procedures since it looks for evidence and compiles them by the public prosecutor and the judicial police officials. It also greatly and effectively affects the trial stage as when the judge looks at the case, he relies on the interrogation of the defendant during the investigation with the public prosecutor and the strength of the evidence compiled, whether it leads to innocence, conviction, or non-liability. This research has tackled a significant and practical issue in the courts, which is interrogation.

Results:

- 1- The Jordanian legislator stipulates in Article No. 112 of the Jordanian Criminal Procedures Law that the Public Prosecutor shall start the interrogation in case that he has a summons or warrant within 24 hours. However, the Jordanian legislator did not specify the time period spent by the Public Prosecutor in the interrogation of the defendant.
- 2- Interrogation is an (investigation method) in order to support and compile evidence against the defendant and obtain a confession from him. It is also a (defense method) that aims to give the defendant an opportunity to refute this evidence and facts that are against his interest.

Recommendations:

- 1- I want the Jordanian legislator to explicitly stipulate in Article No. 112 of the Criminal Procedures Law for the period during which the interrogation process takes place (velocity in the interrogation of the defendant) by proposing the following text (It is not permissible to interrogate the defendant for a period exceeding 3 straight hours) because prolonged interrogation leads to the defendant's exhaustion which some jurisprudence consider it as a moral coercion. Therefore, the interrogation period must be short. Even if the interrogation process is long, there must be a rest period for the defendant. The little interrogation has benefits where the affidavit of the defendant is closer to the truth and there is no time

for him to create justifications to defend himself. The little interrogation releases the defendant from what befell his reputation and freedom when the imputation crime to him remains for a long period.

- 2- I want the Jordanian legislator to explicitly stipulate in Article No. 63 of the Criminal Procedures Law that (the defendant has the right to remain silent during his interrogation and that his silence or his refusal to answer does not explain his confession) because the defendant is innocent until proven otherwise by a final judicial ruling.
- 3- I want the Jordanian legislator to explicitly stipulate in Article No. 63 of the Criminal Procedures Law that (the defendant shall undergo a medical examination before interrogation before any official body) because this is an affirmation of the prohibition of prejudice to the defendant and the bodily and spiritual integrity. This medical examination is for the interest of the defendant (the private interest), the public prosecutor and the judicial police officials (the public interest) since it prevents the defendant from considering any vexatious complaint against the public prosecutor or the judicial police officials (that they beat him until he confesses). It also assures the court hearing the case that the defendant is safe during the investigation, and that there is no defect in the defendant that leads to the nullification of the investigation procedures. This medical examination shall be carried out by one of the public not private medical authorities so that there is no tampering with the medical report.
- 4- Article No. 46 of the Jordanian Criminal Procedures Law shall be amended because it allows heads of security centers and police officers in centers where there is no public prosecutor to carry out some investigation procedures. These procedures include the interrogation of the defendant in the event of flagrante delicto crimes or when they are called upon by the dwelling owner to prepare the official report. This Article shall be amended so that it does not allow the heads of security centers or police officers to interrogate because Jordan has at least one public prosecutor in all its regions. Likewise, interrogation is one of the most important stages of the investigation, which shall be the responsibility of the public prosecutor. This Article contradicts Article No. 48 of the same law, which gives the competence of interrogation only to the public prosecutor.
- 5- Article 100/b of the Jordanian Criminal Procedures Law shall be amended to prohibit the judicial police officials from hearing the defendant's testimony immediately after arresting him/her, except with the presence of an attorney, since the inherent public prosecutor does not carry out the interrogation without the presence of an attorney, and this shall apply to the judicial police official.
- 6- The Jordanian legislator shall explicitly stipulate in Article No. 63 of the Criminal Procedures Law that (In case the defendant has difficult financial circumstances and is unable to hire an attorney, the State shall hire an attorney at its expense) since the State aims to reach the truth and achieve justice which leads to the State public interest.
- 7- The Jordanian legislator shall explicitly stipulate in Article No. 64 of the Criminal Procedures Law that (the attorney has the right to review the investigation folder well in advance before the interrogation date at least, which is one day before the interrogation) since it is one of the most important guarantees for the defendant.

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