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Primary Investigation Procedures: A Comparative Study Between Iraqi Law And Egyptian Law

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Abstract:

The preliminary investigation - is a procedural work and includes many procedures aimed at continuing the search for the truth regarding the crime committed, but this investigative research is subject to the principles and mechanisms that the legislator was keen to organize until the investigation achieves its desired goal.

Also, the preliminary investigation is one of the basic functions of the criminal judiciary, so no criminal case can be considered without this preliminary investigation, as it is a guarantee for the accused, and the preliminary investigation is the first stage of the criminal case, that is, the stage that leads to the investigation of the case and the determination of the validity of its presentation to the court of judgment.

In this research, we have presented one of the investigation procedures, but it is the most important of all, which is the interrogation. At the beginning of this research, we dealt with the nature of the preliminary investigation, which includes its definition and importance from other procedures that are similar to it. We also dealt with the characteristics of the preliminary investigation, the manner in which it is conducted, and the procedures that the investigator must take into account when conducting the investigation. We also presented in some detail the guarantees of this dangerous procedure, whether those related to the authority concerned with the preliminary investigation or those related to guarantees of the freedom of the accused during the preliminary investigation**.**

Keywords : Iraqi Law , Egyptian Law **,** Preliminary Investigation

Introduction

The preliminary investigation stage is one of the first and important stages of the criminal case, where the investigation authorities represented by the investigation officer examine and evaluate the evidence before the court contacts the case, and then ends to be decided in one of the two ways.

Either by issuing an order to close the investigation and release the accused in the event that the accusation is not proven, or by referring him to the competent court in the event that the accusation evidence outweighs the innocence.

The court also has the power to decide the fate of the case, meaning that it can freely, whether the case is suitable for prosecution before the court or whether it is incorrect, according to what has been proven that the evidence is sufficient for the accusation, or not sufficient. If the investigation authority considers that the evidence is insufficient from its point of view regarding Indictment, it can terminate the criminal case by ordering the investigation to be temporarily closed.

Investigation is one of the basic functions of criminal justice. It is not possible to settle any criminal case without an investigation, but the law does not require that an investigation be conducted with the knowledge of the investigative authorities represented by the investigating judge in all cases, other than conducting the investigation with the knowledge of the court to which the case is filed. The basic principle is that the court must investigate the case on its own, and judge it based on the investigation it concludes.

The basic work of the preliminary investigation is to search for evidence of the crime attributed to the accused and assess whether it is sufficient to refer him to the competent court ([1]). This function in Iraqi legislation is limited to the investigative judge and the investigator under the supervision of the investigative judge, and the Iraqi criminal legislation was not limited to entrusting the investigation to the investigative judge and the investigator, rather, it is permissible for any judge in a flagrant offense of a felony or misdemeanor ([2]), the status of the judicial police members and the official in the police station, and the status of a member of the Public Prosecution being authorized to conduct an investigation into the Iraqi penal legislation.

Therefore, the researcher will deal with the topic of "initial investigation procedures" in both Iraqi and Egyptian laws, through two sections, according to the following plan:

The first topic: the nature of the preliminary investigation.
The first requirement: the definition of the preliminary investigation.
The second requirement: the importance of preliminary investigation.
The second topic: preliminary investigation procedures in Iraqi and Egyptian law
The first requirement: Initial investigation procedures in Iraqi law.
The second requirement: Initial investigation procedures in Egyptian law.

The nature of the preliminary investigation

The preliminary investigation aims to continue the search for the truth in the committed crime, and the investigation is subject to the foundations and mechanisms that the legislator is keen to organize so that the investigation achieves the desired goal. We will discuss the definition of the preliminary investigation first, and then show the importance of the preliminary investigation secondly.

Definition of preliminary investigation

Investigation in terms of language

Imam al-Zamakhshari gave a definition of verification in the chapter Investigate that “I verified the matter and verified it, I was certain of it, and verified the news and stood for its truth, and verified the matter I knew its truth and stood on the facts of things” ([3]).

As it was stated in Al-Munajjid in Al-Lughah and Al-Alam that “the report is verified, i.e. it is proven, and it is verified, and the saying or conjecture is verified, its truthfulness, and

[1] Dr.. Abd al-Wahhab Homed: The Mediator in Kuwaiti Criminal Procedures, 3rd Edition, Kuwait University Press, 1982, p. 229. Dr.. Ashraf Ramadan Abdel Hamid, Impartiality of the Criminal Judiciary, A Comparative Analytical Study in Positive Law and Islamic Jurisprudence, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 7.
[2] See Article 51/c of the Iraqi Code of Criminal Procedure.
[3] Imam Al-Zamakhshari / Asas Al-Balaghah - Dar Sader Beirut 965 p.135

the man's verification of the matter is his certainty" ([4])

And it was mentioned in Al-Mukhtar from the Sahih Al-Lughah that he "verified his words and assumptions into truth, i.e. their sincerity, and the words of a validator, i.e. sober." ([5])

And he mentioned in the chapter Investigating the Alphabetical Al-Munajjid that he "has achieved an investigation – confirmed it – or obligated it." ([6])

Idiom investigation

Some define the preliminary investigation as a set of procedures carried out by the investigating authority before the trial in order to search for evidence and scrutinize it to verify its sufficiency in proving the occurrence of the crime and attributing it to a specific perpetrator.

It was also defined as specific procedures other than inference procedures carried out by the investigation authority with the aim of confirming the existing evidence and attributing the crime to the accused, for the purpose of presenting it to the court on a realistic and clear legal basis. It is the first stage of criminal litigation, and it is a judicial act, undertaken by the competent authority, by which the criminal case is initiated and directed ([7]). There are those who defined the investigation as the means that the investigator uses to clarify the ambiguity surrounding the occurrence of the crime, in terms of its perpetrator, the circumstances of its commission, and its contributors, for the purpose of collecting evidence that is inevitable for the sake of trial ([8]), and it can be said in general that jurisprudence has adopted multiple criteria To define investigation ([9]), it has been defined as a set of judicial procedures exercised by the investigation authority in the form specified by law in order to search for evidence regarding a crime committed, collect it and evaluate it to determine its sufficiency to refer the accused to trial.

In light of the foregoing, the preliminary investigation can be defined as a set of procedures carried out by the competent investigative authority in order to collect evidence that would lead to the detection of the crime, its perpetrator and its circumstances, when sufficient evidence is available for referral to the competent court.

It is clear from this definition that the preliminary investigation is the first stage of the criminal case, that is, the stage that leads to preparing the case and deciding the validity of submitting it to the court. The preliminary investigation procedures are initiated by a body granted by law the original investigative authority, and the law has entrusted the investigative

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[4] Al-Munajjid in Language and Media, Dar Al-Mashreq, Beirut, 1973 Edition 21, p. 173
[5] Muhammad Muhyi al-Din Abd al-Hamid and Muhammad Abd al-Latif al-Subki / The Chosen One from Sihah al-Lughah - Al-Istiqama Press, Cairo, 1934, 5th edition, p. 177
[6] Alphabetical Al-Munajjid / Dar Al-Mashreq - Beirut First Edition - Pg 376
[7] Dr. Sami Al-Nasrawi / Study in the Code of Criminal Procedure, Part One - Dar Al-Salaam Press, Baghdad 1976, p. 319
[8] See: Dr. Omar Al-Saeed Ramadan, Principles of the Code of Criminal Procedure, Dar Al-Nahda Al-Arabiya, Cairo, 1967, p. 278.
[9] If the legislation did not adopt a unified direction in defining the investigation, then jurisprudence took three criteria, including the teleological criterion that depends in its definition of the investigation on its purpose, which is the direction of jurisprudence and the judiciary in France, the time criterion relates to the moment in which the procedure is started before or after the investigation is opened in order to know that a procedure is inference or an investigation

authority to the investigative judge or the investigative advisor in some cases. Investigation procedures aim to search for evidence that is useful in revealing the truth and to see it to verify its sufficiency in proving the commission of the crime and attributing it to the accused, even if it is possible that his conviction will be referred to the court of justice. The investigation procedures are characterized by the element of coercion in their behavior in order to reach the truth. The legislator authorized the investigative judges to issue warrants for arrest, summons, arrest, search, pretrial detention, oath and sworn witnesses. These procedures were surrounded by certain guarantees that must be respected and observed.

The importance of the preliminary investigation

The importance of preliminary investigation is highlighted by two points: the first is practical, the other is legal. As for the practical importance, it appears in its purpose, as it aims to verify the evidence and determine its sufficiency to file a case to the court of judgment or not. This is not limited to the realization of the evidence obtained at the inference-gathering stage, but also to its completion or enhancement.

This end highlights the importance of the preliminary investigation, especially since it is often conducted after the occurrence of the crime, so its procedures call for reassurance from the investigation procedures that come after a long period that may generate the possibility of extending the hand of tampering with it. ([10])

Thus, the preliminary investigation ensures that a case in which there is insufficient evidence is not brought to trial, in order to save the judiciary's time from wasting in searching and collecting evidence, and to ensure that the accused persons are not subjected to trials without sufficient evidence available against them ([11]) The importance of the investigation appears from a legal point of view, In that it is a necessary condition for the validity of filing a criminal case in felonies. The law necessitates the necessity of a preliminary investigation before referring the case to the criminal court. If this investigation is neglected or its procedures are invalid, it leads to the invalidity of the procedures for filing it due to the absence of one of the conditions for filing it, and thus to a ruling that it is not accepted. ([12])

The extent to which a preliminary investigation is required:

The law does not require conducting a preliminary investigation in all cases. It is not a duty except in felonies only. It is not permissible to refer felonies to the criminal court except after an investigation carried out with the knowledge of the investigation authorities. As for misdemeanors and violations, the investigation authority may conduct the investigation, if it considers that the record of collecting evidence It is not sufficient to prove the occurrence of the crime and attributing it to the perpetrator, or the misdemeanor is an important misdemeanour that requires long and complex investigations. Hence, the investigation of these

[10] Accordingly, there is nothing to prevent the judge from presenting some of the evidence that leads to the procedures that took place before him and establishing the judgment on the preliminary investigations carried out by the investigating authority (see the cassation of December 13, 1949, collection of judgments of the Court of Cassation, Q1 No. 51, p. 152, October 8, year 1951 Q3 No. 2, p.3, and in this last ruling, the court ruled that "the court is not at fault if it takes the witness's statements in the preliminary investigations without his statements in the session, as the matter is based on her contentment and conviction.

[11] Dr. Raouf Obeid, Principles of Criminal Procedures in Egyptian Law, 1979, p. 383, Dr. Mahmoud Naguib Hosni, Explanation of the Criminal Procedure Law, 1988 No. 657, p. 614.

[12] Dr. Muhammad Eid Al-Gharib, Explanation of the Criminal Procedure Law, 1996, 1997., pg. 723.

crimes is permissible. As for minor misdemeanors and infractions, they are usually disposed of on the basis of the evidence report and without any investigation conducted by the investigating authorities. ([13])

Accordingly, the role of the preliminary investigation varies according to whether the incident is a felony, misdemeanor or contravention, as it is a necessary condition for the validity of referring the case in felonies to the criminal court, which the law dictates the necessity of conducting it, even if the evidence is sufficient to prove the occurrence of the crime and attributing it to the perpetrator ([14]). As for misdemeanors and infractions, it is not considered a necessary condition for the validity of filing the case to the court of judgment, but in its conduct it is subject to the discretion of the investigation authority. If it is assessed that the evidence is sufficient, the accused may be referred to trial based on the evidence's actions (Article 63 Procedures) ([15]), but if it considers that it is insufficient, it conducts an investigation to uncover the truth and collect evidence.

Initial investigation procedures in Iraqi and Egyptian law

Article (58) of the Iraqi Code of Criminal Procedure No. (23) of 1971 stipulates that (the investigation shall be initiated by writing down the testimony of the complainant or informant, then the testimony of the victim and other witnesses of the prosecution and the litigants requesting to hear their testimony, as well as the testimony of those who come forward on their own to provide his information if It was useful for the investigation and the testimony of persons who came to the knowledge of the judge or investigator that they had information related to the accident, as stipulated the necessity of codification in Article (73) of the Egyptian Code of Criminal Procedure No. 150 of 1950 saying (the investigative judge shall be accompanied in all his procedures by a clerk from the court clerk To sign the minutes with him, and these minutes, along with the orders, and the rest of the papers are kept in the court clerk's office).

Initial investigation procedures in Iraqi law

Investigation procedures are what the investigator undertakes by authorizing experts, moving, inspecting, searching and seizing items related to the crime, disposing of seized items, listening to witnesses, interrogation, confrontation, pretrial detention, and ending the investigation by filing the case or referring the investigation to the competent court. We address this requirement through six sections, as follows:

The stage of news and preliminary investigation

This stage precedes the preliminary investigation stage and occurs accidentally and is not required to occur during the investigation of all crimes. The purpose of the news is to inform the competent authorities about the occurrence of the crime, whether it is against the money, person, or honor of the informant, or against the person, money or honor of others. The state may be the

[13] Dr. Muhammad Eid Al-Gharib, Explanation of the Criminal Procedure Code, previous reference, p. 723.
[14] See Cassation of March 28, 1971, Collection of Judgments of the Court of Cassation, p. 22 No. 72, p. 314.
[15] Cassation January 10, 1972, Collection of Judgments of the Court of Cassation, Q. 23 No. 12, p. 42, November 4, 1973, Q. 24 No. 185, p. 897, and see also the Cassation of October 16, 1944, set of rules, Law No. 6 No. 374, p. 514, May 22, 1939 Vol. 4 No. 396, p. 557 January 11, 1937, Volume 4 No. 35, p. 32.

subject of the attack, and it is usually either written or verbal, and it may be through a phone call, and the informant is not required to have a specific capacity. The law obligated some authorities to report on crimes, and they are every person charged with a public service who learned during the performance of work or because of it that a crime had occurred, and anyone who provided assistance by virtue of his medical profession in a suspected case, and everyone who was present at the time of committing a flagrant offense or a crime committed in front of him.

Also, the party to which the information is submitted is the investigating judge, the investigator, the public prosecutor, or a police station, and this means that the notification is made to any of these people at the place of the crime ([16]).

Also, members of the judicial police are charged in their respective authorities with investigating crimes and accepting reports and complaints received about them, and they must provide assistance to investigative judges, investigators, police officers and commissioners, provide them with the information they receive about crimes, apprehend the perpetrators and hand them over to the competent authorities, and they must prove all the procedures they undertake in the recorded minutes which signed by them and those present, indicating the time and place at which the procedures were taken, and they shall immediately send notices, complaints, minutes, other papers and seized materials to the investigating judge. ([17])

The law requires some people to report some crimes as follows:

Every person charged with a public service, if he learns during the performance of his work or because of his performance of the occurrence or suspicion of the occurrence of a crime in which the case is being initiated without a complaint, he must inform about it. Every individual, whether he is entrusted with a public service, if he witnesses the commission of a witnessed crime of the type of felony or becomes aware of the death of a suspect or the occurrence of a crime in which the case is initiated without a complaint, he must inform about it.

It is necessary to mention some examples, including the captain of the ship, so they must inform the judge, the investigator, or the police station who knows the ruling of his profession on the ship, as well as for the captain of the plane and everyone who works with him, if he knows that a crime has occurred, to contact those responsible for a crime that occurred on the plane, as well as the mayor of the locality He must inform the police station if he knows that a crime has occurred in the area in which he lives, as well as a train driver, if he knows that the crime has occurred, he must inform those responsible for the crime. Likewise, the doctor, by virtue of his profession, may inform the police station, if he knows that any crime has occurred, to inform the police station.

The researcher believes that speeding up the news about the occurrence of the crime or its location is important, as it is the duty of all individuals. Every person must inform the competent authorities of the crime that occurred so that the competent authorities can come to the scene of the accident and collect some evidence or arrest the offender.

Evidence-gathering stage

Moving

[16] Article 247 of the Iraqi Code of Criminal Procedure No. 23 of 1971.
[17] Article (41) of the Iraqi Code of Criminal Procedure No. (23) of 1971.

The investigator, deputy public prosecutor, or investigative judge goes to the place where the crime was committed, where its traces or evidence are found.

Inspection

Watching the crime scene and proving the situation therein, i.e. witnessing and proving the material traces left by the commission of the crime to help discover the truth.

As the judge may find at the crime scene traces of evidence of the offender, such as his footprints or fingerprints, or infer from the placement of things at the crime scene how they happened, and he can write down the statements of those present at the scene of the accident.

It may allow him to move or take immediate procedures that he would not have been able to take had it not been for his presence at the crime scene, such as hearing the witnesses present at once and confronting them with each other or arresting the accused present.

Moving is a physical movement that is intended for the investigator to conduct the investigation with him in a place other than his regular headquarters, and it is not intended to conduct an inspection only. What may come to mind from the phrase “establishing the case” in terms of making it easier for him to conduct all the procedures, as it is easy for him to invite witnesses to give their information, as well as the inspection that he performs. The legislator has permitted the investigator to move to the place of the event, and the move is not obligatory on him, as the legislator has left him the freedom to assess the benefit of the move.

A true and honest picture of the subject of the inspection must be transmitted without justifying it or building results on it, and the benefit of the inspection is evident in its proof of the facts revealed by the material. In most cases, they have a significant impact on the case, and the transfer may take place on any day, even on official holidays, and does not have the effect of nullity.

The procedures for collecting evidence provided by law, moving to the place of committing the crime, establishing what is related to the place, inspection, that is, examining the scene of the accident and organizing the explanatory scheme, and testimony, that is, the person giving the information he has about the crime in accordance with the general rules governing testimony, including that the witness built his information On what he saw or heard in person, the testimony is of two types, either a testimony of proof or a testimony of denial, and experience is (the material or mental assessment shown by the owners of art or competence in a technical issue that the person investigating the crime cannot know with private information, whether that technical issue is related to the accused person, the object of the crime, or the materials used to commit its effects).

The researcher believes that both moving and inspection are related to the crime, and one complements the other. Therefore, there should be no delay in issuing the order to go to the crime scene and inspect, because this may withhold part of the important information, which will subsequently affect the course of the investigation and the rights of the accused.

By moving quickly, collecting evidence and taking samples, it is possible to obtain vital and preliminary information about events.

Inspection

The definitions given by jurisprudence to him were many, and some defined it as (seeing a place granted by law a special sanctity to search for what may benefit the investigation) ([18]). It was also defined as (one of the investigation procedures carried out by a legally competent authority with the aim of searching for material evidence of the crime in a private place that enjoys inviolability or with a person in accordance with the provisions of the law) ([19]). Others defined it as (a procedure of the investigation aimed at finding evidence of a crime that was actually committed, by searching for these evidence in the secret warehouse, whether it was conducted on the person of the accused or in his home without stopping his will) ([20]).

Inspection, although it is considered an exception to the rule stipulating not to prejudice the liberties of individuals and the sanctity of their homes, is a procedure of the preliminary investigation whose purpose is to obtain what is related to the incident subject of the investigation, that is, to search for evidence from the forensic evidence, by seizing the things related to the crime and the criminal and seizing Everything related to them helps to reveal the truth.

Interrogation

And the interrogation is intended to discuss the accused in the evidence against him regarding the crime attributed to him, and the purpose of it is to find out what the accused has of matters related to that crime, so he confesses or denies, it is an accusation procedure and self-defense at the same time. It is not mentioned exclusively, as the investigator may take any other procedure that is useful for evidence and investigation, provided that it does not result in restricting the freedom of individuals or compromising the freedom of their homes, and for this reason some procedures have been permitted even if not provided for by law, such as identification operations by police dogs, that these As a result, all procedures are subject to the general provisions of investigation, unless there is a special regulation for them.

In addition, the law did not obligate the investigator to follow a specific arrangement in initiating these procedures. Rather, he has complete freedom to take any of these procedures, according to any arrangement he deems appropriate for the circumstances of the investigation.

The interrogation is one of the investigation procedures to collect evidence, and it is a right for the accused as a defense procedure. It is wrong to consider it a mere procedure to prove the crime against the accused, as was believed in the old systems, where the main purpose that the investigator sought was to obtain the accused's confession, but at the present time, the situation has changed. Modern procedures laws are concerned with interrogation as an investigative procedure on the one hand, and on the other hand, as a means for the accused to defend himself. ([21])

[18] Tawfiq Al-Shawi, Jurisprudence of Criminal Procedures, Volume 1, 2nd Edition, Faculty of Law, Cairo University, Arab Book House Press, 1954, p. 471.
[19] Dr. Mahmoud Mahmoud Mustafa, On Inspection and the Consequences of Its Provisions, A Comparative Study, Journal of Rights, Q1, 14p., 1943, 2p.
[20] Dr. Fawzia Abdel Sattar, Explanation of the Criminal Procedure Code, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 296.
[21] Judge Dr. Sardar Yassin reviewed the lectures he gave in the training course for justice investigators and police officers at the Erbil Police Directorate

Expert delegate

An expert is every person who has a special knowledge of any science or art, and the experts must take an oath before the investigating judge on the condition that they express their opinion impartially. The delegated expert should carry out the task himself, and he may not refer it to an expert, because if it is necessary to seek the assistance of another specialist to carry out a material act without interfering with him in expressing his opinion, he may do so. Experience means the advice that the investigative judge or investigator uses in estimating technical issues whose assessment requires technical or practical knowledge that is not available to the person conducting the investigation by virtue of his work and culture, whether those technical issues are related to the person of the accused, the body of the crime, or the materials used in its commission or its effects ([22]).

The expert relies on his personal experience and the findings of his technical profession without relying on the accused and his confession or statements alone.

He must submit a written report on the outcome of the task or mission assigned to him and his personal opinion that he reaches within the time period specified for him without delay. The court has a discretionary power to take the opinion of the expert or not according to its emotional conviction. The expert, like the rest of the other evidence, is subject to the discretion of the court.

Often, during the conduct of the investigation, matters that need to be brought up with the help of the opinion of the experts and to benefit from their knowledge and based the results on accurate technical information that can lead to the truth.

The investigator may seek the assistance of an expert if the court deems that there is what is necessary to prove his condition for the assistance of his opinion, such as a doctor, a chemist, or an expert in weapons, and he may choose whom he deems qualified to do so. The litigants may request to delegate the expert, but the investigator is free to respond to their request or reject it, and he is not obligated to give reasons for his refusal. However, this may be a loophole in the investigation that the litigants penetrate to weaken the evidence. It is not required that the expert be among the experts registered on the courts' rolls. Rather, the investigator may seek the assistance of any person he deems to benefit from his expertise, and the investigator can seek the assistance of more than one expert's opinion.

The oath must be prior to the commencement of the expert procedures, and since the procedures that the expert conducts are mostly technical issues such as dissecting a corpse, matching fingerprints or verifying the correctness of lines, there is no benefit to be gained from the litigants, and given the speedy nature of criminal procedures, the expert must: It ends in the mission entrusted to him in the nearest time.

Work has been done to give the expert the time limit he requests to complete his

[22] Dr. Amal Abdel Rahim Othman, Experience in Criminal Matters, Comparative Legal Study, People's House and Printing Press, 1964, p. 3. And Professor Abdul Amir Al-Agaili. Dr. Salim Harba, Principles of Criminal Trials, Baghdad, 1980-1981, p. 117.

procedures and submit the report.

The expert assessment is divided into three sections:
The subject of assignment and what is to be taken for an opinion.
Procedures carried out by the expert.

To include the result that he ended up with, which is what the investigator wants to know.

The law authorized the accused to seek the assistance of a consultant. If, for example, a disagreement opinion on technical points is established from the statement, the consultant has the right to review the lawsuit papers and what was submitted to the expert chosen by the investigator, on which he bases his assessment. He may review the report submitted by the expert assigned to the investigator, because by depositing the case file, it becomes one of the papers that the consultant expert can review.

Accordingly, the expert may, in all cases, perform his task without the presence of the litigants ([23]). This is what the Iraqi legislator stipulates as follows: (The investigative judge, if necessary, may authorize the opening of a grave to examine the dead body by an expert or a specialized doctor in the presence of those who can be attended the relationship to find out the cause of death) ([24]) That is, the procedure is considered valid if no one of the related persons attends.

The investigation may require the assistance of a doctor or other expert, so the law permits the investigator to seek assistance on his own or at the request of the litigants with any of these.

Therefore, the material evidence is sometimes backed by technical information that the investigative judge is not competent to, so the legislator allowed him to seek the assistance of specialists from among the experts to help him to obtain technical information related to the person of the accused or the body of the crime.

In order for the expert or experts' procedures and the results of their detection to be reliable and referenced in determining the truth, the law required that the report be submitted in writing of the facts that were witnessed and the findings of the matters.

One of the most important tasks assigned to the experts by the investigative judge is often related to traffic accidents, and the expert, when he moves to the place of the induction, becomes what he sees as a witness, but he differs from the witness who saw the accident, knowing himself or hearing from him.

He is exposed to what the witness has been exposed to, as he is empty-minded, reassuring, and sees the facts with an eye of scrutiny. However, there are factors that experts are exposed to that lead to error.

[23] Dr. Saleh Abdul-Zahra Al-Hassoun, Provisions of Inspection in Iraqi Law, Baghdad, University of Baghdad.1979, and Dr. Hilali Abdul-Lah Ahmed: The Legal Center of the Accused in the Stage of the Primary Investigation, A Comparative Study of Islamic Criminal Thought, Dar Al-Nahda Al-Arabiya, Cairo, 1986.
[24] Article (71) of the Code of Criminal Procedure No. (23) of 1971,

The factors affecting the validity of the expert's report can be summed up as follows: -

Intelligence and accuracy of the expert

There is no doubt that experts vary in intelligence and mental ability, like any human group that performs similar work, where there is a difference in levels of intelligence, which is reflected in the results of each individual in this group. The one who enjoys meticulousness in terms of organization, maintenance, tabulation, monitoring of facts and presenting final results away from ambiguity.

The time period after the accident

The lengthening of the time between the experience and the report reduces the accuracy of the report due to the disappearance of some features of the accident or the occurrence of a change in them by others, which makes the expert's task difficult and he may have to resort to conclusions based on intuition and guesswork so that the accuracy of the expert's report diminishes. .

Exaggeration in emphasizing knowledge and people

Some experts may involuntarily resort to unwarranted details and at the expense of substantive issues to appear to others, including the investigative judge, that he is capable of his craft and that he has knowledge that no other expert can match.

Freedom of the expert to write his report

The investigative judge may resort to directing questions to the expert to seek clarification from him in interrogative forms. These questions make the expert's report more accurate than if it was based on his personal observations. The opposite is true, as this formula limits the expert's freedom to formulate his ideas based on observation and knowledge of the facts.

The position of the Iraqi judiciary regarding the appointment of experts

The Iraqi judiciary does not have a firm position on the assignment of experts, since in cases it finds it is not necessary to request one of the litigants to refer the matter to the expert, and in other cases it emphasizes the need to refer the matter to the experts and to abide by their reports.

The researcher believes that the experts and their assignment as an integral part of the legal procedures in the course of any legal case. Experts, due to their large technical expertise, may help the court to reach a better conclusion in a particular case.

The expert must have integrity, impartiality, honesty, and frankness, and what all his work requires in this field.

One of his qualities is the commitment to time and keenness on punctuality and moving to them in time.

The expert is summoned in case he realizes that his presence is important to the progress of the investigation process. The expert's duty is to review the case and its documents, then write a report on the subject, and he has to swear that he has been appointed as an expert in this field.

Initial investigation procedures in Egyptian law

The procedures for collecting evidence, as stipulated by law, are moving , inspection,

delegation of experts, hearing witnesses, searches, seizure of objects, monitoring of recordings, interrogation and confrontation.

It is noted that these procedures are not exclusively mentioned in the law, so the investigator may initiate any other procedure in which he deems useful in revealing the truth as long as it does not entail violating the freedoms of individuals or the sanctity of their homes, such as legal displays of exposure to the persons of the accused and the Presentation of the accused by police dogs, fingerprint checks and cross-checks. ([25])

Moving and inspection

Moving means the investigator's orientation to the place where the crime occurred or to any other place where there are traces or things that the investigator deems helpful in revealing the truth. The investigator's movement may be for the purpose of inspection or for a purpose other than inspection, such as hearing witnesses present at the scene of the accident at once and confronting them with each other, arresting the accused present, or searching his residence.

The principle is that the investigator's move to conduct an inspection or to take one of the investigation procedures is left to his discretion. In felonies not in flagrante delicto and misdemeanours in general, the transfer of the Public Prosecution office is left to its discretion according to the circumstances of the investigation and what it deems necessary to collect evidence (Article 90, 199 criminal procedures). However, the law requires the Public Prosecution as soon as it is notified of a felony in flagrante delicto, to move immediately to the scene of the incident (Article 31 Criminal Procedures). However, the violation of this duty does not entail invalidity in the procedures, but merely administrative responsibility.

Transfer and inspection procedures:

The principle is that the litigants in the criminal case (the accused, the victim, the plaintiff with civil rights and the person responsible for it), have the right to attend the inspection as it is one of the investigation procedures in accordance with Article 77 criminal procedures, and this requires that the investigator notify them of their time and place. However, the investigator may, according to the general rules, conduct the inspection in their absent all or some of them if it is necessary. Estimating necessity is a matter for the investigator to carry out under the supervision of the trial court. ([26])

Expert assignment rules:

The law permits the investigative authority (the investigative judge and the Public Prosecution) if proof of the case requires the assistance of an expert to appoint him. The assignment of experts is subject to certain rules, the most important of which are:

1 The principle is that the investigator must attend and observe the expert's work. If it is necessary to prove the case without the presence of the investigator due to the necessity of carrying out some preparatory work or repeated experiments or for any other reason,

[25] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedures Law, 2014-2015, p. 396.
[26] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 397, 398.

the investigator must issue an order stating the types of investigations and what is to be proven Article 85 Criminal Procedures).

2 Experts must take an oath before the investigator to express their opinion honestly and truthfully, and they must submit their report in writing.

3 The omission of the oath results in the invalidity of the expert's work, which is related to the interests of the litigants, and it is not permissible to show it for the first time before the Court of Cassation.

4 The investigator sets a date for the expert to submit his report, and the investigator may replace him with another expert if the report is not submitted on the specified time (Article 87 Procedures).

5 The litigants may reject the expert if there are strong reasons calling for that. The reject request shall be submitted to the investigator for decision, and the reasons for the reject shall be stated, and the investigator shall decide on it within a period of three days from the day of its submission.

6 The basic principle is that the expert undertakes his work by himself, however, he may seek the assistance of other experts as long as the opinion of the one he sought has been adopted.

7 The accused may seek the assistance of a consultant expert to present his report to the investigator in order for him to use him in discussing the delegated expert's report and to derive from both of them the elements of his assessment.

8 The law did not require the litigants to be present while the expert was performing his task, and the expert is not require to invite them to attend. In all cases, the expert may perform his task without the presence of the litigants. ([27])

Inspection

Inspection rules:

Objective rules of inspection:

These rules relate to the reason and place of the inspection.

Reason for inspection:

Inspection as an investigation procedure requires the existence of a legal reason for its validity, i.e. an incident that entitles the investigation authority to issue a warrant for the inspection, and the reason for the inspection as defined by the legislator in Article 91 Criminal Procedures is "an accusation directed against a person residing in the house to be inspected of committing a felony, misdemeanor, or By his participation in the commission of the crime, or if there is evidence indicating that he is in possession of items related to the crime, then several conditions must be met in order to carry out the inspection:

That the inspection is related to a crime that has actually occurred, so it is not permissible to inspect to detect a future crime, even if investigations are made and serious evidence that it will actually take place, because the inspection, as one of the preliminary investigation procedures, moves the criminal case, and the criminal case does not exist before the crime is committed.

The crime must be a felony or misdemeanor, whatever the penalty for the misdemeanor

[27] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 400, 401.

is, even if it is just a fine. It is not permissible to search people or homes for violations, because their simplicity does not justify violating people's freedoms or violating the sanctity of their homes.

That there is an accusation against the person to be inspected or his house inspected, or that there are presumptions indicating that he is in possession of items related to the crime. It is not sufficient to carry out or authorize the inspected that a crime has occurred, but in addition to that it is necessary to have sufficient signs or evidence that a certain person is the perpetrator.

That the purpose of the inspected is to seize things related to the crime or useful in revealing the truth. In Article 91/2, the legislator defined criminal procedures for the purpose of the inspected as "the seizure of papers, weapons, and everything that may have been used in the commission of the crime, resulted from it, or inflicted upon it, and all What is useful in revealing the truth ([28])

Inspection place:

The place of inspection is the warehouse in which a person keeps his secret, and the secret that is protected by law is the one that is stored in a place of sanctity, and accordingly the place of inspection may be the house or the person.

Home inspection:

Article 91 Criminal Procedures stipulates that "house inspections are among the investigation activities and may not be resorted to except by virtue of an order from the investigative judge based on an accusation against a person residing in the house to be inspected for committing or participating in a felony or misdemeanor, or if there are presumptions indicating that he is possessing for things related to the crime - and the investigative judge may inspect any place and seize papers, weapons and everything that may have been used in the commission of the crime or resulted from it or occurred on it and everything that is useful in revealing the truth, and in all cases the inspection warrant must be justified.

If the place of inspection is the accused's home, the investigative judge or the Public Prosecution may inspect him whenever there is sufficient evidence that he has been accused of a felony or misdemeanor, or evidence is found indicating that he is in possession of items related to the crime or useful in revealing the truth.

But if the place of the inspection is not the accused house , the investigating judge may inspect it to seize everything that is useful in revealing the truth (Article 91/2 Procedures). But if the Public Prosecution is the one that undertakes the investigation, it may not conduct this inspection until after obtaining in advance a substantiated order from the criminal judge after reviewing the papers (Article 206/3 Criminal Procedures). On the basis that, in this case, the inspection takes place on the home of a person other than the accused, this procedure should be surrounded by sufficient guarantees to enable the criminal judge to review the Public Prosecution's assessment of the feasibility and development of this procedure.

Inspection of persons:

[28] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 402: 404.

Article 94 of Criminal Procedures stipulates that "the investigative judge may inspect the accused, and he may inspect the non-accused if it becomes clear from strong indications that he is hiding things useful in revealing the truth. The inspection shall take into account the provisions of the second paragraph of Article 46.

Inspecting a person means seizing what he has in his possession of things that are useful in revealing the truth. The person's inspection includes his body, his outer and inner clothes, and what he carries, and it is one of the investigation procedures stipulated in Article 41 of the Egyptian Constitution, which says that a person may not be inspected except by an order necessitated by the necessity of investigation and maintaining the security of society. This order is issued by the competent judge or the Public Prosecution. ([29])

Inspection of the accused person:

The legislator authorized the investigation authority (the investigative judge or the Public Prosecution) to inspect the person of the accused if there is sufficient evidence that he has been accused of a felony or misdemeanor with the intention of seizing things related to the crime or useful in revealing the truth. The judicial control officer may be delegated to carry out this inspection according to the details previously mentioned.

Inspection of a person other than the accused:

The legislator authorized the investigating judge to inspect a person other than the accused, but if the Public Prosecution is in charge of the investigation, it is not permitted to inspect a person other than the accused except after obtaining in advance a substantiated order from the criminal judge after reviewing the papers (Article 206).

In both cases, it is not permissible to inspect unless there are strong indications that the person to be searched is hiding things related to the crime or useful in revealing the truth. These signs are considered a matter left to the investigation authority under the supervision of the trail court.

It is noted that it often happens at work that the Public Prosecution issues an order assigning a judicial police officer to inspect a specific suspect or his residence, as well as those who are with him at the time of the inspection, if strong evidence is established that he has hidden things useful in revealing the truth, and the assignment order in this way is considered valid and useful Assuming that the person present with the accused is joint with him in the crime, i.e. that he, in turn, is accused in it, and then the inspection of those who are with the accused is valid without the need for the permission of the criminal judge.

Execution of persons conducted by the investigation authority is subject to the aforementioned detailed rules regarding the search of persons conducted by the judicial officer. ([30])

Formal rules for inspection

First: Reasoning for the inspection warrant:

Article 44 of the Egyptian Constitution stipulates that residences may not be entered or inspected except by a reasoned judicial order in accordance with the provisions of the law.

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[29] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 405, 406.

[30] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 406, 407.

Article 91/2 criminal procedures responded to this constitutional rule, stipulating that in all cases the inspection warrant must be justified, and the rule of causation for the inspection warrant allows the court to assess the seriousness of the order and the justifications that necessitated its issuance and to assess its invalidity if it is proven that it did not aim at the purpose specified by the law.

The rule of reasoning for an inspection warrant is limited to an inspection of dwellings without a search of persons.

Attending the inspection:

Attending a home inspection:

The legislator required the presence of some persons during the housing inspection procedure to verify the integrity of the procedure and the correctness of the seizure.

The presence of the accused or his representative:

The law requires for the validity of the inspection of the accused's home as one of the investigation procedures carried out by the investigation authority (the investigative judge or the Public Prosecution) the presence of the accused, as the procedure affects his sanctity, If he fails to attend or is unable to attend, he may delegate someone else to conduct the inspection in his presence (Article 92/1 Criminal Procedures). ([31])

It should be noted that the Supreme Constitutional Court ruled on June 2, 1984 that Article 47 of criminal procedures which authorizes the judicial officer to inspect the house of the accused in flagrante delicto is unconstitutional. Accordingly, the judicial officer may not inspect the residence of the accused, even in flagrante delicto, except on the basis of a reasoned judicial order from the investigating authority (the investigation judge or the Public Prosecution). ([32])

The presence of the accused when the house of others is inspected:

If the inspection is carried out in a house other than the accused, the owner (i.e. the actual owner) shall be summoned to attend himself or by whomever he delegates if possible (M 92/2 Procedures), so that he can protect his property and defend his own interests, but is the accused permitted to attend the inspection that takes place in someone else's house ? Nothing in the texts of the law indicates that the accused is invited to attend this inspection. However, this does not prevent the investigation authority from enabling the accused to attend the inspection that takes place in someone else's house, and to invite him to do so whenever the invitation is possible.

Attending the inspection of persons:

Undoubtedly, the inspection conducted by the investigating authority on the person of the accused takes place in his presence, and the legislator did not require the presence of anyone during this inspection, in order to prevent harming the feelings of the accused. Some have argued that the investigation authority may allow the presence of any person if the accused does not object to that. Rather, the accused has

[31] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 408.
[32] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pp. 409, 410.

the right to request that a inspection be conducted in the presence of a specific person such as his lawyer, unless this results in delaying the inspection or losing interest in it. If the investigation authority rejects the accused's request, then this is arbitrary and will result in weakening the evidence derived from the inspection, even if it does not invalidate it. In fact, allowing the investigator to attend the presence of a person whom the accused requests to attend when conducting his inspection is considered an important guarantee for the integrity of the procedure he is conducting. As long as this attendance does not result in delaying the inspection or harming the progress of the investigation.

Invalidation of inspection:

In setting the objective and formal rules for inspection, the legislator takes into account the reconciliation between protecting people's liberties and the inviolability of their homes and the interest of the investigation in revealing the truth. Therefore, failure to observe these rules results in the invalidity of the inspection, and some have argued that violating the rules of inspection results in invalidity related to public order. The Court of Cassation endorsed this opinion, and its rulings were carried out under the repealed Felony Investigation Law, provided that the mere failure to observe the rules of inspection results in absolute nullity, and the court must rule it on its own, even without a request.

Therefore, the invalidity of the inspection is one of the invalidity related to the interests of the litigants. It follows from this that the court may not rule it on its own, but it must be defended by the person concerned, and he is the one who signed the false inspection as an attack on his personal freedom or a violation of the sanctity of his home. This plea should also be made before the trial court, and it may not be made for the first time before the Court of Cassation. It also entails considering the invalidity of the inspection related to the interests of the litigants, that it may be waived - and the waiver as it is express may be implied. It is an implicit waiver not to plead the nullity before the trial court until the pleading is closed before it, and the right to plead it is forfeited when the accused has a lawyer and the procedure takes place without objection from him (Article 333) Criminal Procedures.

And when it is decided that the inspection is invalid, it deals with all the effects that it directly entails, and the court has to release the evidence derived from it, so it is not correct for it to rely on what the inspection resulted in from seizing the evidence of the accusation or even the testimony of those who performed it, because it includes information about something they committed in violation of the law. Since what is proven in the inspection report of statements and confessions that were said to have been obtained before them by the accused in front of the inspector does not go beyond being a kind of testimony, it is also not correct to rely on those statements, because that means seeking the assistance of an invalid act illegally ([33]).

Satisfaction With Inspection:

If the legislator has established objective and formal rules for inspection to guarantee the freedoms of people and the sanctity of their homes, the right holder may waive these guarantees

[33] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 411, 412.

that protect the sanctity of his person and the sanctity of his home. Therefore, if the person concerned agrees to inspect his person or his home, the procedure is valid and produces legal effects. For the validity of the consent that permits the inspection, it is required that it be explicit, emanating from a free and conscious will, obtained prior to the commencement of the inspection, not after it. It is not sufficient for the validity of the procedure just the silence of the person concerned and not objection. Also, consent that occurs under the influence of fear or coercion is not considered. The coercion may be physical, as if the men of the public authority assaulted the person concerned, forcing him to submit, and the coercion may be moral, as if the men of the public authority threatened to use force if the person concerned refused to allow them to enter. The consent issued by ignorance of the circumstances of the inspection is also not considered, as the consent should be issued by the person concerned while he is aware that whoever is conducting an inspection of him or his home has no legal right to do so.

What is meant by seizing things?

Inspection aims to seize items related to the crime that are useful in revealing the truth. seizure is the goal of the inspection and its inevitable result, as it is one of the investigation procedures.

Seizure topic:

Seizure is only made on a material object related to a crime that occurred and is useful in revealing the truth, just as this thing is real estate or movable, owned by the accused in the crime or someone else, present in his possession or in the possession of others. The legislator defined in Article 91 criminal procedures the things that may be seized as papers, weapons, and everything that may have been used in the commission of the crime, resulting from it, or inflicted upon it, and everything that is useful in revealing the truth. ([34])

Seizure restrictions:

The investigative authority (the investigative judge or the Public Prosecution) is bound by certain restrictions in taking the seizure procedure which are:

First Restriction: Prohibition of seizing the papers handed over by the accused to his defender or the correspondence exchanged between them:

In Article 96, the legislator prohibits criminal procedures for the investigation authority to seize with the accused's defender or the consultant's expert, the papers and documents handed over by the accused to them to perform the task entrusted to them, nor the correspondence exchanged between them in the case.

The prohibition of registration requires two conditions: First: that the accused or others have already handed over the papers or documents to the advocate or expert consultant, and Second: that the papers and documents are related to the performance of the mission of the advocate or the expert consultant in the case. Therefore, protection extends to what the accused's family and friends hand over to his lawyer, as long as the thing has been handed over

[34] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 413, 414.

to him in order for him to use it in the performance of his mission. This protection also extends to the wired and wireless conversations that take place between the accused and his defender by analogy with papers and documents, as long as these conversations relate to the mission of the defender or the expert consultant.

The second restriction is that the investigation authority shall observe the guarantees related to the seizure of letters, letters, newspapers, publications and parcels:

In Article 95, the legislator authorized procedures for the investigative judge to order the seizure of all letters, crimes, publications, and parcels at post offices and all telegrams at telegraph offices, whenever this is useful in revealing the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months. The seizure must be based on a reasoned order and for a period not exceeding thirty days, renewable for a similar period or periods. ([35])

But if the Public Prosecution is in charge of the investigation, it must obtain in advance a reasoned order from the criminal judge after reviewing the papers. In all cases, the order must be exact for a period not exceeding thirty days, and the criminal judge may renew this order for a period or other similar periods (Article 206 procedures). This order is issued or renewed at the request of the Public Prosecution.

Disposing of seized items:

The principle is that the seized items are returned to the person in possession of them at the time of their seizure, and that is only when the case is decided upon. Nevertheless, the legislator permitted the investigator to order the return of these items before a ruling is issued in the criminal case, if they were not necessary for the proceeding of the case or subject to confiscation. M 101 procedures).

The order to return the seized items shall be issued by the investigating judge, the Public Prosecution, or the Misdemeanors Court of Appeal sitting in the counseling room, and the court may order the return during the consideration of the case (Article 103 Procedures). It is ordered to return even without a request (Article 105 Procedures). In the event of a dispute, neither the Public Prosecution nor the investigative judge may order the return, and the matter is raised in this case or in the event of doubt as to who has the right to take over the thing to the Misdemeanors Court of Appeal, sitting in the counseling room of the Court of First Instance at the request of the concerned, to order what it deems appropriate (Article 105 Procedures) . ([36])

Monitor and record personal conversations

Conditions for monitoring and recording conversations:

For the validity of monitoring and recording conversations, the following conditions are required:

1 The subject of monitoring and recording should be personal conversations, whether

[35] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 415, 416.
[36] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 417, 418.

they take place directly, i.e. exchanged by people facing each other, or indirectly by means of wire and wireless communication. As for the public conversations that take place in a public place, even if they dealt with the secrets of those who were told. There is no restriction on their monitoring or registration and therefore they do not enjoy criminal protection.

2 That the crime ascribed to the accused be a felony or misdemeanor punishable by imprisonment for a period exceeding three months, provided that this crime has already occurred and its order has been disclosed (Article 95 Procedures).

3 Monitoring or recording should have the benefit of revealing the truth. The investigator assesses this and is monitored by the trial court. If it is not approved by the court, the monitoring or recording will be null and void, and accordingly, the evidence derived from it is invalidated.

4. The order issued for monitoring or recording should be justified and for a specific period. This order is issued by the investigation judge if he is in charge of the investigation (Article 95 procedures) and from the criminal judge if the Public Prosecution is in charge of the investigation (Article 206 procedures), and the period prescribed for monitoring may not be extended Or registration for thirty days, but it may be renewed for a similar period or periods (M306 procedures). It was ruled that if the judgment indicated that the judge had given permission to monitor the appellant's phone after it was proven that he had been informed of the investigations that the officer had included in his report and had expressed his confidence that they were sufficient, then he had taken from those investigations reasons for his permission to monitor and this is enough to consider his permission as a cause as required by law.

It is noted that the power of the criminal judge is limited to the mere issuance of permission to monitor telephone calls or his refusal without the law conferring upon him the authority to carry out the procedure subject of the permission itself, and therefore he may not delegate a judicial officer to carry out the mentioned procedure. But if the Public Prosecution is the one who conducts the investigation, and then permission is issued for monitoring, it may assign a judicial police officer to carry it out. Therefore, it was ruled that if the Public Prosecution attorney orders the execution of the permission issued by the criminal judge, he is not faulted for not appointing the name of the authorized officer to conduct the monitoring. The validity of the procedure does not disqualify any one of these officers carrying it out as long as the order did not appoint a specific officer. (1)

Eavesdropping on phone conversations by placing the phone under surveillance:

The Egyptian legislator has permitted wiretapping of telephone conversations by placing the telephone under censorship or recording them, as a result of the misuse of telephone communication devices and the large number of attacks that have occurred against people with insults and slander by telephone, disturbing them in their homes day and night, and hearing the dirtiest and ugliest words and phrases. The legislator stipulates in Article 95 bis criminal procedures that "the head of the competent court of first instance may, in the event of strong evidence that the perpetrator of one of the crimes stipulated in Articles 166 bis or 308 bis of the Penal Code, has used a specific telephone device to commit it, to order based on the report of the Director General Telephones Authority and the victim's complaint in the aforementioned crime by placing the aforementioned telephone under supervision for the period specified by him.

Hearing the witnesses

Hearing witnesses means that non-litigants have provided information related to the crime before the investigation authority. Testimony is of great importance in criminal matters, as it is considered the normal way of criminal proof, because it focuses on material facts that cannot be proven in writing.

The authority of the investigator to select and summon witnesses:

The legislator empowered the investigator with a wide discretionary authority to listen to whom he deems necessary to hear from whom the litigants ask to be heard if he does not see the benefit of hearing them (Article 110 Procedures).

The Public Prosecution shall announce the witnesses that the investigative judge or it decides to hear, and he shall instruct them to appear through the bailiffs or through the public authority men, and the investigator may hear the testimony of any witness who appears on his own. In this case, this shall be recorded in the report (Article 111 Procedures). ([37])

Everyone who is called to testify before the investigation authority must attend based on the request written to him, otherwise the investigation judge may, if he is the one who is conducting the investigation, or the criminal judge in the area where he requested the presence of the witness if the Public Prosecution is the one initiating him (208/2 Procedures). A ruling against him, after hearing the statements of the Public Prosecution, pays a fine not exceeding fifty pounds, and he may issue an order instructing him to appear again with expenses on his part, or issue an order to arrest him and bring him (Article 117 Procedures).

Witness hearing procedures:

Hearing of witnesses by the investigation authority shall follow the following procedures:

1 The investigator must hear each witness individually (Article 112 Procedures). Invalidity does not result from a violation of this duty, but may affect the value of the evidence derived from the testimony. The investigator may confront witnesses with each other and with the accused.

2 The investigator asks each witness to indicate his name, surname, age, profession, residence, and his relationship to the accused. These statements and the testimony of witnesses are recorded without scraping or insertion. No correction, omission or exclusion is approved unless it is certified by the investigator, clerk and witness (Article 113 Procedures).

3 Witnesses who have reached the age of fourteen years must take an oath before giving testimony that they testify to the truth and only say the truth.

4 Upon completion of hearing the witnesses' statements, the litigants may express their observations on them, and they may ask the investigator to hear the witness's statements about other points, and the investigator may always refuse to ask any question that is not related to the case or is in a way that is prejudicial to others (Article 115 Procedures).

[37] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 421, 422.

([38])

5 If the witness appears before the investigator and refuses to testify or take the oath, the investigating judge shall sentence him if he is the one who is conducting the investigation, or the criminal judge if the Public Prosecution is the one who is conducting the investigation in misdemeanors and felonies, with a fine not exceeding two hundred pounds.

6 Witnesses may not be rejected for any reason, and the civil rights plaintiff shall be heard as a witness after taking an oath.

Persons who may decline to testify:

It is permissible to refrain from testifying against the accused, his ascendants, descendants, relatives, in-laws to the second degree, and a wife, even after the marital bond has expired, unless the crime was committed against the witness or one of his relatives or close in-laws, or if the witness was the one who reported it, or if there is no other supporting evidence.

Interrogation and confrontation

Interrogation means discussing the accused in detail in the evidence against him about the accusation against him and asking him to respond to it either by refuting it or admitting it. The interrogation in this sense is an important investigation procedure that aims to clarify the truth of the accusation from the accused himself, and to reach either his confession of it and thus its confirmation based on this confession or based on other evidence, or to hear his defense of it denying it by refuting the evidence and suspicions against him.

In this way, the interrogation differs from the question of the accused, which is carried out by the judicial officer or a member of the Public Prosecution, and is considered one of the inference procedures. It means nothing more than accusing him and proving his statements about it without discussing it in detail or confronting him with the evidence against him. ([39])

The law requires the investigator, when the accused appears for the first time in the investigation, to prove his identity, then inform him of the accusation against him and record his statements in the record. This requires that the investigator has - when the accused appears before him for the first time - to verify his identity, then inform him of the accusation against him, and leave him complete freedom to make whatever statements he wants without questioning him. The investigator's job in this case is merely to hear the accused's statements about the accusation against him.

Confrontation means:

Confrontation means putting the accused face to face in front of another accused or one or more other witnesses to hear for himself what they said about a specific fact or facts, and

[38] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 423, 424.

[39] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 425, 426.

respond to them with what supports or denies them.

Confrontation in this sense, like interrogation, means confronting the accused with one or more evidence from the existing evidence against him, but it differs from it by limiting it to one or more specific evidence that the investigator deems important and shows him the apparent difference or contradiction between the statements of the accused and the statements of another witness or accused.

The nature of the interrogation:

The interrogation is considered a cornerstone of the preliminary investigation, as it is a procedure aimed at strengthening the authority of the accusation and obtaining from the accused a confession of the crime he committed. It also aims to investigate the defense of the accused, as it allows him, if he is innocent, to refute the evidence and suspicions against him, thus avoiding filing a criminal case against him before the court of judgment. This means that the interrogation is a procedural act of a dual nature: it is one of the investigation procedures, and it is also one of the defense procedures, Interrogation as an investigation procedure is considered a duty of the investigator, and as a means of defense is considered a right of the accused. ([40])

Given the nature of the interrogation as an investigation procedure, the legislator has authorized the investigation authority to conduct it at any stage of the preliminary investigation, if it becomes clear to it its necessity or expediency. It may be the first procedure of the investigation, or when the accused appears for the first time in the investigation after hearing his statements. It may be the last procedure for the preliminary investigation, after the inspection and inspection and the hearing of witnesses. The investigator may also interrogate the accused more than once during the investigation. If the accused was summoned for questioning and he did not attend, the investigator may order his arrest and his summons, while enabling him to give his statements freely. If the rule is that the interrogation is permissible for the investigator in the preliminary investigation, but the interest requires that it be conducted always so as not to question the impartiality and impartiality of the investigator.

Interrogation guarantees:

Conducting the interrogation with the knowledge of the competent investigative authority:

The legislator required that the investigator (the investigative judge or a member of the Public Prosecution) initiate the questioning of the accused himself. If the investigation judge is the one who conducts the investigation, he may not assign someone else - whether he is a member of the Public Prosecution or a judicial officer - to interrogate the accused (Article 70/1 Procedures). And if the Public Prosecution is the one who handles it, it may not delegate a judicial officer to interrogate the accused. This is justified by the fact that the interrogation is a dangerous procedure because it aims to confront the accused with the evidence against him and discuss him in detail, which may lead him to make statements that are not in his favour, as it may lead to his confession of the accusation against him, and to be fully aware of the details of the incident and the evidence for its proof that only comes to the investigator. Also, conducting the interrogation with the knowledge of the judicial officer may subject the accused to pressure

[40] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 427.

and affect his will while making his statements. ([41])

Freedom of the accused to make his statement:

The accused, when questioned, has complete freedom to express his statements and defence. He may answer the investigator's questions, refrain from answering them, or continue with them, to choose the appropriate time to express his statements and defence, and his refusal to answer may not be considered a presumption against him, because the interrogation, as we mentioned above, is considered a means Defending the accused and the investigator cannot compel him.

It follows from this that any influence on the accused's will and freedom to express his statements and defense during his interrogation nullifies the interrogation, whether this influence comes from the investigator himself, a judicial officer or any other person, and whether the influence is in the form of physical or moral coercion. Physical coercion is represented in acts of violence that occur on the body of the accused, regardless of their amount or type, for example, drugging the accused with the truth serum, which is a narcotic drug that loses the accused the ability to choose and voluntarily control, which makes him more suggestive and a desire to be frank and express his inner feelings, and this drug is called Truth serum.

As for moral coercion, it is the one that affects the will of the accused and his psyche, such as his threat or promise, because a promise is like coercion that spoils the confession of the accused, and it is about spreading hope in the accused person to improve his position, which may have an effect on his will. It is considered as moral coercion as well as swearing an oath by the accused before the interrogation. If the investigator hears the person as a witness and asks him to swear an oath, then he swears it, then after the evidence of the accusation against him appears, he is not allowed to charge him at the end of hearing his testimony, but he must interrogate him after that with a procedure independent of the procedure for hearing the testimony without taking the oath.

Inviting the accused's lawyer to attend:

Article 124 of Criminal Procedures replaced by Law No. 145 of 2006 states: "It is not permissible for the investigator in felonies and misdemeanors punishable by imprisonment to require the accused or confront him with other accused or witnesses except after inviting his lawyer to attend, except in the case of flagrante delicto and speeding due to fear of losing evidence. as evidenced by the investigator in the record. ([42])

It should be noted that the attorney's invitation to attend is limited to felonies and misdemeanors that are obligatory by imprisonment, and that the investigator does not abide by this invitation in two cases, the cases of flagrante delicto and speeding due to fear of losing evidence. However, if the lawyer attends on his own, the investigator may not prevent him from attending the interrogation, whether the crime is a felony or a misdemeanor, because it is not permissible to separate the accused from his lawyer present with him during the investigation.

It should be noted that the guarantee of summoning the accused's lawyer when

[41] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 428: 430.

[42] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 431, 432.

questioning him or confronting him with others is decided in favor of the accused, so he may waive it explicitly and in advance, and it is announced to the investigator that he does not adhere to the invitation of his lawyer when questioning him or confronting him with others, and the investigator must record this waiver in the record. The accused may also, at any time during the course of the investigation, rescind this waiver and request the summons of his attorney during interrogation or confrontation.

Allowing the accused's lawyer to view the investigation:

If the legislator has obligated the investigator to summon the attorney of the accused in a felony or misdemeanor punishable by imprisonment and obligatory to be present during his interrogation or confronting someone else, then it is natural for him to be allowed to review the investigation the day before the interrogation or confrontation. So that the purpose of his attendance is achieved and he is sufficiently familiar with the investigation procedures taken by the investigator so that he can perform his duty.

Allowing the lawyer of the accused to review the investigation file the day before the interrogation requires that the accused or his lawyer be informed of the date of the interrogation or confrontation at an appropriate time before that. He placed the papers at his disposal throughout the day prior to the interrogation or confrontation. To inform the lawyer either in person or through a clerk who is entrusted with perusal on his behalf. If the day prior to the interrogation or confrontation was a holiday, the attorney must be authorized to review it on the day prior to that holiday, or the interrogation should be postponed for at least one day, otherwise the interrogation shall be void.

The law allowed the investigator to deprive the lawyer of access to the investigation. This is criticized because depriving the lawyer of access to the investigation renders his presence during the interrogation fictitious and useless, as it contradicts the freedom of defense, and therefore the investigator should not use this license except in the case of urgency where the interest of the investigation requires the speed of the interrogation of the accused, and once this situation ends, it is worth allowing the lawyer to view the investigation. ([43])

The lawyer may waive access to the investigation prior to the interrogation, unless the accused objects, and the investigator must record this waiver in the minutes.

Invalidity of interrogation or confrontation:

Violation of the interrogation guarantees results in its invalidity, as well as the invalidity of other procedures based on it. Deciding the interrogation's invalidity and its consequences are governed by the general rules of invalidity.

As for the violation of the fundamental rules related to the interests of the litigants, such as inviting the accused's lawyer to attend or enabling him to review the investigation before the interrogation, it will result in relative nullity and the right to adhere to it by waiving it explicitly or implicitly, and the court may not rule it except at the request of the litigants.

[43] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 433, 434.

The nullity of the interrogation results in the nullification of all its consequences, so the confession made by the accused during the false interrogation shall be null on the basis that pretrial detention is not permissible until after a valid interrogation by the investigation authority.

Precautionary measures against the accused (order to attend the accused and order to arrest him and bring him in)

Order to attend the accused:

It is an invitation that the investigator sends to the accused to appear before him at a specific time and place to ask him about what is attributed to him, to interrogate him, or to confront him with other accused or witnesses. This invitation authorizes the person carrying it to use force in its implementation, so the accused may respond to it or reject it if he wants. However, if the accused does not appear at the time specified in the summons without an acceptable excuse, the investigator may compel him to appear against his will by issuing an order to arrest him and bring him in, even if the crime itself is one in which pretrial detention is not permissible. The summons to appear is permissible in all crimes, whether they are a felony, misdemeanor or contravention. ([44])

Order to arrest and bring the accused:

It is an order issued by the investigator instructing the men of the public authority to arrest the accused and bring him before him, even by force. It differs from the summons in that it involves coercion and coercion, as the holder has the right to compel the accused to appear before the investigator. In the law, this order is called arrest if the accused is present and arrest warrant and summons if the accused is absent.

This order includes assigning public authority men to arrest the accused and bring him before the investigator if he refuses to attend voluntarily at once.

Cases of warrants for arrest and summons

The investigator may, as a general rule, order the arrest of the suspect present or the arrest of the absent suspect in every crime in which pretrial detention is permissible. However, the investigator may issue an order to arrest the suspect and bring him in, even if the crime is one in which the suspect may not be remanded in custody in the following cases:

1 If the accused does not appear after being summoned to appear without an acceptable excuse.
2 If it is feared that the accused will flee.
3 If he has no known place of residence.
4 If the crime was in flagrante delicto.

The law empowered the investigator to issue this order in felonies and misdemeanours only, so it may not be issued in violations. ([45])

Interrogation of the arrested suspect:

[44] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 435, 436.
[45] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 436, 437.

The investigator shall immediately interrogate the arrested suspect, and if this is not possible, he shall be imprisoned until his interrogation. The period of his detention shall not exceed twenty-four hours. If this period has passed, the prison warden shall hand him over to the Public Prosecution. It shall immediately request the investigating judge to question him.

If the accused is arrested outside the area of the accused being investigated, he is sent to the Public Prosecution in the area where he was arrested. The Public Prosecution must verify all the personal data, inform him of the incident attributed to him, and record his statements in this regard. If the accused objects to his transfer, or if his health condition does not permit the transfer, he shall be investigated and he shall issue his order immediately with the following.

The arrested has the right to know immediately the reasons for his arrest, and he has the right to contact whoever he thinks to inform him of what happened and to seek the assistance of a lawyer, and he must be promptly notified of the charges against him.

Pre-trial detention

Introduction and justification:

Pre-trial detention is the most dangerous procedure of the preliminary investigation procedures, according to which the freedom of the accused is deprived and he is imprisoned before a court ruling is issued to convict him. However, it may be required by the interest of the investigation in order to avoid the accused's influence over witnesses, tampering with the evidence of the accusation, or in anticipation of his escape from the execution of the sentence that may be issued against him, or preventing him from committing new crimes, or protecting him from the possibility of revenge against him.

Given the danger of this procedure on the freedom of the accused, it should be surrounded by strong guarantees to ensure reconciliation between its contradiction with the presumption that the accused is innocent. ([46])

Conditions of pretrial detention:

The authorities concerned with ordering pretrial detention:

The authorities competent to order pre-trial detention are the investigation authority (the investigative judge or the Public Prosecution), and if the case is referred to the trial court, it has the authority to order pre-trial detention - and the order for a period is only for the investigative judge, the criminal judge, and the appellate misdemeanour court sitting in the counseling room.

Neither the victim nor the civil plaintiff may request the pretrial detention of the accused or the extension of his detention, and no statements are heard from them in discussions related to his release (Article 152 Procedures), because pretrial detention is a matter related to the criminal case alone.

Likewise, a pretrial detention order may not be issued by the judicial police officer, and he may not be delegated for that. It is prohibited (Article 70 criminal procedures) to delegate

[46] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedures Law, previous reference, pg. 438.

him to interrogate the accused, and the order for pre-trial detention must be preceded by interrogation (Article 134 Procedures), which results in the prohibition of his delegation to pre-trial detention.

Crimes in which pretrial detention is permissible:

The rule is that pre-trial detention is permissible in felonies in general, whatever their type, and is absolutely prohibited in violations, regardless of the punishment prescribed for them. As for misdemeanours, provisional detention is permissible in it in two cases: the first is if the misdemeanor is punishable by imprisonment for a period of no less than one year, and the second: if the crime is a misdemeanour punishable by imprisonment, no matter how short its duration, provided that the accused does not have a fixed and known place of residence in Egypt.

In all cases, pretrial detention is not permissible in crimes that occur through newspapers, unless the crime includes insulting the President of the Republic, insulting honor or inciting corruption of morals. ([47])

Conditions for the Accused Who Can Be Pretrial Detention:

In order to order the pretrial detention of the accused, the legislator stipulated the fulfillment of two conditions:

The necessity of questioning the accused:

The order for pretrial detention must precede the questioning of the accused. Therefore, discussing the accused in the evidence of the accusation may enable him to express his defense and refute the evidence and suspicions against him. If the accused does not comply, the order of pretrial detention is void. The legislator did not make an exception from this except in the case of the suspect fleeing, so it is permissible to order his pretrial detention without interrogation.

Availability of sufficient evidence that he committed the crime:

For the validity of the order to pre-trial detention of the accused, it is necessary that there be sufficient evidence that he committed the crime or his participation in it, and the assessment of the sufficiency of these evidence is left to the authority of the investigator under the supervision of the authority that owns the extension of pre-trial detention and then the trail court, which, if it considers the absence or insufficiency of the evidence, may consider the pre-trial detention void . Consequently, all evidence derived therein is null and void, in addition to the obligation to release the accused immediately.

Pre-trial detention period:

The Public Prosecution:

The Public Prosecution may order the pretrial detention of the accused for a maximum period of four days starting from the day following the arrest of the accused if it was the one who ordered his arrest, or the day following the handing over of the accused to it if he was arrested by a judicial police officer in the cases established by law. ([48])

If the four-day period is not sufficient, the Public Prosecution must, before its expiration, submit

[47] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 439, 440.
[48] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 441: 443.

the papers to the criminal judge to issue an order as he deems fit after hearing the statements of the Public Prosecution and the accused. The judge may extend the provisional detention for a period or for successive periods so that the total extension of detention does not exceed forty-five days.

In all cases, the period of pre-trial detention may not exceed three months, unless the accused has been notified of his referral to the competent court before the expiry of this period. If the accusation against him is a felony, the period of precautionary detention may not exceed five months except after obtaining, before its expiry, an order from the competent court extending the detention for a period not exceeding forty-five days, renewable for a similar period or periods, otherwise the accused must be released in all cases. (Article 143/3 Procedures amended by Law No. 145 of 2006).

The investigative judge:

Article 143 of Criminal Procedures, as amended by Law No. 145 of 2006, permits the investigative judge to order the pretrial detention of the accused for a maximum of fifteen days. If this period is not sufficient, he may, after hearing the statements of the Public Prosecution and the accused, issue an order extending the detention for another period or periods, the total of which does not exceed forty-five days.

If the investigation is not completed and the investigative judge decides to extend the detention of the accused beyond the period prescribed for him, he shall, before its expiry, refer the papers to the Misdemeanors Court of Appeal sitting in the counseling room to issue its order after hearing the statements of the Public Prosecution and the accused to extend the detention for successive periods, each of which does not exceed forty-five days until the investigation is completed.

The investigative judge is obligated, as is the case with the Public Prosecution, to submit the matter to the Public Prosecutor if three months have elapsed since the accused has been imprisoned, in order to take the measures he deems necessary to complete the investigation. ([49])

Execution of pretrial detention:

Pre-trial detention is carried out in public or central prisons, but the treatment of the accused in a special way that differs from the treatment of a prisoner sentenced to a penalty is taken into account. Therefore, the legislator decided to reside pre-trial detainees in separate places from the places of other prisoners. The permit allowed him to reside in a furnished room, wear special clothes, bring food from outside, or buy it from prison.

Deduction of the period of pretrial detention from the period of the sentence imposed:

The period of arrest and the period of pretrial detention shall be deducted from the period of the custodial penalty imposed. Article 482 of Criminal Procedures stipulates that the term of the penalty restricting freedom "begins" from the day of the arrest of the convict based on the judgment to be executed, taking into account that it is reduced by the amount of the periods of pretrial detention and the period of arrest. If there are multiple custodial penalties imposed on the accused, the period of pre-trial detention shall be deducted from the lightest of

[49] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 443, 444.

these penalties. If it is not exhausted, it shall be deducted from the most severe punishment immediately, then from the next in severity until it is exhausted.

If a person is detained provisionally and has not been sentenced to a fine, he must deduct five pounds from it upon execution for each day of the aforementioned imprisonment, and if he is sentenced to both imprisonment and a fine and the period he spent in pretrial detention exceeds the period of imprisonment sentenced, he must be revoked from the fine The aforementioned amount for each day of the aforementioned increase.

If the accused is acquitted of the crime for which he was precautionary detained, the period of precautionary detention shall be deducted from the period sentenced in any other crime that he committed or investigated with him during the precautionary detention.

Alternatives to pretrial detention:

The authority concerned with pretrial detention may issue an order for one of the following measures: (1)

1 Requiring the accused not to leave his home or domicile.
2 Obligating the accused to present himself to the police headquarters at specific times.
3 Prohibition of the accused from going to specific places.

If the accused violates these obligations imposed by the measure, he may be remanded in custody. With regard to the period of the measure or its periods, its maximum limit, and its appeal, the same rules established for pretrial detention shall apply.

Expiry of pretrial detention (provisional release):

Temporary release is divided into two types: obligatory and permissible:

Mandatory release:

The legislator required the release of the accused who is being held in pretrial detention in the following cases:

1 If a period of eight days has elapsed from the date of the interrogation of the accused in a misdemeanor that does not exceed the maximum prescribed penalty for one year, and the accused has a known place of residence in Egypt and he was not a returnee and has been previously sentenced to imprisonment for more than one year.
2 If an order is issued in the criminal case to establish it, the accused must be released immediately, unless he is imprisoned for another reason.
3 If the period of pre-trial detention has expired without an order to extend it from the competent authority before its expiry.
4 If five months have passed since pretrial detention. The incident was a felony, and the accused did not announce that he had been referred to the court competent to hear the case. No order was issued by the competent court before its expiry to extend the detention for a period not exceeding forty-five days, renewable for a similar period or periods.
5 If the investigation authority finds that the incident attributed to the accused is a

violation or misdemeanour, in which pretrial detention is not permissible. ([50])

Permissible Release:

In cases other than mandatory release, the investigative authority that issued the order for pretrial detention may order the temporary release of the accused if it deems that the interest of the investigation does not conflict with this release, whether on its own or at the request of the accused, and whether the accused is returning or not, and in any stage reached by the investigation of the case.

The legislator necessitated the fulfillment of two conditions to allow the temporary release of the accused who is being held in pretrial detention:

The first: that the accused pledge to attend whenever he requests and not to flee from the execution of the judgment that may be issued against him.

The second condition: that the accused designate a place for him in the area where the court is located, if he is not residing there.

Competent authority for temporary release:

The rule is that the order for temporary release is issued by the authority that ordered the pretrial detention or the extension of its period, as long as it is still conducting the investigation. However, there are cases in which the legislator deviated from this rule, as follows:

The Public Prosecution that ordered the precautionary detention of the accused may order his temporary release on bail or without (Article 204 Procedures) as long as it is still conducting the investigation. And she may do so even if the period of imprisonment has been extended - at her request - from another party, such as the criminal judge or the appellate misdemeanour court sitting in the counseling room. If the accused had requested the Public Prosecution to release him, and it refused, he may not appeal its decision.

The investigative judge who is conducting the investigation may issue - either on his own or at the request of the accused - an order for the accused's temporary release after hearing the statements of the Public Prosecution. ([51])

The Court of Misdemeanors of Appeal, sitting in the counseling room, may order the temporary release of the accused in all cases in which it is concerned with ordering pretrial detention or its extension. These cases are:

1 If investigation papers were referred to it. Which has not yet expired, to order the extension of pretrial detention after the expiry of the period prescribed for the criminal judge.
2 If the Public Prosecution appeals the release order issued by the investigating judge in a felony. If the court issues its order to cancel the release order and re-imprison the accused, a new order for release may only be issued by it.

[50] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 447, 448.
[51] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, pg. 449, 450.

3 If the accused who is being held provisionally is referred to the Criminal Court outside the session, the Court of Appeals for Misdemeanors is sitting in the counseling room and remains competent for temporary release, or to order the extension of his provisional detention.

4 This court is competent to order the temporary release of the accused in the event that the case is judged by any trail court of lack of jurisdiction until the case is submitted to the competent court.

If the accused is referred to the trial court, the order for temporary release is within the jurisdiction of the court to which he is referred, except in the case of referral to the criminal court outside its session, and in the case of a judgment of lack of jurisdiction issued by any court, where the release order is within the jurisdiction of the appealed misdemeanors court sitting in the chamber Advice as previously said.

Re-imprisonment of the accused after his temporary release:

The order issued for release does not prevent the investigation authority from issuing a new order to arrest the accused or imprison him if one of the following cases is present:

1 If the evidence against him is strengthened, as if a witness did not provide evidence to testify against him, or items related to the crime were seized in his house, or the reports of the experts suggested his conviction. ([52])

2 If he violates the conditions imposed on him, such as if he violates the conditions of supervision and visits places that he is prohibited from visiting, or if he fails to appear before the investigator despite his return.

3 If there are circumstances that require his remand in custody, such as if he tried to influence some witnesses, or tried to tamper with the evidence of the accusation, or he tried to escape (refer to Article 150 Procedures), and it is noted that the authority is competent to issue an order to re-imprison the accused is the same authority that ordered his temporary release.

Suspension of temporary release on bail:

The expenses incurred by the government.

The financial penalties that may be imposed on the accused. If the bail is assessed without specification, it is considered a guarantee that the accused will perform the duty of attendance and other duties imposed on him and not evade execution. ([53])

Conclusion

In the end, I can only say that I have presented my opinion on this subject. Perhaps Allah has helped us in writing this topic, as it became clear to us that:

The preliminary investigation is one of the basic functions of the criminal judiciary. No criminal case can be heard without this preliminary investigation, as it is a guarantee for the

[52] Dr. Ahmed Shawki Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 451.

[53] Dr. Ahmed Shawky Omar Abu Khatwa, General Principles in the Criminal Procedure Code, previous reference, p. 452.

accused.

The preliminary investigation is the first stage of the criminal case.

That is, the stage that leads to the investigation of the case and the determination of the validity of its presentation to the court of judgment

In this section, we discussed one of the investigation procedures, but the most important of them is the interrogation. At the beginning of this research, we dealt with the nature of the preliminary investigation, which includes its definition and importance from other procedures that are similar to it. We also dealt with the characteristics of the preliminary investigation, the manner in which it is conducted, and the procedures that the investigator must take into account when conducting the investigation. We also discussed in some detail the guarantees of this dangerous procedure, whether those related to the competent authority in the preliminary investigation or those related to the guarantees of the freedom of the accused during the preliminary investigation.

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