

# Requirements of Procedural Invalidity in Police Procedures

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## Abstract

The concept of procedural justice is a fundamental objective of the procedural system. The drafters of procedural legislation touched upon this reality and required respect for the obligations arising from the procedural relationship. Because among the basic pillars of its framework is the protection of human rights and basic freedoms, it is a tool for balancing these rights from a realistic standpoint. Several standards have been set to guarantee and preserve those rights, and the idea of justice within the framework of the criminal system does not deviate from what was mentioned above. What concerns us in this framework, the powers assigned to police personnel, raise many problems in terms of scope, restrictions, and scope, and its impact on personal rights and freedoms. From this direction, we tried to capture this idea by explaining the shortcomings that marred the procedural texts within the framework of Iraqi procedural legislation, while explaining the position of some Arab legislation in this regard. Subsequently, this study revealed several results and explained the requirements of procedural reform and the most important pillars on which it is supposed to be based.

**Keywords:** Procedural Invalidity, Criminal System, Police, Procedural Justice.

The idea of justice occupied the first goal in all legal systems. It is considered as a goal that is sought by every system, a hope that it aspires to achieve with all the means at its disposal. It is considered as a standard for measuring the extent of nations' civilization and progress.

The idea of justice within the framework of the criminal system does not deviate from what is mentioned above. Rather, this system regards it as behavior that governs the implementation and enforcement of the law. If these actions and that enforcement are not limited to one party within the framework of the procedural criminal system, then what concerns us in this context is what is assigned to police personnel. These

powers raise many problems in terms of their scope, restrictions, and impact on personal rights and freedoms.

From this standpoint, procedural legislation was keen to establish the foundations and rules that regulate the work of this authority when carrying out its duties in investigating crimes and prosecuting their perpetrators. It grants them the right to violate rights and freedoms, in light of the requirements of achieving justice between the right of the authority to reveal the truth and the prohibition of violating rights and freedoms, in addition to recognizing the invalidity of these procedures and their consequences whenever

they deviate from the frameworks set by law for them.

Although the idea of invalidity is explicitly approved within the framework of special laws, it is not that clear within the framework of procedural criminal laws, especially those related to the role of the police in this aspect. The authorization and license granted to police personnel within the framework of Rule 50 of the Iraqi Code of Criminal Procedure, for example, by granting them broad powers that allow them to search, arrest, and other investigative procedures, it is based on the idea of justice. However, the ambiguity of this idea among many members of this group made it a selective idea, which means the necessity of restricting these powers to the judicial authorities because they are capable of achieving complete justice among citizens, given their full awareness of what the idea of justice requires in exercising the judicial function and at least acknowledging the invalidity of those procedures with an explicit text in cases of deviance from the requirements of their adoption or outside the frameworks set for them by law.

A possible research question for this study is to assess the efficacy of legal frameworks controlling police acts, particularly in relation to investigation powers, summonses, and arrests. The purpose of this analysis is to determine how effectively these models mesh with the norms of criminal justice, which attempt to strike a balance between the power to discover the truth and the liberties guaranteed by constitutional and procedural regulations.

"How effective are the existing legal frameworks in balancing the investigative powers of police personnel with the constitutional rights and freedoms of individuals in the context of criminal justice standards?"

## Methodology

Within the framework of this study, the researcher will rely on the descriptive and analytical approach based on extrapolating the

procedural texts provided by the Iraqi Code of Criminal Procedure related to the subject of this study, in order to reach practical solutions to its problem. The comparative approach will also be present whenever the subject of the study requires it.

The plan of the study is divided into two sections. The first section is based on explaining the definition of the police, while the second section is devoted to explaining cases of invalidity in police procedures.

Exposure to this topic raises many points, perhaps the most important of which are those related to the concept of the police, defining what it means, and the mechanisms for assuming this function, which led me to allocate the first requirement to clarify the definition of this term and the members of the second requirement to explain how the mechanisms assume this function through the following:

The first requirement

Introduction to the police

The requirements of the research require us to divide this research into two sections. In the first, we address the definition of the police in linguistic conventions. As for the second section, we will separate it to explain the conventional meaning of this title, as follows:

First section

Police in language

The police in the language, and according to what is mentioned in the Intermediate Dictionary, maintain security in one country, and the owner of the police is its chief, and so-and-so conditioned himself for such-and-such, that is, he taught it to him and prepared it. It is said that they are given this name because they make a mark for themselves by which they would be known (1).

It is also said that they are responsible for maintaining security, organizing traffic, and ensuring the implementation of laws and rulings in cities and elsewhere. It is mentioned in Al-Bustan that the police is the first battalion to witness war and prepare for death. As for the word police, it is foreign, derived from the Greek

word (*politeia*, which means the state or the city, and it does not mean the city). Its buildings, monuments, and landmarks, but its meaning is directed to the civilization existing there. In other words, more precisely, it means security and stability, as civilization cannot grow and prosper except with the availability of the requirements for reassurance and security. The Arabs Arabized it, changing the *ta'* to *ta'* as is the rule in parsing, and the French took it in two ways, similar to the Arabized or Arabized word *police*. Both words are used by the French for police and security to this day, but this opinion cannot be accepted (2) and Nasari is the preponderant opinion that confirms that the word *police* is Arabic.

#### Second section

##### Police as a term

The terminological meaning of police varies depending on the country to which this agency is affiliated, despite the similarity in the duties it performs. In Tunisia, the police are called the General Directorate of National Security. In Lebanon the General Directorate of Internal Security Forces. While in America, France, and England, the word “police” is used for this. the device (3).

It is noted that the word “police” is the common term used to refer to the internal security forces in various countries of the world, although it includes other formations with different bodies that are sometimes compatible with the nature of the duties assigned to them. Following the above, it was found that the Second Arab Conference of Police and Security Leaders proposed naming the police the following: this device (4).

As for Iraq, by studying the laws regulating the police and its duties, one can find the conventional meaning of the police through the laws that regularly regulate this apparatus. The Police, Security and Nationality Service Law No. 149 of 1968 has been issued, where it has stated in the reasons for its legislation that necessity requires legislating a new law that takes into account all the circumstances surrounding the

conduct in terms of career, organizational, and living conditions, and the definition of the duties of the police, security, and nationality in general, which are neglected to be mentioned in all laws in order to avoid confusion that may occur as a result of the lack of clarity of duties. Paragraph 11 of Rule Two it specifies what is meant by police, security, and nationality, as this expression includes the officer and the commissioner. The non-commissioned officer, the policeman, the secretary, and the student. This law also included a text outlining the duties of the police and security. Rule 4 stipulates that the police and security forces shall carry out their duties in maintaining order and the integrity of internal security, preventing the commission of crimes, tracking down their perpetrators, carrying out necessary monitoring, and collecting information related to the internal and external security of the state. Its general policy is to ensure the implementation of laws and regulations following the orders issued to it by the competent authorities. As for Rules 5 and 6 of the law, they indicate the cases in which the police and security forces may use force without weapons or use weapons without an order from the competent authorities.

When the Internal Security Forces Service and Retirement Law No. 1 of 1978 were issued, the legislator used the term internal security forces, as the fifth paragraph of Rule One defined this definition as the internal security forces, which are the police, security, nationality, traffic, and civil defense. The sixth paragraph of the same Rule, defines the policeman as one of the Members of the Internal Security Forces, whether an officer, a commissioner, a non-commissioned officer, or a policeman, a student in one of the colleges, institutes, or schools of the Internal Security Forces. The description of police applies to all the Internal Security Forces, unless a special text in this law states otherwise, as stipulated in the first paragraph of Rule 95. Implementing the Police, Security, and Nationality Service Law No. 149 of 1968 and its amendments, while continuing to implement the

provisions of Rules 4, 5, and 6 thereof until a special system is issued for them. It is noteworthy that these Rules regulated the duties of the police and security forces in general in maintaining security and order and in cases of the use of force and weapons. Note that the aforementioned law is repealed pursuant to Law No. 18 of 2011, as Rule 87 of it stipulates that (the amended Internal Security Forces Service and Retirement Law No. 1 of 1978 shall be repealed, and the regulations, instructions, and internal regulations issued pursuant thereto shall remain in force in a manner that does not conflict with the provisions of this law until the issuance of What replaces or cancels it).

With the issuance of the Internal Security Forces Service and Retirement Law No. 18 of 2011, Paragraph 6 of Rule one clarified that a policeman is (a member of the Internal Security Forces, male or female, whether he is an officer, commissioner, non-commissioned officer, policeman, or student in one of the colleges, institutes, or Schools of the Internal Security Forces. The description of the police applies to the Internal Security Forces unless otherwise stated in this law.

Thus, this term includes the officer, the commissioner, the deputy non-commissioned officer, the non-commissioned officer, and the policeman. Accordingly, the term includes all those who belong to the police corps, including officers, commissioners, their deputies, and all other ranks and grades, up to the head of the department, as he is the highest-ranking officer.

Through these texts, we can define the police as: an armed executive force affiliated with the Ministry of the Interior, headed by the general directors of the Internal Security Forces, each within his jurisdiction, composed of officers and members, whose mission is to maintain and consolidate public order, take the necessary means to prevent the occurrence of crimes, track down and arrest their perpetrators, carry out the necessary surveillance and protect them. Lives, money, and implementation of the duties imposed on them by laws and regulations.

We believe that it is better to define the police before their duties, at the level of Iraqi police legislation, and this will not be affected by what was dictated by the development of the political, economic, and social conditions, based on the principle of specialization in work, and imposing keeping up with this development by creating specialized general directorates to exercise the duties previously undertaken by the General Police Directorate. As the General Security Directorate and the Nationality Directorate.

Also, the word "police" is a common term in most countries of the world, and thousands of people use and circulate it, in addition to using it with this description that is conclusive in its meaning, which would remove confusion, ambiguity, and interference with the concept and specializations of other security services, such as intelligence, private security, military intelligence, and the armed forces. Therefore, we call on the legislature to adopt this term in the future (5).

The second section

Invalidity in police procedures

There is no doubt that the effectiveness of the procedural rule does not have strength and effectiveness unless there is a penalty resulting from its compliance from the procedural aspect, especially when the authority overpowers the law and sovereignty becomes the authority and not the law, and the logic of the law of force prevails instead of the logic of the force of the law, and the principle of penal legitimacy evaporates, and perhaps from the most important and effective penalty in the face of your violation of the procedural rules is invalidation, and this penalty can be stated through the following:

The first requirement

Definition of invalidity

It is known that the procedural law, while regulating the procedures for arriving at the truth, also regulates the procedural rights of the parties to the criminal case, including the guarantees it contains. If a violation of these guarantees occurs, the procedural work becomes ineffective and loses its effects. This is expressed by saying

that the procedure is invalid. From this standpoint, it is defined as (a legal description or adaptation of an action that violates its legal model in a way that leads to the failure to produce the effects required by the law if it were complete), and it is also defined as (a procedural penalty that attaches to every defective procedure that occurred in violation of its legally prescribed model, thus hindering it from performing its function and stripping it. Its legal effects could have been arranged in what had occurred correctly) or it is (a procedural penalty that attaches every defective procedure that occurred in violation of its legally prescribed model, thus hindering it from performing its function, and depriving it of its legal effects that could have been arranged in what had occurred correctly) (6).

Thus, it is considered the most important criminal procedure ever, (7) and the most dangerous is that its effect is not limited to wasting the procedure, but rather extends to the exclusion of all evidence obtained that contradicts the assumptions of its establishment, and it is the most common in flawing the procedural work, as the legislator imposes for each procedure a specific form that must be observed or a specific method that must not be taken into account. Otherwise, it will be invalid, in accordance with the principle of procedural legality and its predominance, and thus the Federal Supreme Court ruled (...the defendant is originally innocent until his guilt is proven in a fair legal trial in accordance with the provisions of Rule 19/Fifth of the Constitution of the Republic of Iraq for the year 2005 (7), and hereby The Egyptian Court of Cassation stated in its ruling that “procedural legality prevails even if its action leads to a criminal escaping punishment, because it targets a public interest represented in protecting the presumption of innocence and providing people with reassurance about the justice of the judiciary” (8)

If the judge does not invalidate the illegal procedures, those implementing them will not hesitate to violate them and not care about the

rights and freedoms of individuals, and then the procedural texts will become worthless. Hence, it can be said that invalidating the criminal procedure that violates the law requires those implementing it, especially the police, to respect the orders of the law. And its prohibitions and careful consideration when taking penal measures, especially substantive ones.

Although the trends of jurisprudence seek to demand achieving a balance between the considerations of authority in revealing the truth and the rights and freedoms of individuals through its approval of the invalidation system, the jurisprudential schools of thought in its approval were not on a single approach. There are those who argue that the legislator himself, and no one else, is the one who arranges the invalidation of the procedural work according to the considerations he sees, and in view of the goals aimed at through the procedure. Therefore, the judge may not decide invalidity as a penalty for violating a rule for which a penalty has not been established, nor may he refrain from deciding invalidity where the legislator has approved it (9).

Some argue that the ruling on the invalidity of a procedure is not necessarily dependent on the legal text that determines the invalidity, but that the judiciary has the discretion to rule on the invalidity of the procedure if it violates a fundamental rule of the rules of the procedural law, and not to rule it if the violation occurred to a non-essential rule (10).

Some believe that invalidation occurs as a result of violating all the rules of criminal procedure that regulate criminal litigation procedures. That is, this doctrine considers every violation of any procedural rule to result in invalidity. The procedural rules are therefore all the same and equally important. There is no need, therefore, for the legislator himself to stipulate the cases of invalidity. The judiciary must invalidate on its initiative any measure proven to have been taken in violation of a procedural rule, regardless of the nature or importance of this rule (11).

As a reflection of this jurisprudential discrepancy, we have found that the procedural legislation did not stop at a single point for this system. We have found that the Egyptian legislator, within the framework of Rules 331-337 of the Egyptian Penal Code of 1950, combined the doctrines of legal invalidity and subjective invalidity, and this is what has been stated in the text of Rule 331 of it, where He ruled (invalidation results from failure to observe the provisions of the law relating to any fundamental procedure) and referred in Rules 332-337 to the cases under which invalidity is decided (12).

The Jordanian legislator has moved in the same direction within the framework of the Jordanian Code of Criminal Procedure through what is stipulated in Rule 7/1 by saying (the procedure is invalid if the law explicitly stipulates its invalidity or if it is marred by a fundamental defect due to which the purpose of the procedure is not achieved) and likewise the Palestinian legislator under the law (13). The Criminal Procedures Act of 2001 AD, Rule (474) stipulates: "The procedure is considered invalid if the law explicitly stipulates its invalidity or if it is marred by a defect that leads to failure to achieve its purpose" (14).

Through that text, we can say that the legislator has embraced the theory of legal invalidity and subjective invalidity and combined them, which is the same approach that the Qatari legislator followed.

Among the Rules that stipulate legal invalidity: Is Rule (52) of the Code of Criminal Procedure regarding inspection provisions, which stipulates: "Invalidation shall result from failure to observe any of the provisions of this chapter."

It is noted that the phrase (or if there is a defect that leads to failure to achieve its purpose), as it appears, leaves a lot of room for interpretation regarding the interpretation of what is really meant by it, as it is known that the end does not justify the means, meaning that it may achieve the goal that the flawed procedure

seeks, and yet It cannot be accepted, or the result it produces in proof, for example, the purpose of interrogation is to know the truth; But this does not mean that the accused can be forced to reach that truth, otherwise the procedure and all its legal consequences will be invalid (15).

It is worth noting that the legislator distinguished between absolute invalidity and relative invalidity, as Rule (475) stipulates that: "Invalidity results from failure to take into account the provisions of the law related to the formation of courts, their jurisdiction, their jurisdiction, or anything else related to public order. Moreover, it is permissible to raise it in any stage of the case, as decided by the court on its own initiative."

That Rule clarifies cases of absolute invalidity, while Rule (478) stipulates relative invalidity by saying (16): "In cases other than invalidity related to public order, the right to claim the invalidity of the procedures for gathering evidence, the preliminary investigation, or the investigation at the session shall be forfeited if the accused has a lawyer, and the procedure took place." In his presence without objection from him, and the Public Prosecution's right to claim invalidity is forfeited if it does not adhere to it at the time."

The Omani legislator on the other hand has embraced the theory of subjective invalidity through the text of Rule (208) of the Code of Criminal Procedure, which stipulates that "invalidation results from failure to observe the provisions of the law related to any fundamental procedure."

Rather, there is a difference in the scope of invalidity between two types of it: absolute and relative, as jurisprudence and jurisprudence have been used to describe absolute invalidity related to public order and relative invalidity related to the interests of the opponents. This distinction appears in the framework of Rules (209, 210) of the Code of Criminal Procedure No. 97/99. Also in its amendments, as Rule 209 stipulates: "If the invalidation is due to failure to observe the provisions of the law related to the formation of

the court or the jurisdiction to judge the case or its jurisdiction in terms of the type of crime or other matters related to public order, it may be adhered to in any case.” The lawsuit shall be decided by the court on its own initiative.” Rule (210) stipulates that: “In cases other than those stipulated in Rule (209) of this law, the right to claim the invalidity of the procedures for collecting evidence, the preliminary investigation, or the investigation at the hearing in misdemeanors and felonies shall be forfeited.” If the accused has a lawyer and the procedure took place in his presence without his objection, the procedure is considered valid in violations if the accused does not object to it, even if a lawyer is not present with him at the session, and the public prosecution’s right to claim the invalidity is forfeited if it is not revealed at the time.

Within the framework of Iraqi legislation, we have not found anything in the framework of the Iraqi Code of Criminal Procedure No. 23 of 1971 that explicitly indicates the adoption of the theory of invalidity. It does not provide special texts for it like the rest of the aforementioned legislation, and all references found in this law are the inclusion of phrases indicating non-invalidation and not Invalidity itself, including the text of Rule 53/e (Neither the procedures of the investigating judge nor his decisions are invalid due to their issuance in contravention of the provisions of Paragraph A), which stipulates that (the jurisdiction of the investigation is determined by the place where the whole crime occurred or any part of it, or any act complementary to it, or any result). It results in or is an act that constitutes a complex, continuous, or successive crime or a crime of habit, as determined by the place where the victim is found or the money in respect of which the crime is committed is found after it is transferred to him by the perpetrators or a person with knowledge of it.

However, at the same time, we find that the text of Rule 249 of the same law, which is about clarifying the aspects of violations that may afflict criminal rulings and which could be the

subject of appeal, has indicated the possibility of filing an appeal because the procedure is marred by a fundamental error in the due process, which means the implicit indication of invalidity. This is reinforced by the explanatory memorandum’s reference to the text of Rule 53 of the Code of Criminal Procedure, which says (Rule 53 specifies spatial jurisdiction to investigate crimes, and it is nothing more than a regulatory text. Violation of which does not base the invalidity of the procedures) and all that means is the establishment of invalidity in cases of violation of the procedures. necessary or essential.

#### The second requirement

Applications of invalidation in police procedures

The procedures that are undertaken by police personnel are not included within the framework of Iraqi procedural legislation exclusively, as is the case with most budgetary legislation, and the legislators have not seen any harm in this. Because it does not involve violating a right or restricting freedom, rather it is a collection of information about crimes and their perpetrators (17). However, some measures may affect rights and freedoms, whether they are taken in the investigation and reasoning stage or are taken in the investigation stage in cases where the policeman has the authority of an investigator. There is no doubt that taking it in an inappropriate manner will result in the law having procedural consequences. The most important of which is that the invalidity of the procedure entails the invalidity of all the effects directly resulting from it. In no case is it permissible for the court to rely on the evidence that resulted from the invalid procedure, otherwise its ruling in turn would be invalid and the most important circumstances of invalidity can be explained. This can affect police procedures through the following:

#### First branch

##### Invalidity of suspension

Stopping is a procedure carried out by a public authority person in order to investigate

crimes and uncover their perpetrators, justified by suspicion justified by the circumstances. It is permissible for men of public authority if the person voluntarily and voluntarily places himself on the subject of suspicion and suspicion and this situation indicates a necessity that requires the intervention of the person detained to investigate and reveal his truth.

There are conditions for a stop that the police officer must take into account, otherwise this stop will be invalid. They can be fulfilled by two conditions:

First: A person voluntarily puts himself in a place of suspicion and suspicion

Second: This situation indicates a picture that requires the intervention of the detainee to reveal his truth.

This is due to the appearances that justify the arrest are not present. Then in this case it is an arrest that is not based on a basis in the law, so it is invalid and the evidence resulting from it is not taken into account. The Court of Cassation ruled (if it is established that the accused was confused when he saw the two officers and extended his hand to his bra tried to leave the café and then changed his mind, then there is no reason in all of this to suspect him or stop him, because what he did is not inconsistent with the nature of the matter, and it is. Then, if one of the officers stops him, grabs him with his hand, and opens it, it is an arrest that has no basis in law (18).

Although the policeman has a role as a member of the judicial police, which he performs after the crime occurs in accordance with what is regulated by the Code of Criminal Procedure, he has another role, which is his administrative role, which is represented in preventing crimes before they occur in order to preserve security in the country, that is, taking precautions to prevent the occurrence of crimes, which the legislator called for. To grant the policeman some powers in various laws, such as requesting the presentation of identity cards or a vehicle driving license for review, or entering public stores and stores that disturb comfort and are harmful to health, and the like.

However, these powers are not an absolute right that is not restricted by any restriction that a policeman exercises without an officer. Rather, he is restricted in doing so by the legal controls prescribed for administrative work. It must target a public interest, have the support of the law, and adhere to the limits necessary to achieve the goal of the legislator in granting him this authority. In conducting it, he must adhere to the constitutional and legal rules, otherwise his work will be described as illegal and a deviation from authority. Therefore, it is not permissible in law for a policeman, in order to perform his administrative role stipulated in the Traffic Law, to review vehicle licenses, to prepare an ambush in which he stops all the vehicles passing by him. Without the commander putting himself under suspicion for behavior of his own choice, it is not permissible for a policeman to stop all passers-by on a public road to review the identity card of each one of them unless the person voluntarily puts himself in the subject of suspicion and suspicion, because in stopping all passers-by or vehicles randomly, in this case, Ambushes are a waste of the presumption of innocence assumed by all, and involve an attack on the freedom of movement of individuals stipulated in the Constitution. Saying otherwise makes the text that authorizes the person to view vehicle licenses or identity cards to be tainted by the defect of violating the Constitution, which is what the legislator removes from it (19).

#### Second section

##### Invalidation of arrest

Arresting a person means grabbing him by his body, restricting his movement, and depriving him of his freedom to move around as he wants without having to spend a certain period of time. It is legally established that in the case of flagrante delicto, judicial officers have the right to arrest and search those who have indications or strong evidence that they have committed that felony (20).

The order not to move that the officer issues to those present in the place he enters legally deviates from the previous concept, as it is a



measure intended to stabilize order in this place until the mission for which he came is completed. Thus, the Court of Cassation ruled that (the order issued by the officer to some of the men of the force accompanying him to seize the members of the family of the accused who are authorized to search his person and home and those who are with them is a measure intended to stabilize order in the place that the arresting officer entered until the charge for which he appeared is completed. Considering that this procedure is one of the organizational procedures required by the circumstances of the situation to enable him to perform the task assigned to him (21).

Note that the invalidity of the arrest due to its illegality is based on the lack of reliance in a conviction on any evidence resulting from it or derived from it, so whatever is based on falsehood is invalid. It is not sufficient for the validity of the judgment that the evidence be truthful if it is the result of an unlawful procedure.

### Section Three

#### Inspection invalidated

House searches are an investigative procedure that may not be resorted to except pursuant to an order from an investigating judge based on an accusation directed against a person residing in the house to be searched of committing a felony or misdemeanor or participating in its commission, or if there is evidence indicating that he is in possession of items related to the crime. The investigating judge may search any place and seize papers, weapons and everything that may have been used in, resulting from, or committed the crime and everything that is useful in revealing the truth. In all cases, the search warrant must be justified.

The basic principle is that the search of a place focuses only on him and what is in it of movables, and does not extend to the people present there, because a person's freedom is separate from the sanctity of his home. However, the law allows an exception to the search of a person present in the place, whether he is

accused or not, if strong evidence is based on. He is hiding something that would help reveal the truth, and this right is exceptional, so it should not be expanded upon.

According to Rules 72-86 of the Iraqi Code of Criminal Procedure No. 23 of 1971, inspection controls can be stated from both the formal and substantive aspects through the following points:

First: That a specific crime, which is a felony or misdemeanor, has occurred and it is not valid to take a decision regarding the possibility of its occurrence. The Court of Cassation approved this in its ruling (the search warrant is an investigative procedure that is not legally valid to issue except to seize a felony or misdemeanor crime that has already occurred and is likely to be attributed to the person authorized to search it. It is therefore not valid to issue it to seize a future crime even if there are investigations and serious evidence that it will actually occur. If the contested ruling proved regarding the facts of the case is that there had been no crime committed by the appellant when the Public Prosecution issued its permission for the search. Rather, the permission had been issued based on what the officer had decided that the accused and his colleague would transport a quantity of the drug outside the city. The ruling, convicting. The appellant, without offering to clarify whether his and his colleague's possession of the drug was prior to the issuance of the search warrant or subsequent to it, is tainted by deficiency and error in the application of the law.

Second: There must be enough evidence to charge the person whose home is to be searched, and the issuance of a search warrant does not require a report containing the evidence that justifies it. Thus, the Court of Cassation ruled (if the established fact was that several reports were submitted to the police against a specific group of people in which it is alleged that they have been trafficking in narcotic substances, then the police investigated the validity of what was included in these reports, and it appeared that corroborating matters appeared, including those

guides from his men had twice purchased drugs. Drugged by one of the members of this group, and based on that, the police obtained permission from the prosecution to search and search the house in which they were meeting. This search is legal because the prosecution issued permission for it in a specific crime based on circumstantial evidence that would indicate that the crime occurred among those residing in the house that was searched. If, after the drugs were seized in this house, one of the accused flees to his residence, the officer may search this house without permission from the prosecution on the basis that the accused is involved in the crime of being caught red-handed.

Third: That there be a date and time for the search. The Court of Cassation ruled that: "The permission issued to the center's warden by the prosecution to search the accused's house in the circumstances of a week must be implemented within a week, otherwise the search will be invalid."

Fourth: The search warrant must be reasoned, and the law does not specify a specific form for reasoning. Rather, it is sufficient for its validity that the judicial officer has learned from his investigations and inferences that a crime has occurred and that there is strong evidence and indications against the person requesting permission to seize him, search him, and search his residence, and that the authorization be issued based on that. Thus, the Court of Cassation ruled that the judicial police officer had learned from his investigations and inferences that a crime had occurred and that there was strong evidence and indications against the person requesting permission to search him or his residence. Therefore, it does not affect the validity of the permission if he uses the word "in search of the drug" in the sense of seizing it. ) (21)

Fifth: The law does not require a specific form for the search warrant. All that it requires in this regard must be that the permit be clear and specific regarding the people and places to be searched, that its source be competent to issue it, and that it be written in his handwriting and

signature. The Court of Cassation ruled that (the search warrant was invalid because it lacked a statement of the name of its issuer and his spatial jurisdiction, without proving that the issuer of the permit wrote it down in his handwriting and signed it with his signature. He was not spatially competent to issue it, so it is defective due to insufficiency and error in applying the law in its correct manner). (22)

Sixth: The permission to inspect must be in writing, and in accordance with the general rules, the investigation procedures and the orders issued regarding them must be proven so that it remains an excuse for the employees - those in charge and those in attendance - to work according to it, and to be a valid basis for the results based on it. The oral specification is not sufficient, but rather it must have it. A written original signed by the person who issued it as an acknowledgment of what happened to him. Otherwise, it is not considered to exist and becomes void of what reveals the person from whom it came from. This is because the authorization paper, which is an official paper, must bear in itself evidence of its authenticity and the elements of its existence by being signed by him because the signature is the only document that bears witness. By issuing it from the person from whom it was issued in a legally recognized manner. It is not permissible to supplement this essential statement with evidence that is not derived from the warrant paper or by any means of proof. Therefore, it is indispensable for signing the search warrant for the warrant paper to be written in the warrant paper or addressed in his name, or for him to witness or acknowledge its issuance without signing it as long as the order is not related to the fact that the permission was issued in the name of its issuer, but rather to the form in which it was written and signed by the source's handwriting.

The above does not mean that the warrant paper must be in the hands of the judicial police officer when conducting the assigned search because that would obstruct the investigation procedures, which by their nature require speed.

Rather, what is required is that this notification must have a proven basis in writing in the case papers, and the Court of Cassation confirmed this in its ruling (no It is required that the authorization paper be in the hands of the assigned judicial officer because that would obstruct investigation procedures, which by their nature require speed. However, what is required is that this notification of the content of the authorization must have an original (established by writing in the papers)

Seventh: Arbitrariness in executing the search warrant results in its invalidation. The search warrant must not be issued for a purpose other than the one for which it was issued. Otherwise, it is considered arbitrariness in its implementation and results in its invalidation, unless he accidentally witnesses, while conducting the authorized search, an existing crime in itself that he may seize, and the basis for that is the occurrence of a case of *flagrante delicto*. Practical applications of a state of necessity, as it is not permissible for a police officer, in the rule of reason and logic, to remain handcuffed in the face of his awareness of a situation or behavior - issued by a person - that on its face indicates the occurrence of a crime.

In this context, we find that the legislator equated the treatment between monitoring phone calls seizing messages, and searching for a not-so-hidden reason, represented by privacy, so he stipulated the necessity of asking the permission of the district judge, and he has absolute freedom to authorize this procedure or reject it as he sees fit.

## Results

Policemen are one of the basic pillars on which the state is built. They are the custodians of public facilities and the trustees of the public authority that the state has entrusted to them to regulate all people's affairs, their freedoms, their money, and their honor. If they are reconciled, the matter of governance will be reconciled, security will be established, order will be stable,

and the nation will move forward on its path. Progress and prosperity. The assumptions of procedural justice require the need to balance the interest of society and justice in revealing the truth and the preservation of basic rights in preserving the freedoms of people and parties to the lawsuit, in addition to enabling the accused to express his defense.

One of the components of respecting the principle of procedural justice is the principle of innocence in humans, which has received constitutional respect and is confirmed by procedural rules, so torture of the accused or coercion in any form of coercion is completely prohibited.

## Conclusion

The need to activate the role of the Public Prosecution in monitoring procedural legitimacy, especially when the executive authority exercises some aspects of the judicial authority's procedures without enacting legislation that defines the role of the Public Prosecution and its position in the investigation and evidence-gathering phase, especially in confronting the investigative procedures carried out by police personnel.

Obligating police stations to inform the public prosecutor of all information and complaints they receive, with the need to inform them of the action taken regarding them. The necessity of explicitly stipulating the right of the competent minister to grant approval to refer an employee associated with his ministry to court in the event that a policeman is accused of committing a crime during the performance of his duty or because of that.

It is necessary to adopt the principle of relative publicity for competency reports for workers in the Internal Security Forces, taking into account the indication of these reports' weakness, with the aim of addressing them and putting an end to subjective diligence in negative evaluation. Due to the importance of the procedural penalty represented by invalidation,

we ask the legislative institution to explicitly stipulate it within the framework of the Code of Criminal Procedure, similar to other comparative legislation.

The necessity of amending the text of Rule 218 of the Iraqi Code of Criminal Procedure No. 23 of 1971 in a way that does not permit resorting to coercion in all its forms and under any circumstances.

The study concluded that there is a need to activate the role of the Public Prosecution in monitoring procedural legitimacy, especially

when the executive authority exercises some aspects of the judicial authority's procedures without enacting legislation that defines the role of the Public Prosecution and its position in the investigation and evidence-gathering phase, especially in confronting the investigative procedures carried out by police personnel. Additionally, obligating police stations to inform the public prosecutor of all information and complaints they receive, with the need to inform them of the action taken regarding them.

## WORKS CITED

- Arabic Language Academy, Dictionary of Law, General Authority for Princely Printing Affairs, Egypt, 1999.
- Mahmoud Ahmed Taha, The Right to Assist a Lawyer During Judicial Police Investigations, Dar Al-Nahda Al-Arabiya, Egypt. 1999.
- Suhair Abdul Aziz Mohammed, Community Police, Dubai Police College, 2006.
- Abu Muslim Youssef, The Police in Egypt, Alexandria Book Center, Egypt, 2006.
- Samih Abdul Qadir Atallah Al-Majali, The Impact of the Invalid Criminal Procedure on the Legal Status of the Accused, a doctoral thesis submitted to Amman Arab University.
- The ruling of the Federal Supreme Court in Case No. 31/Federal/2019 is unpublished
- Sabry Al-Rai, Encyclopedia of Modern Egypt, Volume One.
- Mansour Saud Muhammad, The Exceptional Powers of Judicial Officers in Investigative Inspection, Master's thesis submitted to Amman Arab University, Faculty of Law, 2015, Majid Najm Idan / The Constitutional Legitimacy of Criminal Law: A Comparative Study between Iraqi Constitutional Law and Bavarian Law / Journal of the Faculty of Law for Legal and Political Sciences / Vol. 4, Issue 13, 2015, p. 253.
- Abdullah Ahmed Al-Mufleh, Invalidation of Procedural Action in the Jordanian Code of Civil Procedure, PhD thesis submitted to the Faculty of Legal Studies, Amman Arab University, 2007.
- Youssef Ali Juma Al-Khazaleh, Limits of the Theory of Invalidation in the Jordanian Code of Civil Procedure, Master's thesis submitted to Al-Bayt University, Jordan, 2015.
- Palestinian Criminal Cassation (Ramallah) No. (22/2014), session 5/5/2014 AD (unpublished).
- Ahmed Al Mahdi, Arrest, Search and Flagrant delicto, House of Justice, Egypt, 2005.
- Collection of rulings of the Court of Cassation, thirteenth year on April 10, 1964.
- Muhammad Abdel Latif Farag, The Presumption of Innocence and Illegal Gain, Dar Al-Nahda Al-Arabi, Egypt, 2004.
- Muhammad Muhammad Misbah Al-Qadi, Criminal Protection of Personal Liberties in the Pre-Trial Stage, Dar Al-Nahda Al-Arabiya, Egypt, 2000.
- Ahmed Abdel Mohsen Muhammad, housing inspection and the most important defenses related to it, Dar Al-Massar Publishing, 2023.
- Collection of Cassation Rulings of the Thirty-First Year, January 1, 1962.
- Collection of cassation rulings of the eighteenth year, on January 1, 1965, Yasser Mohammed Abdullah / Nadia Mustafa Hussein / Audit Regulations: A Comparative Study / Journal of the Faculty of Law for Legal and Political Sciences / Vol. 67, Issue 24, 2018, p. 270.
- Collection of cassation rulings for the ninth year, on 5/7/1971.
- Collection of rulings of the Court of Cassation of the thirty-ninth year on January 19, 1979.
- Collection of rulings of the Court of Cassation for the thirtieth year on May 11, 1965.
- Collection of cassation rulings for the twelfth year, November 15, 1971.