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APPLICATIONS OF PROCEDURAL NECESSITY IN SOME TRIAL PROCEEDINGS: COMPARATIVE STUDY

Lana Seerwan Khudhur
Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye
20225782@std.neu.edu.tr

Assist. Prof. Dr. Ahmad Mustafa Ali
Near East University, Law department, TRNC, 10 Mersin, TR-99040 Lefkosia, Türkiye
ahmed.ali@neu.edu.tr

ABSTRACT

The legislator in the Arab countries allowed the court the right to exclude the accused from the session, if his presence violates the session, as he is entrusted with managing it, he may leave the session whoever deems that his presence disrupts the conduct of the session, and not only that, but he may remove from it everything that would impede the conduct and good procedures of the trial. With some guarantees necessary for his deportation, such as the inadmissibility of removing his defender, the accused should also be informed of what happened in his absence. All of this is only an application of procedural necessity.

The child may also be removed from the trial session if he is accused, and the procedural necessity lies in his removal in the interest of the child because there is a state of constant anxiety and tension within the trial sessions, which may affect his psychological state and weaken his personality.

Procedural necessity must be defined by fixed legal texts, so that their application without provisions does not lead to a departure from the principle of legality of crimes and penalties.

We also hope that the legislator will stipulate the need to use an interpreter in the event that one of the litigants or witnesses does not speak Arabic or does not understand it, as well as to impose a penalty for the translator who deliberately lies in his translation.

Keywords: Trial proceedings - the right of the accused - common law - stages of the trial

1. Introduction:

Given the seriousness of the trial phase. The legislator has provided them with guarantees aimed at reaching the truth and preserving all human rights for litigants. This right, guaranteed by the current Egyptian constitution of 2014 and previous constitutions, is that the accused is innocent until proven guilty in a legal trial in which he is guaranteed guarantees of self-defense. Accordingly, the street has set limits before the judiciary that it must observe and exercise its jurisdiction over them. Among the most important of these guarantees governing trial proceedings are the principle of publicity of the trial, the principle of orality of trial, the principle of confrontation between litigants and the principle of recording trial procedures.[1] However, it may surround that stage circumstances in which the procedural person is forced to

[1]Dr. Alaa Mohamed El-Sway Salam, The Right of the Accused to a Fair Trial, A Comparative Study, Menoufia University Rights, Publisher Dar Al-Nahda Al-Arabiya, 2001 edition, p. 355.

go beyond the limits of some of the rules to be carried out and may be necessary in some cases [2]to depart from those guarantees, so it has become important to determine the procedural necessity that requires departure from those rules, and that procedure is correct and productive of its effects.

1.2 Importance of Research:

Through this study, the researcher seeks to achieve many things:

Shedding light on the state of necessity and analyzing its legal dimensions within the framework of the provisions of the Code of Criminal Procedure, especially since it plays an important role in most other branches of law, and then developing a complete theory of necessity that takes care of all the provisions it means.

The importance of research in necessity in the procedures comes in that they are comprehensive all stages of the lawsuit, and therefore the examination of each stage would lead to a substantial and important result.

Procedural necessity may conflict with the guarantees guaranteed by law for the protection of the accused and the victim. If procedural necessity exceeds its proper controls, all guarantees and rights are violated and the procedural act becomes criminalized.

Since procedural legislation is not provided for, its importance comes in whether it is permissible to act as a general theory, or whether it applies as an exception and is limited to the cases mentioned exclusively.

1.3 The problem of research:

In order to review the study, the researcher faced many difficulties, which are:

The notion of procedural necessity is not expressly provided for in many procedural legislative texts. Thus, it was difficult to derive procedural necessity provisions from the unspoken.

There is also a scarcity and lack of specialized legal references that have dealt with the subject in criminal proceedings, as well as reliance on public literature, some sporadic legal research, as well as some judicial rulings.

1.4 Research Plan:

But with these procedures being assets, can the procedural operator violate these procedures based on procedural necessity or not? To answer this, the researcher divided this section into three demands:

The first requirement: the procedural necessity in the absence of the accused in the trial proceedings.

Second requirement: procedural necessity in dispensing with hearing the witness**.**

2. Procedural necessity in the absence of the accused in the trial proceedings

One of the guarantees of the trial is oral trial, which means subjecting all procedures

[2]

and evidence in the case to discussion and dialogue, and which aims to ensure the application of the accused's right to a fair trial. Oral is the optimal application of the principle of confrontation between litigants in the criminal case, which allows each litigant to confront the other party with all the evidence he has, and at the same time to see all the evidence of his opponent, and in order to achieve this, the accused must be present at the trial session in order for the trial to be valid. If the accused does not attend the hearing, **the trial** will be null and void. But is it permissible to conduct the trial without the presence of the accused based on the availability of a state of necessity or is it Failure to appear violates the guarantees of the trial that require his presence and the trial is therefore null and void in that case. To answer this, the requirement is divided into two branches:

2.1 Attendance of the accused in the trial proceedings

The rule of the presence of the accused in trial proceedings is one of the basic principles that have dominated criminal trials since ancient times, as this principle was born in ancient Greece, and immortalized in Rome as it remained known throughout the Middle Ages. Rather, this principle has remained a key feature of the rule of law.[3] Rather, it was prevalent in Pharaonic law, where the accused was assigned to appear before the court when hearing the lawsuit filed against [4] him.

Therefore, Article 270 of the Code of Criminal Procedure stipulates that "the accused shall attend the hearing without restrictions or shackles, but shall be subject to the necessary observation. He may not be removed from the hearing during the hearing of the case....."
It follows from the text of the preceding article that the presence of the accused at the hearing is an important guarantee of the trial. The final investigation conducted by the court must therefore proceed in the presence of the litigants in the case. Therefore, the legislator required the litigants to be notified on the day specified for the hearing so that they could attend.[5]
Jurisprudence defines the accused. It is any person who is charged when the criminal case is initiated before him by the Public Prosecution because of the suspicions that have arisen around him confirmed by the evidence that he is the perpetrator of the sinful act that is the subject of the case before the judiciary [6].

Hence, the reason sought by the legislator is that the accused attends the trial proceedings, in order to present his statements and discuss the evidence against him in application of the rule of the right to be heard, since it is decided that it is not permissible to

[3] VARRAUT (J.M.: Le droit au droit, puff, 1985, pp. 137-138.

[4] Dr. Raouf Obaid, Criminal Justice of the Pharaohs, National Criminal Journal 1958, Third Issue, p. 70 - Dr. Mahmoud Al-Saka, Pictures from the records of the civil and criminal judiciary in Pharaonic Egypt, Journal of Law and Economics, Q44, Third Issue, p. 251.

[5] Dr. Mamoun Salameh, The Code of Procedure commenting on jurisprudence and the judiciary 1980, p. 738.

[6] Referred to by Dr. Ahmed Abdel Hamid, p. 349. **Substantive and procedural protection of human rights at the pre-trial stage, a comparative study, Al-Maaref Foundation Publishing House, PhD 2009,**

convict an accused before hearing his statements and presenting his defense.[7]

First, the concept of the rule of the accused attending the trial proceedings:

This rule means that the trial proceedings take the form of discussion and structured dialogue between the parties to the proceedings. So that each litigant is allowed to attend it and inform the opponent of his evidence, and allows him to express his opinion on it, and based on it, the judge bases his belief towards the evidence presented to him.[8]

The Court of Cassation confirmed this rule, saying in a ruling, "The law stipulates that the accused must be present in all roles of the investigation before the court, and that he may not be removed from it. If the court deported a defendant and questioned the civil plaintiff in his absence, and his deportation was not due to serious interference or fear of its impact on other defendants or the plaintiff of the civil right, it would have violated the law in that regard.[9]

Second: The importance of the accused attending the trial:

The importance of the accused attending the trial lies. That he has a real defence against the accusation against him, and thus that rule places the accused on an equal footing with other litigants before an impartial and independent judge. Indeed, the presence of the accused represents a genuine oversight of the elements of the evidence taken into account by the judge. This presence also allows the correct use of the judge's discretion in assessing the penalty taking into account the personal and social circumstances of the accused, as the presence of the accused enables him to raise his personal and social circumstances and thus demand to benefit from them when convicting him[10].

The requirement of this rule is that the judge may not base his judgment on a measure taken without the knowledge of the litigants or without enabling them to discuss the evidence on which he is based. In application of this, he ruled that a judgment based on an inspection report conducted by the court [11] in the presence of the prosecution and without the knowledge of the accused and without being informed of it shall be null and void [12]. This requires that the judge should not rely in the formation of his belief except on the oral procedures that take place in the hearing, which require the presence of the accused at the hearing, otherwise all the results of the trial shall be considered without the presence of the accused. Void actions.

In application of this, it was ruled that the principle of the trial is to take place against the real accused before whom the proceedings were taken [13].

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[7] Dr. Alaa Mohamed El-Sway, The Right of the Accused to a Fair Trial, A Comparative Study, Dar Al-Nahda Al-Arabiya, 2001, p. 444.

[8] Dr. Azmi Abdel Fattah, The Judge's Duty to Achieve the Principle of Confrontation as the Most Important Application of the Right of Defense, Dar Al-Nahda Al-Arabiya 1992-1993, p. 24.

[9] Cassation of the session of 27/12/1933 Collection of Legal Rules Part 3, p. 229.

[10] Dr. Mahmoud Naguib Hosni Explanation of the Code of Criminal Procedure, 1988 edition, Dar Al-Nahda Al-Arabiya, p 816 - Dr. Eid Mohamed Abdullah, The judge's commitment to the principle of confrontation, PhD thesis, Zigzag University 1993, p 472 - Dr. Hatem Bakar, Protection of the right of the accused to a fair trial, a comparative study, PhD thesis, year 1996, Knowledge Foundation in Alexandria, p 160.

[11] Dr. Amal Othman, Explanation of the Code of Criminal Procedure in 2010, Dar Al-Nahda Al-Arabiya, second edition, p. 484.

[12] Cassation of May 3, 1903 Official Collection S4 No. 35 p. 86.

[13] Cassation of May 10, 1960 Collection of Cassation Judgments Q11 P 416 - Cassation 3/11/2000 No. 5348 of 62 BC, Law Magazine Second Issue 2002 p. 324 and beyond.

The rule of the accused attending the trial and participating in the discussions leads to the effectiveness of the trial and contributes to the clarity of the truth. Rather, it is the cornerstone of all the guarantees enjoyed by the accused. This is confirmed by international human rights instruments. It said that the accused shall have the reasonable possibility to present his case in circumstances that do not offend him and under the same conditions as the other [14] litigant. This is stipulated in Article 10 of the Universal Declaration of Human Rights, as well as Article 14/1 of the International Covenant on Civil and Political Rights of 1996.

Third: Controls for the presence of the accused:

If the law provides for the accused to attend the trial proceedings, so that he can have a real defense against the accusation against him. The legislator has regulated the means of the presence of the accused, if he must be notified of the date and place of the hearing specified for the hearing of the case so that he can prepare his defense and stipulates that the declaration is valid.[15]. If the accused is in pretrial detention, he must be brought to the trial session by being notified by the prison warden, and whether the accused is [16]released or imprisoned, he must attend the trial session without restrictions or shackles, this is what is stipulated in Article 270 of the Procedures: "The accused shall attend the session without restrictions or shackles, but the necessary observation shall be made on him."

In all cases, the Criminal Court may order the arrest and summons of the accused, which is called non-administrative presence.

The rule of the presence of the accused at the trial fulfills an important principle, which is the confrontation between the parties to the proceedings, which can only be achieved in the presence of the accused. This is an asset of criminal procedure. Article 427 of the French Code of Criminal Procedure stipulates that "a judge may base a verdict only on evidence presented to him during the trial and discussed before him vis-à-vis the parties". This implies that confrontation will only occur if the accused attends the trial so that he can discuss the evidence and the charges against him.

Article 215 of the French Code of Criminal Procedure stipulates that the personal presence of the accused before the Criminal Court is mandatory in order to rule on the case. If the accused is not in custody, he must turn himself in on the day before the hearing, otherwise the indictment chamber will order his arrest, but if the accused is summoned to appear before the Misdemeanors and Offences Court, he must appear. He may apologize for not attending. It is not permissible for the accused to appear through his defense when the law imposes a penalty of imprisonment for more than two years for the crime subject of the case, and if the court

[14] On this topic see:
BENMAKHLOUF (GABRIELLE: LE Process Pénal au regard des exigence's de la convention euro penne des droits de l 'homme, These, paris all, 1984.

(Cassation of February 6, 1992, Collection of Cassation Judgments, Q43, No. 23, p. 213 [15]- Cassation of February 8, 1993, Collection of Cassation Judgments, Q44, No. 19, p. 16.
([16] Dr. Mamoun Salama, previous reference, Part II, p. 111.

allows the lawyer to plead erroneously in such a case, it is not permissible to invoke this error before the Court of Cassation[17].

2.2 Failure of the accused to attend the trial proceedings due to necessity

If the general principle is that the trials take place in the presence of the accused all procedures, in order to enable him to monitor the progress of the investigation, and the statements of the other defendants and witnesses, and attend his defense and this is stipulated in Article "270" of the Code of Criminal Procedure in its first paragraph that the accused attend the session without restrictions or shackles, but the necessary observation is conducted. To be in front of the accused and his lawyer as long as he has appeared before the court [18] .

According to French jurisprudence, the street has determined that the accused has the right to attend all trial proceedings. [19]Another view was that the presence of the accused was his duty, since his responsibility for the suspected crime required him to participate in the proceedings required to determine his responsibility.

However, there are cases where discussions take place in the hearing without the presence of the accused, so whether those trials that took place without the presence of the accused are considered valid, and therefore if a verdict is rendered, it is valid, based on the existence of a state of necessity that requires the trial to take place without the presence of the accused in order to ensure the smooth conduct of the trial proceedings. Or is that trial that took place without the presence of the accused invalid for not attending? So, we talk about these cases.

The first case: removing the accused from the session for disturbing the order of the session or disturbing it:

Article 270 stipulates the procedures of "..... He may not be removed from the hearing during the hearing of the case unless there is a disturbance that requires it, in which case the proceedings shall continue unless they can be proceeded with in his presence, and the court shall stop him on the proceedings that took place in his absence."

It is inferred from the text of the preceding article that the accused may be removed from the hearing if he commits anything that disrupts the conduct of the session or if he commits a disturbance that requires his removal from the session. The court shall continue the normal course of the proceedings, and the court shall stop him on what was done in his absence, and the discussions that took place after his removal from the session shall be considered as adversarial [20] discussions.

Confusion is defined in language: as mixing, and may be confused by any confusion and confusion, and confused any confusion and mis raised. Noise is therefore loud noise or sounds, whether regular or irregular. Whether issued by persons or repeated by means of recording

[17] cases- crim 6 oct 1960. B. crim.439 dec.1965.
[18] Criminal Cassation 17/12/1987 Collection of Judgments of the Court of Cassation, Q38 No. 202, p. 1103.
[19] Roger Merle and André Vatu, Traite de droit criminal; problems generous de la legislation criminel 1973, No. .1365, p. 595.
[20] Cassation of the session of 24/5/1948 Collection of Legal Rules Part 7 P.575 No. 618 _ Cassation of March 7, 1949 Collection of Legal Rules Part 7 No. 837 P.795.

devices or loudspeakers, leads to the disappearance of the usual calm that must be available in the trial sessions[21].

Article 243 gives procedures to the presiding officer to manage and control the session, stipulating: "The control and management of the session is entrusted to the presiding officer, and for this purpose he may leave the session room who violates its order."

Therefore, a breach of the order of the session means that the person takes actions or words that affect the calm that should prevail in the session. As if one of those present at the session shouted to the effect that they were approvable or disapproving of something that took place in the session or simply applauded. It includes anything that affects the respect due to the court body [22].

An example is also when the accused boycotts witnesses, the prosecution or the civil plaintiff. If the court decides to deport the accused for committing disturbance in the hearing, then he returns to the hearing. After that, another disturbance was committed during the hearing, the court may order his removal again. However, it may not sentence him to twenty-four hours imprisonment or fine him ten pounds for not being stipulated in Article 270 of the procedures governing such cases[23].

It should be noted that the exclusion contained in the text of Article 270 is limited to the accused and does not extend to his defender. A defender who always has the right to remain at the hearing may not be excluded.

The removal of the accused from the hearing in this case is a disruption or disruption of the order of the hearing is a procedural necessity necessary to ensure the proper conduct of the trial proceedings. The court needs calm and tranquility in conducting the hearing. So that she can form and build her doctrine towards the lawsuit. A judgment is valid. Therefore, the removal of the accused from the hearing as a result of what he issued is an application of the theory of procedural necessity, which gave the judge the right to remove the accused from the session so that the judge could proceed with the trial.

This is confirmed by the Court of Cassation in its rulings, where it considered that the loud voice and speech during the course of the session is a confusion on the judiciary that leads to the mixing of voices, which leads to the demise of the calm necessary for the course of justice, the weight of evidence and the examination of papers, as it ruled that the Court of Cassation is restricted to what is proven in the provisions of the facts, if the court considers that what was issued by the accused of speech is a confusion that occurred from him in the session in a case that indicates disregard for the judiciary, the Court of Cassation was restricted by what is proven in the judgment.[24]

The Court of Cassation ruled to consider the Shusha as a confusion, as it ruled that the

[21] Dr. Mohamed El-Said Abdel Fattah, Criminal Protection of Freedom of Belief and Worship, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 54 and beyond.
[22] Dr. Abdul Raouf Mahdi, Explanation of Criminal Procedures, 2008 edition, p. 911.
[23] Ahmed Al-Tayeb, Court Authorities in Hearing Crimes, National Criminal Journal, Volume Forty-One, Issue Two, July 1998, p. 79.
[24] Cassation of December 1, 1925 No. 336, p. 498, Law Magazine, sixth year, - Cassation of January 10, 1929, No. 199, p. 366, Law Magazine, ninth year.

second appellant's defect in removing him from the hearing room is due to what the court proved that he was too consulted, “so there is no wing against it if it expelled him because of the confusion that occurred from him, which it saw as not possible to proceed with the case." [25]

He went on to believe that the removal of the accused from the hearing if there is serious interference is decided in favor of the accused, and [26] even if the previous opinion has stipulated that the interference should be serious until the accused is excluded from the hearing, and with the fact that the text of Article "270" did not mention the term gravity as a justification for the establishment of a state of procedural necessity, but the term interference was absolute without restriction, which leads to the exclusion of the accused for any reason.

It represents an obstruction to the conduct of the case, so we hope that the legislator will put some controls through which we can realize that there is confusion that requires the removal of the accused or not.

Therefore, if the state of necessity on which the exclusion of the accused from the hearing is based, he shall return to the hearing if the judge so deems. If the state of necessity persists, the accused must be informed of the proceedings carried out in his absence through the court, and if it does not do so, it will have violated the right of defense, which makes the trial invalid.

The question arises, however, whether the court may rely on procedural necessity and exclude the accused from the hearing when there is a reason other than interference or disruption of the order of the hearing. Or is the court not entitled to remove the accused from the hearing except for the two preceding reasons?

According to the view, the legislator had established a general principle that the accused could be excluded from the hearing if the court assessed that it was in the interests of the proper administration of justice. Accordingly, the court may exclude the accused from the hearing if it considers that his presence impedes the disclosure of the truth, as if it would intimidate the witness and prevent him from telling the truth. Therefore, it is the court that assesses his presence or non-appearance, in what it deems appropriate in accordance with the public interest in the conduct of the final investigation. This opinion is based on the analogy with the reason mentioned in article 270/2 [27]procedure, as well as on the possibility of removing a witness when another witness is heard, as provided for in article 278.

This view was also based on the text of Article 273/2, which requires the court to prevent the witness from making any statement or insinuation and any gesture on which his thoughts are disturbed or intimidated [28] is based. This means that the court may remove the accused from the hearing, even if it is not due to interference or breach of the order of the hearing in comparison with what has passed.

[25] Cassation of May 24, 1948 Appeal No. 742, year 18, Asim Collections of Legal Rulings and Principles, First Group, Book Three, p. 184.

[26] Dr. Mohamed Zeki Beamer, previous reference, p. 707, no. 385, footnote no. 3. -

[27] Dr. Raouf Obaid, Principles of Criminal Procedure, 1964 edition, p. 523 – Dr. Ahmed Fathi Sorour, Explanation of the Code of Criminal Procedure, 2015 edition, p. 1290.

[28] Dr. Ahmed Fathi Sorour, previous reference, p. 1291 – Dr. Mohamed Eid Al-Gharib, Explanation of the Code of Criminal Procedure, Part Two, p. 1192.

Another view is that the accused may not be removed from the hearing for a reason other than disturbing or disrupting the order of the hearing. This is because the right of the accused to defence, which is guaranteed by the legislator by the necessity of attendance, must erase any other consideration related to access to the truth. While this can be allowed at the preliminary investigation stage, it poses a serious risk to the rights of the defence if it is allowed at the court stage. If the legislator has allowed an exception to remove the accused for considerations related to maintaining order in the hearing, he must not expand this exception, especially since the legislator did not allow the court what it allowed the investigating authority to initiate investigation procedures in the absence of litigants[29].

One of the supporters of the previous opinion stated that he based his opinion in supporting his opinion on preventing the removal of the accused from the hearing other than the two cases provided for in article 270 on the argument that he does not hide from anyone the serious risks to his right to defence in the removal of the accused that cannot be compensated by the mere fact that he is informed of the proceedings that took place in his absence[30].

The researcher saw:

The researcher supports the first view that the court has the right to exclude the accused from the session if his presence violates the order of the hearing, and the deportation is not limited to disruption or disruption of the order of the hearing, but also everything that hinders the conduct and good procedures of the trial. This is because the reason for the removal of the accused from the hearing is a procedural necessity against which it can be measured, because it aims to achieve one objective, which is the proper conduct of the trial proceedings. The fact that one of them relied on the argument that he does not hide from anyone the serious risks to his right to defence in removing the accused from the hearing cannot be compensated. It can be answered that the removal of the litigant from the hearing room does not prevent the presence of his representative, nor does the presence of the agent exempt the court from the obligation to inform the litigant of the proceedings that have taken place in the event of his deportation. We therefore hope that the legislator will provide for the right to exclude the accused if he impedes the course of justice.

Second case: If the accused is a child:

Is it permissible for the court to remove the child if he is accused based on the necessity that allows him to be removed from the hearing room? Or is the court not entitled to remove him from the session under any pretext, and therefore if it removes him from the session, all the proceedings that took place without his presence will be invalid?

Article 126 of the Child Act No. 12 of 1996 states that "only relatives, witnesses, lawyers, social monitors and those authorized by the court may attend the trial of a child before the Children's Court. The court may order the removal of the child from the hearing after questioning him or the removal of one of those mentioned in the preceding paragraph if it deems it necessary, provided that in the case of the removal of the child may not order the removal of

[29] Dr. Mamoun Salama, previous reference, 1980 edition, p. 740.
([30] Dr. Abdel Tawab Mouawad Al-Shortage, Lessons in Criminal Procedures, Section Two, 2010-2011, p. 96.

his lawyer or the social monitor.
The court may also exempt the child from attending the trial himself if it deems that the child's interest so requires, and the presence of his guardian or guardian on his behalf is sufficient, in which case the sentence shall be deemed to be in his presence.

Accordingly, the legislator decided in accordance with the text of the preceding article. It is permissible to remove the child if he is accused from the hearing. This is because it is in the interest of the child to keep him away from that tense atmosphere within the hearing, where the constant conflict between the accusation and the defense and where witnesses testify, experts testify, and social observers report, which reveals to the juvenile some of the things hidden from him, and this may lead to a negative impact on his psyche, and to His disorder, and anxiety during the practice of these procedures. [31]And then affects his future, which hinders the prospects of reform and rehabilitation, which is the main goal of punishing the juvenile[32].

It is noted that the removal of the accused child from the hearing room does not constitute a violation of the oral rule of trial procedure, but rather a procedural necessity that the court has resorted to its right to carry out this procedure for the preservation of that child and for his benefit and the protection of his psyche. This is because the legislator says in the second paragraph of the text of Article 126 of the Child Law, "The court may remove the child if it deems it necessary, and this necessity consists in preserving the child's psyche. Perhaps if he attended the session and heard what was in it, it would have affected his psyche and led to his confusion and anxiety.

Protection of the child's right and protection of this right in the event of his or her removal from the hearing. Article 126/2 of the Child Act establishes guarantees the child's right to a defence, including that "in the event of the removal of the child, it is not permissible to order the removal of his lawyer who represents the defence, and he must be allowed to follow the proceedings. The article also allows the presence of the child's guardian or guardian in the event of his deportation, so that the court can discuss the causes of the child's delinquency and how to treat and reform it.

One of these guarantees established by the legislator to protect the child's right to defence in the event of removal from the hearing room requires the court to understand the child and inform him of the proceedings taken in his absence so that he has the full opportunity to defend himself and to discuss the evidence against him.

Publicity and confidentiality of hearings in the French Code of Procedure

The principle of publicity is regulated by Articles 306,592 of the French Code of Criminal

[31] Dr. Mahmoud Saleh Al-Adly, Presumptions, guarantees and rights of juvenile defense. Report submitted to the Fifth Conference of the Egyptian Society of Criminal Law, held in Cairo from 18 to 20 April 1992, "New Horizons for Criminal Justice in the Field of Juveniles", Conference Proceedings Group, Dar Al-Nahda Al-Arabiya, 1992, p. 646.
[32] Dr. Hassan Mohamed Rabie, Procedural aspects of the treatment of juvenile delinquents and those prone to delinquency. Report submitted to the Fifth Conference of the Egyptian Society of Criminal Law 1992, Conference Proceedings Group, Dar Al-Nahda Al-Arabiya, 1992, p. 566.

Procedure.
International Covenant on Civil and Political Rights, New York, 16-12-1966
Law No. 2019-222 of March 23, 2019 for Scheduling 2018-2022 and Amendment to Justice Article 306, French Code of Criminal Procedure

The first paragraph of article 306 of the Code of Criminal Procedure enshrines the principle of the publicity of the hearing, in accordance with article 6 of the European Convention for the Protection of Human Rights and article 14.1 of the International Covenant on Civil and Political Rights, which stipulates that everyone has the right to a public hearing. The European Court of Human Rights considers that "the publicity of the hearing is a fundamental principle that [33]protects litigants from the secret hearing beyond the control of the public. is one way to help maintain trust in courts and tribunals."
This means, inter alia, that doors to the courtroom must be opened at the beginning of the hearing and remain open, unless there are exceptions, throughout the proceedings. Publicity must be mentioned in the minutes of the hearings[34]. But it is not necessary to observe publicity at every hearing. [35] All this is limited by the exceptions provided for by law, for any violation of the principle of publicity of the hearing leads to the invalidity of the proceedings of the Code of Criminal Procedure, Article 592, paragraph 3.

Procedural necessity in making the meeting confidential
The status of minors. When the court deems it appropriate, it will prohibit minors or some of them from entering the courtroom Code of Criminal Procedure, Article 306, paragraph 2 [36].
The French legislator has allowed the court to remove the child from the hearing and to conduct the trial in absentia, as stipulated in article "13" of the French February 2 law, "where the court is granted absolute power to exempt the child from attending if the interest of the juvenile so requires.

Accordingly, the French legislature has permitted the same as the Egyptian legislature to remove the accused child from the courtroom. However, the French legislature stipulated a condition for the child's discharge, namely whether the interest of the juvenile so requires. I see this interest in his removal to be represented in not hearing the statements of the litigants from discussing their statements and confronting each other, which may have affected his personality, or if the case before the judiciary had indecent acts. Or otherwise, which makes his removal from the hearing a necessity required by the circumstances of the case.

If the accused child is removed from the hearing on the grounds of procedural necessity. There was no need to give the court the right to remove the child from the courtroom. However, the court removed him from the hearing, in which case his removal would be null and void. Actions taken in his absence are also null and void. All of this is due to the discretion of the

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(34 CASS. Crim. 15 January 2014, No. 13-81-888.
(35 CASS.crim.9 November 1988, No. 88-81.7070-cass. Crim.12 March 2008, n07-86-080.
(36 This principle is regulated by articles Article 306, 306-1, 706-73 Code of Criminal Procedure)
المادة 225-7، 225-9 , 221-12، 221-1 , 221-6، 706-73، قانون العقوبات

court, which assesses the procedural necessity of removing the accused.

The court also has the right to make the hearing secret in the event that if the court considers that the publicity of the hearing poses a danger to order or morality [37], it declares the eighth session secret by a decision issued in a public session. Article 306 of the Criminal Code. Paragraph 1 Hence, if the court decides to make the hearing secret and there is no justification for it, this action shall be invalid [38].

In confirmation of this, Article "404" procedures stipulates[39] that when there is a breach of the order of the session by a person present in any way, the president of the court shall order his exclusion from the session, and in order to implement this decision, if the excluded person opposes the decision, he shall be arrested and imprisoned .... He shall be forced to leave the session by coercive force, based on the order of the President of the Court." Article 405 also stipulates[40] that if there is a breach of the order of the hearing by the accused himself, he shall be excluded. By extrapolating the previous two texts, we find that the French legislator has recognized the exclusion of the accused from the session if he violates the order of the session in any way, and the legislator did not specify the defendant's breach of the order of the session in the confusion like his Egyptian counterpart, but stipulated any method that would cause a breach of the order of the session and this is based on the procedural necessity that requires his removal from the session because his presence in it obstructs the conduct of the trial.

The Criminal Chamber of the Court of Cassation considers that the law leaves it to the conscience of judges to evaluate both the facts and the circumstances that require the reservation of this procedure and its scope[41]. While stipulating that the "sole purpose" of private hearings is to prevent the disadvantages of publicity "due to the nature of the facts of the case in question" and in particular, it was suggested that confidentiality could be declared confidential because of the details contained in the testimony of witnesses during the briefing[42]. Even if he intended to prevent the hearing from proceeding, he could not justify going in camera. In the event of disturbance by the persons present at the hearing, the President shall have the right to use his police power by ordering their expulsion[43].

The hearing is secret for some crimes:

In the case of proceedings on the basis of certain offences defined under article 306, paragraph 3, of the Code of Criminal Procedure, the hearing shall be held in camera if so, requested by the victim, the civil party, one of the victims or the civil parties. The crimes in

[37] BENIAMIN FIORINI lecturer all' university paris VLLL. THE JUDGMENT OF CRIMES, date of 10 furrier 2020 p 4-1-2.
([38] 85.959 and No. 97-80.548.-CASS, crim.21 October 1998, n 97

[39] Article 405 read more this article "is lorded Is troubled at hearing by the prevention of law, it is applied to him the provisions of article 404.

[40] THE prevent, even free, liquid Is expelled from the dirty hearing, Is grader the pulque force, until the end of the debates, at the disposal of the court. LLC Is then renewed at hearing, or the judgment is rendered in as presence".

([41] **CASS. Crim .11December 1968, No. 68-92.858.**

([42] CASS.crim.17 January 1973, No. 72-92.207.

[43] CASS. Crim. 20February 2019, No. 18-82-915.

question are rape, torture, barbarism accompanied by sexual assault, trafficking in human beings and, finally, aggravated procuring under articles 225.7 to 225.9 of the Penal Code. In any case, When the criminal court prepares to sentence one or more of these crimes, detention may only be ordered if the victim, a civil party, a victim or a civil party does not object to the Code of Criminal Procedure, article 306, paragraph 3. It should be noted that the Constitutional Council considered these provisions [44]constitutional.

The court also has the right to make the hearing secret for the trial of crimes against humanity mentioned in the first paragraph of chapter one of Book II of the Penal Code, from the crime of enforced disappearance referred to in Article 221-12 of the Penal Code, from the crimes of torture or atrocities mentioned in articles 222-1 to 222-6 of the said Code, and from the war crimes mentioned in Chapter 1 of Book IV bis of the same law and the crimes mentioned. In Article 706-73 of the Code of Criminal Procedure, the court in the teaching staff, without the assistance of a jury, and issue a verdict in an open court ordering a secret hearing at the time of hearing a witness. Such a decision can only be taken if the court considers that the public testimony of this witness would seriously endanger his life or physical integrity or the lives of his relatives. Code of Criminal Procedure Article 360-1

Similarly, in which the court has the right to order the hearing to be held in camera, article 306 of the Code of Criminal Procedure stipulates that if a rape judge is brought before the court, it has the right to go to a secret session if one of the litigants with the victim so requests. A victim of civil rape may also object to the rape trial before the criminal court behind closed [45]doors.

3. Procedural necessity in dispensing with hearing witnesses

The principle of all trial proceedings is to be oral, to be orally presented in the presence of all litigants and to present evidence to them for discussion, and the court must itself hear the testimony of witnesses and allow it to be examined orally. If the court rejects the litigants' request to hear the testimony of witnesses, it shall cause such refusal. If it refuses without giving a reason for such rejection, its judgment shall be null and void. Because it violated the right of defence. But does the court allow the hearing of witnesses to be dispensed with on the basis of the procedural necessity of not finding the witness, his inability to appear or otherwise? Hence its judgment is considered valid and not invalid. To answer this, this requirement is divided into two branches:

3.1 **Attendance of witnesses before the court**

Testimony is considered one of the important means of proof, because it may be the only evidence existing in the case, and because truthful and accurate testimony may be the best help for the court in forming its belief and judgment. Whereas the rule of orality requires the court to hear oral testimony itself [46]and to allow it to be discussed orally. Accordingly, the legislator

(44 Conseco's. 21 July 2017, decision n 2017-645 QPC.

(45 انظر المرجع السابق BENIAMIN FIORINI lecturer all' university paris VLLL. THE JUDGMENT OF CRIMES ,P 4-1-2

46 Dr. Mamoun Salameh, previous reference, p. 784.

has regulated its procedures and rules in articles 277 et seq. Therefore, in this requirement, we talk about the definition of testimony, its importance, the organization of their presence, and the wisdom of hearing witnesses.

First: Definition of Certificate and its Importance:

Testimony is the expression of the content of the witness's sensory perception of the incident to which he testifies. Therefore, testimony may be a vision or an auditory or sensory testimony depending on the witness's perception. [47]

It was said that it is what a person confesses before a judicial authority about what he has seen, heard or perceived with one of his senses related to the crime [48].

Because of its importance, it is considered one of the anecdotal pieces of evidence on which the Court relies in its judgment. It allows the accused to discuss the witness, which helps the court to form its belief, because the judge's belief may be affected by the confidence suggested by the witness's statements or not suggested , and therefore it is not correct to rule that the statements of a witness of one of the litigants in the case are not true based on the statement of others to the contrary without hearing the testimony of this witness[49], and discussing it in the Governing Council whenever possible.[50]

Therefore, it was said that witnesses are the eyes and ears of the judiciary. Despite this importance of the testimony of witnesses, the judiciary must look at it with [51]caution, because it depends on the truth or lie of the witness, and the witness as a human being is prone to error and forgetfulness, and may even be affected by his social relations or job status if he is an employee. Therefore, it was important for the legislator and the judge to avoid situations that contradict his impartiality and thus affect the integrity of his testimony. So that the judgment that relies on it is respected and appreciated.

In this regard, the Court of Cassation said that the observation in the psychological state of the witness at the time of testimony, and his integrity and frankness, or his evasiveness and disorder, are among the things that help the judge to appreciate his statements rightly.[52]

Second: Procedures for the Presence of Witnesses before the Court:

The appearance of witnesses before the court shall be based on a summons to appear notified to them by a bailiff or a judicial officer.

The summons to appear shall be issued by the Public Prosecution for prosecution witnesses. Defence witnesses are notified at the request of the accused or civil rights official. Witnesses may also be summoned at the request of the victim or the civil plaintiff if the Public Prosecution has not notified them, which is stipulated in Article 277 of the procedures by

[47] Cassation of June 17, 1968, Judgment Series S19, No. 147.
[48] Cassation of February 6, 1978, Collection of Cassation Judgments Q29 No. 25 P36 - Cassation of December 15, 1993 Collection of Cassation Judgments Q44 No. 181, P. 1164 - Cassation of January 5, 1998 Appeal No. 2308 of 65 Unpublished judgments.
[49] Cassation of October 14, 1993, Series of Cassation Judgments Q44 No. 126 p. 814.
[50] Cassation of 21/4/1947 Collection of Legal Rules Part 7 No. 349 p. 331.
[51] Dr. Amal Othman, previous reference, p. 556.
[52] Cassation of October 18, 2009, Appeal No. 11609 of 72 - Cassation of February 8, 2001, Appeal No. 16862 of 68.

saying, "Witnesses shall be summoned to appear at the request of the litigants."

The summons to appear twenty-four hours before the hearing, taking into account the dates of the distance, but this time may be dispensed with in the event of flagrante delicto, they may be assigned to appear at any time, even orally, by a judicial officer, and the witness may attend the session without notice at the request of the litigants.

During the hearing of the case, the court may summon and hear the statements of any person, even by issuing an arrest warrant, if necessary, and may order his summons to appear in another session Article 277 of the Procedures.

Therefore, if the court deems it necessary during the hearing of the case to hear the statements of a specific person who has not been declared as a witness, or if the litigant has waived the request to hear him, but the court deems it necessary, it may summon him and hear his statements, and may resort to issuing an exact order and habeas corpus if he refuses to appear despite the warning against him. It may also order his arrest and summons, if necessary, even in the absence of the previous announcement, and may also order that he be summoned to appear at Another [53] session.

Third: The wisdom of hearing witnesses:

The original is due in criminal trials. Every criminal court must conduct a new investigation of the evidence and re-examine witnesses and experts vis-à-vis the litigants[54]. This is called a final investigation as distinct from a preliminary investigation conducted by the evidentiary and preliminary investigation authorities. This is because the testimony of witnesses in preliminary investigations or in the evidence collection records does not relieve the court of its duty to hear them before it, the accused has the right to hear and discuss the statements of the prosecution witnesses who have already been heard in the preliminary investigation and others at the stage of the preliminary investigation or before the court.

Therefore, the court cannot deprive the accused of this right on the pretext that the witness has already made his statements in the preliminary investigation, because if the court does so, it will have violated the defendant's right to defense, and it will also have violated the principle of orality of the pleading, which in turn leads to the invalidity of its verdict[55]. This is because the trial is the last chance to review the evidence and remedy the shortcomings or negligence that may have been missed by the preliminary investigation authority, and the trial is the only opportunity Therefore, including hearing witnesses again.[56]

It is prudent to hear witnesses that the Court's conviction of the charge or lack thereof should be derived from the confidence that the witness's statements suggest or not, and from the impact that these statements have on the judges as they listen to them themselves. Moreover, the hearing of the witness in a public hearing is re-in-person. If he has already been heard, something often alerts him to the seriousness of his statements, which leads him to insist on them if they are true or reversed. about her if she is a liar.

[53] Dr. Mamoun Salama, previous reference, p. 785.
[54] Dr. Raouf Obaid, Principles of Criminal Procedure, previous reference, p. 523.
[55] Cassation of November 10, 1993 Appeal No. 22690 of 61.
[56] Dr. Raouf Obaid, previous reference, p. 523.

In application of the accused's right to be heard. Ruled that criminal trials are based on oral investigations conducted by the court in the presence of the accused and hear witnesses as long as they can be heard, they are not in a solution of this except with the express or implicit consent of the accused or his defender, so that if it does not do so despite the defendant's insistence on hearing them before the two levels of litigation, it will have violated the principle of orality, if the court has turned away from the appellant's request to hear the statements of witnesses in order to achieve his defense without justifying Its conduct in heeding this request, its judiciary is defective and involves a violation of the right of defense[57]. However, if the accused does not follow the path laid down by the Code of Criminal Procedure in summoning the witnesses who are requested to be heard before the Criminal Court, the court shall not be discouraged if it refuses to hear them.

Similarly, if the accused insists on the presence of one of the absent prosecution witnesses, the court may not refuse to answer this request and rely on his statements to convict the accused[58].

Accordingly, the court's duty to hear witnesses is determined by the fact that their testimony is based on facts that the court appreciates to be serious and important to the subject matter of the case, and if it considers that they deviate from the subject matter of the case, it may prevent the witness from giving them, and the court must also prevent questions from being asked to witnesses that it deems inadmissible because they may not be directed to them. This is stipulated in Article 273 of the Code of Criminal [59] Procedure.

The court has the duty to hear the witnesses of the incident, who witnessed the crime with any sense of their senses, whether they are prosecution witnesses or defence witnesses, even if their names do not appear in the list of evidence and whether or not the accused announces them.

If the court has violated the rule of orality and does not hear the witnesses before the two levels of litigation, despite the accused's insistence on hearing them before a court of second instance, the accused may appeal in cassation for this aspect alone, which is the procedure that has been taken, which is a violation of the rule of oral procedures [60].

3.2 Authority of the Court to dispense with hearing witnesses for necessity

If the principle decided based on the rule of orality is that witnesses must be heard and discussed by the litigants and the court in the session, so that what is recorded in the preliminary investigations is not satisfied - but the street allows the court to dispense with hearing witnesses, and only to refer to what the witnesses decided from the testimony of the minutes of evidence or preliminary investigation. This is because there is a state of necessity that allows the court to dispense with hearing witnesses again because they are not present, or the witness no longer remembers the incident, and then the court was allowed to dispense with hearing them again, so as not to disrupt the trials on the pretext of the absence of a witness or otherwise. There are cases where the law allows the court to dispense with hearing witnesses. This requirement is

[57] Cassation of May 24, 1965, Collection of Cassation Judgments, Q16, p. 501, No. 101.
[58] Cassation 20/1/1958 Cassation Judgments Q9 No. 10 p. 48.
[59] Article 273 Procedures.
[60] Dr. Raouf Obaid, Principles of Criminal Procedure, previous reference, p. 527.

then broken down into the following:

First: The witness could not be heard.

Second: The acceptance of the accused or his defender to dispense with hearing the witness.

First: The witness could not be heard:

The legislator allowed the court to dispense with hearing the witness, in the event that it is not possible to hear him for any reason. Article 289 of the Procedures stipulates that the court may decide to read the testimony given in the preliminary investigation, in the minutes of evidence gathering or before the expert, if the witness cannot be heard for any reason. The phrase "inability to hear a witness" includes situations in which the witness is unable to testify before the court. If he died after the preliminary investigation and before the trial hearing, or if it was not substantiated,

The court may not fail to hear the witness if he is not inferred unless all means are taken to re-notify him after assigning the prosecution to search for his place of residence. [61]

In application of this, since it is established that the court responded to the request of the appellant's defender to adjourn the case to discuss the victim, the witness, but it was not possible to identify him, so it would not be discouraged if it decided on the case without hearing him and it would not have erred in the proceedings or violated the right of defense.[62]

The same applies if the witness is one of those authorized to refrain from testifying and chooses to use this license and refrains from testifying, such as if he was originally the accused, his descendant, one of his relatives up to the second degree, or he did not come to his place of residence in order to notify him of his presence, or he was traveling outside the Republic, or he was mentally ill. Or other reasons that prevent him from hearing the meeting.

The wording of the phrase "inability to hear the witness" includes all cases in which the witness does not appear before the court, whether for compelling reasons or because he refuses to appear, as well as his refusal to testify [63].

It is also impossible to hear the witness if the witness attends the hearing and decides that he no longer mentions one of the facts mentioned in his testimony in the preliminary investigations, as well as if the testimony he gave at the hearing contradicts his previous testimony and statements Article 290 of the Procedures.

In application of this, it was ruled that "the failure of a witness to appear despite the adjournment of the hearing of the case due to his notification does not help merely because his hearing has become impossible, since the Code of Procedure has set out in Articles 279 and 280 the procedures to be followed by the court in the event of the witness's failure to appear after being assigned to him and it is permissible for it to fine him and order his arrest and

[61] Cassation of February 2, 1948 Collection of Rules Part 7, No. 429, p. 487 – Cassation of December 3, 1956 Collection of Judgments S7 No. 339 P.1226 – Cassation of February 3, 1974 Q25 No. 20 P91.

[62] Cassation of April 20, 1982, collection of cassation rulings, Q33, Appeal No. 1599 of 52, p. 513.

[63] Quoted from Dr. Hassan Sadiq Al-Masafumi, Al-Maracay in the Code of Criminal Procedure with its legislative developments, explanatory notes and provisions in one hundred years, Al-Maaref Foundation in Alexandria, 1990, p. 830.

summons [64].

However, if the hearing of the witness is not impossible, his testimony may not be dispensed with, as the mere failure of the witness to appear does not mean that it is impossible to hear him based on the availability of a state of procedural necessity that gives the court the discretion in this, and so that the courts do not delay in adjudicating cases and thus leads to prolonging litigation, the court cannot rely on this and adjudicate the case because it has violated the rights of the accused to hear the witness again, Especially since the legislator gives the court the authority to order the arrest of a witness who fails to appear and bring him Article 279/2 / "Procedures.

In application of this, he ruled that the illness of the witness alone is not sufficient to justify not hearing him when the defence requests to be heard. He also ruled that the witness should be absent abroad for treatment for a limited period and the accused insisted on hearing him, so the court must wait for the witness to return [65] to hear him. Or he was sent to a study mission [66]abroad, as this absence does not preclude his hearing because the Code of Procedure regulates the manner in which he is notified. Also, there is no excuse to prevent the witness from being heard if he is inside the prison[67].

Hence, the inability to hear the witness in the examples mentioned is that the court dispenses with summoning him and hearing the testimony from him personally, and decides to read the testimony given by this witness in the preliminary investigations. It should be noted that the reading of the testimony given in the preliminary investigation is not mandatory for the court in the event that the witness cannot be heard, as long as the evidence obtained from it is open to discussion at the hearing, and its recitation is obligatory only if requested by the accused or the defender.[68]

However, if the accused is aware of it and discusses it in the hearing, he may not take the mere fact that he did not read it as a face to appeal against the judgment issued against him on the basis thereof[69].

The court shall have the discretion to decide to read the entire testimony if the witness

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[64] Cassation of April 29, 1982 Collection of Cassation Judgments Q33 Appeal No. 1242 of 52 S.C. p. 540.

[65] Cassation of January 20, 1958, Collection of Cassation Judgments, S9, No. 10, p. 48.

[66] Cassation of May 21, 1962 Collection of Judgments of the Court of Cassation Q13 No. 122 p. 481 - Same meaning March 26, 1973 Q24 No. 86, p. 412.

[67] In application of this, it was ruled that the principle of criminal judgments is that they are based on the oral investigation conducted by the court at the hearing and in which witnesses are heard as long as they can be heard.
Street in the rules of the trial because it is a bug whatever it is except by waiver of the litigants explicitly or implicitly and what is required by criminal justice to grant all litigants equal rights in terms of providing evidence and confronting it, which has become with him one of the essential foundations of the criminal trial The right of the appellant to confront the evidence provided by the Public Prosecution in proof of the crime and the right to refute it with the evidence of denial provided by him, and the presence of the witness in prison does not make his question impossible, The court had to wait for him to be brought from him and hear him in another session, and it could have taken all possible means to bring him from him and hear his testimony, as long as it was not proven that it was impossible to find him and that it was impossible to question him, but since it did not respond to the appellant's request to hear his witness, to whom it authorized his declaration, he announced it and held on to hear it at the end of his pleading, and it was not proven that he refrained from hearing him. Its judgment will be defective and cassation of April 16, 1995, collection of cassation judgments Q46 p 730 No. 107.

[68] Cassation of January 20, 1964 Collection of Judgments of the Court of Cassation Q15 No. 12 P57 - Cassation 25 /12/1980 S31 No. 217 P1126.

[69] Dr. Amal Othman, previous reference, pp. 575-576.

is unable to attend, and the court may decide to read the part relating to the incident that the witness decided that he does not remember, or in which his testimony contradicts his testimony in the preliminary investigation or the evidentiary [70] report.

The examples cited in the inability to hear a witness, which allowed the court to decide to read out the testimony given in the preliminary investigations in advance because the witness could not be heard again, give the court the right to complete the trial proceedings and to adopt pre-trial testimony based on the procedural necessity that allowed it. In order not to disrupt the trial proceedings, because one of the principles of the trial is the speed of the procedures and not to disrupt them. However, it is required that the court has exercised full care in searching for the witness and that it is in no hurry to leave the witness until justice is served. The principle of oral pleading was not only decided in the interest of the litigants, but also in the public interest in the proper functioning of the judiciary.

Second: The acceptance of the accused or his defender to dispense with hearing the witness:

Dispensing with hearing the witness at the hearing is based on the consent of the accused or the defender. It is a case added after the amendment of Article "289" procedures by Law No. 113 of 1957. [71] Accordingly, the preceding article stipulates that "it is permissible to dispense with testimony by reading the witness's statements in the preliminary investigation or in the minutes of evidence collection or before the expert if the accused or his defender accepts it." Consequently, such dispensation should have valid reasons for justifying it derived from the circumstances of the case, and from this interest the desire of the accused not to obstruct the adjudication of the case, if the insistence on hearing witnesses or one of them obstructs it. Or that the wisdom of discussing the witness orally [72] at the hearing is not available, or that it is achieved as soon as this testimony is read at the hearing. The dispensation of hearing the witness according to the above is only an application of the availability of procedural necessity that gave the judge the right to dispense with hearing the witness if the accused or the defender accepted it, and this procedural necessity that allowed the court to carry out such a procedure lies in the fact that the court considered that the wisdom of hearing and discussing witnesses is not available, or that it is achieved by simply reading the testimony at the hearing. If the court does so, it will be in accordance with the procedural necessity requirements. Because when the court decides to read the testimony in the preliminary investigation report and dispense with hearing it again, this did not lead to a breach of the elements of procedural work, such as if the witness, for example, was completely non-existent, or no longer remembers the incident, so the

[70] Dr. Mamoun Salama, previous reference, pp. 735-736.

[71] The explanatory memorandum justified this amendment as "..... It is established that criminal trials must be based on the oral investigation conducted by the court at the hearing. However, the reality of the situation has shown that the issuance of this judgment on its previous face would have hindered the adjudication of many cases unnecessarily, as if the statements of the witness or witnesses were taken for granted by the litigants, and the usefulness of obliging their presence to repeat them disappears. Therefore, it was ruled that "it is not permissible to pay attention to hearing witnesses unless it is considered that the purpose of hearing them is to look and spite" Cassation 3 December 1991, Series of Cassation Judgments Q42 No. 177, p. 6277.

[72] Dr. Raouf Obaid, previous reference, p. 528.

court decided to take that measure not to disrupt the adjudication of the case, and that when the court carried out that procedure, it had no other way to carry out this procedure and complete the lawsuit procedures except to dispense with hearing the witness and reading the testimony that was read in the preliminary investigations. The accused or the defender accepted it as if the witness's statements had been taken for granted by the litigants. Or if the purpose of hearing them is to look at the case, the court shall be in accordance with the correct procedures taken by the law.

As for authorizing the court to dispense with hearing witnesses altogether, whether they appear or are absent. It is not permissible to amend it, no matter how much the accused or his lawyer accepts. This is because the accused cannot ask the court to rule on his conviction if it is not satisfied with this conviction, or if he paves the way for this conviction by dispensing with hearing the prosecution witnesses in the case altogether if such dispensation is not justified by its circumstances, and the availability of circumstances that satisfy the conscience of the judge with the validity of the witness'[73]s statements.

The acceptance of the accused or the defender to dispense with hearing witnesses may be explicit or implicit in the conduct of the accused or his defender in an indication of this, as if the defender is silent about adhering to the discussion of the witness in his presence, and continues to plead without insisting on requesting to be heard[74].

He ruled that if the accused did not adhere to his request at the last hearing, but pleaded in the case without reference to the request to hear the witness, this implied that he withdrew this request[75].

It also ruled that the court has the right to dispense with hearing prosecution witnesses if the accused or the defender expressly or implicitly accepts this, without preventing reliance on their statements made in the investigations, as long as these statements are on the table at the hearing[76.]

The consent of the accused to waive the hearing of the witness does not preclude the right of the court to insist on hearing the witness when necessary, because this waiver does not exceed the effect of the mere failure of the accused to listen to the witness, there is no value for this waiver if the Public Prosecution insists on hearing the witness, in this case the Public Prosecution has the right to hear the witness in line with the principle of oral pleading, as well as the principle of equality between litigants in procedural rights[77].

However, the accused may revoke his waiver of hearing the witness and insists on the request

[73] Dr. Raouf Obaid, op. cit., pp. 528-529.
[74] Cassation of February 5, 1963, Collection of Judgments, Q14 No. 21, p. 97.- January 27, 1964, S15 No. 18, p. 87.- May 3, 1965 Q16 No. 84, p. 407.- May 26, 1974 Q25 No. 110, p. 514.- January 12, 1975 Q26 No. 8, p. 31. – January 5, 1976 Q27 No. 4, p. 33.- March 8, 1990 Appeal No. 32759 of 59 - March 21, 1991 Appeal No. 320 of 60 S.- February 6, 2002 Q53 No. 45, p. 397.
[75] Cassation of December 30, 1958, Collection of Judgments S9 No. 276, p. 1138.
[76] Appeal No. 2438 of 55, session of 22/10/1985, Q36, p. 918.
[77] Dr. Ahmed Fathi Sorour, Mediator in the Law of Procedure, previous reference, p. 1275.

to hear him as long as the pleading is still ongoing [78].

The waiver of hearing witnesses must have been issued by the accused, the litigants or the civil plaintiff in accordance with the provisions of Article 289, and in application of that, the Court of Cassation ruled in waiving the hearing of witnesses that it is equal to that on the part of the accused or the plaintiff of civil rights, as it is not reasonable for the latter to have more rights than the accused[79].

If the accused or the defender agrees, the Court has stipulated that the Court has orally investigated the discussions by hearing the witnesses who attended the hearing, and accordingly if the witnesses who have not heard themselves are the only evidence in the case, the Court may not dispense with hearing them as long as their presence is possible even if the accused or his defence is accepted. Because the orality of the trial is not so much a guarantee for the litigants as it is a guarantee for the proper administration of justice[80].

If the two witnesses provide an excuse to the court in the event of their failure to appear to testify, and the defense requests the court to postpone until the two witnesses attend and be able to discuss them, the court rejects this request, making the judgment tainted by the defect of breaching the right of defense, which requires its reversal, because the conduct of the proceedings in this way does not achieve the meaning intended by the legislator in Article 289[81].

Therefore, the court ruled that the validity of the trial proceedings did not affect the court's order to continue the detention of the accused until the hearing to which the case was adjourned, as this would not have prevented the defense from his right to request an adjournment of the hearing of the case to hear witnesses, but he did not do so for the unacceptable reason that he was forced to give up hearing them. His obituary on the ruling for this reason is not valid[82].

In the event that the accused or the defendant's defender expressly or implicitly consents to the dispensation of hearing witnesses as already mentioned. The court shall be obliged to recite his statements evidenced in the minutes of evidence or preliminary investigation, and this obligation is an alternative to hearing witnesses. The Court of Cassation therefore stated that the purpose of the reading of the testimony was to alert the accused to defend himself. The Court of Cassation has stipulated that the obligation to recite the statements of the absent witness be requested by the accused or his defender[83].

If the court may dispense with hearing witnesses at the hearing based on the acceptance of the accused or his defender, the failure to hear them shall not prevent the court from relying on their statements in preliminary investigations whenever they are on the table for discussion

[78] Cassation of January 26, 1970, Judgment Series S21 No. 42, p. 176. – October 24, 1991, Appeal No. 8280 of 60. – February 20, 1992 Appeal No. 17672 of 60.– April 2, 2002 Q53 No. 94, p. 577. The Court of Cassation ruled that the descent of the defense in the first place from hearing witnesses does not deprive him of this descent if he is not acquitted.
[79] Cassation 7/4/1969 Collection of Judgments S20 No. 95, p. 449.
[80] Dr. Mamoun Salama, op. cit., pp. 734-735.
[81] Cassation 6/3/1961 Cassation Judgments Q12 No. 57 p. 304.
[82] Cassation of May 16, 2004, Series of Judgments, S55, No. 71, p. 510.
[83] Cassation of February 2, 1974 Collection of Judgments Q25 No. 20 P91 – December 27, 1976 Q27 No. 225, p. 1004.

and discussion at the hearing [84].

In French law, in trials in absentia, the court is not allowed to hear witnesses. Accordingly, Article 632 of the French Criminal Procedure stipulates that "the referral order shall be read out in the session, and the court shall hear the statements of the Public Prosecution and verify the accused's notification of the referral order, as well as the minutes proving the publication and publicity procedures, and then decide on the case." [85] Rather, it must judge the requirements of the papers. Egyptian law differs from French law, as Egyptian law allows the court to hear witnesses if it deems it necessary to hear them. Unlike French law, which does not allow them to be heard about trials in absentia, but rather rules the case on the papers submitted in the case.

Results:

1. For the existence of a state of procedural necessity, many of the conditions and controls set by jurisprudence are required in order for such a procedural act to be legitimate, and therefore this act must be the only means to do it, otherwise it will not be able to do it in the future, and that there is an immediate and real danger in order to be able to violate the general principle, there must be proportionality between the act and the existing danger.

2- The legislator has allowed the court the right to exclude the accused from the session, if his presence violates the session, as he is entrusted with its management, he may remove from the session whoever deems that his presence disrupts the conduct of the session, not only that, but may also remove from it anything that would impede the conduct and good procedures of the trial. With some guarantees necessary for his deportation, such as the inadmissibility of deporting his defender, as well as informing the accused of what happened in his absence. All That is only an application of procedural necessity.

3. The child may also be removed from the trial session if he is a defendant, and the procedural necessity lies in his removal in the interest of the child because of the existence of a state of constant anxiety and tension within the trial sessions, which may affect his psychological state and weaken his personality.

4. The court shall have the right to seek the assistance of an interpreter during the trial to translate the trial if the accused or witnesses do not speak Arabic or do not understand the language of the court, and therefore the use of an interpreter is necessary to facilitate the work of the court and access to the truth.

[84] Cassation of October 16, 2008 Appeal No. 13654 of 71 – November 24, 2008 Appeal No. 182 of 69 – February 28, 2010 Appeal No. 949 of 78 – March 10, 2010 Appeal No. 25391 of 73

[85] Dr. Ahmed Shawky Abu Khatna, Criminal Judgments in Absentia, Dar Al-Nahda Al-Arabiya, 1987, p. 117 and beyond, Dr. Muhammad Jaber Abdel Azim Abdel Qader, The absence of the accused in the trial stage in the Comparative Code of Criminal Procedure and Islamic Sharia, PhD thesis, edition 1997, p. 365.

Recommendations:

1- The procedural necessity must be specified by fixed legal texts, so that working without provisions does not lead to a departure from the principle of legality of crimes and penalties.

2- We hope that the legislator will stipulate the need to seek the assistance of an interpreter in the event that one of the litigants or witnesses does not speak or does not understand Arabic, as well as setting a penalty for the translator who deliberately lies in his translation.

3- We also hope that the legislator will intervene by amending Article 270 on the removal of the accused from the hearing due to interference from him, and to determine the nature of the interference and that it is serious, and that he will also be deported if he issues everything that hinders the disclosure of the truth and the proper conduct of proceedings.

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