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PRELIMINARY INVESTIGATION PROCEDURES AND PROCEDURAL NECESSITY COMPARATIVE STUDY

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ABSTRACT

The procedural necessity in the Code of Procedure is for the competent person to violate the form prescribed by the law, because there is a serious and imminent danger threatening one of the interests regulated by the procedural rules, and the need for him to carry out the violating action immediately, otherwise it is not possible to carry it out afterwards, to the detriment of the interest. This is after balancing between two interests, and therefore the public interest prevails.

In case of necessity and fear of not doing so, experts may be used in technical matters, and their work may be carried out without the presence of the investigator or the litigants. In addition, in case of necessity, experts who are not on the lists of experts registered with the judicial authorities may be sought if circumstances so require. This is confirmed by the French legislator in that an expert may carry out his work without the presence of the investigating judge.

There was also procedural necessity when the legislator gave the investigator the right to interrogate or confront the accused with other accused persons or witnesses without the presence of a lawyer, in the event of flagrante delicto, as well as the fear of losing evidence.

Based on the foregoing, the legislator must provide for a case if the person delegated is prohibited from interrogating except in the presence of his lawyer and his consent to do so, and that the interrogation shall be carried out on the basis of a case of necessity without the presence of his lawyer.

Keywords: Preliminary investigation - procedural necessity - public international law - constitutional and criminal law

1. Introduction:

The necessity is one of the stable legal systems in all branches of law, so care was not limited to the field of criminal law, both substantive and procedural, but extended to other laws such as public international law, constitutional and administrative law, civil law, commercial law and others, which is an exception to the original.1

The theory of necessity represents a departure from the legal texts with the aim of reconciling and coordinating the conflicting interests that arise in critical circumstances that the texts are

1Abdul Hakim bin Salem bin Saif Al-Harthy, The Idea of Necessity in Criminal Procedures, PhD Thesis, Mansoura University, Faculty of Law, 2021, p. 6.

unable to address 2 The pillar of the organization of criminal procedures in the State of law is to reach a kind of balance between the interests of society in safeguarding it from crime and reducing its aggravation and the interests of individuals in ensuring their rights.3

It is necessary to take measures that collide with the origin of the innocence, such as the arrest or pretrial detention procedure on the accused4, so we are then in the process of a conflict between two basic interests, the first interest is the interest of the individual, and the second interest is the interest of society, which is the interest of investigation and collection of evidence, which necessitates the need to take some precautionary measures in the face of the accused, and then the public interest side outweighs the interest of the individual 5 The street has prevailed in the interest of society allowed to prejudice this freedom in order to protect the public interest by detaining the accused in pretrial detention as required by the interest of the investigation to prevent the influence of the accused on witnesses or tampering with evidence and to avoid the possibility of escaping from the implementation of the sentence that may be issued against him in addition to protecting him from retaliation from the victim and his family, however, the street did not overlook the interest of the accused where he set conditions for imprisonment and confined to short periods to ensure that the freedom of the accused is not taken away except in the limited scope that required by the interest of the investigation 6

This investigation assumes parity between the parties to the case, by the existence of guarantees for the accused in the face of the means of prosecution, and in view of the importance and necessity of the investigation procedures, a fundamental problem arises, which is the coordination between two interests between the interest of society in the administration of justice and the interest of the accused to preserve his dignity and freedom until a conviction is issued.

The preliminary investigation includes many of the procedures taken by the investigating

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2See: Mohamed Al-Saeed Abdel Fattah, Procedural Necessity in the Code of Criminal Procedure, Cairo, Dar Al-Nahda Al-Arabiya, 2011, p. 6.

For 3more information, see Youssef Qassem, The Theory of Necessity in Criminal Jurisprudence and Positive Law, Cairo, Dar Al-Nahda Al-Arabiya, 1993, p. 584, as well as Bassem Muhammad Ahmed Al-Hagrasin, The Theory of Necessity in Islamic Sharia and Constitutional Law, PhD Thesis, Mansoura University, Faculty of Law, 2014, p. 19, and French jurisprudence has also taken the theory of necessity, but it has refined it so that it rejected the concept adopted by German jurisprudence, and two trends have emerged in French jurisprudence about the theory of necessity, one bestows it on a legal concept and the other It gives it a realistic concept, and the two directions agree to subject the theory of necessity to a number of controls. For more details see/
John Crabb: The French civil code “revised edition as amended to 1 July 1994", Rothman and and co,1995.

4See Ibrahim Al-Shahat Lotfi Abdullah, Pretrial detention and its importance in preserving crime evidence, PhD thesis, Mansoura University, Faculty of Law, 2018, p. 129

Ahmed 5Lotfi El-Sayed Marei, Problems of Strengthening the Principle of the Origin of Innocence at the Trial Stage, research published in the Judicial Journal, Kingdom of Saudi Arabia, Sixth Issue, March 2013, p. 67. See also / Mohamed Sobhi Saeed Sabah, The Theory of Necessity in the Code of Criminal Procedure, a comparative study, research published in the Journal of the Egyptian Society for Political Economy and Statistics, Volume 106, Issue 520, October 2015, p. 459

6 See Mahmoud Naguib Hosni, Explanation of the Code of Criminal Procedure according to the Latest Legislative Amendments, revised by Dr. Fawzia Abdel Sattar, Cairo, Dar Al-Nahda Al-Arabiya, Part One, 2011 edition, paragraph 656, p. 655, as well as Muhammad Eid Al-Gharib, Principles of Criminal Procedure, without a publishing house, Dar Al-Nile Press, 2008, p. 422, and see Wajdi Shafiq Farag, Pretrial Detention and Mandatory and Permissible Release from the Scientific and Practical Perspectives, Cairo, Walid Haidar Press for Publishing and Distribution, 2006, p. 26.

authority, including inspection and inspection, listening to witnesses, monitoring of conversations, interrogation and confrontation or other procedures, but there is a procedural necessity that requires departure from the general principle and the law has set controls governing them so as not to be subject to whims and subject to the control of the trial judge, who confirms the existence of necessity and then the procedure is valid and all that resulted from it, but if the judge decides that there is no procedural necessity, what the person has done The procedure is null and void and therefore any procedure on which it is based is null and void.

1.2 Importance of the study:

If the theory of necessity has received ample luck from legal studies in the field of civil law, constitutional law and penal law, it did not receive sufficient luck in the field of criminal procedure law, especially with regard to the idea of necessity in the preliminary investigation and accordingly the researcher seeks to achieve the following objectives:

- The subject of the study acquires great importance, because it is considered one of the new topics, and its importance appears through the legislation and laws that regulated some of them, as well as its importance at the level of jurisprudence and judicial rulings.
- The importance of the study is also due to the development of a complete theory independent of its provisions so as not to resort to necessity in the Penal Code.
- Its importance lies in knowing the availability of procedural necessity in the procedures taken at the investigation stage or not, and in order to reach knowledge of what is considered procedural necessity and what is not.

1.3 The problem of research:

In his review of the study, the researcher faced many difficulties and problems, as follows:

The difficulty of research is due to the interest of the majority of studies in examining necessity in the Penal Code, without addressing it in the Code of Criminal Procedure. Among the difficulties faced by the researcher is the lack of studies and specialized legal references that addressed this subject, as well as the absence of judicial applications and the presence of legislative contradictions in many aspects related to the whole study.

1.4 Research Methodology

This study depends mainly on the confusion between the descriptive analytical and comparative approaches, by addressing all aspects related to the subject of the study, by extracting theoretical ideas from various legal references, and from research and scientific theses related to the subject and its historical developments, and analyzing and comparing it with other laws, and the position of both jurisprudence and the judiciary of them to be our study according to the origin in Egyptian law and in comparison with French law for the purpose of standing on points of disagreement and agreement and the position of jurisprudence and the judiciary from eavesdropping on Telephone conversations, and the importance of necessity at the stage of preliminary investigation and the legality of monitoring conversations with the permission of the judiciary, as well as the security authorities and procedural criminal protection for telephone conversations to reach the best legal texts.

1. The expert commences his work without the presence of the investigator or litigants

The aim of the investigation is to get to the truth. However, this fact may be hindered by technical issues that the investigator himself cannot adjudicate because their disclosure requires special knowledge that is not available in his person7, but needs people with expertise in purely technical matters, the so-called experts. Accordingly, the researcher divided this requirement into two branches:

Subchapter I: The authority to investigate the use and presence of experts.

Subchapter II: The extent to which the expert can carry out his work without the presence of the investigator or the accused.

2.1 Power to investigate the use and presence of experts

Article 85 of the Procedures stipulates that "if proving the case requires the assistance of a doctor or other expert, the investigating judge must attend the time of work and observe it, and if it is necessary to prove the case without the presence of the investigating judge due to the need to carry out some preparatory work, repeated experiments, or for any other reason, the investigating judge must issue an order indicating the types of investigations and what is intended to prove his condition, and in all cases the expert may perform his mission without the presence of the litigants."

Article 88 of the Egyptian Code of Criminal Procedure also stipulates that the accused may seek the assistance of a consultant and request access to the papers and all other previously submitted to the expert appointed by the judge, provided that this does not result in delaying the proceedings.

By extrapolating the texts related to experts and using them, it becomes clear that expertise means expressing a technical opinion from a person specialized in an incident of importance in the criminal case 8 , and this person must be a member of one of the professional associations to which he belongs. Or within the lists of experts in the judicial authorities 9

Concept of experience:

It has been defined by an aspect of jurisprudence as "that expertise is a procedure related to a subject that requires knowledge of technical information in order to be able to extract evidence from it [10].

He went on to define it as "expressing a technical opinion from a technically competent person regarding an incident of importance in the criminal case [11].

Another aspect of jurisprudence defines it as "technical advice on certain matters whose assessment requires technical knowledge or scientific know-how that the investigator does not

7Referred to by Dr. Abdul Raouf Mahdi, Explanation of the General Rules of Criminal Procedure, Rose Al-Youssef Press, 2008, p 531 - Dr. Adel Ghanem, Experience in the Field of Criminal Evidence, Public Security Magazine, October 1968.

8Dr. Mahmoud Najib Hosni, Explanation of the Code of Procedures, 1998 edition, p. 474

9g . Stefani, g. LeVasseur. B. BOUC. "Criminal Procedure;2000. p. 371, b. Bouloc and h. Metropoulos, criminal law and criminal procedure, sire, coll. integral concours, 22nd ad., 2020.

[10] Dr. Mamoun Salama, Criminal Procedures in Egyptian Legislation, Dar Al-Fikr Al-Arabi, 1988, p. 335.

[11] Dr. Mahmoud Najib Hosni, previous reference, p. 474.

have [12].

French jurisprudence has defined it as "technical knowledge of certain matters beyond the competence of the investigating judge [13].

The work of expertise before the judicial authorities is regulated by Law No. 96 of 1952, and Article 18 of this law has set out the conditions that must be met by the expert. [14]

Rules for secondment of experts:

If the investigating authority deems it necessary to seek the assistance of an expert to examine a specific case, it shall appoint an expert to submit his technical opinion, in which case the following rules must be observed:

1. The investigator must attend the work of the expert and observe the expert in what he is doing. Article 85 of the Code of Criminal Procedure stipulates that the investigating judge must be present and the expert must carry out his work under the supervision of the investigating authority.
2. The presence of the accused and his lawyer and the exercise of expertise. This is their right permitted by Article 85 of the Procedure.
3. The judicial expert shall take the legal oath and this is one of the guarantees established in the field of expertise in order to ensure that he performs his experience without doubt.
4. The litigants shall have the right to dismiss the seconded expert if there are strong reasons for doing so. According to Article 89, the submission of the application requires that the judicial expert not continue his work unless the state of urgency and upon an order of the investigating authority [15]continues.

Accordingly, Article 85 stipulates that the investigating judge must attend at the time of the expertise's work and their work shall be under his supervision.

In France, it may require the use of experts to decide on a technical or scientific issue during the investigation, so French law allowed the investigating judge to initiate this procedure automatically in articles "156 to 169" French procedures, and the experience included asking questions to the accused based on the judge's approval, or including a physical examination of the accused [16.]

Article 165 stipulates that the judiciary of the investigation or trial may, on its own initiative, or at the request of the Public Prosecution, or litigants, seek the assistance of experts when it encounters a technical issue, and the parties or the Public Prosecution must specify in their request the technical issues that need the assistance of experts, and when the investigating judge

[12] Dr. Amal Osman, Experience in criminal matters, a comparative study, PhD thesis, Cairo University, 1964, p 29

[13] Dr. Ahmed Abdel Hamid El-Desouky, Substantive and procedural protection of human rights in the pre-trial stage, a comparative study, Al-Maaref Publishing House, PhD 2009, p 595.

[14] The text of Article 18 stipulates that whoever is appointed to expert positions must: 1- To be an Egyptian with full civil capacity. 2- To have a bachelor's degree or a bachelor's degree from an Egyptian university in the subject of the department in which the appointment is requested or a certificate considered equivalent to this degree from a recognized scientific institute.3- To be licensed to practice the profession of the branch in which he is nominated for appointment. 4. He should not have been sentenced by the courts or the disciplinary board for a matter involving moral turpitude. 5- To be of good reputation. No one may be appointed to such posts until after ascertaining the adequacy and suitability of the work of the section in which he is due.

[15] Dr. Mamoun Salameh, previous reference, p. 337, Dr. Abdul Raouf Mahdi, p. 536.

[16] Dr. Ahmed Abdel Hamid El-Desouky, previous reference, p. 657.

deems that there is no need to seek the assistance of experts, he must issue a reasoned decision within a period not exceeding one month from the date of receipt of the request.
Article 81 of the French state specified that experts should carry out their mission under the supervision of the investigating judge or the other judge of the court who ordered the use of experts. 17
One of the guarantees established by French law for the accused is the necessity of announcing the expert report to express their observations, and to stand from them a certain position that suits him, whether in favor or rejection, and to request the assistance of other experts who may give an opinion contrary to the first opinion Article "167" French procedures. It is customary for the original experts to be appointed from among those on the roster of experts who have already taken the oath, but if it is necessary to appoint an expert who is not on the roster, French law requires that he take an oath before he begins his expert work, and therefore there is a state of procedural necessity that allowed the appointment of an expert not included in the roster and whose opinions are to be applied[18].
It was ruled in France that if the assignment of an expert did not meet the conditions required by law for him to carry out his work, his work would be null and void. 19
2.2 **The extent to which the expert can carry out his work without the presence of the investigator or litigants**

The principal is the presence of the investigator during the performance of the expert for his work and his supervision in accordance with the text of Article No. 85 procedures, but the expert may perform his task without the presence of the investigator or the litigants, as stipulated ..... If it is necessary to prove the case without the presence of the investigating judge in view of the need to carry out some preparatory work, innovative experiments or for any other reason, the investigating magistrate shall issue an order indicating the types of investigations and what is required to prove his case.
Accordingly, if it is necessary for the investigator or litigants not to attend the expert's work, whether there are innovative experiments, preparatory work or for any other reason, non-attendance is considered a case of necessity and urgency that allows the expert to carry out his work without the presence of the investigator or litigants, and the expert's work becomes valid, and this is confirmed by the text of Article No. 85 procedures, as well as the judicial rulings that decided to do so in several rulings, all of which indicates the validity of the expert's work in the absence of the investigator as If the investigator is busy with another case or is traveling for any reason.
If one of the characteristics of the investigation procedures is the speed in performing the work until the truth is revealed, and this speed requires in case of urgency to carry out the work as if the evidence would be wasted if the expert was not present quickly.
It ruled that since it is established in the papers that the member of the Public Prosecution has

17J.F. Reduce, Criminal Expertise and the European Convention on Home Rights; Jack 2000, L, 227

1[18] Dr. Ahmed Abdel Hamid Desouki, previous reference, p. 657.

19CASS. Crime 2/9/1986 boils. Crime .no 251.

delegated the engineering expert to examine the elevator to determine its suitability for work and whether it has a defect or technical malfunctions, especially its door located on the third floor of the building in which the accident occurred and whether the incident could have occurred in the manner contained in the investigations, it is not necessary according to the meaning of the text of the second paragraph of Article 85 Procedures for the presence of the member of the Public Prosecution during the exercise of the expert's mission as long as it is required to prove the case. Carrying out technical examinations and experiments[20].
It also ruled that the Code of Criminal Procedure stipulates in articles 85 and 89 that experts shall be delegated by the investigating judge, stipulating that the investigating judge must be present at work and observe unless it is necessary to carry out the mission without his presence. [21]

In order for the expert's work to be correct, he must be on the lists of experts with the judicial authorities. Can experts be used outside this scope, and if so, is his work correct or not?
Yes, the judicial authorities have the right to seek the assistance of experts who are not experts of the Ministry of Justice, if circumstances so require. Article 50 of Decree-Law No. 96 of 1952 stipulates that "the judicial authorities may delegate to carry out the work of expertise one or more experts from the roster or delegate the office of experts of the Ministry of Justice, the Department of Forensic Medicine or one of the departments entrusted with the implementation of the expertise.
The Public Prosecution's instructions No. 492 were also issued, which included that members of the Public Prosecution should refer to the provisions of Decree-Law No. 96 of 1952 on the organization of expertise and the use of others when necessary and in special circumstances that require the use of the technical opinion of others, such as university professors and teachers of princely schools, provided that the investigations are sent to the Office of the Attorney General at the Court of Appeal, accompanied by a memorandum indicating those circumstances that call for this assignment, in order to take an opinion before issuing a decision. [22]
Accordingly, Article No. 50 of Law No. 96 of 1952 allowed the investigator the right to delegate experts outside the table or the Office of Experts of the Ministry of Justice, but the article stipulated a condition that if there are circumstances that require it, and these circumstances are considered a case of necessity that allows it to do so, such as if it summoned a university professor for his expertise in a particular specialty that he needs in the case before him in order to express his opinion, so he takes it after taking the oath and works with his opinion as if it was issued by a restricted expert In the schedule, the two reports shall be sent by memorandum to the Advocate General, but they shall be accompanied by a statement of the circumstances that led him to delegate that expert, as the Attorney General is the one who assesses the validity of the procedure or not.
From the sum of the above, it becomes clear that the use of an expert is originally a necessity required by the requirements of the investigation in revealing the truth and its circumstances,

[20] Cassation 13/4/1975 Collection of Cassation Judgments Q26 P323 No. 76 Appeal No. 788 of 44.
[21] Cassation of the first of November 1954 appeal No. 1056 year 24 BC.
[22] General instructions for prosecutions. Book I, Judicial Instructions, Section I in Criminal Matters, Section III, 1980, Article 492, Office of Magistrates.

which sometimes require scientific expertise with special skills, and the judge is the one who assesses the availability of necessity or not.
Also, according to the text of Article 85, procedures that allow the expert to carry out some experiments or preparatory work without the presence of the investigator in case there is a necessity, as well as the absence of the litigants during the performance of the expert's work.
The legislator also granted, in accordance with the text of Article 89, the litigants the right to dismiss the expert and thus does not continue his work unless there is a state of urgency, so he gave the right to the investigating judge to continue the expert in his work and not to suspend him, and this is a procedural necessity estimated by the investigating judge under the supervision of the trial judge to examine the validity of the response or not, as well as the availability of procedural necessity or not.

Secondment of experts in the French Code of Procedure and procedural necessity therein.

The use of experts in technical matters is inherently a procedural necessity necessitated by the requirements of the investigation under the investigative judiciary, and the Court of Cassation monitors the request for assistance.

Article 157/2 stipulates a state of necessity, as it stipulates that in the event of exceptional circumstances, the court shall, by a reasoned decision, select experts who are not registered in any of the lists of the office of the Court of Cassation or the Court of Appeal. However, the French legislator allowed in case of urgency the use of experts who are not registered by a reasoned decision for any reason, and this matter is considered to be within the procedural necessity, and due to its seriousness, the legislator has placed an important guarantee for it, which is that they will not be used except by a reasoned decision, otherwise their use and selection is invalid in accordance with the text of Article No. 206, and this is confirmed by the French Court of Cassation in many of its provisions. It ruled that unregistered experts cannot be selected in exceptional circumstances except by a reasoned decision, otherwise their selection is invalid, and the court rules on its own initiative in accordance with the text of Article 23

The legislator has set an important guarantee for the use of unregistered experts, as it stipulates in Article "160" that unregistered experts must take an oath in accordance with Law No. 498 of 1971 on experts before the judiciary, and the official report of taking the oath must be signed by the competent judge, the expert, and the clerk, and this is the practice of cassation rulings.

Where the Court of Cassation ruled that the unregistered expert, and was hired in exceptional circumstances, must take an oath every time he is requested before the investigating judge, and the expert's oath can be made in writing in case of an obstacle, and the reasons for this must be stated. 24

[25]Article 166 also stipulates that the expert must record the expert report, sign it, and record the

23cases. Crime., 26 fever. 1991, bull. 98.

24cases. Crim., 25 jail 1979; bull. 253.- cases. Crim, 14 Nov. 1991; bull.410; cass. Crim,8janv. 1992; bull .4.

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names and capacity of any persons he hired and those responsible for them in carrying out his mission.

The expert's task can be comprehensive, as this Law No. 114-1184-of 31-12-1974 on judicial experts Article (2) obliges the expert to inform the investigating judge of facts that appear suspicious to him as soon as they appear on the occasion of the examination of documents submitted for expert purposes 26. Thus, the scope of responsibilities cannot be eliminated on the grounds that the expert has given a legal opinion. In fact, the expert's findings can still be debated before the judge and the court ruling on the merits 27.

Medical Expert:

The work of the expert is regulated by articles 167 of the Code of Criminal Procedure. Article 6 of the European Convention on Human Rights.

As an exception, doctors and psychologists are allowed to question the person they are evaluating directly, without prior permission and without the presence of a lawyer. It is clear from the task of an expert psychiatrist to interrogate the accused in order to decide whether he can access criminal punishment and to reflect on the facts to which he is accused Code of Criminal Procedure, article 167, paragraph 3. 28 The current system appears to contradict the jurisprudence of the European Court of Human Rights which requires respect for adversarial procedures during expert assessment29. More specifically compared to the Belgian system: "to attend the interviews conducted by the expert and to receive contacts with the documents he has taken into account, to conduct a personal interrogation through his lawyer or a medical board, the persons to whom the expert listened, to make expert observations on the documents examined and the information collected, and to request him to carry out additional investigations into an element that the trial judges consider necessary".30

From the sum of the foregoing, it is clear that when the French legislator used experts, this was the result of the availability of procedural necessity, which lies in the existence of technical issues that require the assistance of experts to express a technical and scientific opinion on a matter related to the investigation and which the investigator cannot evacuate.

The French legislature followed the example of its Egyptian counterpart when it stipulated that experts should carry out their mission under the supervision of the investigating judge. In the event of procedural necessity, the expert may carry out his mission in the absence of the investigating judge. The expert may also carry out his work in the absence of lawyers.

There is also another necessity when he decides, in the event of an obstacle to the expert's oath, to swear an oath in writing if he is unable to swear before the investigating judge, and to take this written oath in the case of the case file.

3Monitor and record conversations and control and view discourses

In this requirement, we first talk about the procedural necessity in monitoring and

[26] محكمة النقض الدائرة الجنائية، 10 يناير 1967، لاحظ .D ، 1967.246، P.-J. Doll.

[27] Court of Cassation, Criminal Division, 9 July 2003.- Court of Cassation, Criminal Circuit, 13 April 2005.

[28] Court of Cassation Criminal Division, April 9, 1991, No. 91-80.614 N °.

[29] ، 1997 مارس 18 ، المحكمة الأوروبية Req.21497/93، Mantovani'll c / France N ° Lex base: A9451KST

[30] ، 2005 يونيو 2 ، المحكمة الأوروبية Req. 48386 / 99، Cotton c / Belgium Lex base no.: A4895DI7.

recording conversations and controlling speeches. Secondly, we talk about assigning a member of the Public Prosecution to review the seized papers.

3.1 Procedural necessity in monitoring and recording conversations and controlling speeches:

The European Court of Human Rights ruled that wiretapping and other forms of telephone conversations constitute a serious infringement on respect for private life and correspondence, and this procedure must be based on the law that includes clear and detailed rules. 31

Ray has gone on jurisprudence[32]. The control of telephone conversations is a type of inspection, and then subject to guarantees and restrictions of its practice33, and this is confirmed by the Egyptian Court of Cassation that the control of conversations and recording is a procedure of inspection[34].

In France, the French Court of Cassation has tended to argue that it is illegal to monitor telephone conversations because they are inconsistent with the dignity of the judge's office. 35

Since the interest of the investigation sometimes requires the monitoring and recording of conversations, the amended Egyptian Constitution of 2014 stipulates in its article 57 that private life is inviolable, inviolable. Postal, telegraph, electronic correspondence, telephone conversations and other means of communication are inviolable, their confidentiality is guaranteed, and they may not be confiscated, accessed or censored except by a reasoned judicial order for a specified period and in the cases specified by law. Thus, while the Constitution guarantees the protection of private life, correspondence and letters by law, the legislator has taken into account that in some cases there may be a procedural necessity that allows the control of objects and letters and the monitoring of conversations, in order to reveal the truth.

Article 95 of the Code of Criminal Procedure also authorizes the monitoring and recording of conversations, stipulating that "the investigating judge may order the seizure of all letters, letters, newspapers, publications and parcels at post offices and all telegrams at telegraph offices, and order the monitoring of wired and wireless conversations or recordings of

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31Clear. 24 Apr,1990 pen.

[32] Dr. Ahmed Fathi Sorour, Telephone Call Control, National Criminal Journal, First Issue, Volume 6 March 1963, p. 147.

33In the face of the development in crime methods, the discovery of the offender has become difficult, and then it was necessary for society to use the same weapon, the weapon of science and technology using eavesdropping means with modern devices to detect and prove crime and confront the accused with his recorded voice, and modern scientific technological developments that occurred in the twentieth century allowed the widespread use of telephone eavesdropping methods as well as its misuse, and as a result of these scientific developments in the field of telephone eavesdropping, human privacy was endangered and the human being was not safe on his telephone speech from eavesdropping Accordingly, see Ahmed Mohamed Abdel-Haq Abdullah, The Legality of Monitoring Telephone Conversations: A Comparative Study, PhD Thesis, Helwan University, Faculty of Law, 2020, P.B., as well as Mustafa Fahmy El-Gohary, An Analytical Study of the Scientific Problems Raised by the Crime of Murder in the Light of Jurisprudence and Judicial Rulings, Cairo, Dar Al-Nahda Al-Arabiya, without publication date, p. 5, and also Ahmed Fathi Sorour, The Right to Private Life, Journal of Law and Economics, Issue No. 54, Year 984, Faculty of Law, Cairo University, p. 27, Samir Al-Amin: Telephone Surveillance and Audio and Video Recordings, Third Edition, Dar Al-Kitab Al-Dhahabi, 2000, p. 6, footnote 1.

[34] Criminal Cassation Session 25/9/2002, Appeal No. 8792/72

35cases , crim ,18 five 1958 bull crim no 163 p.274.

conversations that took place in a private place whenever this is useful in revealing the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months. In all cases, seizure, access, surveillance or registration shall be based on a reasoned order and for a period not exceeding thirty days, renewable for another similar period or periods."

It is clear from the text of the previous article that the seizure of things, monitoring and recording conversations is a procedural necessity if it is in the interest of the investigation and the aim of this criminal procedure law is to reveal the truth and that the law did not leave this matter so without controls governing it so that we are in front of a valid procedural necessity that can be relied upon, the legislator has stipulated several conditions to take from the Code of Criminal Procedure to seize letters, letters and others at post offices and telegrams at telegraph offices, as well as monitoring wired and wireless conversations or conducting Recordings of conversations:

1. The law stipulates that these criminal procedure laws should have a benefit in revealing the truth in a felony or misdemeanor punishable by imprisonment for a period of more than three months, meaning that there is a crime that has already occurred until things or others are seized [36.]
2. The duration of the order shall not exceed thirty days, renewable for another similar period or periods.
3. Such procedures must be issued by a reasoned order from the investigating judge if he initiated the investigation. In order for the judge's permission to be issued exactly or to register, there must be serious investigations that reveal the usefulness of such permission to record the truth. If these investigations are not serious, the permission shall be null and void. [37]

As for the items handed over to a non-accused, the legislator has prohibited these items from being seized in Article 96, provided that the investigating judge may not seize with the defender of the accused or the consultant the papers and documents handed over by the accused to them to perform the task entrusted to them, nor the correspondence exchanged between them in the case. Judge that seizure is of great benefit.

The Public Prosecution may, in the event that it undertakes the investigation, make an investigation, monitor and record in accordance with the provisions of article 206, but provided that it obtains in advance a reasoned order from the summary judge after reviewing the papers, and that the exact order or examination does not exceed thirty days.

Therefore, the Court of Cassation ruled that this procedure is not allowed - monitoring and recording conversations and personal conversations - just for the sake of communication, suspicions and doubts or the search for evidence, but when there is serious evidence that requires supporting it with the results of this procedure, and to prevent the legislator with these integrated guarantees from taking this action for imaginary motives or abuse, it is only for a necessity imposed by the criminal justice actor and the required confirmation of the available evidence by controlling what is useful in revealing the truth in crimes, Estimating that the

[36] Dr. Abdul Raouf Mahdi, previous reference, p. 603.
[37] Cassation of February 11, 1974 Series of Cassation Judgments Q25 P138 No. 1.

judiciary, while appreciating the availability of such evidence and necessity, is the natural guardian of freedoms and sanctities in the face of all forms of control, domination, prejudice and capital without any infringement or tampering with them or unbridled with them[38].

The view in jurisprudence is that it is necessary to stipulate that the things belonging to the accused can be seized by the defender or, in case of necessity, the expert, as long as they are not related to the performance of the task entrusted to him[39].

The seizure of things and monitoring conversations is a procedural necessity if the interest of the investigation so requires, and whether those seized things are material or moral things such as the information network, and with the unprecedented development in committing many crimes through this network, the seizure must include this modern technology.

Can the procedural necessity be invoked to record the speech of a person who has not been authorized to observe his conversations?

Certainly, it is not permissible to rely on the availability of procedural necessity and we record a talk of a person who is not authorized to monitor it, it may happen that a permission is issued to monitor a specific person by recording all his conversations on a certain telephone line, but it happens that someone enters into the group placed under surveillance, the origin is that it is not permissible and if it happened and the registration was recorded, what was recorded is invalid and not reliable may be derived from any evidence and that answer has confirmed the Court of Cassation in that when The Code of Procedure has required even to be monitored conversations to obtain prior permission reasoned, in order to preserve the sanctity of those conversations that emanate from personal freedom, which is confirmed by the Egyptian Constitution prohibits the violation of the sanctity of conversations and the disclosure of secrets unless issued permission from the judge reasoned, and what is clear from the order issued by the Public Prosecution to monitor telephone calls has been limited to recording conversations between the informant and members of the cooperative society company ..... Specifying their names and that the appellant is not one of them, it is not for the officer to record his conversations, but if he did so, this recording is illegal and the defense of the invalidity of the evidence is in order[40].

3.2 Procedural necessity in the control of objects and the control of conversations in French law:

Monitoring telephone conversations is a serious violation of the right to confidentiality, which is one of the most important rights to privacy. Therefore, the French legislator has authorized the seizure of objects and access to conversations and correspondence if there is a procedural necessity that requires the infringement of these rights, and for this purpose restrictions and controls have been set by legal texts and judicial rulings, and the French legislator has regulated this subject in articles 100 and 151 of the French procedure.

[38] Appeal No. 6852 of 59 – session 14/1/1996.
[39] Dr. Mohamed Mohamed Taha, Theory of Necessity in Criminal Procedures, A Comparative Study, Dar Al-Fikr wal-Qanoon, 2016, p. 565.
[40] Cassation 25/9/2002 Appeal No. 8792 of 72 - Cassation of 15 November 1998 Appeal No. 13434 of 66.

Article 100 of the French law provides for the control of conversations. The procedural necessity of this surveillance lies in the event that the crime is a felony or misdemeanor punishable by imprisonment for a period of two years or more, provided that such monitoring is necessary in the investigation, and in view of the seriousness of this procedure, the French legislator has taken it with guarantees that preserve the right of persons and does not take necessity as a pretext for breaking into the confidentiality of communications, it has decided that it should take place under the supervision of the investigating judge, and that such monitoring should be in writing, and that the control order should be issued by the investigating judge and not by the Public Prosecution, provided that Supervision under his supervision, and for a period not exceeding four months, Article 100/2 41

Communication interception:

This is regulated in Articles 100, Code of Criminal Procedure – as well as Article L32, Postal and Electronic Communications Code. Article 100 of the Code of Criminal Procedure allows interception, registration and reproduction of "correspondence sent by electronic correspondence", such as those defined in Article L 32 of the Postal and Electronic Communications Law as "the emission, transmission or reception of signs, signals, writings, images or sounds by electromagnetic means".

Application field:

The French legislator has regulated how to intercept communications in the following articles "100 - 100/1 - 100/7 - 80/4" Code of Criminal Procedure - Law No. 222 of 2019 dated 23 April 2019 on 2018-2022 Programming and reform for justice. 1

The investigating judge is competent to determine communications objections in criminal matters and misdemeanors if the penalty imposed is equal to or more than three years of imprisonment – the minimum limit has been set at two years until the law of 23 March 2019 Code of Criminal Procedure, Article 100, LL. 1. Operations are carried out under the authority and control of the judge Since Law No. 222-2019 of 23 March 2019, it is also possible to object in the case of a crime punishable by imprisonment committed through electronic communications on the victim's line, if he intervenes at the request of the latter Code of Criminal Procedure, article 100, paragraph 3.

Lastly, article 80.4 of the Code of Criminal Procedure provides for this during the course of information for the examining magistrate to determine the causes of death or disappearance and prescribes the interception of correspondence under the conditions provided for in the second paragraph of article 100 and articles 100.1 to 100.7 of the Code of Criminal Procedure.

3.3 Formal conditions for the implementation of the objection decision:

The written decision of the investigating judge must be motivated by reference to the elements of fact and law that justify the operations being necessary – this causation requirement was introduced by the law of March 23, 2019.The decision also includes all the elements of determining the link to be intercepted, the crime that motivates the use of the objection as well as its duration Code of Criminal Procedure, Article 100-1.

41Willy Lubin' liberties individuals et police en droit American et francais ' the Montpellier 1996, p, 140

This decision is not of a judicial nature and is not subject to appeal under the Code of Criminal Procedure, article 100. However, the objection regime can be challenged by requesting annulment before the investigating judge.

Objection Decision: Duration Conditions:

Article 100-2 of the Code of Criminal Procedure stipulates that the investigating judge authorizes the objection for a maximum period of four months. Authorization is renewable, under the same conditions of form and duration, but the total duration of the objection does not exceed one year, or if it constitutes an offence provided for in articles 706-73 and 706-73-1 of the Code of Criminal Procedure in matters of organized crime, two years.

These limits were introduced by Law No. 2016-731 of June 3, 2016, with no maximum period previously stipulated in the code.

Objection decision: Persons concerned:

Since the legislator does not provide any special clarification on the subject, it follows that any person can be involved, whether he is an accused, an auxiliary witness or just a suspect - or even, a priori, alien to the facts, as long as objections can be useful to show the truth.

However, the legislator has set several limits, under penalty of nullity, in article 100.7 of the Code of Criminal Procedure relating to the professional capacity of the persons concerned:

This article prohibits intercepting the communications of a deputy or senator without informing the president of the chamber to which he belongs by the investigating judge; 42

According to the Court of Cassation, there is no provision or principle that makes it possible to extend the provisions of Article 100-7, paragraph 1, of the Code of Criminal Procedure applicable only to deputies of the National Assembly, senators and representatives of the European Parliament43.

Execution of objections:

The investigating magistrate, or the police officer acting on behalf of the judiciary, may request any agent qualified for a service or body under the authority or supervision of the Minister responsible for electronic communications or any qualified agent of an authorized network operator or electronic communications service provider to install an interceptor.

In accordance with article 100-4 of the Code of Criminal Procedure, the investigating judge or police officer shall draw up a report of each interception and registration, stating the date and time of commencement and termination of the operation. Recordings must be placed under closed seals. The procedure for intercepting telephone correspondence ordered by the examining magistrate shall commence from the day of the effective installation of the listening device. 44

Copies of objections:

The investigating judge or the police officer shall record in the minutes any correspondence "useful for establishing the truth", and such copies shall be placed on file in the Code of

42laurel Heinrich et Hugues Diaz, collected d'inférences,10 furrier 2020

43Court of Cassation, Criminal Division, March 16, 2005, No. 05-80.092

44Court of Cassation, Criminal Division, May 10, 2012, n°11-87.328.

Criminal Procedure, Article 100-5. The Court of Cassation had the opportunity to recall this rule by emphasizing that there is no provision for complete transcription of the intercepted conversations. [45]

The interception of telephone communications is a necessary intervention in a democratic society to combat deviation. These procedures are authorized by the judge, who must be informed of their execution, meeting the specific requirements provided for in articles 100 to 100-7 of the Code of Criminal Procedure, according to which the person concerned can punish non-compliance with the request for invalidity, and the legislator logically specifies that correspondence in a foreign language is transmitted in French with the assistance of an interpreter required for this purpose. 46

Correspondence relating to the rights of defence:

This paragraph regulates the legal articles "100/5-206" of the Code of Criminal Procedure, as well as Law No. 71-1130 of 31-12-1971 amending certain judicial and legal professions.

Correspondence can therefore be monitored via the lawyer's line. More generally, the defendant can keep his conversation with a lawyer on a line other than that of the lawyer. In all cases, such correspondence cannot be recorded and therefore appears in the investigation file when it concerns the exercise of the rights of the defence (article 100.5, third paragraph, of the Code of Criminal Procedure). This important principle, which is based on the privilege of the lawyer - under article 66-5 of Law No. 71-1130 of December 31, 1971 on the reform of certain judicial and legal professions - must be strictly adhered to. Accordingly, the Court of Cassation affirmed that the violation of this principle must be raised, even on its own initiative, by the investigative chamber mandated, pursuant to article 206 of the Code of Criminal Procedure, to consider the regularity of the proceedings before it. 47

Foreign correspondence for the rights of defense:

According to the Code of Criminal Procedure, only an exchange of views with defence counsel can be transferred. Thus, case law concludes that it is not forbidden to intercept and record the statements of a lawyer who intervenes on the telephone line of a third party who regularly wiretaps on him when that lawyer is not defending that person, which are not raised at this stage of the proceedings, and his observations that do not relate to the exercise of the rights of defence, and reveals evidence of his participation in facts likely to constitute a criminal 48offence.

Similarly, the examining magistrate may stipulate that previous correspondence be intercepted by the handwriting of a relative of the person under investigation, even if it involves conversations between the latter and the lawyer of the person under investigation.

Therefore, the Court of Cassation ruled that Article "100/7" has granted the right to monitor conversations and correspondence to the investigating judge, and is not granted to the

[45] Court of Cassation Criminal Division, 10 January 2018, n°17-84.084.
[46] Court of Cassation, Criminal Division, March 22, 2016, No. 15-83.206.
47LES acts dine ligation, dated update 10 furrier 2020, p 6-2.
[48] French Cassation Criminal Court 22 March 2016

judicial officer or their assistants. 49

It also ruled that the order to monitor the conversations must respect the rights of the defence, in particular the confidentiality of conversations between the accused and his lawyer, and this guarantee is not abolished unless it is proven that the accused participated in the crime. 50

Part of the French jurisprudence has argued that it is not enough for the crime to justify the monitoring of telephone conversations, but there must be a benefit to be hoped for to reveal the truth, and the reason for this is that surveillance is a dangerous procedure because it is an attack on the sanctity of private life is not left without controls or restrictions, and the assessment of the existence of the benefit of surveillance or not is left to the investigating judge under the supervision of the Court of First Instance [51] .

Consequently, correspondence and telephone conversations may be accessed, if necessary, but in accordance with the controls specified in legal texts and judicial rulings.

The procedural necessity in monitoring the talks appears in the fact that the legislator has set a period of four months, and the extension can only be extended for the same period and under the same conditions specified by law for that, and this extension in itself is a procedural necessity to reveal the truth, in accordance with the text of Article "100/2" French procedures.

The procedural necessity also arises when the French legislature empowers the investigating judge or judicial officer to copy any correspondence that is conditional on it being useful in revealing the truth, and that any copying of correspondence with the lawyer related to the exercise of the rights of defence shall be subject to nullity. According to the text of Article "100/5"

Among these guarantees that allow the infringement of these rights, the French legislator stipulated that there must be strong evidence justifying the subjection of the suspect to such means, and that it be useful in revealing the truth "151: French proceedings.

In application of this, the French Court of Cassation ruled that the order to eavesdrop is permissible only in a felony or misdemeanor that represents an attack on public order, and the investigating judge assesses this seriousness in view of the circumstances of the case, which he must mention in his decision to have control and describe the seriousness bestowed on the crime. 52

Therefore, if the guarantees and restrictions stipulated by the legislator for such control are violated, is it permissible to invoke this procedure on the basis of procedural necessity or is it considered null and void?

The French judiciary has traditionally not to take the evidence derived from invalid procedures

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49cases. Crim., fever. 1996; bull. 93.

50cases. Crim., 15 jam. 1997; bull.14.

[51] Dr. Mohamed Abu Al-Ela Aqida, Monitoring Telephone Conversations, A Comparative Study, Second Edition, Dar Al-Nahda Al-Arabiya, Cairo 2008, p 192.

52jean-Christophe saint-pau; Unwithdrawal clandestine d une conversation amicable relative activate profession Nelle note under crim 14 fever 2006, p. 1184.

while retaining the discretionary power to determine the violation[53], and from these judicial applications where the Court of Cassation rejected the evidence derived from one of the heads of the facility eavesdropping on the conversations of his subordinate trying to use the content of the conversation that was recorded as evidence of guilt, based on the fact that the registration was done illegally as expressly stipulated by the French legislator in Article No. 100/7 of the French Code of Criminal Procedure

3.4 Delegating a member of the Public Prosecution to review the papers seized for necessity:

Article 97 specifies the procedures for those who have the right to view these seizures, stipulating that the investigating judge alone shall be informed of the seized letters, letters and other papers, provided that this shall be done, if possible, in the presence of the accused and the possessor or the addressee and record their observations thereon.

Hence, it is clear from the text of Article 97 that the general principle of access to the seized papers is for the investigating judge alone to review all seized letters, letters and papers seized and sort these seizures, and that these seizures are included in the case papers and this is done in the presence of the accused. This is a condition in the event that they can attend, and the judge or the Public Prosecutor may not prevent any of them from attending if they are present at the time of sighting. [54]

Article 97 of the Egyptian Code of Criminal Procedure states that the general principle of access to papers is the competence of the investigating judge. Is it possible to deviate from this principle by having the seizures seen by someone other than the investigating magistrate on the basis of a state of necessity that allows him to do so or not?

She answered the text No. 97 of the Egyptian Code of Criminal Procedure in her disability, where she allowed the investigating judge to delegate a member of the Public Prosecution to sort the seized papers when procedural necessary, as she said ..... He may, if necessary, assign a member of the Public Prosecution to sort the aforementioned papers, and may, according to what appears from the examination, order the inclusion of such papers in the case file or their return to the person who was in possession of them or to the addressee.

Accordingly, article 97 of the Egyptian Code of Criminal Procedure allows the investigating judge to assign a member of the Public Prosecution to sort the seized papers. This is done when there is a case of procedural necessity before the investigating judge, for example. To be preoccupied with another topic. Or another issue. Accordingly, the investigating magistrate is not entitled to assign a member of the Public Prosecution to sort the seized papers if there is no state of procedural necessity on which he is entitled to rely. The assessment of whether or not there is necessity is up to the Court of First Instance and the assessment of the validity of the screening by the Public Prosecution or not.

Also, the presence of the accused during the screening is due to the investigating authority, whether he is an investigating judge or a Public Prosecution, which considers it in the interest

[53] Mr. Nawara Brahem, The Legal System of Eavesdropping in Comparative Legislation, Larbi Tebsi University, Algeria, Master of the Year 2015-2016, p. 51.

[54] Dr. Mamoun Salameh, previous reference, p. 362.

of the investigation to attend the accused at the time of screening or that it is in the interest of the investigation not to attend the accused. The Court of First Instance also assesses this.
It has been established by law that if judicial officers are authorized by the Public Prosecution to record conversations in offences in which the law permits the Public Prosecution to issue such permission as a matter in the crime of bribery pursuant to article 7/2 of Act No. 105 of 1980 establishing State Security Courts, they may take whatever they deem sufficient to achieve the purpose of the permit without committing themselves to a specific method as long as they do not violate the law in their proceedings. Since the recording of hadiths in this case is legally authorized, the officer shall not be liable if he listens to the recorded hadiths as long as he considers that such hearing is necessary to complete his procedures while he is aware of his order[55].

The end:

We have finished the subject of research on the procedures of the preliminary investigation and the procedural necessity in which we have confirmed the importance of this topic in terms of how to harmonize between the necessities of protecting society and the effectiveness of prosecution procedures on the one hand, and guarantees of personal freedom of the accused and ensure his right to defend himself, in the case if there is a procedural necessity that requires departure from the general original, and sacrifice some of the guarantees of the accused such as that necessity in monitoring conversations, letters and messages and control. A valid procedural act, otherwise such procedure becomes null and void.
Through this research, we reached a number of results, summarized as follows:
Also, the presence of the accused during the screening is due to the investigating authority, whether he is an investigating judge or a Public Prosecution, which considers it in the interest of the investigation to attend the accused at the time of screening or that it is in the interest of the investigation not to attend the accused. The Court of First Instance also assesses this.
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The end:

We have finished the subject of research on the procedures of the preliminary investigation and the procedural necessity in which we have confirmed the importance of this topic in terms of

[55] Cassation 32/1/1994 Collection of Cassation Judgments Q45, P137 No. 21 Appeal No. 2006 of 62.
[56] Cassation 32/1/1994 Collection of Cassation Judgments Q45, P137 No. 21 Appeal No. 2006 of 62.

how to harmonize between the necessities of protecting society and the effectiveness of prosecution procedures on the one hand, and guarantees of personal freedom of the accused and ensure his right to defend himself, in the case if there is a procedural necessity that requires departure from the general original, and sacrifice some of the guarantees of the accused such as that necessity in monitoring conversations, letters and messages and control. A valid procedural act, otherwise such procedure becomes null and void.

Through this research, we reached a number of results, summarized as follows**:**

1. The procedural necessity in the Code of Procedure is that the person concerned with the procedural work violates the form prescribed by the law, due to the existence of a serious and imminent danger threatening one of the interests regulated by the procedural rules, and the need for him to carry out the violating procedure immediately, otherwise it is impossible to carry it out afterwards, to the detriment of the interest. This is after balancing between two interests, and therefore the public interest prevails.

2- It is necessary to work with this theory the availability of many controls set by jurisprudence in order for the procedural work to be legitimate, including the inevitability of taking action in this way, including that the procedural work does not necessarily lead to a breach of the purpose of the procedural work and its components, and the danger motivating the procedure in this way must be serious, current and real, and there must be proportionality between the act and the danger.

3. In case of necessity and fear of not doing so, experts may be sought in technical matters, and their work may be carried out without the presence of the investigator or the litigants. In addition, in case of necessity, experts who are not on the lists of experts registered with the judicial authorities may be sought if circumstances so require. This is confirmed by the French legislator in that an expert may carry out his work without the presence of the investigating judge.

4- The legislator authorized the seizure of objects and the monitoring of conversations if the interest of the investigation requires that they be useful in revealing the truth in order to achieve the public interest, with the necessary guarantees to limit prejudice to this procedure and preserve the sanctity of private life for citizens. 5- To take into account the modern development of means of delivery and conversations such as the information network. These modern means shall be added to the relevant article.

6. There was also procedural necessity when the legislator gave the investigator the right to interrogate or confront the accused with other accused persons or witnesses without the presence of a lawyer, in the event of flagrante delicto, as well as fear of losing evidence.

Recommendations:

Based on the results of the research, we offer a number of recommendations as follows:

1- In addition to Article 85 of the Egyptian Code of Criminal Procedure, which concerns the performance of the expert's work, the expert shall perform his work without the presence of the litigants, subject to the availability of procedural necessity.

2- We hope that the legislator will amend the articles on the control of things to include material objects, as well as the moral ones that enter the information network, so that the control of these

types after unloading them on the CD prepared for that.
3. The legislator shall provide for a case where the delegated person is prohibited from interrogating except in the presence and consent of his lawyer, and that the interrogation shall be carried out on the basis of a state of necessity without the presence of his lawyer.

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