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### **The Invalidation of Detention in the Jordanian Criminal Procedures Law**

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#### **Abstract**

The procedural action is the central point on which the invalidation is based, because the invalidation is a penalty that results from the invalid procedural action that lacks of one condition or more than one condition of its validity. Since the detention, which is the deprivation of the defendant's liberty for a certain period until the completion of the investigations, it is considered one of the procedural actions that might be invalidated. Therefore, the legislator stipulated some conditions of the detention, some of them are objective conditions, and some of them are formal conditions. All of these conditions are necessary for the validity of the detention, and they must be adhered under penalty of invalidation. This is because detention conflicts with some legal principles that the legislator has been keen to adhere as guarantees of individual liberty, such as the presumption of innocence and the origin of human freedom, because of the risk of detention that impacts on the social, psychological and physical condition of the defendant, as this case needs guarantees reassuring the defendant to prevent the arbitrary authority in using this detention, and because the detention is one of the investigation activities that have legal justifications in terms of serving the interest of the investigation. The Jordanian legislator did not specifically address the issue of the invalidation of detention as a result of non-performance of one or more of these conditions that are necessary for its validity, which stipulated by the legislator but without stipulating the penalty for violating them. However, the failure to perform these conditions results in the invalidation.

#### **Keywords**

Detention, Invalidation, Summon Warrant, Attendance Warrant

## **I. Introduction**

The theory of invalidation raises a wide importance in the field of applying the Criminal Procedures Law, especially in the area of procedural action. The procedural action is the central point on which the invalidation is based, because the invalidation is a penalty that results from the invalid procedural action that lacks of one condition or more than one condition of its validity. With the state of having many different kinds of procedural action, the kinds of invalidation can vary. There is the invalidation of arrest procedures if the arrest does not meet the conditions that the legislator has enacted. There are several forms of invalidation such as the invalidation of interrogation, the invalidation of investigation, the invalidation of judgment, the invalidation of arrest, and other forms of procedural actions. One of the procedural actions is the detention, which includes the conditions necessary for its validity, because this procedural action involves the risk that impacts on the social, psychological and physical condition of the defendant, and because it conflicts with some legal principles that the legislator bears in mind in accordance with the constitution at first as guarantees of individual liberty, the presumption of innocence, and the origin of human freedom. However, the detention is a part of the investigative actions that have legal justifications in terms of serving the interest of investigation. Therefore, the legislator required the availability of some conditions necessary for the validity of this procedural action. Some of these conditions are objective and some of them are formal. In certain cases, the invalidation may result from the violation of some of these conditions, and the invalidation may not result from the violation of some of these conditions.

Our Jordanian legislator did not address the issue of the invalidation of detention as a result of failure to adhere to one or more of these conditions independently. However, this can be accessed through Article No. 7 of the Jordanian Criminal Procedures Law, which is the only article that stated the invalidation of penal procedures, and addressed it superficially, but it lacked of clarity and details about the features of the invalidation of each procedure, so it lacked of establishing a clear-cut theory for the invalidation of penal procedures.

## **II. Detention and invalidation in the Jordanian Criminal Procedures Law**

### **• Concept of Detention**

The jurists differed in the definition of detention; some jurists define it as the defendant is deprived of his freedom for a period of time determined by the requirements of the investigation and its interest in accordance with controls established by law (Muhammad, 1993). Other jurists defined the detention as the imprisonment of the defendant during all or part of the investigation period, or until the trial ends (Al-Sharif, 2004).

We conclude that the detention is an investigation procedure and not an inference/reasoning procedure. Jurisprudence unanimously agrees that the stage of gathering inferences - unlike the investigation stage - is free from the elements of coercing and forcing, as this stage aims to search for information, evidence, and inferences.

The detention as a procedure in this stage of investigation aims to reveal the truth. This stage includes elements of compulsion to ensure the validity of the investigation, by placing the defendant under the control of the interrogator, and not enabling him to escape or tamper with the evidence of the case, and other justifications that will be addressed, or influencing witnesses (Khaled, 2000).

The detention is a high-risk procedural action, because it conflicts with the presumption of innocence which is a legal principle that every person accused of any crime is considered innocent until proven guilty by a final court judgment issued by a competent court and properly constituted in accordance with the law. Therefore, some jurists criticized the expansion of the detention issue and demanded that it not be resorted to except in some exceptional situations, but the emphasis on the presumption of innocence is only a theoretical confirmation that has no effect in practice. The detention is a violation and it conflicts with the presumption of innocence (Moneim, 1997). The detention is characterized by imprisonment and detention of freedom before the accusation against the detained person is proven (Saleh, 1985). The detention is also one of the procedures that affect the freedom, as it is a restriction on the freedom of the defendant. Therefore, the legislator set the conditions as guarantees necessitated by the seriousness of taking such a procedure (Khadar, 1992).

The Jordanian constitution stipulated the need to protect personal freedom and the safety of the body. Article 7 of the Jordanian Constitution states that: "Personal freedom shall be guaranteed." Article 8 states that: "No person may be detained or imprisoned except in accordance with the provisions of the law."

### **Distinguishing between detention and some similar procedures**

The detention or arrest warrant may be similar to both the (request for attendance/appearance warrant) and (the summon warrant). In order to distinguish between the warrants of attendance, summon and detention/arrest, it is necessary to distinguish between the warrants of attendance and summons at first, and then distinguish both of them from the detention or arrest warrant.

### **First: distinguishing between the request for appearance / attendance warrant and the summon warrant**

#### **In terms of implementation method**

The attendance / appearance is based on that the defendant comes at liberty and at a specific time to the headquarters of the public prosecutor who issued this warrant for requesting this defendant. The person who is charged of informing this warrant is not entitled to use any form of compulsion or coercion against the defendant. While, the summon warrant is a judicial warrant that is issued to the officials of the public authority to secure the appearance of the defendant before the public prosecutor. The person in charge of its enforcement may use armed force, if the defendant does not comply with it or he/she tries to flee (Ahmed, 2001).

### **In terms of interrogation time/ period**

The public prosecutor shall immediately interrogate the defendant who has been asked to attend through a request for attendance warrant, while he/she has to interrogate the summoned defendant who was summoned by a summon warrant within twenty four hours after booking him/her into the holding cell. (Paragraph 1 of the Article 112 of The Jordanian Criminal Procedures Law), and If the defendant stayed at the holding cell for more than twenty four hours without being interrogated, the head of holding cell shall bring the defendant before the public prosecutor to interrogate him. (Paragraph 2 of the Article 112 of the Jordanian Criminal Procedures Law)

- **Second: distinguishing between the appearance / attendance warrant, and summon warrant from the detention or arrest warrant**

It was previously found that the request for appearance / attendance warrant and the summon warrant aim only to secure the appearance of the defendant before the public prosecutor, and they may not deprive the defendant of his liberty except by virtue of the summon warrant and for a period not exceeding twenty four (24) hours. While, the detention or arrest warrant is the judicial order that is issued based on the Public Prosecution's order to the public force officials against the defendant who committed a felony or offense, which constitutes a crime punishable by imprisonment or a more severe punishment than it, including arrest and detention of the defendant for a specified period. (Brik, 2008).

The detention or arrest is an exceptional measure, and the detention or the arrest occurs if it is the only way to preserve the evidence or material tools of the crime or to prevent coercion against witnesses or against the victim. The purpose of the arrest is to protect the defendant himself, to put an end to the impact of the crime, to prevent its recurrence, or to prevent the defendant from fleeing. (Article 114/1 of the Jordanian Criminal Procedures Law.)

- **The invalidation in the Jordanian Criminal Procedures Law**

#### **Definition of Invalidation**

The invalidation is a procedural penalty that results from the invalid procedural action that lacks of all or some condition of its validity, so that it invalidates its usual legal effects in the law (Hosni, 1988).

Invalidation is by its nature a procedural penalty because the procedural law regulates and stipulates this invalidation due to the failure of one or more of the procedural action conditions that are explicitly or implicitly requested by the legislator, whether these conditions relate to the content of the procedure, or by the form in which this procedure is formulated, and whether the provisions of the procedure are contained in a Criminal Procedures Law or in the Penal Code (Najm, 2000). The invalidation is also considered a

procedural penalty in terms of the status, since its status is in accordance with the criminal procedure.

The invalidation means the failure to arrange the legal effect stipulated in the procedural rule, because it causes the procedural action not to fulfill the conditions of its validity, form, formula or manner stipulated by the law. Therefore, the procedure with this case and the consequent procedures become of no legal value (Hosni, 1988).

The invalidation is divided into two types: the absolute invalidation and the relative invalidation. The absolute invalidation is the invalidation that results from violating the rules of essential procedures related to the public order. In contrast, the relative invalidation is the penalty for violating essential rules that are not related to the public order (Al-Alimi, 1998).

As there is a difference between the substantial procedural actions whose failure results in the failure to achieve its purpose and the insubstantial action whose failure does not result in the failure to achieve its purpose. Or the procedural action that the law did not obligate to adhere, but rather permitted the order to perform it. By the very nature of the case, the legislator does not usually set a criterion to distinguish between substantial and insubstantial procedures. Rather, the legislator left it to the judge to act to distinguish between substantial and insubstantial procedures, depending on the reason for the legislation. In such a manner that the the purpose of the procedure is to preserve the public interest or the interest of the defendant or other litigants, it is substantial and its violation results in the validation. This is confirmed by Article (7) of The Jordanian Criminal Procedures Law that the validation is a penalty resulting from failing to adhere to the provisions of the law related to any substantial procedure. In any case, if the purpose of the action is merely guidance and direction, then the action is not substantial, and failing to adhere to it does not entail the validation (Najm, 2000)

The majority of jurists have cited examples of procedures or procedural actions related to public order, the first of which was taking the procedures that impact on the safety of the body and considering them as a prohibited matter at all (Al-Saeed, 2008).

Article 7 of The Jordanian Criminal Procedures Law is the legal basis for the invalidation, which stipulates the following:

1. A taken procedure shall be announced as void and null if the law expressly stated such effect or if it was affected by a major defect because of which the objective of the procedure was not realized.

2. If the invalidation of the procedures is due to failing to adhere to the provisions of the law related to the composition of the court or its competency to hear the case or its subject matter jurisdiction or any other similar reason which is related to the public order , then it is allowable to present such argument ( that the procedures is null and void) at any stage of the trial and the court might rule that the procedure is null and void without by itself without receiving a request to this end.

3. The right to invalidate a procedure can be dismissed if the party to whose benefit such invalidation was enacted explicitly or implicitly relinquishes such right except when the invalidation is related to the public order.

4. The invalidation of a certain procedure does not entail the validation of pervious procedures taken before the defective one. AS to the following procedures it can only be invalidated if it was based on the defective procedures.

By reviewing the provisions of the aforementioned article, we find that the Jordanian legislator's approach is as follows:

1. If the law expressly stated the invalidation in some cases, such as the paragraph 2 of the Article No. 227 of the Jordanian Criminal Procedures Law, which stated that: "if the provisions of the paragraph 1 of this article (to appoint an interpreter for those who does not speak Arabic language, and that the interpreter shall take a legal oath) were not applied, then the action/s taken shall be null and void. This is the principle of the legal invalidation.

2. When the incident results from a major violation or is related to the public order. For instance, the criminal incident could not be proven based on the exchanged communications between the accused or the defendant and his/her lawyer in accordance with the Article 152 of the Jordanian Criminal Procedures Law, although Article 352 of the same law stated that the public prosecutor have the power to seize all letters and newspapers located at the post offices. This is a major / substantial invalidation in which the law provides for some cases of invalidation examples, and it empowers the judge to evaluate the invalidation according to certain criteria.

3. We also observe that the Jordanian legislator did not expressly distinguish among the invalidation cases related to public order, which the court rules on its own at any stage of the lawsuit, and which may not be waived, and the relative invalidation related to private interest, which the court does not raise on its own if not maintained or provoked by the person concerned. Note that the legislator has stipulated the invalidation related to public order in some provisions, such as the article 48 of the Jordanian Criminal Procedures Law, which includes that the public prosecutor has the right to delegate to one of the judicial police officers some of the powers and duties except the interrogation. And Article 24 of the same law, which states that the judge shall not hear a case where he/she assumed the role of the public prosecutor in such case. In accordance to this article we notice that the legislator used the verb "shall not" instead of the verb "invalidate" (Najm, 2000).

The Jordanian Court of Cassation has adopted the self-invalidation. However, there was no specific source in the court's conduct for adopting a specific criterion that could be relied upon to distinguish the substantial and insubstantial action of deciding the invalidation. (Hamid, 2008, pp. 44-45)

### **III. Invalidation of detention due to failure of its conditions**

By reviewing the articles of The Criminal Procedures Law, we find that the legislator contented with stipulating some objective and formal conditions of detention. In addition, we did not find anything expressly stating the invalidation of detention when any of its conditions were not met.

#### **• Invalidation of detention due to the failure of objective conditions**

The legislator requires objective conditions for the validity of the procedural action in general, as the failure of one of these conditions results into the invalidation of the procedure. The jurisprudence mentioned some of these conditions, which are: Verification of the occurrence of a crime as stated by the law, the existence of a criminally responsible

person, the procedural capacity, the place, and the reason. These conditions are very similar to the objective conditions that the researcher will mention in the subject of detention as a procedural action. The difference is due to some jurisprudential opinions and viewpoints regarding the condition, whether it is an objective or a formal condition. However, this division of conditions, whether they are formal or objective, is a purely theoretical work. All conditions, whether formal or objective, are considered essential conditions. The objective conditions of detention are as the following:

### **In terms of the authority that requests the detention:**

There are two bodies that have the power to request the detention: the Public Prosecution and the Court of subject-matter / the trial court:

1. The Public Prosecution: the detention is the one of the competencies of the Public Prosecution. The first paragraph of Article (111) of the Jordanian Criminal Procedures Law stipulates that : " The public prosecutor in felony and misdemeanor cases might only issue a request for appearance warrant which can be replaced by an arrest warrant after interrogating the defendant and the investigation required taking such measure. The paragraph (1) of the Jordanian Criminal Procedures Law stipulates that: "after interrogating the defendant the public prosecutor might issue an arrest warrant against him/her. As well as the paragraph (2) of the same article stipulates that: "Despite of what is stated in paragraph (1), the public prosecutor might issue an arrest warrant against the defendant in the following instances: ..."

The Court of Cassation confirmed this in one of its decisions that: "The members of the General Intelligence Department are considered among the judicial police officers with special competence. And that the arrest of an accused and his detention in the General Intelligence Department - regardless of his validity or not - does not constitute a detention, because the detention is an investigative measure, and it is exclusive for the members of the Public Prosecution. Accordingly, the paragraph 1 of Penalty Cassation No. 380/1998 dated 9/9/1998 publications of the Detention Justice Center, although the detention is legally correct, but it has no basis in reality as it is within the competence of the Public Prosecution.

### **1. Court of subject-matter/ trial court**

The judge may also exercise this power after submitting the case file to him, as the paragraph 4 of Article 114 of the Jordanian Criminal Procedures Law stipulates that: "If interest of the investigating requires the continuing detention of the defendant after the end of the periods stated in paragraph (2) of this article, the public prosecutor has to submit the case file to the court of competent jurisdiction to hear the case. The court after reviewing the public prosecutor's argument and hearing defendant or his/her representative and reviewing the investigation documents, might extend the detention period ...." The Court of Cassation referred to this by saying: "The phrase (Any defendant charged with a crime) contained in Article (123) of the Jordanian Criminal Procedures Law, With regard to the release request of such defendant, was comprehensive and it includes all of the following instances: "The requests related to the criminal lawsuit before it is submitted to the court. The request submitted for filing a lawsuit after being referred to the court by the decision of

the public prosecutor and the attorney general. And the request submitted for filing a criminal lawsuit after the issuance of a judgment of the first instance.” In accordance with the second instance: as long as the release request may be made before the court, the court implicitly has the power to detain. Thus, if the decision to detain was issued by any authority other than the competent authority is considered an invalid procedure, which does not result in what the law intended for in terms of its effects (Namour, 2005).

In terms of the legal reasons for the detention (Ahmed, 2001). The importance of the legal reason for detention emerges from the fact that this importance is not only considered as a guarantee for the accused, but also this importance considered as prevention for the judicial board to prevent any suspicion of the practice of tyranny. The legal reasons for the detention lie in three items that the researcher will study as follow: The detention due to serious crimes, the detention occurs when there are justifications for the detention to ensure that the investigation procedures are not impeded, and when there are evidences of the association of the defendant with the crime. The detention due to serious crimes: The general principle of detention is its permissibility if the charge against the defendant constitutes a crime punishable by imprisonment for a period more than two years, or by or a criminal penalty. The legislator limited the detention to the crimes that only constitute seriousness/gravity. The Public Prosecutor, according to the latest amendment to the Jordanian Criminal Procedure Law of 2017, may also to request the detention or to renew the detention period. This is, if the act attributed to the accused is related to his commission of a misdemeanor of theft or intentional harm, or unintended harm resulting from traffic accidents when the defendant is in violation of the provisions of the applicable and enforced traffic law, including driving a vehicle without a license or driving under the influence of alcohol or under the influence of drugs or psychotropic substances. And if he/she has no fixed and known place of residence inside the Kingdom, he/she will be released provided a guarantor approved by the public prosecutor who shall secure his/her appearance before the public prosecution whenever needed (Article 114/63)

### • **Invalidation of detention due to the failure of formal conditions**

The formal conditions raise doubts about invalidation as a result of the failure to implement these conditions in terms of their importance and the possibility of distinguishing between them in order to know whether they are substantial conditions that lead to the invalidation due to their violation, or if they are organizational and guiding that their violation does not result into invalidation.

### **Invalidation of detention due to the failure of formal conditions in accordance with the Jordanian Criminal Procedures Law**

The law requires that the procedural action shall include the data required by the law in the arrest warrant such as: the name of the accused, his/her nickname, his/her profession, his/her place of residence, the charge’s type against him/her, the date of issuing the warrant, and the signature and the official seal of the public prosecutor who issued the warrant. The rule is that the procedures are based on the soundness as long as they are taken according to the law. If the arrest warrant is not drafted in the way of law, then this



arrest warrant will not be taken into account. In order to decide the invalidation on the basis of the failure of the formal conditions, the judge must distinguish between the substantial and insubstantial procedural action work, as we have previously mentioned.

As for the formal conditions for the arrest warrant, they are:

**1. The defendant shall be notified**

The defendant shall be notified of the order and reasons of his/her detention. This is in accordance with the Article (117) of the Jordanian Criminal Procedures Law which stipulates that: "The defendant shall be notified of all requests for attendance, summons, and detention warrants and shall be given a copy of each warrant issued against him/her."

**2. In terms of the form or the order of detention or arrest warrant:**

The legislator stipulated a specific form for the detention or arrest warrant issued by the authority under several conditions as follows:

The detention warrant shall be signed by the public prosecutor who issued it and shall be stamped with his/her department's stamp and shall contain the name of the dependent, his/her nickname, his distinguishing marks in addition to the charge's type, and the period of detention.

By reviewing the legal articles that mentioned these conditions, we did not find anything to talk explicitly or implicitly about the invalidation. In order to know the extent to which the theory of invalidation can be applied to these conditions, it is necessary to distinguish whether these conditions represent substantial procedures or not. With regard to the first condition (The defendant shall be notified), we find that this notification is a basic guarantee for the defendant to secure the right of defense. Therefore, what is related to the defendant's guarantees and the right of defense is an essential measure. As established by jurisprudence that the right of defense is a sacred right and the violation of it leads to the invalidation because it is related to a substantial procedure.

As for the second condition related to the form of the detention or arrest warrant, we did not find any practical or legal applications for it. Here, the judge is free to apply the criteria that distinguish the substantial procedure from others to judge whether it is defective or not, according to his discretion. It should be noted that just as there is nothing in the Jordanian Criminal Procedures Law regarding the invalidation of detention for failing to meet its conditions, especially the formal conditions, we also did not find in the decisions of the Court of Cassation anything that indicates the invalidation of the detention.

As for the effect of invalidation on the procedure itself, the rule indicates that when the invalidation of the procedural action is decided, its legal effects are removed, and thus it becomes as if it had never been. The same applies to invalidation related to public order or related to the interests of the litigants. Since when it is decided to invalidate a procedure, this invalidation can have the slightest effect, which must eliminate the evidence derived from it, and even nullify all subsequent procedures if they are based on it. That is because a defective procedure does not produce an effect, so "Every derivative of mendacity is equally mendacious" (Hawamdeh, 2008).

The Jordanian legislator addressed the effect of invalidation on the same procedure in the last part of article 7, paragraph 4 of The Jordanian Criminal Procedures Law, which stated: "The invalidation of a certain procedure does not entail the validation of previous procedures taken before the defective one. AS to the following procedures it can only be invalidated if it was based on the defective procedures."

The invalidation of the detention or arrest due to its illegality is based on the lack of reliance in the conviction on any evidence resulting or derived from it. It means that if the other procedures are independent of it, then it alone is invalidated. The invalidation of the search, which resulted in the seizure of the drug, does not preclude the court from taking all the elements of independent evidence that lead to the result of the search, and among these evidences is the subsequent confession of the accused in possession of the same drug that found during the search in his possession (Al-Saeed, 2008).

The conviction shall be assessed by the court and that the court is comfortable with it, and it must be legally acceptable and based on correct procedures. If the only evidence against the accused is based on a confession that took place under compulsion and violence before a de-facto force that has neither authority nor class, then this requires that he not be convicted. This implies that if the defective procedure is invalidated, it shall be considered as if it had not occurred. The principle is that invalidation does not affect the validity of the evidence separated from the invalid procedure. In implementation of this, the Egyptian Court of Cassation ruled that: "All that requires the invalidation of the search is the exclusion of the evidence derived from it, not the facts that occurred on the day it was conducted. If the court has established evidence of the crime from other evidence, regardless of the defective search, and the evidence according to it is valid and without any defect, then the appeal in this regard has no place (Al-Husseini, 1993).

Therefore, if it is decided that a confession is invalid, it is not permissible to rely on this confession of conviction. The same applies to the invalidation of the home search, the testimony of a witness, or the expert report, as these procedures have no effect or value, and the court may not rely on them for its ruling. This was confirmed by the Egyptian Court of Cassation in its Decision No. 92/358 No. 11 issued on December 15, 1992.

Also, the invalidation of the judgment for lack of causation does not result in the invalidation of the procedures for considering the lawsuit and the pleadings that were valid before the defective procedure and without affecting or linking to it (Haddadin, 2000). Ordinary logic may lead to saying that declaring the invalidation of a procedural action is limited to canceling its effects alone, but the defect is often transferred to other procedures, which is called the principle of extension, which is the main feature of invalidation (Zaid, 1990).

Some of the jurists believes that the defective procedure, although it does not have a negative impact on the previous and contemporary procedures, is not affected by it as a general rule, because these procedures existed legally, without being affected in their existence by the procedure that was decided to be defective. In application of this, the ruling for lack of causation does not entail the invalidation of the procedures for considering the case and the pleadings that were valid before the invalid procedure and without affecting or linking to it. The invalidation of the interrogation conducted by proxy does not entail the invalidation of the previous search or other investigation procedures that preceded it and were independent of it. (Najm, 2000). However, these procedures, despite being previous or contemporary, may extend to the invalidation if there is a link between them

and the invalid procedure. The invalidation of the arrest of the accused results in the invalidation of his search, and the invalidation of the assignment paper results in the invalidation of the announcement, and the invalidation of the referral order to unknowing the accusation extends to include the previous interrogation as long as the interrogation was carried out on the basis of the unknown accusation contained in the referral order, and it also invalidates the submitting of litigants' requests prior to the issuance of the order (Amer, 1992; Dr. Abu Al-Saud, 1992).

The Jordanian legislator dealt with the effect of invalidation on the procedures prior to it in Article (7/4) of the Jordanian Criminal Procedure law, which states:

"The invalidation of a certain procedure does not entail the validation of pervious procedures taken before the defective one. AS to the following procedures it can only be invalidated if it was based on the defective procedures."

Since when it is decided to invalidate a procedure due to the impossibility of correcting it , then this procedure shall be invalidated and it will has no legal effect and it must eliminate the evidence derived from it, and even nullify all subsequent procedures if they are based on it. That is because of "Every derivative of mendacity is equally mendacious" Abstracting the invalid procedure of its effect does not interrupt the statutory limitation on prosecution because it is considered a legal effect and results only from the correct procedure. The rule is that nullity as a procedural penalty its effect does not extend only to the procedures following it and related to it. This is stated in the paragraph 4 of article 7 of the Jordanian criminal procedures law that: "as to the following procedures it can only be invalidated if it was based on the defective procedures". Thus, the procedures related to the detention and its following procedures considered invalid due to its invalidation.

#### **IV. Findings**

Detention has impact on the freedom of individual, but it is considered a pre-trial or preventive measure whereby the defendant, by order of a competent judicial authority, is imprisoned for a legally defined period in accordance with the interests of the investigation, and within the controls established by law. In addition, the detention is one of the most dangerous measures, because it shows the contradiction between two conflicting interests, namely the freedom of the individual and the right of the state of punishment.

1. The Invalidation is a procedural penalty set by the legislator in order to protect the procedural actions in the course of the litigation from defects that may be incurred by these procedural actions, and they lead not to desired purpose of the organizer, and they prevent from access to the truth of the disputed right and thus they lead to unfairness among people.

2. The invalidation does not occur by force of law or legislation, and it must be decided by a judge's ruling, and the judge is not considered as its originator. In order to decide the invalidation, it must be raised by whom the legislator or the law has authorized to do so, and according to the type of invalidation. The invalidation related to public order may be raised by the court on its own, and at any stage of the lawsuit. As for the invalidation related to the interests of the litigants, the court may not raise it on its own,

and it must be raised by the one who is legitimized for its benefit, and it must be raised and adhered to at the outset before continuing with the following actions:

## V. Recommendations

1. We recommend that the Jordanian legislator, when amending the Criminal Procedure Law to devote a separate chapter of the theory of invalidation that includes its conditions, effects, and rules of adherence to it.

2. We recommend that the Jordanian legislator takes into account when amending the criminal procedures law to adopt or stipulate a clear and specific criterion to distinguish the procedures from each other, to rank the invalidation according to all or some of them, as well as to clearly distinguish between cases of invalidation related to public order " the absolute invalidation", and the relative invalidation which is related to the private interest, as well as to identify the 199 invalidation due to the violation of conditions. Knowing that the legislator has stipulated invalidation related to public order in some articles of the law, but he neglected the criterion of identification of the invalidation.

3. When amending, the legislator must consider the form of the detention or arrest warrant and the importance of this form, and stipulate invalidation if its conditions are not met, or indicate the possibility of correcting if violating its conditions does not require invalidation.

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