

# Rule of exclusion of evidence obtained by illegal means in the Iraqi and comparative criminal legislation and judiciary

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## Abstract

The legality of the evidence is one of the basic components of procedural legitimacy in general, which requires that the law be the source for every rule that allows infringement of rights and freedoms. The criminal procedures are, in essence, and reality, guarantees of the rights and freedoms of the accused, which ensure that his freedom is not violated and the right to defend himself. These procedures were going through two stages, one before the trial and the other taking place during the trial. In each of these two stages, the freedom of the accused is exposed to several risks, arrest, arrest, interrogation, and monitoring of correspondence and communications, so these procedures must be carried out in accordance with the rules specified in the law – the Code of Procedure Criminal – that the constitutional legitimacy of the Code of Criminal Procedure is based mainly on the protection provided by the Code of Criminal Procedure for the rights and freedoms guaranteed by the Constitution, and without the application of the Code of Criminal Procedure, it is not possible to apply the Penal Code, that is the road linking the two stages of criminalization and punishment, and through it, the Penal Code moves from criminalization to punishment, and for this to be achieved, criminal procedures must be carried out as acts Legal aims to protect rights and freedoms within the framework of constitutional legitimacy based on the origin of innocence, and therefore the evidence presented to prove what contradicts the origin of innocence must be legitimate, that is, it should not be the result of procedures tainted by violating personal freedom and rights of defense, and if it is, it is considered illegal evidence and it is not valid Reliance on it to issue a verdict of conviction.

**Keywords:** Procedural legitimacy.Exclude evidence, Legality of the evidence, Constitutional legitimacy, and Conviction verdict

## INTRODUCTION

### Importance of the research

The legality of the evidence of conviction is one of the basic components of procedural legality in general, which requires that the law be the source for every rule that allows infringement of freedom. The essence of this legality is determined by the principle of innocence of the accused, that is to guarantees personal freedom and other human rights-related it. This is in order to guarantee his freedom and all other human rights related to it,

and if the origin of the aforementioned innocence necessitates placing the burden of proof on the accusing authority, then raising that burden is not sufficient alone to deny that origin, but rather the evidence that provides a way to prove what contradicts the origin of the innocence must be legitimate. That is, it should be the result of procedures that are not tainted by a violation of personal freedom and defense rights, otherwise, it should be considered illegal evidence that cannot be relied upon in issuing a conviction.

If the criminal procedures pass through two stages, one of which is before the trial and the other takes place during the trial, and in each of these two stages, the freedom of the accused is exposed to many dangers, including arrest, search, interrogation, pretrial detention, monitoring messages and communications, and the accused (human) needs respect for his freedom and his right to defend his self at this point when he's in the prison.

The Code of Criminal Procedure does not arise merely by establishing a judicial organization to use the state's right to punishment, because the procedures it regulates are not mere purely technical means, but are acts that affect personal freedom and other rights and freedoms when they are undertaken in the face of the accused and expose them to danger.

Since the constitutional legitimacy of the Code of Criminal Procedure is based on the protection provided by the Code of Criminal Procedure for the rights and freedoms guaranteed by the Constitution, and without the Code of Criminal Procedure it is not possible to move to the application of the Penal Code, so the first is the path that must be followed to move from criminalization to punishment, and criminal procedures are only Legal acts aimed at protecting these rights and freedoms within the framework of constitutional legitimacy that based on the principle of innocence for the accused, and the judicial guarantee in the conduct of criminal procedures and a fair trial with all its elements, is the one who transfers the texts contained in the Code of Criminal Procedure from its theoretical reality to practical application, and from Then the requirement for the issuance of the judicial ruling was a constitutional guarantee to protect the rights and freedoms of the accused. Therefore, it was necessary and by necessity that judicial rulings be issued based on legitimate evidence obtained by legitimate means. On the contrary, this constitutional judicial guarantee loses its constitutional value and practical effectiveness.

From the foregoing, the importance of the topic of the research becomes clear, as it sheds light on the reality of the criminal constitutional

protection provided by the criminal constitutional rules for human rights and freedoms, and it is in the most difficult circumstances when he is in the position of the accused, this is on the theoretical level – the texts of the constitution and the law – and on the practical level, represented by Judicial rulings, which transfer constitutional and legal texts from their theoretical level to their practical dimension because the criminal judiciary is the one who gives the legal text's effectiveness.

### **Research problem**

The Code of Criminal Procedure is closely linked with the Penal Code so that each of the two laws is considered two sides of the same coin. Criminal procedures are the means to implement the Penal Code and a transition from a state of stillness to a state of movement.

Criminal procedures reveal the extent of the union between the two parts of criminalization and punishment in the Penal Code because it examines the availability of the conditions for the criminalization part to implement the punishment part, so the criminal procedures in this way are the practical face of the union of the two sides of criminalization and punishment in the penal base, and it is the effective engine of the penal law in order to move from the criminalization department to the practical application department, and since the criminal procedure law sets the judicial organization for the use of the state's right to punishment. And since the Code of Criminal Procedure establishes the judicial regulation for the use of the state's right to punishment, if the procedural regulation aims to achieve the state's interest in revealing the truth to establish its right to punishment sacrificing the personal freedom of the accused, then the state's interest has reached its climax over the interests of individuals, which is what happens in the authoritarian state, because the procedural organization must guarantee the freedom of the individual and balance it with the public interest, so from this angle the Procedures Law is one of the laws regulating freedoms in

particular, and all the rules regulating freedoms have become criminal constitutional rules.

Since all criminal procedures (arrest, stopping, interrogation, search, etc.) aim to reach evidence to know the truth to achieve criminal justice, so the search for evidence must be with the intent of truth and to achieve justice and in light of guarantees of personal freedom and defense rights, and criminal procedures are not acts of Personal freedom is violated for the sole purpose of obtaining evidence of the conviction.

And if the constitutional texts that guarantee freedoms and the provisions of the Code of Criminal Procedure that involve the procedural organization of the procedures affecting them, do not move to practical application, except through judicial work that represents the constitutional and realistic guarantee of freedoms, and which faces the problem of obtaining evidence by illegal methods, then the criminal judiciary does not work for the state's authority to punish the accused, unless he searches for evidence and finds that it conforms to the law and obtained through legitimate procedures in which freedoms are respected and the guarantees established by law, no matter how blatant and clear the evidence is that the accused committed the crime, it is not correct to build on it the conviction Because it is a given that the eagerness to blame those who break the law does not transcend the observance of the procedures that are required and the guarantees that are guaranteed.

### **Research objectives.**

The research objectives are the following points:-

First: Studying and analyzing the constitutional and legal texts related to the rule of excluding illegal evidence in Iraq and the countries whose legislations have been used for comparison to determine their contents and to emphasize the best legislative options among them.

Second: Since the judicial protection of the accused's rights and freedoms complements the

constitutional and legal protections, and since it is the judicial applications of the constitutional and legal texts that transfer these texts from their theoretical field to the practical field, and since the rule of excluding illegal evidence finds its theoretical basis in the texts of the constitution And the law, but its work in practical application is through its judicial applications, so this research aims to study and analyze judicial rulings in Iraq and the countries that have taken the subject of comparison to determine the extent of congruence and difference regarding the application of the rule of exclusion of illegal evidence among the judicial rulings that are compared.

### **Research Methodology.**

To acquaint all the details of the study, the descriptive-analytical method and the comparative method were adopted between the Iraqi penal legislation and the penal legislation in most countries, including Egypt as an Arab country and France.

The same applies to judicial rulings, with reference to international covenants and European Court of Justice rulings as far as they relate to the topic of research.

### **Research Plan.**

The research will be divided into two topics. In the first topic, we will study the legal protection of the rule of exclusion of illegal evidence in Iraqi and comparative penal legislation. In the second topic, we will devote to the study of judicial protection for the rule of exclusion of illegal evidence in Iraqi and comparative criminal justice.

The first topic

The position of the Iraqi and comparative criminal legislation on the principle of excluding evidence obtained by illegal means.

To discuss the position of the Iraqi and comparative penal legislation on the principle of excluding evidence obtained by illegal

means, we will divide this topic into two requirements. The first requirement: is the study of the position of the Iraqi penal legislation on the principle of excluding evidence obtained by illegal means, while the second requirement is the study of the position of comparative penal legislation on the principle of excluding evidence obtained by illegal means.

First requirement.

Iraqi penal legislation positions the principle of the exclusion of evidence obtained illegally

In general, criminal evidence is required to be legitimate in terms of its quality and obtaining. The legality of existence requires that the law provides for the authorization of the reliance on it by the criminal judge to cause a ruling, and the legality of obtaining evidence requires that it be obtained by following the procedures stipulated by the law. The research turns to the case of obtaining legal evidence, but by illegal means, contrary to the procedures stipulated by the law, refer to the Iraqi legislation, we note that the exclusion of evidence obtained by illegal means finds a basis in the Iraqi constitution for the year (2005), which stipulates in Chapter Two (Freedoms) In Article( 37/C), states that ((it is forbidden to all kinds of psychological and physical torture and inhumane treatment and any confession extracted under duress, threats or torture shall not be considered. The aggrieved party may claim compensation for the material and moral damage he sustained following the law. If the foregoing text dealt with excluding confession obtained by illegal means, which was defined by the text as coercion, threat, or torture, but at the same time it represents a criminal constitutional rule, any part of the constitutional legitimacy of the Code of Criminal Procedure, given that the constitutional legitimacy of both the Penal Code and the Code of Criminal Procedure is based On the protection provided by each of the rights and freedoms guaranteed by the constitution, and the second is that without the Code of Criminal Procedure, the Penal Code will not be applied, so the first law is the path

that must be followed to move from criminalization to punishment .

Since it is not correct to say that the Code of Criminal Procedure regulates the forms of criminal litigation procedures, but what is correct is that it is a law regulating the constitutional protection of rights and freedoms, ensuring their protection , and the procedures contained in the Procedure Code are legal acts aimed at protecting these rights and freedoms within the framework of constitutional legitimacy that based on both the principle of innocence for the accused and the judicial guarantee in the conduct of criminal procedures and a fair trial with all its elements, and since the texts of the Constitution represent the rules and principles upon which the system of government is based, and they have the primacy of the rules of public order that must be adhered to and observed, and the legislation in contravention of it must be neglected, that considered the highest commanding rules. And since the Code of Criminal Procedure does not rise merely by setting up the judicial organization to use the state's right to punishment, because the procedures it regulates are not just purely technical means, but they are acts that affect personal freedom and other rights and freedoms when they are taken against the accused, so the criminal procedures, with all their meanings of accusation, and with all their aim of gathering evidence to reveal the truth, affect the freedom of the accused or endanger it. Therefore, the Code of Criminal Procedure in any country is an accurate picture of the freedoms in that country, and the ordinary legislator must adhere to the constitutional legitimacy and respect the criminal constitutional rules that are criminal principles guaranteed by the Constitution. The Iraqi legislator has devoted in the Code of Criminal Procedure No. (23) of 1971 amended the cases of excluding recognition obtained illegally in Articles (127) and (218) from it.

In our view, there is no contradiction between what is contained in the Constitution and what is stated in the Code of Criminal Procedure, regarding the exclusion of an illegal confession, this has not given rise to the problematic situation in some legislation and the crisis of its

application, since some recent constitutions have contained provisions that differ in content from the provisions of the Code of Criminal Procedure in force before they enter into force. and without the legislator amending or repealing the provisions of the Code of Criminal Procedure and bringing them into line with the provisions of the Constitution. After extrapolating the opinions of jurisprudence and comparative criminal justice, we found that in the event of a difference between the constitutional text and a provision in the Code of Procedure, the constitutional text- if it is directly applicable - is considered a copy of the text contained in Procedure Code, if the latter was previously in force , but if the constitutional text is not directly applicable, then saying that the previous legislative text on the constitutional text is contrary to the constitution is a statement under consideration given that the constitutional judiciary does not monitor the legislator's refrain from issuing a certain legal rule to fulfill what the constitution requires .

The researcher believes that it is necessary that the text should not be limited to excluding confession obtained through coercion only, but that it should include excluding confession obtained illegally and in violation of the law. In addition to the need for the law to include an explicit text excluding evidence obtained illegally, and that the matter is not limited to excluding confession, to ensure the protection of rights and freedoms and not to be wasted under the pretext of searching for evidence leading to the truth, because access to evidence by illegal means harms the truth and touches the essence of justice.

Therefore, we believe that the exclusion should be extended to include all evidence obtained illegally and contrary to the criminal procedures established in the law, especially those that represent a precise regulation of personal freedoms, which the Constitution has elevated to the level of constitutional rules, especially since the legality of the evidence is an essential element of what the Iraqi Constitution called with the fair legal trial .

Also, what is meant by the procedural legitimacy through which evidence is obtained is that the process of searching for and obtaining it has taken place following the procedures prescribed by law for its collection, whenever it was obtained outside these legal rules, the value of the evidence is not considered, whatever its evidence of the truth, because of its illegality and therefore it should not be considered a document obtained as a result of the void inspection .

As the evidence must conform with the law, if it violates the mandatory legal rules, it will be void and stripped of the legal value of being convinced in it, and it is no longer valid to be invoked and relied upon in the evidence. Persuasion , and it is not correct to rely on any evidence, no matter how clear its significance, as long as its source lacks integrity and is not characterized by respect for the law .

#### The second requirement

The principle of excluding evidence obtained by illegal means in comparative criminal legislation

The principle of excluding evidence obtained by illegal means finds its basis in international covenants before national legislation, and international covenants included texts confirming the inevitability of evidence, and the article (7) of the International Covenant on Civil and Political Rights affirmed that ((no one may be subjected to torture or cruel treatment or punishment inhuman or degrading of dignity)) the article (9) also stipulates that ((Everyone has the right to liberty and security of his person, and no one may be arbitrarily arrested and detained, and no one may be deprived of his freedom except for reasons stipulated by law and in accordance with the procedures established in it.))

Article 10 requires the treatment of all deprived of their freedom of humane treatment, which respects the inherent dignity of the human person, and the guarantees stipulated in Article (14) regarding the guarantees for every person accused of a crime during the examination of his case, in addition to his being considered innocent until the crime is proven legally, that

he will not be compelled to testify against himself or to confess guilt. Likewise, Article (17) prohibits exposing any person, arbitrarily or illegally, to any interference with his privacy, family, home, or correspondence, or any illegal campaigns affecting his honor or person, and establishes the right of every person to be protected by law from such interference or prejudice.

As for the Universal Declaration of Human Rights, Article (5) states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article (9) also affirmed that no person may be arbitrarily arrested, detained, or exiled. This is the ruling included in Article (9) of the International Covenant previously mentioned, even though Article (17) of the Covenant is a repetition or detail of the provision of Article (12) of the Universal Declaration of Human Rights.

The United Nations also issued a Declaration on the protection of all Persons from being subjected to torture and other cruel, inhuman, or degrading treatment or punishment. This declaration was adopted by General Assembly resolution 3452 (D-30) of December 9, 1975, based in particular on the text of Article (5) of the Universal Declaration of Human Rights, and Article (9) of the aforementioned International Covenant, and Article 1 of the aforementioned Declaration of Protection includes what is meant by torture within the scope of its work, that which occurs by the act of a public official, or at his instigation, to obtain information or a confession, and Article (12) included It includes explicitly disclosing the inevitability of the legality of the evidence by stating that ((if it is proven that making a statement was the result of torture or other cruel, inhuman or degrading treatment or punishment, that statement may not be taken as evidence against the person concerned or another person in any lawsuit)).

It should be noted that the circle for the protection of human rights in criminal proceedings held in Vienna in March 1978 tried to differ the effect between grave violations of those rights, such as torture, and other illegal means so that the evidence obtained from the

first is rejected, while the acceptance of evidence resulting from the means is subject to The court was convinced of the extent of its sincerity and weight of the values and interests related to it, and one of the advantages of the Twelfth International Conference on Penal Law held in Hamburg was its non-acceptance of this distinction and the rejection of a recommendation that allows the judge to adopt false evidence.

In the same context, the introductory session of the Fifteenth International Conference on Penal Law, which was held in the Spanish city of Toled in May 1992, issued several recommendations, including that all evidence based on a violation of a fundamental right is considered null and cannot be considered at any point in the criminal proceedings .

The United Nations General Assembly also adopted the convention against torture and other cruel, inhuman, or depressing treatment or punishment by its resolution (39/46) dated (10) December 1984.

As for the position of comparative laws regarding the exclusion of evidence obtained by illegal means, we find that the Egyptian Code of Criminal Procedure stipulates in the second paragraph of Article (302) added to Law No. (37) of 1972 that (every statement proves that it was issued by one of the accused Or witnesses under duress or threat of it is wasted and unreliable).

In France, Article 114/1 of the French Code of Criminal Procedure stipulates that the accused must be alerted when he appears before the investigating judge for the first time that he is free not to make any statement. Failure to alert the accused to this right results in the nullity of the investigation .

Also, the French Penal Code punishes in Article (86) of it the employee who uses violence against the accused, and article (173) of the French Code of Criminal Procedure requires the exclusion of papers that contain false acts and may not be invoked even as inference. It is not permissible to rely on evidence obtained from an invalid search

according to the French Code of Criminal Procedure .

Several comparative laws decide to ban the means of control that violate the sanctity of the person in his private life and decide their illegality and therefore the illegality of the evidence obtained from them, as in the case with the prohibition of electronic surveillance on telephone communications, wiretapping devices for people or obtaining information through electronic means, and among these laws The German Federal Criminal Law of 1967, in Article (298) thereof, and Swiss Federal Law No. (1) of 1969 concerning the protection of confidentiality, in an article (179) thereof, and Danish Law No. (28) of 1970 in Article (79). In England, it is stable that freedom of correspondence and communication is subject to the authority of the Minister of the Interior in accordance with Article (58/1) of the Postal Act of 1953, and in the United States of America, it is required to obtain judicial permission for electronic monitoring of telephone communications .

However, English law in general does not take into account the method through which the illegal evidence is obtained. Exclusion of illegally obtained evidence according to the rule of exclusion of evidence (The Exclusionary Rule) that the House of Lords has stood in favor of the rule of excluding evidence obtained by illegal means to achieve a fair trial, when the evidence is much less important than the subject matter of the case and when it is exaggerated to obtain on it .

In England, the Police and Criminal Evidence Act No. (60) of 1984 stripped the discretionary power of the criminal judge through the obligatory exclusion of the confession extracted from the accused, whether it was done by coercive means or after something he was told, or the confession was made after it. The court allows the public prosecutor to present such evidence even if the confession is factually genuine .

From the foregoing, it is clear that comparative laws prohibit the violation of the rights and guarantees of individuals, that the process of

searching and investigating evidence should be carried out within the framework of these guarantees, and that the criminal procedures taken against the accused take into account the rights of the defense and the requirements of preserving human dignity, although some of them did not expressly decide to exclude the evidence obtained, in contrary to the legally established criminal procedures, it is necessary to examine and study the judicial position on the evidence obtained by illegal means, to find out the judicial interpretation of the relevant legal texts and to identify the most important principles that have been established to protect the rights of the defense and ensure respect for human dignity, and this will be the subject of our study in The second topic of this research.

#### Second topic

Judicial application of the principle of the exclusion of illicitly obtained evidence

To examine the judicial applications of the principle of exclusion of evidence obtained by illegal means, we divide this topic into two sections. We devote the first requirement to the study of the position of the Iraqi criminal judiciary on the principle of excluding evidence obtained by illegal means. As for the second requirement, we will devote it to studying the comparative position of the judiciary on the principle of excluding evidence obtained by illegal means.

#### First requirement

Iraqi Penal Court's Position on the Exclusion of Unlawfully Obtained Evidence

The principles approved by the Iraqi judiciary represented by the Federal Court of Cassation call for pride, as the Federal Court of Cassation, through its judicial interpretation of the origin of the innocence, established many principles related to the issue of the legality of evidence, so it was imposed on the criminal judiciary when it searches for evidence, as well as on the parties to the case when they present the evidence to the judge, that the evidence is in conformity with the law, so that if it violates the mandatory rules, it is void and stripped of legal value in conviction, and it is no longer

valid for reliance on it in conviction, although the Iraqi legislator under the text of Article (181 / d) took a rule that it involves forms in implementation on the one hand, and on the other hand, this text removes the evidence from its objective basis and introduces it into the old concept by describing confession as the master of evidence .

In addition, we find that the Federal Supreme Court had a major role in consolidating the principles of respect for human dignity, and the principle of innocence in the accused, from which many defense rights and guarantees derive, including the exclusion of evidence obtained illegally. The accused is innocent until proven guilty in a fair legal trial, human freedom and dignity are preserved, and withholding this freedom must be regulated by a law that leaves the judiciary to decide the legal position in arresting the accused or releasing him on a surety bond. As for restricting the judge completely, as is the case in the text of Article (1) From the decision of the (dissolved) Revolutionary Command Council No. (157) of 1996, it is considered in violation of the provisions of Articles (19/first), (47) and (88) of the Constitution of the Republic of Iraq for the year 2005, so I decided to rule after its constitutionality .

The Federal Supreme Court also decided to rule the unconstitutionality of Paragraph (A) of Item Two of Article (37) of Customs Law No. (23) of 1984, which grants the Director-General or whoever is authorized to arrest the accused, and indicated that this violates Paragraph (I / B) of Article (37) of the Constitution and ruled that it is unconstitutional since any law that grants the authority to arrest suspects to other than the judges is considered an unconstitutional law .

We find that the Iraqi judiciary emphasized, in most of its decisions, not to accept the confession alone, despite the permissibility of ruling based on the confession , the Court of Cassation ruled that recognition in criminal matters and that the ruling is permissible accordingly, but that this permissibility does not prevent the court from further examining the validity of the confession or not , and it ruled that confession alone is not sufficient for

judgment unless it is supported by evidence to support it , and it ruled that the duty is to summon the doctor who organized the autopsy form and discuss it in the light of the confession and ask him whether the diseases in the victim's body are caused by poison or not , and it ruled that if the confession was the only evidence, then it is not permissible to take it into account unless it matches the reality of the situation .

The Court of Cassation also ruled for the court to waste the part that did not show evidence to support its validity and ruled that the confession alone is not sufficient for conviction unless it is supported by testimonies , or other evidence , or by revealing the evidence and the anatomical report , or it was written in the hand of the accused and supported by testimonies and the medical report or if it was supported by the victim's statement and the autopsy report or if the confession conformed to reality , or if it was reinforced by the testimony of the complainant and the report of the examination on the scene of the accident , and the Court of Cassation ruled that the confession is not sufficient for conviction if the accused retracted it and it was contradictory or if the evidence denies it or if the evidence is found to weaken it .

The Federal Court of Cassation emphasized the need for the evidence to be legal and valid for conviction , and in the latest decisions of the Federal Court of Cassation, it ruled that the accused had obtained a forensic medical report in which it was established that the accused had been subjected to torture, which led to the dislocation of the back of the joint, making it unfit for reliance. It rises to the level of sufficient evidence to punish the accused for a serious crime punishable by execution .

It also ruled that the accused retracted his previous confessions and that he was subjected to the most horrific forms of torture, which makes the confession unreliable and the judgment convicting the accused .

From the foregoing, it is clear that the Iraqi judiciary is stable on not accepting evidence obtained illegally, and we conclude from the



judicial applications previously stated that the Iraqi judiciary is truly the wall that protects freedoms and that it is the shelter of the oppressed, especially since the judicial application is what gives the penal, objective and procedural texts effective in practical reality and through judicial interpretation that seeks to reveal the truth with legitimate evidence obtained through correct legal procedures, to achieve the desired criminal justice.

#### Second requirement

The principle of exclusion of evidence obtained by illegal means in the comparative judiciary

When extrapolating the decisions of comparative criminal justice, we find that it is stable in most of the countries with which the comparison was made not to rely on illegal evidence. Rather, comparative criminal justice confirms the inevitability of the legality of the evidence, and on the contrary, it is not valid to rely on it in issuing a judgment of conviction.

The Egyptian Court of Cassation has expressed its refusal to rely on the evidence resulting from procedures that do not abide by procedural legitimacy, and among the principles that it has settled on in its numerous rulings embodying this side in its saying (the original is that the confession that is relied upon must be voluntary and it is not considered as such even if it is sincere if it is issued an effect Coercion or threat to an object was as much as this threat or coercion) .

This court also ruled that (If the facts of torture took place, the statements that came from witnesses and prisoners who were subjected to this torture must be dismissed. Responsibility and the presence of lawyers in the investigation do not negate the occurrence of torture. It is not correct to rely on these statements, even if they are true and conform to reality, when they were the result of torture or coercion, no matter how insignificant, and the presence of lawyers in the investigation does not negate the occurrence of torture) .

And it's saying, "It is not sufficient for the integrity of the judgment that the evidence is

truthful when it is the result of an illegal procedure." . The Egyptian Court of Cassation also ruled that "The court has the power to estimate the statements of the accused and it may implement their truth without taking into account their appearance, and in the case of a plea for the invalidity of a procedure and this is proven, it may estimate the amount of connection of these statements with the invalid procedure and the extent to which they are affected by it) .

It also ruled that ((it is not valid to infer the wife by the confession attributed to her partner in adultery and which is recorded in the report of the false search as long as the arrest of this partner in the home was only the result of an invalid procedure)) .

The Egyptian Court of Cassation also ruled that "it is not sufficient for the integrity of the verdict that the evidence is truthful when it was the result of an illegal procedure" ( ), and it also ruled that "the defense of the accused that he cannot be inferred by a witness who has been overheard or by a stolen paper is from the defense that, in addition to being It is related to public order that requires an objective investigation"( ), and it ruled that "the judge may make his belief from any element of the case unless this element is derived from a legally void procedure" .

As for the judgment of acquittal, the Egyptian Court of Cassation has resulted in the Egyptian Court of Cassation's observance of the principle of the established principle of innocence for the human being, to decide that the provisions of innocence may be excluded from the inevitability of legality of evidence as a result of the origin of innocence, and it was judged that legality is not an obligatory condition in the evidence of innocence and the reason for this approach taken by the court The cassation is that the origin of the innocence does not make the trial court in need of proof, but rather skepticism is sufficient for it as a basis for ruling on it, and it is sufficient for it to base the doubt on any evidence, even if this evidence is illegitimate, as long as it is within the scope of confirming the origin to prove the opposite .

Among the judicial applications of the Egyptian Court of Cassation related to excluding acquittal rulings from the condition of the value of the legality of the evidence, it ruled that what was included in the judgment stipulating that the evidence of the conviction be legitimate and valid, because it is recognized that the conviction may not be based on invalid evidence in the law, but his report is the same opinion. In the evidence of innocence, it is not correct, because it is one of the basic principles in criminal procedures that every accused enjoys the presumption of innocence until his conviction is judged by a final judgment and that until this judgment is issued, he has complete freedom to choose means of defense as much as his position in the lawsuit and the factors surrounding himself of fear, caution, caution and other natural symptoms of the weakness of human souls, based on the guidance of these principles, the right of the accused to defend himself, and it became a sacred right. He transcends the rights of the social body, which does not harm the acquittal of a guilty person as much as it harms them and harms justice together. The conviction of the acquittal and the Court of Cassation concluded that it is not permissible to exclude the evidence that the accused presented even if it was illegally accessed .

It also ruled that the verdict of acquittal based on written testimony from a judge and the statements of a lawyer that included information that reached him by virtue of his profession and that he did not disclose, does not undermine the integrity of the ruling .

In France, the judiciary of the French Court of Cassation has settled on the principle of excluding illegal evidence. This court has ruled that prolonging the interrogation of the accused by several hours without giving any opportunity for rest constitutes an attack on human dignity and thus constitutes one of the cases of coercion nullifying the evidence obtained from this interrogation , It also ruled that any evidence on which the judgment of conviction is based must be legitimate evidence and that the conviction is not based on false evidence . It also ruled that it is not permissible to base the conviction on telephone recordings

made by the judicial police officer without judicial permission or to rely on documents obtained by an unreliable method in their legality .

In England, we find that the judiciary there, despite the absence of an imperative rule of the legality of evidence and the exclusion of illegal evidence, because the English judiciary sometimes takes it if the evidence is influential in the case, but it decides that criminal justice must be achieved with the accused , in the *Joffrey v Black* 1978 case, the Extraordinary Chamber of the Court of the Queen's Listening went to the trial court's error when it decided to exclude evidence obtained as a result of a false search of the accused's home, which resulted in the seizure of a drug that leads to an unfair solution, and added that discretion should not be used except as an exception when a policeman has not only exceeded the limits of his competence but has also committed fraud or misled another person or may have acted in a way that condemns him . It should be noted that the British Criminal Justice Act 2003 expressly stipulates that the accused may not be subjected to torture or inhuman treatment and prohibits the use or threat of violence, whether it amounts to torture or not.

At the level of the European Court of Justice, it has affirmed that the requirements of combating crime, especially in the context of terrorist crime, do not allow any restriction on the protection established for the physical integrity of man .

It is clear from the foregoing that the judicial applications of the principle of excluding evidence obtained by illegal means reflect the reverence of the criminal judiciary for human rights and its keenness to guarantee them, taking into account the sensitivity of the position of the accusation and its deep sense of accuracy. A lofty place that transcends the right of the social body to punish the guilty.

## Conclusion

In conclusion of this research, we reached several results and recommendations, which can be summarized as follows:

First: Results.

The research results can be summarized as follows:-

1. The Iraqi penal legislation, as well as the comparative penal legislation, did not include texts that lay down a clear and precise general rule according to which all evidence obtained through illegal means was excluded, but it did include texts related to the prohibition of obtaining recognition by illegal means such as coercion, threats, torture or deception, with special texts related to the invalidity of it. Criminal procedures are carried out in violation of the law, such as false searches or false arrests.
2. International covenants expressly provide for the exclusion of illegal evidence, in particular confession obtained through coercion, torture, or cruel treatment.
3. The attempt of the Human Rights Protection Circle in the Criminal Procedures held in Vienna in March 1978 to distinguish and differ in the effect between grave violations of human rights such as torture and other illegal means, So that it is imperative to reject the evidence obtained from the first, while the evaluation of evidence obtained from other illegal means is subject to the assessment of the court in light of its conviction that failed, among the advantages of the Twelfth International Conference on Penal Law, held in Hamburg, was its non-acceptance of this distinction and its rejection of an approach allowing the judge to adopt false evidence.
4. It was noted that the situation in some countries, such as England, where the law was not considered as a general rule by the method through which the illegal evidence was obtained, is considered the strength of the evidence and its relevance to the subject matter of the case, bearing in mind that the House of Lords stood in favor of the rule of excluding evidence obtained by illegal means to achieve a

fair trial in accordance with Article (6) of the Human Rights Act in England for the year 1998, and the Police and Criminal Evidence Act No. (60) for the year 1984 stipulated in Article (78/a) of it that evidence should be excluded by the judge if the process of obtaining it was unfair.

5. It was found that the decisions of the Iraqi criminal justice represented by the judiciary of the Federal Court of Cassation have consistently excluded the confession obtained through torture or other illegal means and that the judiciary of the Federal Court of Cassation has devoted fundamental principles regarding illegal evidence, the most important of which is that the criminal judge must search for evidence that conforms to the law Which is not flawed with regard to the procedures for obtaining special access if it was obtained through procedures in which the personal freedom of the accused was violated.

6. We found that the criminal judiciary in some countries, including Egypt, has triumphed over human dignity when the Egyptian Court of Cassation drew attention to the necessary distinction between the truthfulness of confession or testimony as evidence in the case and its conformity with reality. It showed its validity as a procedural act and to support human dignity and care for its humanity, it was not permissible to mix them up, and it did not tolerate the actions of the impact resulting from the issuance of a confession from coercion or threat of it, and then refused to rely on it even if it matches the truth.

Second: Recommendation

The most important recommendation that we believe should be adopted by the legislator and at the level of judicial applications can be summarized as follows:-

1. The necessity of explicitly stipulated in the Code of Criminal Procedure the rule of excluding evidence obtained by illegal means, and not only excluding recognition obtained by illegal means.
2. Until the explicit provision in the Code of Criminal Procedure on the rule of excluding

evidence obtained by illegal means, we believe that judicial applications should establish the rule of excluding evidence obtained by illegal means and determine the inevitability of the legality of the evidence.

3. The judicial application of the rule of excluding illegal evidence, which is what we recommend considering that the inevitability of the legality of the evidence of conviction is one of the important components of procedural legitimacy and an essential element of a fair trial so that the legality of the evidence does not depend on it in the conviction even if it is honest and consistent with reality.

4. The necessity of deciding the exclusion of acquittal rulings from the imperative of legality of evidence, and emphasizing that this legality is not a necessary condition in the evidence of innocence since the reason for this exception is the accused's right to defend himself as much as his position in the case helps him, in appreciation of the critical position of the accused, his accuracy and his special circumstances, the least of which is their presence behind bars and what Proof of innocence is surrounded by difficulties.

5. We call on the Iraqi criminal legislator, in addition to providing for the inclusion of any evidence obtained from the accused by illegal means, to exclude him and not rely on it in issuing convictions, we also call him on enacting a special law to compensate those affected by arrests and those convicted upon acquittal and release, if harm occurred to them as a result of a violation of their rights and freedoms in violation of criminal procedures, and in particular when confessions were taken from them by illegal means, provided that the people and entities that carry out criminal and civil liability are identified, and the Iraqi legislator's call to legislate such a law for its importance and to achieve the principle of equality among Iraqis, given that the Kurdistan Region of Iraq enacted the Law of Compensation for Detainees and Those Convicted at Innocence and Release No. (15) of 2021.

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