

**Invalidity Conditions of Invalid Arrest in
Flagrante Delicto Cases
Comparative Applied Study**

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Abstract:

Undoubtedly, law permits the restriction of the physical freedom of individuals through arrest, and permits assaulting person's inviolability through searching him but after balancing the public interest with the individual one. Since arrest is one of the most procedures that prejudice the personal freedom of individuals, it was necessary to clarify the extent of the validity of arrest procedures in cases of flagrante that meet full controls or conditions.

In view of the seriousness of the arrest procedure, the idea of this research emerged under the title of: "Invalidity Conditions of Invalid Arrest in Flagrante Delicto Cases." To clarify the subject of the research, it was necessary to answer several questions, the first of which is: What is the nature of the procedure for arrest? What is the nature of flagrante delicto? We researched for the cases of invalidity in cases of flagrante delicto, its conditions, and finally the nature of arrest.

Main Findings: There is clear difference of opinion regarding determining the nature of the invalidity of arrest. We chose the opinion that the plea for the invalidity of arrest and search is one of the legal defenses mixed with reality, and therefore it may not be filed for the first time before the Supreme Court.

Main Recommendations: We hope from the Saudi legislator to add an explicit legal article specifying the nature of invalidity resulting from invalid arrest in cases of flagrante delicto, so that it becomes clear that arrest in this case is absolutely invalid.

Keywords:

Flagrante Delicto- Arrest- Absolute Invalidity- Relative- Invalidity- Lawful .

أحوال البطلان الناشئ عن قبض باطل في أحوال التلبس

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أستاذ مساعد في كلية الحقوق والعلوم السياسية في جامعة الملك سعود

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الملخص:

إن كان النظام يسمح بتقييد الحرية البدنية للأفراد عن طريق القبض، ويبيح الاعتداء على حرمة الشخص عن طريق التفتيش، فما ذلك إلا بعد موازنة بين المصلحة العامة والمصلحة الفردية، ولكون القبض من أكثر الإجراءات مساساً بالحرية الشخصية للأفراد، كان لابد من تبيان مدى صحة إجراءات القبض في حالات التلبس التي تكتمل ضوابطها أو شرائطها.

ونظراً لخطورة إجراء القبض تولدت فكرة هذا البحث والتي حملت عنوان "أحوال البطلان الناشئ عن قبض باطل في أحوال التلبس" ولتبيان موضوع البحث كان لزاماً أن نجيب على عدة أسئلة، أولها ماهية إجراء القبض، وماهية التلبس، ومن ثم تحريماً عن أحوال البطلان في حالات التلبس، وشروطه، وأخيراً طبيعة القبض.

وكانت أبرز النتائج، ظهر بجلاء اختلاف الرأي بشأن تحديد طبيعة بطلان القبض، واخترنا الرأي الذي ينادي بأن الدفع ببطلان القبض والتفتيش من الدفع النظامية المختلطة بالواقع، ومن ثم لا يجوز إثارتها لأول مرة أمام المحكمة العليا.

وكانت التوصية أننا نأمل من المنظم السعودي تحديد طبيعة البطلان الناشئ عن قبض باطل في أحوال التلبس بنص صريح حتى يستبين الأمر أنه بطلان مطلق.

كلمات مفتاحية:

التلبس - القبض - بطلان مطلق - بطلان نسبي - مشروعة.

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The Law of Criminal Procedure is one of the laws most closely related to personal freedom, because the goal of criminal procedures is to investigate and reveal the facts of the crime. This goal may be difficult to achieve except by enacting a set of procedures that prejudice the rights of individuals, such as arrest.

Arrest is one of the most serious criminal procedures that affect personal freedom, as it wastes evidence of innocence, and also harms the reputation of the accused. However, the necessary harm is justified by the necessity of investigation; as arrest is a guarantee that the accused will appear before the investigator, who will ask and interrogate him, and make him encounter the witnesses and evidence of the crime. However, the preserve of human freedom should be considered, so that an innocent person is not arrested, and the freedom and rights of the individual are not affected except to achieve the public interest.

Penalty is one of the pillars of the legal rule, rather its main pillar, as it activates the need to respect the individuals subject to the provisions of the legal rule; because of the duties it decides, and the obligations it imposes on them. Hence, the absence of penalty makes the legal rule just a written text devoid of every motive to observe and respect it. If the legal rule loses the pillar of the penalty, it turns to be within customs and morals, and it is easy to depart from its duties ¹

It is worth noting that if the penalty is the cornerstone of the general theory of laws, then penalty represents the main pillar of procedural law; because it controls the proper application of the procedural law, which prevents the violation of its provisions.

¹ Dr. Hassan Ali Hussein, The General Theory of Procedural Sanctions, Ph.D. thesis, Faculty of Law, Alexandria University, 2004,

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Research Importance

The procedural penalty ² aims to prevent the procedural action for which the elements specified by law were not taken into account, and its statutory effects³. Hence, omission or violation of procedural rules entails procedural penalties, the most important of which is the invalidity of the offending act unlike other types of non-procedural penalties, which are criminal, disciplinary, or civil.⁴

Since the Kingdom of Saudi Arabia is based actively on the effective maintenance of human rights⁵ in accordance with Islamic law, therefore, the maintenance of these rights is a duty on the state, and for this it regulates through law the limits of individuals' rights, and shows the actions that should be avoided or grasped to protect these rights. Undoubtedly, law permits the restriction of the physical freedom of individuals through arrest, and permits assaulting person's inviolability through searching him but after balancing the public interest with the individual one. Since arrest is one of the most procedures that prejudice the personal freedom of individuals, it was necessary to clarify the extent of the validity of arrest procedures in cases of flagrante that meet full controls or conditions.

² The criminal procedural rule is a "reciprocal" rule; this is because if the procedural action entrusts a person in a procedural capacity with "authority", "right" or a "enables him", it imposes on the other party in the procedural bond a "submission" or an "obligation" or a "duty" or a "burden". Dr. Abdel-Fattah Mustafa Al-Saifi, The General Theory of the Procedural Rule, University Press, no year of publication, p. 52

³ Dr. Abdel-Fattah Mustafa Al-Saifi, The General Theory of the Procedural Rule, Ibid. p. 134.

⁴ Dr. Muhammad Eid Al-Gharib, Law of Criminal Procedure, Part 2, Dar Al-Nahda Al-Arabiya, 1996 - 1997 AD, paragraph 1365, p. 1683

⁵ Basic Law of Governance, Article (26) promulgated under Royal Decree No. A/90 on 27/8/1412 AH

Research Problem:

Given the seriousness of the arrest procedure as it affects the personal freedom of the accused, which should not be prejudiced except in accordance with the provisions of the law, therefore this research answers the following questions:

- What is the nature of arrest procedure?
- What is the nature of Flagrante Delicto?
- What are the conditions of invalidity in cases of flagrante delicto?
- What are the conditions of valid Flagrante Delicto?
- What is the nature of invalid arrest?

Research Methodology:

The research problem being studied plays a major role in choosing and identifying the methodology that will be employed. The choice of a particular approach or methodology depends on the quality of the research, its suitability to the nature of the events being studied, and the objectives sought from it.

From this point of view, the research will employ the analytical and fundamentalist approach, taking into account the comparison and application as follows:

This research, based on the fundamentalist methodology, researches and studies the similar partial or subsidiary legal issues properly to reveal the common ground therein, including, for example, extrapolating the trends of judicial rulings in several topics to clarify the general rule governing the subject.

The study also employs the deductive (analytical) approach, based on a general rule that it applies to some cases. We relied on the general rules of the Law of Criminal Procedures, to reveal the possibility of applying them to research questions, along with mentioning the provisions of Saudi and Egyptian law.

Research Plan

Based on the foregoing, our plan will be to study the conditions of invalidity arising from invalid arrest in cases of flagrante delicto. It will be divided into five sections, as follows:

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- Nature of arrest
- Nature of Flagrante Delicto
- The conditions of invalidity in cases of flagrante delicto?
- The conditions of valid Flagrante Delicto?
- The nature of invalid arrest?

Section One

Nature of Arrest

In this section, we will review the legal, judiciary and jurisprudential definition of arrest, as well as explaining the reasons for arrest or the conditions that allow to arrest of the accused.

Topic One

Legal Definition of Arrest

The Drafted Implementing Regulations for the Law of the Bureau of Investigation and Public Prosecution defined arrest as:

"A set of temporary precautions to seize the movement of the accused in order to verify his identity and take measures against him"⁶

Arrest was also defined in the Drafted Implementing Regulations of the Law of Criminal Procedures⁷ as:

"Seizing the accused to take legal measures against him"⁸

The Saudi Law of Criminal Procedures in force⁹ did not define Arrest; as it gives¹⁰ jurisprudence and judicial rulings the authority to clarify the meaning of arrest.

⁶ The Drafted Implementing Regulations for the Law of the Bureau of Investigation and Public Prosecution – Chapter One – Definitions (5)

⁷ Has not been issued

⁸ The Drafted Implementing Regulations of the Law Criminal Procedures, Chapter One (4) Concerning the drafted regulations: Cited from the arrest of the accused in the Law of Criminal Procedures, a comparative study, Osama bin Abdul Rahman bin Muhammad Al-Rajhi, complementary research submitted to obtain a master's degree in Sharia Politics, 1427 - 1428 AH, p. 18. This draft was not approved, and a regulation was issued after it, but it was referred to, as it represents an organizational vision at the time.

In comparative law, the Algerian legislator defined arrest as: The order directed to the public force to search for the accused and bring him to the penal institution mentioned in the order.¹¹

Kuwaiti Law of Procedures and Penal Trials¹² defines Arrest as: An arrest is the seizure and bringing the person, even forcibly, before the court or the investigator by order of him, or without an order, in cases provided by law.¹³

Therefore, arrest aims to restrict and seize the freedom of the accused to take legal measures against him.

Topic Two

Judicial definition of Arrest

Arrest is defined as: Holding the arrested person from his body, restricting his movement and depriving him of the freedom to roam without considering a certain period of time¹⁴. Judiciary also defined it as:

⁹ Issued on 22/1/1435 AH by Royal Decree No. (M / 2) dated 22/1/1435 AH

¹⁰ Dr. Muhammad Ahmad Al-Minshawi, Explanation of the New Saudi Criminal Procedure Law, Edition 1, Dar Al-Ijadah, 1437 AH - 2017 AD, p. 230

¹¹ Article 119 of the Algerian Code of Criminal Procedure promulgated by Order No. 66-155 of Safar 18 1386 corresponding to June 8, 1966: What distinguishes this definition is that it clarifies one of the purposes of arrest, which is to bring the accused to the institution mentioned in the order; to be imprisoned, but this definition did not mention all the elements on which the arrest is based, in addition to not showing the regular nature of arrest. Dr. Yasser Al-Amir Farouk, Arrest in the Light of Jurisprudence and the Judiciary, University Press, 2012 AD, p. 68

¹² According to Article No. (48) of the Kuwaiti Law of Procedures and Criminal Trials No. 17 of 1960.

¹³ This definition explains:

- An important element of the elements of arrest, which is: compulsion and force.
- The definition referred to some of the purposes of arrest, which is to place the accused at the disposal of the court or investigative authority

The definition omitted the following:

- Referring to the rest of the other elements of the arrest
- Legal nature of arrest

See Dr. Yasser Prince Farouk, Ibid, the same page.

¹⁴ The judgment ruled that "Since the appealed judgment proved that the appellants arrested the victim and detained her in one of the rooms of their

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A set of absolute temporary precautions to verify the identity of the accused and investigate him preliminary. They are precautions related to detaining the accused, and placing them anywhere at the disposal of the police, for a period of a few hours sufficient to gather evidence through which it can be decided that the accused should be held in provisional custody and to ensure the legal validity of that stay¹⁵

residence, and she was tortured with physically which resulted in the injuries described in the autopsy report, which led to her death, and all of this fulfills the elements of the crime of illegal arrest associated with physical torture, detention, and the crime of beating that leads to death stipulated in Articles 236, 280, 282/2 of the Penal Code, meaning that: Arresting a person is Holding the arrested person from his body, restricting his movement and depriving him of the freedom to roam without considering a certain period of time. Also, physical torture does not require a certain degree of immensity, and the matter is left to the discretion of the trial court to extract it from the circumstances of the case. the contested judgment has clarified the elements of the two crimes for which the perpetrators were convicted, and therefore the deficiency of reasoning is not applicable to this judgment, and what is raised in this regard is misplaced. In addition, the contested judgment objected to the appellants' defense that the offenses of arrest and detention were absent, by saying: "... With regard to the defense statement that a person is not detained in his home, and because the victim was moving freely inside the home, it is a statement that is in violation of the law, and can be replied to that by saying that this crime is realized as soon as the victim is deprived of her freedom to roam, and that the place in which the arrest and detention takes place is not considered, and then there is no difference between placing the victim in prison, taking her to the police, or preventing her from leaving the house, as is in the case of the victim. Likewise, the means of arrest are not considered, as there is no difference between the use of coercion, or even just issuing a verbal order to the arrested person not to move or leave his place, and all that is required in this is that the arrest and detention have taken place against the will of the victim, as mentioned above. What the appellants raise in this regard is misplaced." Egyptian Criminal Cassation, March 25, 2017, Appeal No. 20640 for the year 67, Technical Office, year 58, rule 59, p. 311

¹⁵ Egyptian Criminal Cassation, June 15, 1912 session, official group, year 13, p. 207. This definition omitted the legal nature of arrest

Hence, it is clear that judiciary and jurisprudence have concluded that arrest includes restricting the freedom of the accused, by seizing him, to take legal measures against him.

Topic Three

Jurisprudential Definition of Arrest

Arrest: Depriving a person of freedom for a short period, by detaining him in a place designated by law for that.¹⁶ Fiqh (Jurisprudence) also defined it as: Detaining the accused for a period of time to prevent him from escaping, and sending him to the competent authority for investigation.¹⁷ Other jurists also defined arrest as: Restricting the movement of the accused by detaining him and depriving him of movement, even for a short period; to prevent him from escaping to send him to the Public Prosecution or take some measures against ¹⁸him¹⁹

From the foregoing, it is clear that law, judiciary, and jurisprudence conclude that arrest includes restricting the freedom of the accused; by seizing him, to take legal action against him.

Arrest can also be defined as: Depriving the accused of his freedom to move, even for a short period, on the basis of an authority specified by law, with the aim of taking him to the competent authority for preventive detention or releasing²⁰

¹⁶ Dr. Mahmoud Najib Hosni, Explanation of the Criminal Procedure Code according to the latest legislative amendments, 4th edition, Dar Al-Nahda Al-Arabiya, 2011 AD, paragraph 481, pg. 479

¹⁷ Dr. Raouf Obeid, Principles of Criminal Procedures in Egyptian Law, Arab Thought House, 1989, p. 329

¹⁸ Dr. Omar Al-Saeed Ramadan, Principles of the Code of Criminal Procedure, Part 1, without a publishing house, p. 306

¹⁹ The last two definitions neglected to refer to an important characteristic of arrest, which is compulsion and force, in addition to not referring to its regular nature.

²⁰ Ibrahim Muhammad Ibrahim, The General Theory of Arresting Persons in the Criminal Procedure Code, without a publishing house, 1416 AH - 1996 AD, p. 17 and next pages

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Hence, we support what some²¹ have mentioned that it is: One of the investigation procedures in the first place, and evidence is an exception, which includes restricting the individual's freedom of movement and roaming against his will for a long or short period of time. It aims to ensure the proper conduct of the preliminary investigation, as a legal result of the availability of sufficient evidence of violation of the criminal provisions.

Arrest is one of the important and dangerous investigation procedures because it is related to individual freedom of movement and roaming, so that he cannot lead himself; as the command of his movement becomes for his arrestor²², and therefore he may not resist the arrestor out of respect for the rule of law. The arrestor has the power to take the necessary coercion and compulsion methods to carry out arrest, if necessary.²³

Therefore, if the arrest is a legal and procedural act^{24, 25} and in order for it to be complete and correct, which ultimately means to

²¹ Dr. Yasser Prince Farouk, Arrest in the Light of Jurisprudence and the Judiciary, Ibid, p. 90

²² Dr. Muhammad Zaki Abu Amer, Criminal Procedures, 8th Edition, New University House, 2008 AD, clause 76, p. 176 and next pages

²³ Dr. Hassan Muhammad Rabie, Police Authority to Arrest People Without Permission from a Judicial Authority, and Suspected Procedures, Comparative Study, No Publishing House, No Publication Year, p. 34

²⁴ It is an act that has a systematic role in moving the case and its progress in its successive stages. In this way, it is considered a component part of the lawsuit, and in terms of its legal role, it moves it from one stage to another until it follows the path of its progress that the law sets for it to reach the final ruling. Dr. Mahmoud Najib Hosni, Explanation Code of Criminal Procedure, 2nd Edition, Dar Al-Nahda Al-Arabiya, 1988 AD, Paragraph No. 374, p. 340 and next pages

²⁵ However, it is noted that the criminal case does not initiate with the arrest of the accused based on an order issued by the criminal investigation officer to arrest him on his own. The reasoning for this is that this initiation is an accusation related to the jurisdiction of the Public Prosecution, as it is the accusing authority. Dr. Mahmoud Najib Hosni, Explanation of the Code of Criminal Procedure, Ibid, paragraph 100, p. 105, and Ibrahim Muhammad Ibrahim, The General Theory of Arresting Persons in the Code of Criminal

have effect, it must meet the elements and conditions. The elements are limited to practice arrest by a procedural person with a capacity and competence, and within the limits of his powers granted to him by law.

Executing arrest on the basis of a permission presupposes the identification of the subject of this permission and not violating the provisions of law. These conditions, despite their importance, remain incomplete without a reason or a legal evidence that allows and justifies arrest²⁶

It is clear to know that arrest depends on the following:²⁷

- The existence of a direct reason for arrest.

Procedure, Ibid, p. 44. He also ruled that the litigation does not take place and the criminal case does not initiate except through the investigation conducted by the Public Prosecution and not others, as it is the competent investigation authority, whether by itself or through its representative for this purpose, including judicial officers, or by filing a case before the ruling authorities. The case shall not be deemed to have commenced with any other procedure taken by the evidence authorities, even in the case of flagrante delicto. It is established in the law that the procedures for evidence, whoever undertakes them, are not considered among the criminal litigation procedures, but rather they are among the initial procedures whose sequence precedes its initiation, and which is not mentioned in the legislator's restriction on the order based on the original ruling, and to abide by the intent of the legislator's speech regarding the exception and defining the correct meaning of the criminal case, excluding the precedent of the procedures that pave the way for its emergence; The Public Prosecution is responsible for this case alone. Egyptian Criminal Cassation, Session 4 November 1968, Appeal No. 1284, Year 38, Technical Office, Year 19, Rule 178, p. 899. However, we do not accept the previous opinion; as we see if we accept that the arrest that the criminal investigation officer in flagrante delicto conducts is an investigation that requires us to acknowledge the ability of this type of arrest to create the legal effects that result from the investigation procedures, and this includes the initiation of the criminal case..

²⁶ Dr. Suleiman Abdel Moneim, The Invalidity of the Criminal Procedure, An Attempt to Root the Reasons for the Invalidity in the Light of the Cassation Court in Egypt, Lebanon and France, New University Publishing House in Alexandria, 1999 AD, paragraph 131, p. 203

²⁷ Dr. Suleiman Abdel Moneim, The Invalidity of the Criminal Procedure, An Attempt to Root the Reasons for the Invalidity in the Light of the Cassation Court in Egypt, Lebanon and France, Ibid, paragraph 131, p. 204

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- The legality of arrest reason (i.e. fulfillment of some legally established conditions).

Topic Four

Conditions for Arresting the Accused²⁸

Two conditions must be met in order to fulfil the legality of arresting the accused. The first condition: In exceptional cases: The Legislator grants the criminal investigation officer the authority to arrest the accused in flagrante delicto, under certain conditions.

The second condition: In normal cases: the criminal investigation officer does not have the authority to arrest the accused, and he must request the Public Prosecution to issue an arrest warrant whenever the conditions are met. In this case, the criminal investigation officer may take appropriate precautionary measures regarding the suspect until an arrest warrant is issued by the Public Prosecution.

Section Two

Nature of Flagrante Delicto

Article (33) of Law of Criminal Procedure stipulates that: In case of flagrante delicto, the preliminary criminal investigation officer shall arrest the accused against whom sufficient evidence exists for charging him with the crime. A report to that effect shall be drafted and the Bureau of Investigation and Public Prosecution shall be promptly notified. In all cases, the arrested person shall not be detained for more than twenty four hours, except upon a written order by the investigator.

Topic One

Linguistic Meaning of Flagrante Delicto (in Arabic talabbos)

The root of the word "تلبس / talabbos" is "لبس/labasa". It comes in several inflections, including what follows:

²⁸ Dr. Muhammad Eid Al-Gharib, Judicial Jurisdiction of the Control Officer in Ordinary and Exceptional Cases, Dar Al-Nahda Al-Arabiya, 2003 AD, paragraph 76, p. 95

- "لُبْس/lobss" which means "to wear",
- "لَبْس/labss" which means "to be confused",
- "لباس/libass" which means "a garment" and also "a spouse".
The Quranic expression "لباس التقوى /the garment of righteousness" means the shield that guards against evil, which is inhibition that stops the man doing or saying something wrong.
- "لُبُوس/labooos" which have several meanings:
 - ✓ "a man who has many garments and tends to wear differently very often",
 - ✓ "garments"
 - ✓ "weapons"
- "أَلْبَسَ/albassa" which means "to cover, literally or metaphorically".²⁹

The technical definition has, by way of simile, likened the crime in its clarity and visibleness to a certain garment worn by a person, through which this person can be identified³⁰. It is also as if the perpetrator, metaphorically, wore the crime as if it was a garment.³¹

Topic Two

Contextual Meaning of Flagrante Delicto:

There are many definitions of Flagrante Delicto by jurists. Some jurists stated that flagrante delicto is: "A case of temporal proximity between the occurrence of the crime and its detection"³²

²⁹ Ibn Manzur, Lisan al-Arab, Dar al-Maaref, Volume 5, pg. 3986

³⁰ Dr. Ibrahim Hamed Morsi Tantawy, Authorities of the Judicial Commissioner, PhD Thesis, Faculty of Law, Cairo University, No Publication Year, pg. 408

³¹ Dr.. Hilali Abdul-Llah Ahmed, The Legal Position of the Accused in the Initial Investigation Stage, A Comparative Study of Islamic Criminal Thought, 1st Edition, Dar Al-Nahda Al-Arabiya, 1989, p. 396 and beyond

³² Dr. Amal Abdel Rahim Othman, Explanation of the Code of Criminal Procedure, Arab Renaissance House, 1975 AD, No. 232, p. 369; Dr.. Tawfiq Al-Shawi, Jurisprudence of Criminal Procedures, Part 1, 1st edition , no publishing house, no year of publication, paragraph 232, p. 288; Dr. Saad bin

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This definition is not comprehensive for all cases of flagrante delicto mentioned in Article 30 of the Egyptian Code of Criminal Procedure and Article 30 of the Saudi Law of Criminal Procedure. It applies only to what is jurisprudentially called legal or judgmental flagrante delicto, and to cases from the second to the fourth clauses of Article (30) of the Egyptian Code of Criminal Procedure, excluding the first case of flagrante delicto mentioned in the same Article, which represents flagrante delicto in its precise technical sense.

Some other jurists tried to avoid the deficiency in this definition by adding a complementary phrase, which is: “The actual witnessing of the crime and the temporal proximity between the occurrence of the crime and its detection”³³. This definition, though distinguished by the fact that it refers to the main distinguishing feature of the crime, which is the lack of time or its proximity between the occurrence of the crime and its detection, but it does not indicate the nature of flagrante delicto or other features that distinguish it

We see flagrante delicto as a realistic case expressed by a set of external manifestations that by themselves indicate that a crime is occurring or has just occurred, and its basis is the absence of time or its proximity between the occurrence of the crime and its detection.

Topic Three

Philosophy of Arrest in cases of Flagrante Delicto

The state of flagrante delicto refers to the contemporaneity or temporal proximity between the moment the crime was committed and the moment it was detected. This is what made the Legislator deviate from the general principle that prohibits criminal

Muhammad Ali Al Dhafir, Criminal Procedures in the Kingdom of Saudi Arabia, no publishing house, 1436 AH - 2015 AD, p. 66

³³ Dr. Ahmed Fathi Sorour, the Code of Criminal Procedure, 1st edition, Dar Al-Nahda Al-Arabiya, 1980 AD, paragraph 293, p. 399

investigation officers from undertaking any action that prejudices personal freedom without permission from the investigation authorities; for the following reasons:

- That the incident in flagrante delicto is clear, and the evidence of the crime is apparent, and therefore the possibilities of faults in accusing are absent.
- The process of collecting evidence needs quickness before tampering and fabricating it ³⁴, so there is no harm in authorizing the officers in flagrante delicto cases with the authority to arrest the accused without permission from the investigation authority, as there is no fear of arbitrariness in the arrest as a result of a mistake or hasty accusation. .
- In the case of flagrante delicto, the immediate arrest shall satisfy public opinion through a quick reaction to the crime that caused a breach of public order in a manner that achieves public and private deterrence³⁵.
- The realization of the criminal investigation officer, who represents the authority of states for a flagrant crime without having the authority to immediately arrest the offender, reduces the prestige of the security services, and makes its employees unable to perform their duty to establish security and safety in society.

So, flagrante delicto is a reason that justifies the criminal investigation officer to arrest the person in flagrante delicto³⁶. In order to achieve the state of flagrante delicto, this depends on the availability of conditions and controls; to make flagrante delicto a legitimate procedure.

³⁴Dr. Al-Sayyed Abu Aita, The Saudi Code of Criminal Procedure, a comparative study, Dar Al-Fikr Al-Jameei in Alexandria, 2014, p. 284

³⁵ Dr. Yasser Al-Ameer Farouk, Arrest in the Light of Jurisprudence and the Judiciary, Ibid, p. 424 and next pages

³⁶ Abdul Aziz bin Fahd bin Saeed Al Azab, Judicial flagrante delicto in the Saudi Law of Criminal Procedure, fundamentalist study compared to Egyptian law, Naif Arab University for Security Sciences, 1434 AH - 2013 AD, p. 101

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Section Three

Invalidity Conditions in Cases of Flagrante Delicto

Article (30) of Saudi Law of Criminal Procedure stipulates: A crime shall be deemed flagrante delicto if the perpetrator is caught in the act of committing such a crime, or shortly thereafter. It shall also be deemed flagrante delicto if the victim or a shouting crowd is found pursuing another person subsequent to the commission of the crime, or when the perpetrator is found shortly thereafter in possession of tools, weapons, property, equipment, or other items indicating that he is the perpetrator or accomplice thereto, or if, at the time, marks or signs indicating the same are found on his person.

It is worth noting that the first and second cases relate to the same crime, and the third and fourth cases relate to the circumstances in which the accused is arrested, but this is not important with regard to the procedural effects they have had.

Topic One

Case One:

Catching the Perpetrator while Committing a Crime

This case is considered the most obvious case of flagrante delicto³⁷, because the perpetrator is caught by surprise while

³⁷ In confirmation of this, the judgment ruled that: "Since the appeal against the judgment was based on the fact that the court had concluded within the limits of its objective authority and from the justifiable evidence that it presented, that the officer's meeting with the appellants took place within the limits of the legitimate investigation procedures, and that the arrest of the appellants and the seizure of the amount of foreign exchange offered for sale has been occurred after being caught in flagrante delicto according to the contract in which the source of the secret police pretended to express his desire to buy it from the appellants, and;

Since it was decided that there is no blame on the judicial police officers and their subordinates for investigating crimes with the intent of discovering them, even if they disguised themselves and assumed characteristics other than theirs so that the perpetrator would be reassured to them, knowing that the officers'

committing the act as a material element of the crime. The perpetrator is surprised at the moment of committing the crime.³⁸ Therefore, jurisprudence called this case the expression of Real Flagrate Delicto³⁹

Detecting the crime while committing it is the only condition for establishing the case of flagrante delicto regardless of whether the crime was committed secretly or openly. It is sufficient for the criminal investigation officer to be present at the moment of committing the crime, or after the start of its commission, but before its completion.

adaptation to the perpetrators with the intention of prove a crime committed by the perpetrators does not violate the law, and is not considered incitement by them to the perpetrators, as long as the will of these people remains free, and as long as they did not incite to commit this crime, and;

Since the availability of a state of flagrante delicto or its non-existence is one of the substantive issues related solely to the trial court without any comment thereto, as long as it has issued its judgment based on justifiable reasons, as is in the case at hand, therefore; the judgment issued based on the refusal to plea for the invalidity of the arrest and search procedures based on the availability of the state of flagrante delicto that permits it shall be valid and legal.

Also, since the appellants had voluntarily placed themselves in a state of flagrante delicto, the officer's arrest and search of them is correct and legal, and he is not to be blamed if he did not seek permission from the Public Prosecution to do so; as he did not need to do so, and the officer's escort to his secret source; for the latter to pretend to the appellants that he wants to buy foreign exchange is not incitement to commit or create the crime, as long as it is established from the ruling that the appellants offered the foreign exchange to him under their own free will and choice, and then what the appellants allege in this regard is not valid. Egyptian Criminal Cassation Case, session of February 19 0202, Appeal No. 270, for the year 89

³⁸ The Egyptian Court of Cassation stated: If the perpetrator is surprised when he commits the crime, then the act is proven against him while he is committing it. Egyptian Criminal Cassation, Session of October 16, 1944, Collection of Legal Rules, Volume 6, No. 375, p. 515; Abdullah bin Adnan bin Taha Khasefan, The time of flagrante delicto, a comparative study, master's thesis, Naif Arab University for Security Sciences, 1432 A.H. - 2011 A.D., p. 45

³⁹ Dr. Abdullah Khazneh Katbi, Summary Criminal Procedures, Ph.D. thesis, Faculty of Law, Cairo University, - 1980, p. 262

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Conditions for Invalidity in this Case:

- If the execution of the material element of the crime has taken place without the criminal investigation officer having witnessed the entire element or any of its elements, then this case is absent even if the criminal investigation officer detects the crime immediately after the completion of its execution; because this detection would then be absent when the crime was committed.
- **If the criminal investigation officer has to detect the occurrence of the crime with absolute certainty;** So it is decided that:

* It is not sufficient to establish a state of flagrante delicto that there are external manifestations express the occurrence of the crime.

* It is sufficient to verify manifestations by any of the senses, as long as this verification is in a certain way that does not bear doubt. Therefore, violating the personal freedom of any person is not permissible without permission from the competent authority, except in the case of flagrante delicto. So, the renunciation upon which flagrante delicto is based is required to be voluntary. Therefore, the occurrence of flagrante delicto as a result of an illegal procedure results from the invalidity of the evidence from which the officer makes a request to the appellant without making it clear, and it is an unjustified request that involves a deviation of authority. Also, the effect resulting from this procedure does not result in the judgment being considered that the surrender to the officer was made voluntarily as a result of evidence that does not lead to him; and this constitutes a deficiency, a breach of the right of defense, and a mistake in applying the law⁴⁰

⁴⁰ An example of this: Since the appealed judgment according to the case states that: After the officer stopped the appellant while he was driving his private car, asking him for his license, he noticed that he was holding something in his

hand, and it turned out to be a roll of narcotic, so the officer seized it and arrested the appellant, then searched the car and seized all narcotics therein. However, the appellant argued that the arrest and search were invalid stating: Based on the statements of the witness of the evidence, the officer / Muhammad Mahmoud Al-Qasry in the seizure report, and what he testified in the investigations, on which the court decides that after stopping the accused to see the license of the car, the officer noticed that the accused was holding something in his hand, and when he asked him about it, he handed it to the officer voluntarily. The officer found that it was a flagrante delicto case, according to which the officer arrested the accused and searched the car; to seize the remainder of the narcotics);

Based on that, and it was decided that the judicial police officer, without the permission of the Public Prosecution or the investigation authority, would prejudice the personal freedom of people, except in the case of flagrante delicto, and it was stipulated that the abandonment upon which the case of flagrante delicto is based on was committed voluntarily, and if it is the result of an illegal procedure, the evidence derived from it is void and has no effect, and; Since the fact established by the judgment is that the appellant was holding in his hand something that the officer did not find out, and did not hand it over to the officer until after he requested it from him as mentioned herein, which is an unjustified request, characterized by illegality, and involves a deviation of authority, and this delivery cannot be described to be done voluntarily, rather it has been conducted under illegal procedure taken by the officer, therefore, this delivery was invalid, and the evidence derived from it was void, and if the contested ruling violates this consideration, and stipulated that the appellant handed over the narcotics to the officer voluntarily. In this case, the consent to the inspection has been done without the consent of the appellant, as is clear from the facts and circumstances of the case. Rather, the officer has concluded the consent from evidence that does not express consent.., and;

In view of the foregoing, if the judgment was issued based on the validity of the inspection, refusing to plea for its nullity in a way that does not lead to its results, then it would be, in addition to the deficiency of its causation, had become corrupted in reasoning and violated the right of defense, and erred in the application of the law and violated the right of defense, and erred in applying the law in a way that prevented it from considering other evidence Independent of the invalid procedure on which it relied, including invalidating it and requiring it to be appealed and judged again. Egyptian Criminal Cassation, Session October 5, 2009, Appeal No. 4089, for the year 72, Technical Office, S 60, Rule 45, p. 335

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Topic Two

Case Two: Detecting the Crime Shortly after Committing it⁴¹

It means: Witnessing the crime shortly after its commission: that is:

- The crime has already occurred with the completion of its material element
- Detecting the crime shortly after it was committed⁴²

⁴¹ The differences between the second case in flagrante delicto and the first case:

With regard to the first case, the criminal investigation officer verifies through one of his senses the elements that prove the criminal activity of the perpetrator, while in this second case the matter is limited to the criminal investigation officer watching the crime and its evidence represented in the criminal result and other effects of the crime.

The first case is characterized by the absence of a time interval between committing the crime and witnessing it with the knowledge of the criminal investigation officer, unlike the second case; where the criminal investigation officer does not witness the crime until after it has been committed, which means that there is a time interval between the time when the crime was committed and the time when he witnessed its effects.

⁴² This time interval is not specified by a certain amount, but it is understood from this statement that there must not have been a long time between the commission of the crime and its detection. The French legislator expresses this interval with the phrase “immediately after the act” “Article 53 of the French Code of Criminal Procedure.” French jurisprudence defines this interval to be no more than a few hours have elapsed between the knowledge of the crime and its witnessing, as long as the search procedures for the offender continue without interruption until at the time of arrest. In Egypt, jurisprudence defines the short period of time necessary for the criminal police officer to move to the crime scene, where its signs are clear and its marks are still present. The opinions are also agreed that the estimation of the time period between the occurrence of the crime and its detection and whether it can be considered a case of flagrante delicto or not is an objective matter to be decided upon by the trial judge without commenting on it as long as the reasons on which it is based lead rationally to the final result, Professor / Yasser Prince Farouk , Arrest in the Light of Jurisprudence and the Judiciary, Ibid, p. 449. For further clarification see also, Abdullah bin Adnan bin Taha Khusaifan, The time of flagrante delicto, a comparative study, Ibid, p. 70. In the context of clarification also, we see: that the phrase “Shortly thereafter” used by Article 30 of the

- That the effects of the crime appear to have occurred obviously, and that its effects are fully present and existing⁴³

It is not required here for the criminal investigation officer to witness all the elements of the crime. Rather, it is sufficient for him to witness evidence that the crime was committed.

Conditions of Invalidity in this case:

If the flagrante delicto in this case is unlawful; the arrest is void:

Example: The Court of Cassation stipulates: If the search warrant issued by the Public Prosecution is limited to searching the house, and it was established from the ruling that the appellants have not been in a case of flagrante delicto at the time of seizure, and no permission was issued to search them, and that the appellants threw the drug only when the policemen tried to arrest and search them unlawfully; in order not to be caught with them, as if this arrest had not taken place, the seized drug would not have

Saudi Code of Criminal Procedure allows the time interval to be extended to several days. This is a critical opinion, and is similar to what was in place in the French Criminal Investigation Code, which used the same Terms Voisin, and the judiciary was expanding its understanding of this interval to last for several days. Therefore, it is preferable to amend the formula to reflect the short period of time between the occurrence of the crime and witnessing its effects as far as possible, consistent with the exceptional nature of the case of flagrante delicto. There is nothing to prevent the Saudi legislator from adopting the same formula that was mentioned by the Egyptian legislator (shortly after the commission thereof), and several other procedural legislation followed it. It is noted that Article 53 of the French Code of Criminal Procedure stipulated, in this case, that the prosecution of the offender take place in "immediately after the act", where the first paragraph of Article 53 of it stipulated the following: " A flagrant felony or misdemeanor is a felony or misdemeanor in the course of being committed, or which has just been committed. The felony or misdemeanor is also flagrant where, immediately after the act, the person suspected is chased by hue and cry, or is found in the possession of articles, or has on or about him traces or clues that give grounds to believe he has taken part in the felony or misdemeanor"

⁴³ Dr. Abdul Raouf Mahdi, Explanation of the General Rules of Criminal Procedures, Dar Al-Nahda Al-Arabiya, 2015, p. 342; Dr.. Raouf Ebeid, Principles of Criminal Procedure in Egyptian Law, Ibid, p. 353

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been found with the appellants, if so decided; it is not permissible to accuse the two appellants that they were carrying the seized drug, because finding the drug according to the aforementioned image was not the result of an illegal act; as they had to throw it away when the policemen tried to arrest them unjustly⁴⁴

Topic Three

Case Three: Pursuing the Perpetrator after Committing the Crime

The Legislator stipulates: A crime shall be deemed flagrante delicto if the perpetrator is caught in the act of committing such a crime, or shortly thereafter. It shall also be deemed flagrante delicto if the victim or a shouting crowd is found pursuing another person subsequent to the commission of the crime." This text clarifies that the following conditions must be met:

- Pursuing the perpetrator with the knowledge of the victim or the crowd
- That the pursue be shortly after the commission of the crime
- Pursue must be associated with shouting.

First condition - Pursuing the perpetrator with the knowledge of the victim or the crowd

This condition requires a specific activity. It also requires that this activity originate from a specific person. As for the activity, it is represented by pursuing, which linguistically means: "walking after another person and pursuing him". Lexically, it means: Monitoring the movements of a person. Monitoring may be done when standing, walking or running behind the person being pursued. The legislator did not require a specific form of monitoring, hence, in order to establish the pursuit, it is not

⁴⁴ Egyptian Criminal Cassation, January 13, 1941 session, official group, p. 42, p. 325; Muhammad Muhammad Sheta Abu al-Saad, Flagrante Delicto of Crime, Dar Al-Fikr Al-Jameei in Alexandria, no year of publication, p. 45 and next pages.

necessary for the victim or the crowd to run behind the perpetrator to pursue and arrest him. Rather, the pursuit is established if the victim walked behind the perpetrator in fear, and in slow steps until he met the criminal investigation officers and told them⁴⁵

As for those responsible for monitoring, they:

- The Victim
- The crowd, and in this case it does not matter how many persons are pursuing the perpetrator, as *flagrante delicto* is established even if only one person is pursuing the perpetrator.⁴⁶

Second condition: That the pursue be after the commission of the crime

This condition means a short period of time between the occurrence of the crime and the pursuit of the perpetrator, a matter whose discretion is subject to the control of the trial court, without the control of the Supreme Court; because it is a matter of fact.

This case, as for the element of time, differs from the second case of *flagrante delicto* by the short period of time between the occurrence of the crime and the pursuit of the perpetrator. If the crime occurred the day before, and the victim saw the perpetrator and pursued him along with shouting in the public road to catch him, then the case shall not be deemed *flagrante delicto*.⁴⁷

⁴⁵ Dr. Awad Muhammad Awad, *Al-Wajeez in the Criminal Procedure Law*, Alexandria University Press, no publication year, p. 216; Dr.. Bassiouni Ibrahim Abu Al-Atta, *Flagrante Delicto of a Crime and Its Impact on Islamic Jurisprudence and Positive Law, Comparative Study*, New University House, No Publication Year, p. 106; Dr.. Issam Afifi Abdel Baseer, *Commentary on the Criminal Procedures Law in the Kingdom of Saudi Arabia*, 1st Edition, No publishing house, 1435 AH - 2004 / 2005 AD, p. 84 and next pages,

⁴⁶ Dr. Ali Kamel Ahmed Hussein, *The General Theory of Invalidity in Arrest and Inspection*, Ph.D. Thesis, Faculty of Law, Cairo University, 1428 A.H. - 2007 A.D., p. 50

⁴⁷ While in the second case, the time period between the occurrence of the crime and its detection by the criminal investigation officer is prolonged, so a murder may be committed on the day before its detection. Despite this, the state of *flagrante delicto* remains as long as the criminal investigation officer moved

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Examples for the invalidity of this case:

Since pursuit alone is not sufficient, as there should be a short period of time between the occurrence of the crime and the pursuit process, but if there is a long period between the crime and the pursuit process, then the case should not be deemed flagrante delicto. Accordingly, the case of flagrante delicto is not established if it is proven that the crime was committed on the previous day, then the victim saw the perpetrator and pursued him on the public road to catch him.⁴⁸

Likewise, the case of flagrante delicto despite the pursuit is not available if the accused passes through the area in which he committed his crime after a few days, and the victim or other people recognize him, so they pursue him shouting and running after him.⁴⁹

Third Condition: Pursue must be associated with Shouting

Shouting is vocal pursuit. Shouting is not required to be in understandable words. Rather it is sufficient for the shout to indicate the accusation against the perpetrator⁵⁰

But is the pursuit required to be associated with shouting, whether the pursuit is from the victim or from the crowd?

Jurisprudence unanimously states that if the pursuit occurs by the crowd, it must be associated with shouting, based on the

as soon as he learned of the crime, and he only took the necessary time to move, and people's fear did not subside yet. The case of flagrante delicto remains as long as the search for the perpetrator continues uninterrupted until the time of his arrest. For more, see Dr. Fawzia Abdel Sattar, Explanation of the Code of Criminal Procedure, Arab Renaissance House, Beirut, 1975 AD, No. 341, p. 348, and also: Dr. Ahmed Awad Bella, Comparative Criminal Procedures and Islamic Procedural Law in the Kingdom of Saudi Arabia, Dar Al-Nahda Al-Arabiya, 1411 AH - 1990 CE, pg. 406

⁴⁸Dr. Ahmed Fathi Sorour, the Code of Criminal Procedure (In Arabic: Al-Waseet), Book One, Dar Al-Nahda Al-Arabiya, 2016, paragraph 500, p. 731

⁴⁹ Dr. Awad Muhammad Awad, The Code of Criminal Procedure (In Arabic: Al-Wajeez), Ibid, p. 216

⁵⁰ Dr. Mahmoud Najib Hosni, Explanation of the Code of Criminal Procedure, Arab Renaissance House, 1982, No. 576, pg. 545

explicit text of the Law. If the victim is the one who is chasing the perpetrator, the majority believes that it should be associated with shouting⁵¹; because we do not find a legal basis for the distinction.

Therefore, if the accused entered a shop and then stole money from the shop and ran away, then the accused wandered around that shop after several days of the theft, and the employee recognized and chased the accused with shouting in order to catch him and hand him over to the police; this is not considered a case of flagrante delicto⁵²

SECTION FOUR

Validity Conditions of Flagrante Delicto

The legality of exercising the exceptional competencies of a criminal investigation officer does not depend on the existence of one of the cases that do not justify the exercise of this exceptional jurisdiction. Rather, the following must be done:

- *That the criminal investigation officer himself detects the case of flagrante delicto.*
- *That the criminal investigation officer detect the case of flagrante delicto by legitimate means*

⁵¹ We think that in the case of being pursued by the victim, it does not have to be accompanied by shouting; because it is not reasonable to prove the case of flagrante delicto based on circumstances that may differ from one person to another. For example, a case of flagrante delicto cannot require shouting from the victim who has a disease in his throat that prevents him from making a sound. Also, the crime may prevent the victim from shouting so as not to be harmed, so the victim prefers to remain silent while chasing the perpetrator, until he meets a policeman and tell him of the crime of the perpetrator. Therefore, from our point of view, it is sufficient for the victim to commit actions that draw attention to the perpetrator, and leave a belief in the criminal investigation officer that the victim has been subjected to a crime.

⁵² Dr. Abdul Hamid bin Abdullah Al-Harqan, Criminal Procedures in the Pre-Trial Stage in the Kingdom of Saudi Arabia, 2nd Edition, 1434 A.H. - 2013 A.D., p. 79

TOPIC ONE

Detecting the case of flagrante delicto by the criminal investigation officer himself

The detection by the criminal investigation officer depends mainly on the external manifestations that indicate the existence of the crime in one of the cases of flagrante delicto, which manifestations may be:

- a part of the material elements.
- or not a part of it, even if it is related to it.

The criminal investigation officer must also assess the sufficiency of these manifestations to say that a crime is being committed or was committed within the timeframe necessary to say that the crime committed is still in flagrante delicto case.

First: Direct Personal Detection Of External Manifestations:

The case of flagrante delicto is built upon a set of external manifestations. It is not sufficient for the criminal investigation officer to have been informed about the occurrence of flagrante delicto through the narration from the one who witnessed it, because the case of flagrante delicto requires that the criminal investigation officer verify the occurrence of the crime by witnessing it himself, or detecting it through one of his senses.⁵³ Hence, personal observation or detection through any of his senses of external manifestations is a prerequisite for the validity of flagrante delicto. This restriction is consistent with the exceptional rulings to which flagrante delicto is subject, and the general effects it entails. It is unreasonable for those rulings or effects to be built upon a mere narration of others that may be false or inaccurate. In fact, otherwise, the guarantees of individuals will be lost, and mere

⁵³ Dr. Ali Kamel Ahmed Hussein, The General Theory of Invalidity in Arrest and Search, IBID, p. 55; Dr. Saad bin Muhammad Ali Al Dhafir, Criminal Procedures in the Kingdom of Saudi Arabia, IBID, p 66

suspicion becomes sufficient to infringe upon their freedoms and sanctities.

Conditions of invalidity in the event of no direct personal detection of external manifestations:

1- Annulment of flagrante delicto based on merely being informed by others about the occurrence of the crime.

Example: The case of flagrante delicto requires that the criminal investigation officer verify the occurrence of the crime by witnessing it himself, or detecting it through one of his senses. It is not sufficient for him to be informed about it from witnesses, as long as that situation has ended with the disappearance of the traces of the crime and the evidence that indicates it⁵⁴.

⁵⁴ Therefore, it was judged that whereas “the judgement was challenged by the invalid search, he responded: ” and whereas it is unequivocal that informant Abdel-Aal Omar Ahmed Al-Sayed informed the detective officer Ibrahim Hanafi Desouki that the accused had obtained a pistol that he used in the quarrel and verified that this happened, then he by searching the accused’s home and finding the seized pistol and ammunition, this search was considered done in flagrante delicto. The fact that the officer did not move to the accused’s house until half an hour after the crime occurred does not negate that the crime occurred in flagrante delicto, as long as it is established that the aforementioned officer initiated the search procedures immediately after his presence at the scene of the accident. Hence, the plea raised by the defense of the accused is not built upon a valid allegation. Therefore, it must be dismissed.” Also, what the judgement mentioned above does not constitute a case of flagrante delicto. This is because such a situation, which requires witnessing the crime while it is in this state, or at least the presence of external manifestations that as such indicate its occurrence, requires the judicial officer to verify the occurrence of the crime by witnessing it himself or detect it through one of his senses. It is not sufficient for him to be informed about it from witnesses, as long as that situation has ended with the disappearance of the traces of the crime and the evidence that indicates it. This being the case, if the challenged judgment refuses to plead the invalidity of the search, this judgment shall be defective, and shall be reversed. Whereas the conviction judgement is based on the findings of the search record and what was testified by the informant Abdel-Al Omar, and does not show the extent of the impact of either of the two evidence on the formation of the court’s belief, with the verdict being set aside, referral must be made without the need to examine the remaining aspects of the appeal. Egyptian Criminal Cassation, Session of 30 December 1963, Appeal No. 951 of Judicial Year 33, Technical Office Y 14, Rule 184, p. 1011, and also, it was

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Accordingly, the case of flagrante delicto is negated regardless of the person who informed the criminal police officer about the occurrence of the crime, that is, whether the crime was reported by a confidential source⁵⁵, from the victim, from another witness, or even from another accused who testified against his accomplice⁵⁶.

A - Reporting the crime from the confidential source:

Hence, the conviction of the challenged judgment against the appellant for the crime of theft and its dismissal of his plea for the invalidity of the arrest and search, due to the lack of permission from the Public Prosecution based on the validity of what the secret source and the officer testified that they entered his residence in his presence at the request of his wife residing with him for her assistance, and that they searched the residence with her consent, which resulted in drug seizure; an error in the application of the law invalidates it, and its producing other evidence does not prevent it does not change the case⁵⁷.

decided that "If it is determined that the passage of time between the occurrence of the crime and the arrest does not negate the case of flagrante delicto as defined in the law as long as the estimation of the time period between the occurrence of the crime and its detection by the judicial officer is within the jurisdiction of the trial court only. Egyptian Criminal Cassation, Session of 17 May 1979, Appeal No. 138, Judicial Year 49, Technical Office Year 30, Rule 124, p. 584.

⁵⁵ Dr. Muhammad Ahmad Al-Minshawi, Explanation of the New Saudi Criminal Procedures Law, IBID, p. 14

⁵⁶ Dr. Ashraf Muhammed Abdul-Qader Samhan, The Role of Conditions of flagrant Delicto in Achieving the Required Efficiency in Indictments, Journal of the Kuwaiti International Law College, Year 6, Issue 2, Serial Issue 22, Ramadan - Shawwal 1439 AH - June 2018, p. 289

⁵⁷ The cause and effect of it? Whereas the challenged judgment explained the facts of the case by saying: The cause and effect of it? As the appealed judgment clarified the fact of the case by saying: "It was following a distress call from one of the residential apartments in the city of..., the secret policeman answered the distress/ ... So he went to its source and found the apartment, the source of distress, with the door opened. He headed towards it, and met with a

woman called / ... the wife of the accused under a customary marriage contract, who lives with him in the same dwelling. She called him to arraign her husband and allowed him to enter the apartment with the intention of suing her husband because he had assaulted her. She told the officer that there was a marital dispute between her and her husband due to her desire to leave the city, but her husband refused and assaulted her. She added that the accused used drugs, and she pointed to a glass jar with a rolled cigarette inside. So he opened the jar and found that it contained hashish seeds and a paper roll with two pieces of hashish inside. The accused confessed to possession of the drug with intent to use. The secret policeman addressed the head of the detective unit. So he asked his wife / who wanted to tell him about other narcotic substances inside the defendant's residence. He moved with her, after taking an acceptance of the search, to where she showed him a plastic bag behind the kitchen refrigerator. He opened the bag and found that it contained a roll of hashish inside. Confronting the accused, he admitted that he possessed the drug with intent to use it as well. The report of the chemical laboratory proved that the substance seized was the substance of narcotic hashish, and that inside the cigarette were parts of hashish and a quantity of hashish seeds, and that inside the two rolls was hashish. Then the judgement presented the evidence of guilt derived from the testimony of witnesses for the proof of the same meaning that it adopted for the image of the incident in the foregoing context. Then it refuted the appellant's plea that the arrest and search were invalid due to the lack of permission from the Public Prosecution by saying: "since when he pleaded for the invalidity of arrest and search due to lack of permission from the prosecution, his plea was rejected by the fact that the law had authorized the policemen to enter homes and public premises not for the purpose of search, but for considerations related to public security and ensuring the application of the regulations and laws regulating. The legislator has been keen to stipulate that for homes in Article (45) of the Code of Criminal Procedure. It has stipulated that the men of the authority may not enter any inhabited premises except in the cases specified in the law, or in case that its residents seek help from the inside, or in the event of fire, drowning, or the like. What is meant by the cases specified in the law are cases of entry for the purpose of search for one of the investigation procedures. As for the other cases, which are asking for help or assistance, or the case of fire and cases of necessity in general, entering the house is not considered an investigation procedure and is not considered a search in the legal sense. Accordingly, the officer, if he enters the house in one of these cases, is not permitted to conduct a search. However, if he accidentally encounters a crime in flagrante delicto, he may seize it, and all the effects of flagrante delicto shall apply to it. Likewise, if, while he was in this house, there was a situation that permits arrest and a personal search, he may do so according to the law and not under the right to search because he entered the

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house, as the entry as such does not entitle him to this right. Since the case is as mentioned above, and the entry of the men of the public authority in this incident to the residence of the accused to request help and distress from the victim, who lives with him in this house in the first seizure stage, was a valid acceptance free from coercion or vices of consent, and this happened before entering the house for search in the second stage of control, then protection with which the legislator forbade the search of homes is invalidated when they are entered after the free, express and unambiguous consent of the residents prior to entry is invalidated. It goes without saying that if the wife or concubine of the house owner consents to the search, the invalidity becomes invalid, because she is considered an agent for the owner of the dwelling. Since that was the case, and the constitution stipulated in Article (44) that "Homes are protected and it is not permitted to enter or search them without a warrant according to the law." It is an absolute general provision that has not been specified or restricted. This indicates that this constitutional provision requires, in all cases of home search, the issuance of a reasoned judicial order in order to preserve the sanctity of the home, which is obtained by personal freedom, which is related to the individual's entity, his private life, and the home he takes refuge in, which is the place of his secrets and tranquility. Therefore, the Constitution was keen to confirm the prohibition of violating the sanctity of the home, whether by entering it or searching it, unless a reasoned judicial order was issued, without excluding from this the case of flagrante delicto, which, according to the provision of Article 41 of the Constitution, allows only the arrest and search of a person wherever he is. This confirms that the draft of the Freedoms Committee, which Committee was formed in the People's Assembly when preparing the constitution included in the provision of Article (44) an exception for the case of flagrante delicto in its ruling. However, this exception was dropped in the final draft of this article, and the constitution, including the current provision of Article (44), was issued in order to preserve the sanctity of houses, as explained above. Since that was the case, and the provision of Article (44) of the Constitution clearly indicates that the case of flagrante delicto is not excluded in the two guarantees mentioned by any reasoned judicial order. It is not justified to exclude the case of flagrante delicto from the ruling of these two guarantees by analogy with its exclusion from their ruling in the event of a person being searched or arrested, because the exception cannot be measured against, and analogy is prohibited due to the explicitness of the provision of the above-mentioned article (44) and the clarity of its significance. This is not changed by the phrase "according to the provisions of the law" that appeared at the end of that article after mentioning the two guarantees referred to, because this phrase does not mean the authority of the ordinary legislator to

release the case of flagrante delicto from their restriction. This phrase does not indicate that the ordinary legislator is authorized to release the case of flagrante delicto from their restriction. Saying otherwise leads to wasting two guarantees set by the constitutional legislator and suspending their actions on the will of the legal street, which is not benefited by the text of Article (44) of the Constitution. Saying otherwise leads to wasting two guarantees established by the constitutional legislator and making their implementation dependent on the will of the legal legislator, which is not indicated by the provision of Article (44) of the Constitution. Rather, the phrase "according to the provisions of the law" refers to the reference to the common law to specify the crimes in which the order to search houses may be issued, and to indicate how and why it is issued, and other procedures by which this search is conducted. Since that was the case, what the constitution stipulated in Article (44) which states that the sanctity of the home is protected and that it is forbidden to enter or search it, except by a reasoned judicial order in accordance with the provisions of the law, is an enforceable ruling as such. Since that was the case, and the entry of the first witness for the prosecution to the residence of the appellant at the request of the second witness for the prosecution was to assist her in accordance with the provisions of Article (45) of the Code of Criminal Procedure, but what the judgment mentioned in the foregoing does not represent the case of flagrante delicto that allows him to search the residence. This is because such a situation, which requires witnessing the crime while it is in this state, or at least the presence of external manifestations that as such indicate its occurrence, requires the judicial officer to verify the occurrence of the crime by witnessing it himself or detect it through one of his senses. It is not sufficient for him to be informed about it from witnesses, as long as that situation has ended with the disappearance of the traces of the crime and the evidence that indicates it. This being the case, the search of the appellant's residence by the secret policeman / ... is invalid, as well as everything that resulted from it, in application of the rule "everything that results from falsehood is invalid." The results of that search and the testimony of the person who conducted it shall be invalid, as it is a consequence of it. A conviction based on the evidence derived from it is not valid. The judgment had relied, in convicting the appellant, on, among other things, the evidence derived from that search, which cannot be relied upon as evidence in the case. Therefore, the challenged judgment is flawed by mistake in the application of the law, which nullifies and revokes it. The other evidence mentioned by the judgment does not change that, since the evidence in criminal matters are mutually supportive and complement each other so that if one of them is omitted or excluded, it is impossible to identify the extent of the effect that the false evidence had in the opinion reached by the court. In addition, the judgement is not supported by the seizure of (narcotic hashish) by the Major / ... when he searched the appellant's

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An example of the invalidity of a case of flagrante delicto based on being informed by a confidential source:

It was decided that the cases of flagrante delicto mentioned in Article (30) of The Code of Criminal Procedure in the Kingdom of Saudi Arabia are exclusive, and it is not permissible to build on them by way of analogy or approximation. Hence, the judge does not have the power to create new cases of flagrante delicto other than the cases mentioned by law literally. It is also determined that it is not sufficient for the criminal investigation officer to prove a case of flagrante delicto to be informed about the crime from a third party, as long as he did not witness any of its traces indicating that it had occurred. The case of flagrante delicto accompanies the crime as such, and the sanctity of the store is derived from its connection with its owner. This being the case, in addition to what was mentioned by the judgment in its statement of the incident, and the statements of the judicial officer and his response to the plea that the arrest and search was invalid - and what appeared from the added particulars - clearly indicated that the two crimes of dealing in foreign exchange outside the approved banks and conducting one of their business without a license did not occur. That is because the officer did not see, with the secret informant who informed him about the crime, the appellant dealing in foreign exchange, and the informant did not bring him banknotes as a trace

house with the permission of Mrs. / ... given that she is the wife of the appellant, as the challenged judgement proved. This is because it is established that if it comes to searching a house or place, consent must be given to it by the owner of the house or place or by the owner's agent at the time of his absence. It was established through the challenged judgment that the appellant was not absent from the house, so the permission of his wife had been issued by someone other than the owner. This being the case, the court erred in applying the law, as it also relied in its judgment to convict the appellant, on, among other things, what resulted in the search of his house by Major / ... on the basis of the validity of the search as it was obtained with the consent of his wife residing with him in the same house. In view of the foregoing, the appealed judgment be defective. This invalidates it, and therefore it must be appealed for this reason as well.

of that crime. It is not sufficient for the officer to be informed of this trace by the secret informant, as long as he has not witnessed a trace indicating the occurrence of the crime as such. As the papers were free of any other legally sinful crime, the officer entering the appellant's shop and seizing foreign and Egyptian currency had taken place without permission from the Public Prosecution, and in a case other than *flagrante delicto*. Therefore, if the challenged judgment ruled the validity of this seizure, it would be in violation of the law and must be rescinded. Since the evidence derived from this invalid seizure is the basis of the conviction in the case, and since the case on which the challenged judgment was based - and the particulars added - other than which there is no evidence, it is necessary to acquit the appellant of what was attributed to him pursuant to the first paragraph of Article (39) of the decision, Law No. (57 of 1959 AD regarding cases and procedures for appeals before the Court of Cassation)⁵⁸.

B - An example of the invalidity of the case of *flagrante delicto* based on the case of reporting the crime by the victim:

Whereas it was decided that *flagrante delicto* is a condition that accompanies the crime as such, not the person who committed it; the criminal investigation officer's being informed about the crime from others is not sufficient to establish the *flagrante delicto* as long as he did not witness any of its traces indicating by itself that the crime occurred; the outcome of the incident mentioned in the judgment contained no evidence that the crime was witnessed in one of the cases of *flagrante delicto* specified exclusively in Article (30) of The Code of Criminal Procedure in the Kingdom of Saudi Arabia; it is not valid to rely on the fact that the appellant was at the time of his arrest in a state of *flagrante delicto* for the crime of theft attributed to him simply because the victim reported the incident, he did not accuse a specific person of committing it, the police investigations found evidence that the appellant and the

⁵⁸ Egyptian criminal cassation, September 27, 2021 session, Appeal No. 22282 for the year 88 q, an unpublished judgment

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other convicts had committed the incident, the car, and the subject of the crime, was seized⁵⁹.

C - An example of the invalidity of the case of flagrante delicto based on the case of being informed about the crime by another witness:

It is not sufficient to detect a case of flagrante delicto for the criminal investigation officer to enter the office of the employee being offered the bribe, and the employee informs him that the briber offered him the amount in front of him in return for performing one of his duties. This news does not prove flagrante delicto. In addition, the criminal investigation officer did not hear the dialogue that took place between them, and did not know the legality of this money⁶⁰.

D - An example of the invalidity of flagrante delicto based on the confession of the crime by another accused:

Whereas it was ruled that “whereas the premise of the appeal is that the challenged judgment is based on an invalid procedure, the appellant has argued that the procedures for his arrest are invalid, because he was not in flagrante delicto permitting his arrest, and because he was arrested by two policemen, not judicial officers - the judgment replied to this plea that the appellant nodded his head at the first accused when he saw the two policemen; although in addition to the fact that the policeman testified at the hearing that he did not understand anything from the appellant's gesture, this gesture does not constitute a case of flagrante delicto - the judgement also inferred the existence of flagrante delicto from the

⁵⁹ Egyptian Criminal Cassation, session May 31, 1990, Appeal No. 8280 of 58 q, Technical Office S 41, Rule 137, p. 792

⁶⁰ Egyptian Criminal Cassation, Session of November 19, 1997, Collection of Cassation Provisions, Y 48, No. 195, p. 1293, referred to by Dr. Ashraf Tawfiq Shams El-Din, Explanation of the Code of Criminal Procedure, C1, T2 Dar Al-Nahda Al-Arabiya, p. 313.

fact that the first accused said to the appellant: "You ruined my future"; while it is clear from the statements of the informants that this statement was not issued until after the appellant was arrested, it did not contribute to creating a case of flagrante delicto, and thus his arrest was invalid; accordingly, all the consequences thereof, including the seizure of this drug, are nullified because the judgement is flawed with insufficiency of its reasons; so the appellant argued that the accusation was fabricated against him by the policemen, because of a grudge he mentioned in the investigation, but the court responded to him with an ill-advised response⁶¹.

2- The case of flagrante delicto is not established by the mere transfer of the traces of the crime or its subject to the criminal investigation officer

An example of the invalidity of flagrante delicto here: It was judged that "when the officer came to the accused's house, he did not find any of the visible effects of that crime that he could infer that the case of flagrante delicto occurred. So the officer when arrived may not consider this accused in flagrante delicto case... This is because the narcotic substance that the informant carried to the judicial officer after the sale may not be considered an effect of the crime sufficient to prove the case of flagrante delicto at the time of the transfer of the officer. The traces that can be taken as evidence of a state of flagrante delicto are the traces that indicate themselves that they are remnants of the crime, which do not need a witness to be informed about⁶².

The insufficiency of transferring the crime instrument, its subject or its traces to the criminal investigation officer to prove the state of flagrante delicto is not changed by the combination of

⁶¹ Egyptian Criminal Cassation, Session of December 4, 1956, Appeal No. 1022 of year 26 C, Technical Office S7, Rule 343, p. 1238.

⁶² Egyptian criminal cassation, session May 27, 1953, set of legal rules, C 3, No 281, p. 483, referred to by Dr. Ashraf Muhammad Abdul Qader Samhan, The Role of Conditions of flagrant Delicto in Achieving the Required Efficiency in Indictments, IBID, p. 290 and what follows it.

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that with the statements of the one who seized it and transferred it to him⁶³. Therefore, it was judged that “it is decided that the state of flagrante delicto for the crime requires the officer to verify that the crime was committed, by witnessing it himself or perceiving it through one of his senses. It does not suffice him to be informed about it from others, be them a witness or an accused person confessing, as long as he did not witness it or saw one of its traces that indicate as such that the crime occurred. Whereas what was stated by the judgment and the statements made by the officer do not show that the officer witnessed the incident of the appellant selling a roll of narcotic to the officer’s secret informant, presenting him with a roll of narcotic, and telling him that he had bought it from the appellant, is not sufficient to prove the case of flagrante delicto. That is because the judicial officer did not witness the crime, but was informed of it by his secret informant. This case does not entitle the informant except to hand the accused over to the police officer. In addition, the narcotic substance that the informant transferred to the officer is not considered one of the traces of the crime that is sufficient to prove the case of flagrante delicto, because the traces cannot be taken as evidence of a state of flagrante delicto, unless these traces themselves indicate that they are remnants of the crime, which do not require the testimony of witnesses to prove this⁶⁴.

Second: The criminal investigation officer’s assessment of the adequacy of the external appearances to prove the case of flagrante delicto:

The reason for this condition: is that the criminal investigation officer personally assesses the adequacy of these external

⁶³ Dr. Ashraf Muhammad Abdul Qader Samhan, The Role of Conditions of flagrant Delicto in Achieving the Required Efficiency in Indictments, IBID, p. 291

⁶⁴ Egyptian Criminal Cassation, April 18, 2009 session, Appeal No. 33238 for the year 61 C, referred to by Dr. Imad al-Fiqi, Criminal proof evidence in the light of jurisprudence and judicial rulings, Nass Printing Company in Cairo, without a year of publication, p. 1056.

manifestations to prove the case of flagrante delicto. Proving any of the cases of flagrante delicto requires such an assessment of the external manifestations⁶⁵.

Examples of error in assessing the adequacy of external manifestations, resulting in the invalidity of the case of flagrante delicto, and therefore the invalidity of arrest. For example, when the incident, as proven by the appealed judgment, is that the police officer obtained permission from the Public Prosecution to search the second accused, stood waiting for him in the station hall, and saw him coming ten minutes before the train departed, with a little boy whom he stopped and searched and noticed that the boy (the first accused) was in a state of great confusion, and that he put his hand on his chest and got out a small roll of paper that he wanted to throw away; he caught him and found some pieces of hashish in this roll; and since being that established by the judgement does not prove the case of flagrante delicto that legally permits arrest and search, as the officer had arrested the accused and searched him as soon as he looked at him while he (the accused boy) was in a state of confusion, taking out his hand from his chest with a roll of paper and was about to throw it, before he (the officer) find out the contents of this roll, without any external manifestations indicating the presence of the drug in it, such as that the officer sees the drug with his eyes visible from the paper, or that its smell emits from it so that he can recognize it by the sense of smell; but the mere confusion of the accused and taking the roll out of his chest trying to throw it and get rid of it when he saw the officer wanting to arrest his brother, who was walking with him, does not in itself indicate that he had obtained the drug, nor does it make him in a state of flagrante delicto that permits his arrest and search⁶⁶.

⁶⁵ Dr.. Ibrahim Hamed Tantawi, The flagrante delicto and its impact on personal freedom, IBID, paragraph, 36 p. 36.

⁶⁶ Egyptian Criminal Cassation, Session January 24, 1953, Appeal 1198, Year 22 C, Rule 154, p. 402

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Another examples of error in assessing the adequacy of external manifestations, resulting in the invalidity of the case of flagrante delicto, and therefore the invalidity of arrest.

Whereas what the appellant condemns to the challenged judgment is that it is based on an invalid procedure, because the appellant pleaded before the trial court that his arrest was invalid because it occurred in circumstances other than those authorized by law, the investigation officer confirmed in his report that he had arrested the appellant and others on suspicion of them and took them to the police station to investigate their livelihood source. After he issued a warrant against them, he handed them over to the duty officer who searched them. The arrest of the appellant in this way would have been invalid, because he was not in one of the cases specified exclusively in Article (34) of the Code of Criminal Procedure, which allows the criminal investigation officer the right to arrest individuals. However, the court rejected this plea on the grounds that the appellant was, at the time of his arrest, suspected to be perpetrator, which permitted his arrest, although he was not at that time in one of the suspicious cases stipulated in Article 5 of Decree-Law No. (98) in 1945 AD. In addition to the invalidity of relying on the prison regulations to justify the search as long as there is no legal order to imprison the appellant, as stipulated in Article (41) of the Code of Criminal Procedure.

Whereas the challenged judgment, after stating the facts of the case, rejected the plea for invalidity of the arrest and search and responded by the following:

"Whereas it was clear from the statements of the investigation officer that he met the accused on the public road late at night, and wanted to know his condition, so he asked him about his name and work, and the statements of the accused contradicted and were not coherent,

Whereas this behavior was suspicious, the detective officer, who is a member of the judicial police, considered it as an

indications that the accused had committed a suspicion of misdemeanour, a crime punishable by imprisonment for a period not exceeding three months,

Whereas this accused (the appellant) was in flagrante delicto of the aforementioned crime, the officer had the power, in this case, to arrest him, and this power is granted to him according to the second paragraph of Article (34) of the Code of Criminal Procedure in particular,

Whereas the detective officer was unable to determine the condition of the accused and know his identity due to his contradictory answers when asked about his name and his work, it appeared from all of this that the arrest was conducted in accordance with the provisions of the law, and was legitimate,

And whereas the detention of the accused (the appellant) until the investigation is conducted is not considered an imprisonment in the sense stated by the accused's lawyer,,

This shows that the plea is invalid."

And Whereas what was proven by the judgement, which is the presence of the appellant late at night on the public road, and his contradiction in his statements when asked about his name and his work, did not in itself indicate that he was involved in the crime of being suspected, but suggested to the officer that there are signs indicating that he committed the crime, it is justified for him to arrest him and search him according to the provision of Article (34) of the Code of Criminal Procedure, and it is not proven against the accused except by the availability of what is stipulated in Article 5 of Decree-Law No. (98) in 1945 AD, the challenged judgment, if it decides to reject pleading the invalidity of the arrest, and the consequent procedures, have violated the law,

And whereas it was clear from the judgment that there is no evidence against the appellant other than the evidence derived from the search and the appellant's confession before the two police officers that he possessed the drug, which is not independent

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evidence of the invalid arrest and search, the judgment shall be invalid and the appellant shall be acquitted⁶⁷.

The effect of the external manifestations of the flagrant offense being inconsistent with the actual reality:

What is the extent to which the case of flagrante delicto is proven, in some cases, just by the presence of external manifestations that make the criminal investigation officer believe that the crime has occurred, and then it turns out that the actual reality belies the significance of the external appearances?

Article 33 of The Code of Criminal Procedure in the Kingdom of Saudi Arabia states the following: “The criminal investigation officer, in case of flagrante delicto, has the power to arrest the present suspect, for whom there are sufficient evidences to accuse him...”. Article (29) of The Code of Criminal Procedure in the Kingdom of Saudi Arabia stipulates the following:

1 - Sufficient evidence referred to in Article (33) of the code is the external manifestations, which is the strong evidence and indications that justify the accusation of a person suspected. The assessment of these evidence is subject to the criminal investigation officer.

The Egyptian Court of Cassation considered that it is sufficient to establish a state of flagrante delicto that there are external manifestations that indicate by themselves the commission of the act that makes up the crime, regardless of what the investigation leads to, or the trial results⁶⁸. This is because it is not

⁶⁷ Egyptian Criminal Cassation, January 29, 1957 session, Appeal No. 1364 for the year 26 C, Technical Office in the year 8 p. 95

⁶⁸ The Court of Cassation justified this by the fact that the crime is not known in its true nature except on the basis of the investigations conducted in the case. Some have supported this, and based on the fact that the law require, in order to prove a case of flagrante delicto, to detect part of the material element of the crime. These are matters that cannot be imagined that the law required or even suppose their existence except in a single case of flagrante delicto, which is the detection of the crime when it was committed. The law does not require for

required to prove a case of flagrante delicto that the investigation leads to attributing the crime to its perpetrator⁶⁹.

establishing the flagrante delicto in any of its cases except the existence of a realistic case of a set of external manifestations that by as such indicate that a crime has occurred, or has just occurred. If this case is present, the case of flagrante delicto is proven, even if reality contradicts the significance of those external manifestations. Dr. Muhammad Zaki Abu Amer, Criminal Procedures, IBID, p. 179 and what follows

⁶⁹ In confirmation of this, it was decided that: "It was established in the judiciary of this court that if there are external manifestations that indicate by themselves the perpetration of the act that constitutes the crime, this is sufficient to establish a case of flagrante delicto, regardless of what the investigation leads to or the trial results in. This is because it is not a condition for the occurrence of flagrante delicto that the investigation leads to the establishment of the crime against its perpetrator. As it was so, and it was established from the contested judgment that after the supply inspector had bought the fish from the appellant and paid its price on the grounds that it weighed three kilograms, he and his colleagues weighed it in the stall of the appellant. It turned out that the weight was less than the weight on which the price was paid by a quarter of a kilogram, whose price is five and a half piasters. it is the right of the supply inspectors who witnessed this, in their capacity as judicial officers, to arrest the appellant, as it appears to them that he committed the crime of selling for more than the specified price. It was also judged in the judiciary of this court that the crimes of assaulting employees stipulated in Articles 137, 137, 136, 133 bis (a) of the Penal Code, united by one material element and separated by the moral element. While it is sufficient for the availability of the moral element in the crimes stipulated in Articles (1) of 133-137 above to prove the general criminal intent, which is the offender's awareness of what he is doing and his knowledge of the conditions of the crime, this element is not realized in the crime of Article 137 bis (a) previously mentioned unless it is proven that The offender has a special intent in addition to the general criminal intent, which is his intention to obtain from the abused employee, a certain result that is to perform an act for which he is not permitted to perform, or to respond to the desire of the offender, which is to refrain from performing an act he was assigned to perform, and that the legislator has enacted the provision of Article (137) bis (a) to punish anyone who uses force, violence or threat with a public official or a person charged with a public service to fulfill an unlawful matter or to avoid performing the work assigned to him. Egyptian Criminal Cassation, Appeal No. 6426 for the year 53 C, session of February 29, 1984, Technical Office in the year 35

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On the other hand, some argue that:

- the procedures by the criminal investigation officer in such cases are invalid and do not have any legal effect, because the case of flagrante delicto as required by law as a prerequisite for the validity of the “arrest” procedures permitted based on it did not, in fact, exist⁷⁰. In addition, the external manifestations that indicate the occurrence of the crime must be part of the material element of the crime. Thus, if it is proven that it does not indicate the occurrence of the crime, then this case is not a flagrante delicto⁷¹.

- it is established that the criterion for granting the procedural authority is the existence of the reason that establishes it in reality and reality, and it is not sufficient just to believe that this reason is valid. The previous judiciary concluded that what authorize the criminal investigation officer to arrest and search is no longer flagrante delicto only, but it is sufficient to believe that flagrante delicto exists. It goes without saying that the lack of evidence of the crime in the behavior of the accused means that there is no flagrante delicto⁷².

TOPIC TWO

The second condition: detection of flagrante delicto by legitimate means

In order for flagrante delicto to produce its legal effect, it shall be detected by a legitimate means⁷³, because the state may not seek to exercise its right to punish by an illegitimate means. If this

⁷⁰ Ramses Bahnam, Criminal Procedures Establishing and Analysis, c. 2, Maarif Foundation in Alexandria, 1977, p. 36

⁷¹ Dr.. Ali Kamel Ahmed Hussein, The General Theory of Invalidity in Arrest and Search, IBID, pg. 60

⁷² Dr. Mahmoud Najib Hosni, Explanation of the Code of Criminal Procedures According to the Latest Legislative Amendments, C1, I 4, Dar Al-Nahda Al-Arabiya, 2011, p. 460.

⁷³ Dr. Alsayed Muhammad Sharif, Al-Wajeez in Explanation of the Saudi Criminal Procedures law, I2, Dar Al-Ijadah, 1441 AH - 2020 AD, p. 168 and beyond.

condition is not met, the flagrante delicto is invalid⁷⁴, and therefore does not have any legal effect. Perhaps the criterion in the legality of the means of detecting a case of flagrante delicto is that the behavior of the criminal police officer, through which he witnessed the case of flagrante delicto, conforms to the law in letter and spirit. If it contradicts his legal behavior in his texts or spirit, it is illegal behavior⁷⁵.

The flagrante delicto is considered invalid if it is detected by an illegal procedure, and then the arrest is considered invalid.

If the behavior or procedure conducted by the criminal investigation officer on which the detection of flagrante delicto was based on unlawful behavior, the detection of flagrante delicto shall be, accordingly, illegally proven⁷⁶.

The illegality is due to a number of things, including:

- **Detection of flagrante delicto through a behavior that is considered a crime.**

For example, a criminal investigation officer looks through a hole in the door of a dwelling (or a private place), and sees a crime committed inside, in this case the flagrante delicto is not proven. Another example, if the accused, upon seeing the police, took something out of his pocket and quickly put it in his mouth, then this is not a case of flagrante delicto. This is because what was contained in that paper was not visible, so the police could see it. If the policemen have arrested this suspect and searched him, then this arrest and search shall be invalid.

Abuse of right

The procedure taken by the criminal investigation officer might be in conformity with the law in its provisions, but it is nevertheless illegal, because it is flawed by the abuse of right,

⁷⁴ Dr. Issam Afifi Abdel Baseer, Commentary on the Criminal Procedures law in the Kingdom of Saudi Arabia, IBID, p. 87

⁷⁵ Dr. Ali Kamal Ahmed Hussein, The General Theory of Invalidity of Arrest and Search, IBID, pg. 60

⁷⁶ Dr. Mahmoud Najib Hosni, Explanation of The Criminal Procedure Code According to The Latest Legislative Amendments, h 1, IBID, paragraph 472, p. 476.

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when it does not target the purpose for which the law decided it. If during the procedure, or on the basis of it, the criminal investigation officer witnessed a crime, the flagrante delicto is not proved by this. If a criminal investigation officer was assigned to search a dwelling in search of unlicensed weapons, and he found a leather wallet between the mattress, and opened it, and found a paper in it, and when he opened it he found a narcotic substance in it, then flagrante delicto is not proved by that because searching for weapons does not require searching the wallet, because it is unreasonable for the weapon to be hidden in the wallet⁷⁷.

Lack of some conditions necessary for the validity of the work:

Even if the criminal investigation officer is carrying out legal work, but some conditions for his health have failed, the behavior is considered illegal⁷⁸. For example, if he was assigned to search the residence of a person other than the accused, and the competent prosecutor did not obtain permission from the competent Judge to do so, or if the officer enters a public place (cafes) to monitor the implementation of laws, this entry is justified and does not require obtaining permission. However, this entry shall not extend to the places taken as residence, and it shall be limited to working times, not closing times. He has no right to explore closed and hidden objects unless the detective realizes by his senses before exposure to them what is in them, which makes the matter of possessing or acquiring them a crime that permits search, and his work in this case is based on the case of flagrante delicto and not on the right to search public places⁷⁹.

⁷⁷ Egyptian Criminal Cassation, Session of December 24, 1981, S 32, No. 21, rules of Cassation, S 28, No. 125, p. 591.4, 120, p.g 120.

⁷⁸ Dr. Alsayed Muhammad Sharif, Al-Wajeez in Explanation of the Saudi Criminal Procedures System, IBID, p. 170.

⁷⁹ Egyptian criminal cassation, session of May 15, 1977.

SECTION FIVE

The nature of the invalidity of arrest

In all cases, invalidity presupposes a fundamental procedure that violates the provisions of the law related to it. If the procedure is not substantial, it is not invalid. Determining the statutory nature of the invalidity of arrest also means determining the type of this invalidity. On the other hand jurisprudence has traditionally divided invalidity into several types. Invalidity is divided into formal and objective⁸⁰, and to general and special⁸¹. However, the most important divisions of invalidity is absolute invalidity, and relative invalidity, because of the great importance of this division in terms of its scientific implications. It has been established that absolute invalidity is related to public order⁸², while relative invalidity is related to the interests of the litigants.

The Saudi Penal Procedures Law has regulated invalidity with general rules, as Article (187) stipulates that: “Any procedure that violates the provisions of Islamic Sharia, or the laws derived from it, is invalid,” Article (189) also stipulates that “other than what is stipulated in Article (188) of this law, if the invalidity is due to a defect in the procedure that can be corrected, the court shall correct

⁸⁰ The invalidity is formal if it is due to the violation of the formal conditions for the validity of the procedural act, and is substantive if it is due to the violation of the objective conditions in this act. Dr. Ahmed Fathi Sorour, The Theory of Invalidity in Criminal Procedures, Ph.D. thesis, Faculty of Law, Cairo University, 1959, p. 139.

⁸¹ The invalidity is general if the legislator has made it a penalty for violating a certain set of rules, conferring on it a specific character without providing for invalidity with respect to each rule. An example is the invalidity of all procedures that occur in violation of the provisions of the law related to public order. As for the special invalidity, it is stipulated by the legislator in connection with certain procedures. An example is when the regulator states that the judgment is invalid if a period of time has passed without the judgment being signed by the head of the court that issued it. Dr. Mamoun Muhammad Salama, Criminal Procedures in Egyptian Legislation, c 2, Dar Al-Nahda Al-Arabiya, 1992, p 435.

⁸² Dr. Fahd bin Nayef Al-Tarisi, Invalidity in the Saudi Criminal Procedure law, Journal of Legal and Economic Research, y 63, 2017, August, pg. 501.

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it. If it is due to a defect that cannot be corrected, then it is ruled invalid.”

The jurisprudence has been divided on the nature of the invalidity of arrest in the case of flagrante delicto into three opinions, some see it as relative invalidity, and some see it as absolute invalidity, and some see it as mixed invalidity.

TOPIC ONE

The invalidity resulting from the violation of the rules of arrest belongs to the relative invalidity

This view⁸³ holds that the invalidity resulting from violating the rules of arrest belongs to the relative invalidity that relates to the interests of the litigants, and not to public order⁸⁴. It is relative in the sense that as long as the person concerned validly consents, not by coercion, to be arrested and searched, the right to plead invalidity is forfeited⁸⁵. In the sense that it is not permissible to plead it except for those whose sanctity has been violated by arrest, so it is not permissible for anyone else to hold on to it even if he has an interest in that, such as the partner of the accused who was arrested and searched invalidly.

This was confirmed by the memorandum of the Egyptian Code of Criminal Procedure, when it referred to examples of relative invalidity, including the invalidity resulting from violating the

⁸³ Dr. Raouf Ebeid, Important Practical Problems in Criminal Procedures, C1, Al-Wafa Legal Library in Alexandria, 2015, p. 51

⁸⁴ Hence, if the invalidity is related to the interest of the accused, he shall present a plea for the existence of the invalidity before the judicial authority that is after the judicial authority before which the invalidity occurred, otherwise his right to plead the invalidity shall forfeit. For more see, Dr. Ahmed Awad Bilal, The Rule of Exclusion of Evidence Obtained by Illicit Methods in Comparative Criminal Procedures, Dar Al-Nahda Al-Arabiya, 2003 A.D., p. 450

⁸⁵ Owaid Mahdi Saleh Al-Anazi, Invalidity in the Saudi Criminal Procedures Law and its Applied Models, Comparative Study, Master's Thesis, Naif Academy for Security Sciences, 1424 AH 2003 AD, p. 138.

provisions relating to arrest, search, seizure, and venue jurisdiction⁸⁶.

Some have tried to reduce the fact that the penalty is relative invalidity, mentioning that the original invalidity of arrest is relative, however, invalidity can be absolute in two cases, namely:

- If the arrest procedure constitutes an illegal arrest crime.
- If it violates a rule of the Basic Law of Governance⁸⁷.

TOPIC TWO

The invalidity resulting from the violation of the rules of arrest belongs to the absolute invalidity

In fact, we are dealing with some rules that have been established to protect the public freedoms guaranteed by the Basic Law of Governance. No one disputes the eligibility of these freedoms to be protected, which is stipulated in the Basic Law of Governance in Chapter Five: Rights and Duties, as it is stipulated in Article (36) that no one's actions may be restricted and no one may be arrested, or imprisoned, except in accordance with the provisions of the law.

Article (35) of The Code of Criminal Procedure in the Kingdom of Saudi Arabia states that: "In cases other than flagrante delicto, no person may be arrested or detained except by an order from the competent authority." The first paragraph of Article 36 of it also stipulated that: "The detainee must be treated in a manner that preserves his dignity, he may not be harmed physically or morally, he must be informed of the reasons for his arrest, and he has the right to communicate with whomever he wants to inform." With a review of the previous provisions, it is difficult to say that violating the rules of arrest results in relative invalidity related to

⁸⁶ Dr. Ali Hassan Kaladari, Invalidity in Criminal Procedures in the Light of the Federal Criminal Procedure Code of the United Arab Emirates and the Egyptian Code of Criminal Procedure, Ph.D. thesis, Faculty of Law, Alexandria University, 2002 A.D., p. 185

⁸⁷ Dr. Abdul Raouf Mahdi, Explanation of the General Rules of Criminal Procedures, Dar Al-Nahda Al-Arabiya, 2011, p. 465.

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the interests of the litigants in all cases, and not absolute invalidity related to public order, and - moreover – an invalid arrest in bad faith constitutes a crime⁸⁸.

Therefore, invalidity here is related to public order, and accordingly, the time limitation in providing evidence becomes insignificant, so it is then permissible to raise it in any state of the case, even for the first time before the Supreme Court⁸⁹.

Hence, the arrest and the consequent search is an evidence-producing procedure. Legally acknowledged evidence is required to be legitimate. The judiciary, which is the natural guardian of freedoms, shall not base its rule on evidence obtained from the violation of rights and freedoms, as this is an unjustified contradiction. This is a general rule that does not concern the evidence resulting from the arrest and search, but rather every evidence obtained in a way that violates the law, and all the requirements of arrest in this regard. There is no difference between what was related to the object or form because violating either of them means the invalidity of the arrest⁹⁰.

Topic Three:

**The Invalidity Resulting from the Violation of Arrest Rules
belongs to the Disordered Invalidity**

The plea for the invalidity of arrest and search is one of the legal pleas that are mixed with reality, and therefore it may not be raised for the first time before the Supreme Court. Therefore, it was decided that: “The defense of the invalidity of the arrest and search is one of the legal defenses mixed with reality that may not be raised for the first time before the Court of Cassation unless it has

⁸⁸ For more see: Ibrahim Muhammad Ibrahim, *The General Theory of Arrest of Persons in the Code of Criminal Procedure*, IBID, p. 157

⁸⁹ Dr. Ahmed Awad Bilal, *The Rule of Exclusion of Evidence Obtained by Illicit Methods in Comparative Criminal Procedures*, IBID, p. 450

⁹⁰ Dr. Yasser Prince Farouk, *Arrest in the Light of Jurisprudence and the Judiciary*, IBID, pg. 983.

been contested before the trial court, or if the documents of the judgment bear facts therein, as it requires an investigation out of the mission of the Court of Cassation⁹¹. Since it is established from the minutes of the trial session that neither the appellant nor his defender plead the invalidity of the arrest and search, and the judgment documents were devoid of what proves that invalidity; then it is acceptable for him to raise it for the first time before the Court of Cassation.⁹²” Hence, the plea for the invalidity of the arrest is considered within the public order, and it may not be raised for the first time before the Court of Cassation if it requires

⁹¹ For example, it was decreed that “personal freedom may not be restricted except in a case of flagrante delicto or with the permission of the competent authority. Article 41/1 of the Constitution. Flagrante delicto or misdemeanors punishable by imprisonment for a period not exceeding three months permits the arrest of the present accused for whom sufficient evidence is found. The basis for that is that it is permissible to search the accused when it is permissible to arrest him, otherwise it is not permissible to search him. Article (46) Procedures. As Article 41/1 of the Constitution stipulates that “personal freedom is a natural right, and it is protected and untouchable. In a case other than flagrante delicto, no one may be arrested, searched, imprisoned, his freedom restricted or prevented from moving except by an order necessitated by the necessity of investigation and maintaining the security of society. This order is issued by the competent judge or the Public Prosecution, in accordance with the provisions of the law.” The implication of this provision was that any restriction on personal freedom, which is a natural right of human rights, may not be made except in a case of flagrante delicto as defined by law, or with the permission of the competent authority. Articles (35 and 34) of the Code of Criminal Procedure, as amended by Law No. (37) of 1972 A.D., had authorized the judicial police officer in cases of flagrante delicto for felonies or misdemeanors punishable by imprisonment for a period exceeding three months to arrest the present accused for whom there is sufficient evidence that he is accused of the crime. If he is not present, the judicial officer may issue an order to arrest him and bring him in. Article (46) of the same law permitted search of the accused in the cases in which he may be legally arrested. If it is legal to arrest a person, it is permissible to search him; otherwise, it is not permissible to search him, and the results of the invalid arrest and search are invalid. Egyptian criminal cassation, session of January 3, 1990, Appeal 15033 for the year 59 C, Technical Office 41, C 4 pg. 41

⁹² Egyptian Criminal Cassation, Session of December 23, 1985, Appeal No. 2560 of 55 C, Technical Office, Year 36, Rule No. 214, p. 1157

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an objective investigation. But if it is apparent from the documents of the ruling itself, it can be pleaded⁹³. This opinion requires that the invalidity of the arrest is not absolute invalidity in all cases, nor is it relative in all of them, but it is correct to differentiate between the two cases⁹⁴

The first case: Violation of the objective rules of arrest results in absolute invalidity related to public order. Without these rules it is not possible to conduct arrest procedure, as they determine the conditions for its existence, and therefore, violating them makes the procedure lacks the right to practice it, and thus constitutes illegal assault on public freedoms, especially freedom of movement.

The second case: Violation of the formal rules of arrest results in relative invalidity related to the interests of the litigants⁹⁵, because

⁹³ Dr.. Ali Kamel Ahmed Hussein, The General Theory of Invalidity in Arrest and Search, IBID, pg. 410

⁹⁴ Dr.. Jalal Tharwat, Code of Criminal Procedures, Maarif Foundation in Alexandria, 1988 AD, p. 1473; Dr.. Sami Hosni Al-Husseini, The General Theory of Search in Egyptian and Comparative Law, Ph.D. thesis, Faculty of Law, Alexandria University, without publication year, paragraph, 234, p. 417; Dr.. Ali Hassan Kaladari, Invalidity in Criminal Procedures in the Light of the Federal Criminal Procedure Code of the United Arab Emirates and the Egyptian Code of Criminal Procedure, IBID, p. 185

⁹⁵ It means the following:

- The invalidity may not be raised for the first time before the Supreme Court; as the plea for the invalidity of the arrest is one of the substantive defenses that may not be raised for the first time before the Supreme Court, and it is not intended to exclude the arrest and all its provisions from issues related to public order. Rather, this saying has another reason closely related to the nature of the function on which the Court of Cassation is based. Because the Court of Cassation is a court of law and not a court of facts, its mission is to consider the case only according to its current state before the trial court. It does not accept a new request or a new plea that has not been submitted to the court that issued the contested judgment; Because such a request calls for an investigation and interrogation of the facts, which by its nature is outside the authority of the Court of Cassation; where it was permitted

these rules are related to the conditions for the validity of the procedure, and therefore their violation negatively affects the work after being valid.

to file it for the first time before the Court of Cassation; even if it has not been contested before the trial court. It is decided that if the Supreme Court may contest the judgment on its own in cases where it appears that the judgment is based on a violation of the law or an error in its application or interpretation when it relates to public order, then it is required that the error be apparent by looking at the same judgment without referring to other documents. The appeal before the Supreme Court cannot be considered an extension of the litigation. Rather, it is a private litigation, and the mission of the court is limited to ruling on the validity of judgments by virtue of the law according to the requests that were presented to it and the aspects of defense and it must consider the case only in its state in which it was presented before the trial court.

- The invalidity may not be pleaded except only by the accused who was searched or his house was searched invalidly, not other perpetrators, even if their interest is related to the invalidity.
- Consent to search before it takes place is valid if it is issued by a person of capacity; Since the explicit consent is required when it comes to the accused himself, who was inflicted with the procedure on his person or on his house, if he pleads for its invalidity for violating the conditions set forth in the law. But if the plea is raised by another person, the presumption of consent derived from the silence of the accused is sufficient for that. It indicates that he was satisfied with it unless otherwise proven, knowing that he would not remain silent about the appeal with invalidity.

For more see, Dr. Sami Hosni Al-Husseini, The General Theory of Inspection in Egyptian and Comparative Law, IBID, paragraph 235, p. 423

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Conclusion

We discussed above invalidity conditions of invalid arrest in flagrante delicto cases, following a plan and methodology that we believe are sufficient to achieve the objectives of the study within its specific framework. In the first stage, we reviewed the nature of arrest and flagrante delicto, then we gave examples of invalid cases in flagrante delicto. We also discussed the conditions of flagrante delicto, and finally the nature of invalidity of arrest

The two researchers made a great effort. The principal researcher worked hard in the process of collecting, reading, writing, editing, weighting, and making inference. The co-researcher participated in some of the above as required by the research participation, and made sure of the correctness of attributing citations to their sources and references after completing the collection and writing process. We do not claim perfection, as omission, deficiency, error and forgetfulness are among the characteristics of human beings. Whoever finds a deficiency, omission, error or forgetfulness, we kindly ask him to inform us to amend and correct such matters, in order to provide correct and sound information along with its references and sources.

We remind everyone who reads this research with the famous statement: “And that is as I saw that everyone finishes writing a book in his day will already say in his tomorrow: If I changed this, it would be better, and if this was added or removed, it would be perfect⁹⁶.” There is no one impeccable but Allah, Exalted is He, so whatever is right is from God, and whatever is wrong is from us and Satan, and we seek refuge in God from Satan. Kindly, whoever finds an error herein; inform us for correction as this is a human

⁹⁶ 1) Al-Naji, Abu Ishaq Al-Halabi Al-Qibati Al-Shafi'i, Agaltul-Imlaa, Investigation And Study: Dr. Ibrahim bin Hamad Al Rayes D. Muhammad bin Abdullah bin Ali Al-Qannas, Publisher: Al-Maaref Library for Publishing and Distribution, Riyadh, first edition, 1420 AH, vol. 3, p. 5. Al-Qanouji, Abu Al-Tayyib Muhammad Siddiq Khan bin Hassan bin Ali bin Lotf Allah Al-Husseini Al-Bukhari, Abjad Al-Ulum, Publisher: Dar Ibn Hazm, first edition, 1423 AH, pg. 5.

work not free from shortcomings, deficiency, omissions and forgetfulness

This research reveals many findings and recommendations, as follows:

First: Findings

- Arrest depends on the availability of a direct reason for arrest, and the legality thereof.
- The situation in light of the exceptional powers granted to a criminal investigation officer in flagrante delicto case does not mean waiving the principle of legality.
- The criminal investigation officer must certainly witness the crime without any doubt.
- The criminal investigation officer must personally witness the external manifestations.
- A case of flagrante delicto is not established once the information is received from a third party about the occurrence of a crime.
- The criminal investigation officer must himself estimate the sufficiency of these external manifestations to prove the presence of flagrante delicto. All cases of flagrante delicto require estimation of the external manifestations.
- The rule for the emergence of the procedural authority is the realization of the cause that establishes it in fact and reality not mere belief in the realization of this reason. The previous judgment concluded that the authority of the criminal investigation officer may no longer establish flagrante delicto case, but merely a belief in its availability. It is clear that the crime not proven against the accused means that there is no flagrante delicto.
- There is a difference of opinion regarding determining the nature of the invalid arrest, and we chose the opinion that argues that the plea for invalidity of arrest and search is

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among the regular defenses mixed with reality, and therefore it cannot be filed for the first time before the Supreme Court.

Second: Recommendations:

- We hope that the legislator specify explicit legal provision for the nature of the invalidity arising from invalid arrest in cases of flagrante delicto, so that the matter becomes clear that it is an absolute or relative invalidity.
- One of the proposed solutions is to apply the rule of exclusion flexibly by making the exclusion of procedures resulting from arrest based on a case of flagrante delicto that did not meet the controls and conditions set by the legislator in Article 30 of the Saudi Law of Criminal Procedure, and to leave the matter up to the discretion of the court, taking into account the extent to which a causal relationship exists between the procedures resulting from a case of arrest based on invalid flagrante delicto.
- We hope from the legislator to amend the text contained in Article (-30) of the Saudi Law of Criminal Procedure, which is "A crime shall be deemed flagrante delicto if the perpetrator is caught in the act of committing such a crime, or shortly thereafter", to: "A crime shall be deemed flagrante delicto if the perpetrator is caught in the act of committing such a crime, or very shortly thereafter", or: " A crime shall be deemed flagrante delicto if the perpetrator is caught in the act of committing such a crime, or very closely thereafter

In conclusion: We hope that this research will be acceptable and beneficial to all

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Comparative Applied Study**

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