

Nullity in Criminal Procedures (Comparative Study)

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Abstract: Since nullity encompasses a broad scope in the law and raises complex legal issues, it is essential to examine and study them to find the necessary solutions to ensure the smooth operation of the criminal justice system. This is particularly true given that the majority of criminal jurisprudence believes that nullity is the key to constructing every law and the best guarantee for the proper application of the law. The law cannot be applied without the validity of correct procedural actions. This means that it requires the validity of criminal procedures. Therefore, the nullity of these procedures affects the validity of the judicial decision. Consequently, it has become an absolute duty to find appropriate solutions to ensure the proper functioning of the criminal justice system, especially after the scope of issues has expanded. Criminal procedures have evolved in response to the progress and development of societies, enabling them to address issues related to the diverse interests that courts consider. Things have turned to establishing a penalty for violating general legal rules, so that they become binding. The best of this is the theory of invalidity, and the basis of this theory is based on the principle of punishment for defective legal action. Therefore, most criminal legislation has tended to regulate cases of invalidity with texts in its laws. However, the Iraqi legislator did not specify this theory in the texts regulating it in the Code of Criminal Procedure; instead, it was scattered throughout the texts without being unified by a single purpose. Therefore, we consider it an essential and unavoidable duty to address the issue of invalid criminal procedures and the consequences and penalties that result from their violation.

Consequently, we have embarked on writing this research to demonstrate the role and importance of invalidity in criminal procedures, as outlined in a research plan consisting of two sections. In the first section, we will address the nature of invalidity in criminal procedures, and in three subsequent sections. In the first section, we will explain the definition of invalidity, and in the second, we will examine the basis of criminal protection for invalidity. We will devote the third section to distinguishing invalidity from similar concepts in other legal systems. The second section is dedicated to invalidity, its types, and causes, and in three sections, we will explain the doctrines of invalidity in the first section, and the second will address the kinds of invalidity. In the third section, we will examine the causes of invalidity, addressing them sequentially according to the plan prepared for this purpose, as follows. This is the summary of the research, and success comes from God.

Keywords: Legal Doctrine, Subjective Doctrine, and Mandatory.

Introduction: Voidance occupies a broad scope in the law, as it raises complex legal problems that require the judiciary to resolve with a just ruling. It has also been said that nullity is "the key to the construction of all law" (1), and that it is the best guarantee for the correct application of the law. The importance of nullity emerged after societies advanced and criminal procedures developed. This was due to the expansion of the scope of topics they encompassed, which acquired varying degrees of importance to enable them

to address the multiple hypotheses related to diverse interests, leading to the multiplication of cases before the courts, a significant number of which are considered.

Therefore, thought has turned to establishing a penalty for violating important legal rules, thus establishing a binding formula. The best example of this is the theory of nullity, as this theory is based primarily on the principle of punishment for defective legal action. The importance of this theory is highlighted in the Code of

Criminal Procedure. Criminal legislators in most countries have tended to regulate cases of nullity with provisions in their laws to leave no room for doubt, and to inform the person conducting the procedure in advance of the fate that their action may face, thus observing the relevant provisions. The Iraqi legislator did not specifically address the theory of invalidity in the Iraqi Code of Criminal Procedure. Rather, some of the provisions on invalidity were scattered throughout the aforementioned law without a unified purpose. The Iraqi legislator left the assessment of invalidity provisions to the discretion of the judge, who would identify the defect in the procedural action and then assess the seriousness of the violation.

In reality, the issue of invalidity in criminal procedures is of paramount importance in the correct application of the law, achieving justice and ensuring security and peace of mind, a goal that every human being aspires to achieve. The theory of invalidity in the Code of Criminal Procedure is of paramount importance in regulating criminal litigation, leading to the imposition of punishment on the offender. Thus, interests clash, and sufficient guarantees for individual freedoms must be provided. First: The Importance of the Research

The importance of this research lies in the paramount importance of procedural law, whether it be the Code of Criminal Procedure, as some criminal legislation, including Iraqi criminal legislation, calls it, or the Code of Criminal Procedure, as some criminal legislation, such as Egyptian criminal legislation, calls it. Whatever the name, it is an extremely important law, as it relates to criminal litigation. The state regulates criminal litigation to the point of imposing punishment on the offender. In this litigation, the state's supreme interest in exacting retribution against the offender conflicts with the interest of the accused. The need to reconcile these two interests and provide sufficient guarantees for individual freedoms appears to be important and urgent, with the aim of ensuring a fair trial. The rules and guarantees established by the legislature are of no importance if they are ignored or not observed. Here, the role of invalidity becomes apparent as a procedural sanction that represents the binding nature of the procedural rule. This leads to the demolition of the defective procedural act, the nullification of its legal effects, and the consequent, extremely important consequences, the most serious of which is the criminal's escape from punishment if his conviction is based on invalid evidence.

Second: The Problem of Research

Despite the great importance of the topic of invalidity in criminal litigation, it has not received sufficient attention and the necessary fundamental study to

address the problem, which branches into several problems. These problems revolve around the validity and legitimacy of the procedure, the consequences that can result from the absence of its legal components, the penalty imposed on the defective procedure, and whether it affects the procedure itself in the lawsuit or the ruling as one of its procedures. These problems highlight the importance of research in its theoretical and practical aspects, and this is what we will address in this research. Third: Scientific Research Methodology

The analytical inductive method was adopted, as we examine the general principles of the theory of invalidity, especially since the theory of invalidity is one of the general theories in law, with its principles and applications in various branches. This theory is based on an induction of the opinions of jurists in various legal schools, as well as an examination of the manner in which this theory is applied in various legislations, enabling us to assess invalidity in criminal procedures through the advantages and disadvantages revealed by practical application. This is the primary objective of this research, which is to present an analytical study to answer the research problem.

Fourth: Research Methodology

The research will be conducted according to the research plan prepared for it, which consists of two sections. In the first section, we will address the nature of invalidity in criminal procedures. In the first section, we will define invalidity in four sections. In the second section, we will examine the basis of criminal protection for invalidity. The third section is devoted to distinguishing invalidity from similar legal systems in four sections. The second section is dedicated to invalidity, including its types and causes. It will cover three sections. In the first section, we will explain the doctrines of invalidity in four sections. The second section will address the types of invalidity in two sections. In the third section, we will examine the causes of invalidity. This is what we will address sequentially according to the plan prepared for it, as follows:

Section One

The Nature of Invalidity in Criminal Procedure

Requirement One

Definition of Invalidity in Criminal Procedure

We will clarify this in four sections. The first section is devoted to defining criminal principles, the second to defining invalidity in language, and the third to defining invalidity in The fourth term defines invalidity in criminal procedures in criminal jurisprudence, as follows:

First Section

Definition of Criminal Procedure

There is no definition of the Code of Criminal Procedure in Iraqi legislation. This has been left to criminal jurisprudence, which defines the Code of Criminal Procedure as "a set of legal rules that must be followed to regulate the course of procedures for investigating crimes and criminalizing their perpetrators, as well as defining the jurisdiction of the authorities and agencies responsible for implementing these rules."

Second Section

Definition of Invalidity Linguistically

Invalidity means that it is the opposite of truth. This is evident in the Almighty's statement: "Falsehood can neither originate nor restore." It is also said of everything that it is "falsehood," "falsehood," and "falsehood." The plural is "falsehoods." A vain man is one with falsehood, and they are vain among themselves. God Almighty also says: "Indeed, those are [in] ruined, and falsehood is [their] conduct." What they were doing. Invalidity comes from the word "batil," which means the invalidity of something, and everything that cannot be relied upon or recourse to. This includes the corruption of something or the lapse of its ruling(2). This means the disappearance of something and its illegitimacy from its very beginning (3).

Third Section

Invalidity in Terminology

From the Latin word "abolito," meaning to cancel or nullify, as well as to nullify a legal status (4).

Fourth Section

Invalidity in Law and Jurisprudence

Invalidity is defined as "a penalty resulting from failure to comply with the provisions of the law relating to any substantive procedure" (5). It is also described as "a procedural penalty resulting from the lack of the necessary elements for the validity of a legal act" (6). It is also defined as "a penalty imposed by the legislator or ruled by the court without a text if the legal act lacks one of the formal conditions required for its legal validity, and this procedure leads to the ineffectiveness of the legal act and its loss of the legal value assumed for it if it were valid" (7). The researcher believes that nullity is (a penalty imposed by the legislator in legal texts or decided by the court in the absence of a text, if the legal act lacks one of the formal conditions for its validity, and this leads to the loss of its supposed legal value), and in all cases, nullity is a penalty for the failure of all or some of the conditions for the validity of the criminal procedure. It results in the procedure not

producing its usual legal effects.

The Second Section

The Basis of Criminal Protection

Given the importance of the issue of the invalidity of criminal procedures, it is necessary to understand the basis of criminal protection for criminal procedures so that we can understand the invalidity of criminal procedures and ensure sound legal procedures and a fair trial. Therefore, this section will consist of two sections. In the first section, we will explain the legal basis for the invalidity of criminal procedures, and in the second, we will discuss the importance of the invalidity of criminal procedures, as follows:

The First Section

The Legal Basis of Criminal Procedure

The legal basis for criminal procedures is the legal text. The legislator places broad procedural powers between the authorities of investigation, prosecution, trial, and execution of judgments, the application of which may affect individuals' freedoms, persons, secrets, and assets. Therefore, the legislator must strike a balance between the right of authorities to exercise their powers and the interests of individuals. This prevents those exercising these powers from deviating from their authority and from their arbitrariness, or at least from neglecting essential procedures that directly relate to the interests of the group or the interests of the parties. The substantive and procedural penal laws stipulate penalties for those who carry out procedural actions or for the procedural action itself (8). Criminal legislation has set several penalties that affect procedural action, including disciplinary penalties, i.e., behavioral penalties. These penalties are imposed by the administrative authority to which the person who carried out the illegal action belongs, as stated in Articles (16-48-403) of the Lebanese Code of Criminal Procedure, as well as criminal penalties, which represent the most severe type of penalties and target the person who carried out the illegal action for criminal punishment. This is what is stipulated in Articles (42/2 - 48-53) of the Lebanese Code of Criminal Procedure due to the disclosure of the confidentiality of the investigation and the violation of the procedures followed in detention, as well as Articles (367-368-369-370) of the same law for violating arrest and search procedures. There is also a civil penalty, which stipulates the right to compensation for the person who suffered harm from the person who carried out the illegal action. The provisions of the law, as well as the procedural penalty (nullity), do not affect those performing the procedural action, but rather the procedural action itself. This is the penalty we are concerned with in this research. The importance of this

penalty lies in the fact that the penal procedure is not an abstract act, but rather a purposeful act through which the law requires the achievement of a specific goal. If the procedure lacks the conditions imposed by the law, it loses its legal value, which entails its nullity.

Since the rules of the Code of Criminal Procedure are the procedural rules of criminal law, they are the legal rules that establish the procedures to be followed when a crime occurs, including all evidence regarding it, investigation, trial of the perpetrator, and imposition of a just penalty upon him after it has been proven that he committed it and is responsible for it. These rules entail achieving two fundamental interests: the interest of society, whose security has been disrupted, and the interest of individuals in ensuring their freedoms. Since this is the case, its legal basis is the legal text, which stipulates the penalty for those who violate these procedures. Criminal procedure rules are generally legal rules. A legal rule is distinguished from other rules that govern the activity of individuals by the element of penalty. Without the element of penalty, the rule is stripped of its binding nature and becomes merely advice or guidance. Criminal procedure rules are distinguished from substantive law rules in that they contain penalties of a special nature, which are procedural penalties, in addition to other penalties. These penalties, which protect criminal procedural rules, aim to properly administer justice and achieve the purpose of the dispute, which is to impose punishment on the offender. All of these penalties constitute a general theory in procedural law, which is the theory of penalty.

One of its most important applications is procedural penalties, which are the theory of invalidity, forfeiture, and non-acceptance. Procedural penalties differ from other penalties, and are characterized by their objective effect, as they do not affect the person who carried out the procedural action, but instead affect the action itself, unlike other penalties, which are personal in effect, meaning they affect the person who carried out the procedural action, whether in his person or his property. Procedural penalties also lead to the procedural action being deprived of its legal effects, unlike other procedures that involve the element of pain and compensation (9), for all of the above, criminal procedures are based on legal texts, as legal rules stipulated by the legislator, which serve as procedural (formal) legal rules.

Section Two

The Importance of the Invalidity of Criminal Procedures

The importance of invalidity emerged after societies advanced and criminal procedures developed, as a

result of the expansion of the scope of topics they encompassed. They acquired levels of varying degrees of importance, enabling them to address the multiple hypotheses related to diverse interests, in addition to the multiplication of cases heard by courts, and a significant number of which, after investigation and discussion, were found to be based on flawed reasons, thus wasting considerable time and effort to no avail. And also to enable the judiciary to focus its research on the claims supported by sound legal justifications, and on the other hand to prevent the transgression of what the legislation includes of provisions that must be followed as interests of concern to society and the individual alike, therefore thinking turned to avoiding those harmful results by establishing a penalty that results from violating important legal rules to become binding, and the theory of invalidity was established, which is basically based on the principle of penalty for defective legal work, and the importance of this theory increased until it became one of the general theories in the law with its principles and applications in its various branches, and the importance and danger of the theory of invalidity appears doubled in the Code of Criminal Procedure, as the state regulates the criminal dispute to reach the imposition of punishment on the offender, and in this dispute the higher interest in retribution from the offender conflicts with the interest of the accused, and the need appears urgent to reconcile the two interests and provide sufficient guarantees for individual freedoms in order to establish a fair trial, mainly since most legislations regulated cases of invalidity in their laws and did not leave room for doubt and for the person carrying out the procedure to know in advance the fate that may The Iraqi legislator did not specifically address the theory of nullity in the Code of Criminal Procedure. Instead, the nullity provisions were distributed throughout the law above, leaving other nullity provisions that were not explicitly provided for to the judge's discretion to determine the defect in the procedural act and assess the seriousness of the violation. This is known as the "doctrine of intrinsic nullity." One of the criticisms of this doctrine is that it leads to conflicting opinions and instability in judgments. From the above, it becomes clear that the importance of nullity provisions lies in the correct application of the law, thereby achieving justice so that security and peace prevail in society, which is the ultimate goal that humanity strives to achieve.

The Third Section

Distinguishing Nullity from Similar Legal Systems

To distinguish nullity in criminal procedures from similar legal systems, we must divide this section into four sections. In the first, we explain nullity, in the second, inadmissibility, in the third, nullity, and the

fourth, the position of Islamic law on nullity, as follows:

The First Section

Vulnerability and Nullity

Vulnerability is defined as a procedural penalty resulting from failure to exercise the right to undertake a specific procedural act within the period specified by the legal system. This period is determined either by a particular date or by a particular incident. Nullity is the prevention of undertaking an act or group of criminal acts due to failure to observe the specified deadlines. In other words, nullity is a procedural penalty that deprives an individual of the right to undertake a specific action. The difference between nullity and nullity is that nullity applies to the act itself, while nullity applies to the nature of the act. Specifically, nullity can be corrected in certain circumstances, while lapse is never correctable. A judgment or order primarily determines nullity, while lapse is by force of law.

Section Two

Voidness and Inadmissibility

Inadmissibility is defined as "not a procedural sanction directed at a specific procedure, but rather a refusal to adjudicate on the subject of a specific request. Therefore, it does not address a procedure as much as it addresses the procedural relationship as a whole or at one of its stages."

It is noted from the definition that nullity and inadmissibility are almost identical in the underlying cause. In both cases, there is a defective procedural action caused by a mismatch between the actual procedure and its legally prescribed model. This means that the procedure lacks one of its substantive components or lacks one of the forms that ensure its validity (10).

This means that the plea of inadmissibility is the plea that aims to challenge the lack of the necessary conditions for hearing a case, namely, standing, interest, and the right to file a lawsuit as a right independent of the right for which it is filed, requesting its establishment, such as the lack of a right to file a lawsuit (11).

As for nullity, it is a penalty imposed by the legislator or decided by the judge for the failure of a specific procedure. The point of disagreement between them is that inadmissibility often affects procedural aspects of public order, i.e., those aspects that the judge may raise on his own initiative, such as the failure of the prosecution to receive a complaint from the injured party, in legal systems that adopt the public prosecution system, such as Egypt, for example. As for Iraq, it adopts the investigative judge system. In this

case, the judge has the right to rule that the public lawsuit is inadmissible due to the absence of a complaint, without waiting for the injured party to submit a plea in this regard. This means that the judge has the right to reject the lawsuit due to the absence of a complaint from the injured party. Section Three

Voidness and Nullity

Voidness is defined as "a penalty imposed on a procedure for violating the law or regulation in a manner that strips it of all its statutory or legal value" (12). This means that its absence in the absence of a procedural act is its nonexistence, and the manifestation of its nonexistence is its invalidity. Nullity results from a defect in the legal act, without affecting the existence of the legal act. The procedural act is considered legally void if the law does not permit it, such as the interrogation of the accused by a person who does not have the legal capacity to interrogate him, or if the interrogation takes place before the criminal dispute arises. In this case, the procedural act is considered legally void. It differs from nullity in that nullity cannot be corrected due to its nonexistence in the legal world, while nullity can be corrected, and any party to the criminal case, and the court may, on its own initiative, raise nullity. Nullity, on the other hand, is specifically raised by the investigating judge and some parties in specific cases.

Section Four

The Position of Islamic Law on Invalidity

Islamic law views invalidity (and its adoption) with a comprehensive and moderate approach. The basis of the theory of invalidity in Islamic law is the violation of the commands and prohibitions contained in the legal texts of the Holy Qur'an and the Prophetic Sunnah, which are definitively proven. Islamic law adopts the theory of invalidity and the principle that "whatever is built on falsehood is itself false." This principle has also been clearly and directly indicated in the Qur'an, as God Almighty says in His Noble Book: "O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger."

Section Two

To complete the research, this section is devoted to explaining the doctrines of invalidity, its types, and causes. Therefore, we must divide this section into three sections. The first will be devoted to the doctrines of invalidity. In the second, we will discuss the types of invalidity, and in the third, we will devote the causes of invalidity. This is what we will discuss in turn, as follows:

Section One

Doctrines of Invalidity

The system of invalidity in criminal procedures requires that it be governed by rules that fulfill the purpose for which the law enacted this penalty. Invalidity, as a procedural penalty, is the tool by which the law proves its will, obligates persons to observe its rules, and achieves the guarantees it intended to provide in litigation. Thus, the rules of invalidity fulfill the purpose upon which the penalty of invalidity is based. Therefore, they must be based on stability and specificity so that procedural persons know their rights and obligations. This is what the nature of the penalty leads to. The circumstances of invalidity must be defined without excess or negligence, so as not to lead to the waste of evidence for the most trivial reasons and enable the accused, which is something that contradicts the nature of The litigation is an attempt to escape punishment, in addition to the complexity of the procedures and the prolongation of the criminal litigation that aims to achieve social defense by imposing punishment on the offender and protecting individual freedoms (13). We will explain these doctrines briefly in four branches as follows:

Section One

The Doctrine of Legal Nullity

The implication of this doctrine is that nullity can only be established by explicit legal text (there is no nullity without a text). If the legislature does not stipulate a penalty for nullity, the action taken is considered valid even if it is not carried out within the limits stipulated by the law. The legislature alone has the authority to impose a penalty in this regard. A judge does not have the power to rule on nullity as long as the legislature does not stipulate it, nor does he have the power to refrain from ruling on it when the text does. The flaw in this doctrine is that it is based on the legislature's prediction in advance of the circumstances of nullity, even though it is impossible for the legislature to agree on the specific circumstances of nullity in a university free of excess or negligence. In short, this doctrine relies on the text of the legislature. Second Section

The Doctrine of Intrinsic Nullity

In this doctrine of nullity, the legislator does not specify specific cases of nullity, as in legal nullity. Rather, nullity results from a violation of any fundamental or essential rule, and the judge is responsible for determining it. He may impose nullity on a violation of a rule he deems essential, even if the legislator does not stipulate nullity as a penalty. This doctrine of nullity is sometimes called fundamental or essential nullity. The advantage of this doctrine is that the legislator cannot pre-limit the circumstances of nullity, and for fear of the consequences of such limitation, he leaves the matter to the judiciary to assess the seriousness of the

violation. This doctrine does not rely on rigid texts, seeing a serious defect in the procedural action before it and being unable to take action simply because the law omitted to stipulate nullity as a penalty for this defect. This doctrine raises a major problem, namely the problem between essential and non-essential actions. This problem lies at the heart of the flaws of this doctrine. This doctrine has been adopted by Egyptian and Iraqi law. Section Three

The Doctrine of Mandatory (Absolute) Nullity

Also called the formalist doctrine, it stipulates that nullity results from a violation of all procedural rules governing litigation proceedings. The basis of this doctrine is that the law only requires consideration of formalities due to their importance and the role of litigation. Therefore, nullity must be declared as a penalty for failure to comply with all of them.

This system was known in Roman law and the feudal era, where procedures were subject to specific formalities, the violation of which affected the subject matter of the lawsuit itself. The advantage of this doctrine is its clarity in defining the circumstances of nullity. However, it is marred by the defect of excessive adherence to formalities, which leads to excessive nullity and the predominance of form over substance (14).

Section Four

The Doctrine of Nullity in Iraqi Law

The Iraqi legislator did not include in the Baghdad Criminal Procedure Code (repealed) any provision relating to nullity. The explanatory memorandum to the appendix to the Baghdad Criminal Procedure Code No. 63 of 1950 states the following: "It has been proven from the application of this law that it is a practical law devoid of formalities, allowing the judge to act with complete freedom without his procedures being marred by nullity, provided that the rights of defense are not violated."

As for the current Criminal Procedure Code, Article 249/Paragraph 1 states: "The Public Prosecution, the accused, the complainant, the civil plaintiff, and the civil defendant may appeal to the Court of Cassation the rulings, decisions, and measures issued by the Misdemeanor Court or the Criminal Court in a misdemeanor or felony case if they were based on a violation of the law or an error in its application or interpretation, or if a fundamental error occurred in the procedural procedures, the assessment of evidence, or the assessment of the penalty, and the error affected the ruling."

This is evident from the phrase "fundamental error in the procedures." The above article states that the

legislator has adopted the principle of intrinsic nullity, as it is inconceivable that there is no procedural penalty for violating the basic rules of criminal procedure, as these rules are useless unless there is a penalty for violating them. This penalty is decided by the court to which the appeal against the decision of the investigating authority or the judgment is brought (15).

However, criminal jurisprudence in Iraq has differed regarding the nullity of a search. Some have held that a search conducted by the investigating authorities outside the conditions stipulated by law is considered absolutely null and void, and that the contents of the search report or the criminal items and exhibits discovered therein may not be relied upon, nor may the court rely on them in its ruling. As for the person who conducted the invalid search, his testimony regarding that search may not be relied upon, nor may the procedures or statements he provided in his report or investigation of that invalid search be relied upon.

Others believe that a search conducted without observing these provisions is tainted by relative nullity, given that the legislator has established the general provisions relating to searches and made them obligatory. The courts are not exempted from applying this principle on the grounds that there is no specific text regulating invalidity in a matter that affects people's public freedoms that are protected by the Constitution and other laws, especially since the rules of the Code of Criminal Procedure are formal rules, the purpose of which is to ensure the proper administration of justice and to guarantee the public interest in criminal justice, which does not prevent the court from adopting the broad interpretation and the principle of intended inference a fortiori (16). The Iraqi legislator did not include in the Code of Criminal Procedure a text that clarifies for us the general rule in the invalidity of criminal procedures that stipulate their invalidity for violating the stipulated conditions and forms, and that he left the matter to the judiciary until it assesses the seriousness of the violation.

The Second Requirement

Types of Invalidity

There are two types of invalidity: absolute invalidity and relative invalidity. The rulings for each of these two types of invalidity differ from one another, and Islamic jurisprudence has established this distinction (17). Although some do not permit it (18), they even reject dividing invalidity into absolute and relative invalidity (19). Those who reject this idea proceed from the view that its basis is a traditional distinction in civil law jurisprudence and is inconsistent with the rules of procedural law. This rejection appears to be based on a distinction between absolute invalidity and procedures

related to public order (20), or it may be based on the ambiguity of the concept of absolute and relative invalidity. To clarify, it is preferable to replace them with another distinction based on the public interest and the private interest (21). We will explain this in two sections. In the first, we will discuss absolute invalidity and devote the second to relative invalidity, as follows:

The First Section

Absolute invalidity

This is the invalidity whose provisions apply when essential procedures that protect the public interest are violated due to their connection to public order. We will explain its status and provisions as follows:

A - Cases of absolute invalidity

Absolute invalidity can be summarized as violating the rules related to the formation of the court, its jurisdiction to adjudicate the case, and its subject-matter jurisdiction (22), as well as if the violation is directed at Procedural invalidity is defined as the absence of one of the procedural elements due to a failure to observe procedural formalities in a manner that undermines the proper administration of justice (such as not conducting the trial in public, not observing the oral nature of the proceedings, not providing reasons for the rulings, or replacing one investigating judge with another without observing legal principles). This constitutes a fundamental violation of public order and is therefore absolutely null and void.

B - Provisions of Absolute Nullity

The provisions or characteristics of absolute nullity are embodied in the following:

- 1- It may be invoked at any stage of the trial.
- 2- The court may rule on it of its own accord without a request from any of the parties.
- 3- It may be invoked before the Court of Cassation.
- 4- It may be invoked by any interested party in their report.

These rulings are based on a basic idea, which is that invalidity is established for the benefit of society, whether it is a direct interest of society or a private interest of the accused, which has risen in importance to the level of a direct interest of society. Accordingly, it is not possible to explicitly waive the invocation of it, nor through it by an implicit waiver inferred from not invoking it in some stages of the lawsuit (23).

Section Two

Relative Invalidity

Relative invalidity is not related to public order, and therefore its cases are not among the cases of absolute invalidity. Relative invalidity is invalidity that affects a

procedure that violates a rule protecting an interest that the judiciary deems less important than absolute invalidity (24). I will outline the most important provisions and conditions of this invalidity as follows:

A- Provisions of Relative Invalidity

1- Relative invalidity is not established for the benefit of society, but rather for the private interest of the litigants or one of them. Therefore, its invocation is limited to the party concerned by the violation of the legal rule, and invalidity may only be invoked by the person for whose benefit it was established (25). For example, the rules of search are only available for the accused whose home or person was the subject of a search. Therefore, the defense of this invalidity may only be invoked by him, not the other accused. 2- Since relative invalidity is the responsibility of the interested party, he may raise the plea of invalidity of the procedure within his right not to need it, and he also has the right to waive the right to raise it explicitly or implicitly, and implicit means not raising it in the stages of the lawsuit (26).

3- If the interested party does not raise the plea of relative invalidity, the court does not have the right to raise it (27). If the interested party does not raise the plea of relative invalidity in the early stages of the lawsuit, he does not have the right to raise it before the Court of Cassation. That is, when the interested party does not raise the plea of relative invalidity in the first stage of the lawsuit, he does not have the right to raise the plea of relative invalidity before the Court of Cassation for the first time in a plea that he had not previously raised. B- Conditions for Relative Invalidity

There are three conditions for the validity of a claim of relative invalidity:

1- The party claiming it must have a direct interest in the procedural rules and their failure to comply with them (28).

2- The party must not have caused or contributed to the invalidity of the procedure, whether intentionally or unintentionally. For example, if the accused is absent during a search due to not being summoned, then the procedure is invalid. However, his refusal to appear is not considered a reason for the invalidity of the procedure, and he is not permitted to claim its invalidity (29).

By invalidity (30).

3- Relative invalidity must be pleaded before discussing the subject matter of the lawsuit (31). Therefore, it was ruled that "the invalidity of the request paper must be requested for not including a statement of the accusation before entering into the subject matter of the lawsuit, otherwise the right to it is forfeited" (32).

Third Requirement

Reasons for invalidity

The criminal procedural act is, in essence, a legal act. The reasons for invalidity depend on examining the elements of this criminal procedural act as a legal act. For every legal act, the existence of the will and capacity to carry it out, as well as the subject matter and cause, in addition to the forms, with respect to formal legal acts, for whose validity the law requires that they be formulated in the form it regulates. These are the elements that must be present for the validity of the legal act. At the same time, these elements represent the basis upon which the reasons for invalidity are based (33), namely the lack of the necessary elements for the validity of the legal act. Since procedural action is a formal act, it requires both formal and substantive conditions for its validity.(34) Therefore, in this section, we will examine three branches of reasons for invalidity(35) the first, for violating the rules of jurisdiction; the second, for violating the substantive rules; and the third, for violating the formal rules (36). We will discuss these in turn, as follows:

The First Branch:

The reason for invalidity is for violating the rules of jurisdiction (37).

The rules of jurisdiction are that the court hears a case outside its jurisdiction. These rules are three:

A. Rules of personal jurisdiction

B. Rules of subject-matter jurisdiction

C. Rules of territorial jurisdiction

A. Rules of personal jurisdiction:

The court has jurisdiction over the accused in a trial. This means that the juvenile court has jurisdiction over juveniles,(38) while the regular courts have jurisdiction over non-juveniles. Otherwise, this is not permissible, as it is not permissible to try juveniles in regular courts or adults in the juvenile court. (39) This would lead to the invalidity of the procedural action. B- Rules of Subject-Matter Jurisdiction:

This means that the court has jurisdiction based on the nature and seriousness of the crime. (40) If the crime is a misdemeanor, the case is heard before the Misdemeanor Court. If the crime is a felony(41) the case is heard before the Criminal Court.

C- Rules of Local Jurisdiction

Local jurisdiction refers to the location of the crime. There are three criteria for determining this:

1- Location of the crime.

2- Location of the accused.

3- Location of the accused's arrest.

The reason for this is that investigating the crime scene is intended to uncover the truth, due to the presence of traces of the crime, exhibits, witnesses(42), and all evidence and circumstances of the crime. Furthermore, it serves to achieve deterrence, and Iraqi law has adopted this procedure and approach (43).

It is worth noting that investigation procedures are not invalidated if the investigating judge conducts an investigation outside his jurisdiction, as they are regulated by law based on the provisions of Article 53 of the Criminal Procedure Code No. 23 of 1971, as amended. Section Two

Reasons for Invalidation for Violating Objective Rules

All objective rules that depend on the validity of a procedure are considered essential, as the law requires that the procedure be performed by a person with a specific capacity, which is expressed as procedural capacity. (44) This means that the absence of objective conditions affects the purpose of the procedure and, consequently, results in its invalidity. (45) An example of this is a search warrant issued without a prior crime being committed. Searching a non-accused person in circumstances other than those stipulated by law is also invalid. (46) A search warrant issued to search the home of an accused person without sufficient evidence of his guilt and without new investigations invalidates the warrant (47).

As for defects of will, do they invalidate the procedure? Examples of this include testimony given under duress, a search warrant issued under the influence of error, or filing or waiving a complaint due to a defect of will. Opinions differ on this matter in criminal jurisprudence. Some jurisprudence holds that the validity of a procedure requires it to be issued from a free and conscious will, and that the absence of this will invalidates the procedure. The other group of jurisprudence has gone to differentiate between the various defects of the will and between material coercion, and it believes that material coercion negates the will and nullifies the procedure in its materiality, and the reality is that the procedural action must have a will that is free from all defects, otherwise the procedure is invalid.

Section Three

Due to Invalidity Due to Violation of Formal Rules

Formal rules refer to those rules that the law requires the procedure to be formulated in. They do not relate to the substance and content of the procedure, but rather to the form in which it should be. Examples of these include rules about the implementation of a search, such as the presence of the accused or

witnesses, the signature of the investigation report by the person responsible for the investigation, the swearing of the witness before hearing his testimony, the mention by the investigating judge of the charges, the description of the charge, and the name and address of the accused in the summons and referral order, and other formal rules. Here, it is necessary to distinguish between substantive regulations and regulatory rules, which are intended to provide guidance and direction. The criterion is the legislator's intent in stipulating the procedure. If the formalities required by the legislator would render the procedure ineffective in achieving its objective, then the form is substantive. If they do not have this effect, then these rules are guidelines and directions.

An example of this is the presence of two witnesses during a search of the accused's home in their absence by a judicial police officer who has not been assigned to search. This is considered a substantive form, rendering the procedure invalid. (Inspection), And the same applies to the swearing of a witness before hearing him. This form is likely to be disregarded, thus casting doubt on the value of the testimony as evidence that the court can rely on.

Likewise, the failure of the clerk or the minutes' editor to sign during the session is not considered an essential form that results in nullity, as long as it is written in the clerk's handwriting. The failure to sign does not deprive the minutes of their legal value as evidence of their contents. However, the signature of the presiding judge on the minutes of the session and the judgment is an essential form required by the legislature for the minutes or judgment to take effect, as it constitutes evidence regarding their contents.

From the above, we conclude that the form of the procedure is essential if it is linked to the purpose or objective of its achievement, and is not necessary if it intends to organize and guide.

CONCLUSION

After completing this study, we reached a set of conclusions and recommendations that we deem necessary for its completion, as follows.

First: Conclusions

1. The study clarified that nullity only applies to flawed criminal procedures.
- 2- It also demonstrated that failure to comply with any formal procedure leads to the invalidity of that criminal procedure, and consequently, the invalidity of the legal act.
- 3- It also demonstrated that invalidity is a penalty imposed for violating formal legal rules.
- 4- The study demonstrated that a defect in the formal

procedure of a legal act can often be remedied by correcting it, which leads to the validity of the legal act without invalidating it.

5- It also became clear that the theory of invalidity of criminal procedures aims to correct legal action and ensure the proper course of justice.

6- This study also demonstrated that most criminal legislation does not stipulate the invalidity of criminal procedures, leaving this matter to the discretion of the judge in most cases. This leads to their discretion being subject to the judge's whims.

7- This study also demonstrated that the invalidity of criminal procedures is of paramount importance to the course of justice.

8- It also demonstrated that the invalidity of criminal procedures is a guarantee of the protection of the rights of individuals and society. 9. This study demonstrates that a flawed legal procedure must be nullified if it relates to public order.

10. The study also clarifies that the party with an interest in the criminal procedure may expressly or implicitly waive the invalidity of the criminal procedure, but this does not extend to the remaining defendants.

11. It also demonstrates that relative invalidity related to individuals must be raised in the early stages of the lawsuit and may not be invoked upon appeal for the first time.

12. Procedural action is an essential legal process in determining the validity of the procedure, and this is what this study concluded.

13. This study demonstrates that the criminal procedure is the primary determinant of the validity of the criminal case, from notification to expiration and execution.

Second: Recommendations

1. The study recommends activating the penalties for invalidity of criminal procedures in Iraqi law.

2. Given the great importance of the issue of invalidity in criminal procedures, the study recommends defining the basic rules related to the invalidity of criminal procedures in legal texts in the Iraqi Code of Criminal Procedure under specific chapters, starting with notification and ending with execution, provided that all procedural legal rules are met.

3. The study recommends that all interested parties be made aware of the invalidity of a flawed criminal procedure by the investigator or the court during the early stages of the case, so that they can retain their rights upon appeal.

4. The study also recommends activating the theory of invalidity in Iraqi law and specifying this in specific legal

texts that outline the cases of invalidity of criminal procedures.

5. Since procedural action is the basis for achieving the course of justice in criminal proceedings, ensuring the rights of the individual, society, and the public interest, the study recommends that this be specified in specific texts.

6- The study recommends that the Iraqi legislator define procedural action through legislation exclusively within the Iraqi Code of Criminal Procedure.

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