



Guarantees of a fair trial and the right to defense under the penal order system.

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Abstract:

The issue of immediate trial is among the most important topics that have been addressed, both internationally, through the International Covenant on Civil and Political Rights, and nationally, through the 2020 Constitution and the Code of Criminal Procedure. This is due to several reasons, including the need for speed in various transactions, including those related to the judiciary, and the requirements of rights themselves, especially the right to a fair trial through respect for the presumption of innocence and the right to defence.

Keywords: Guarantees. of a fair trial. the right to penal order. system.

Introduction:

Order No. 15/02 of July 23, 2015, amending and supplementing the Code of Criminal Procedure, introduced several new procedures, including the penal order concerning minor and moderate misdemeanors stipulated in Article 380 bis and subsequent articles. Through this new and limited procedure, the Public Prosecutor can refer minor misdemeanors punishable by a fine only, or by a fine and imprisonment for a period equal to or less than two (2) years, to the competent misdemeanor court for adjudication by a penal order resulting in acquittal or

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conviction without prior argument, and through conditions and procedures specific to the penal order.

The procedures of the founder of a fair trial, the rights of the defense, and the fact that

the incident, what he sees as the truth, the fact that the defendant presented the evidence that it is possible to present it during it and Legitimate¹

The second aspect of the issue is that the procedures are nonexistent, which is the basis for the issue.

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THE FIRST TOPIC :

The conceptual framework of the right to defense in an immediate trial.

There is no doubt that the right of defense is a fundamental principle of litigation and a characteristic of procedural law. The right of defense is an original and ancient right that was established by ancient laws and agreed upon by all modern legislations.

The right of defense aims to achieve equality between the positions of the opposing parties before the judiciary, and its direct legal basis is the principle of equality between the opposing parties and the principle of the proper administration of justice, as justice cannot be achieved without observing these rights and exercising them honestly and sincerely before an impartial judiciary. Therefore, some believe that this right includes all the basic guarantees provided to the accused to protect his interests¹.

This is the right of defense, which is the fundamental and essential pillar of a fair trial. It is closely linked to the principle that the accused is presumed innocent, the right to litigation, and the right to equality between the accusation and the defense. It achieves the desired balance between rights, freedoms, and the public interest. Therefore, respecting the right of defense is a fundamental guarantee of

1 Corinne Renault-Brahinsky, Procédure pénale, Gualino éditeur, Paris, France, 2006. P 56.



justice, and it is inconceivable that justice would be based on violating the right of defense².

Article 100 of the Algerian Code of Criminal Procedure stipulates that: “When the accused appears before him for the first time, the investigating judge shall verify his identity and inform him explicitly of each of the facts attributed to him and warn him that he is free not to make any admission and shall note this warning in the record. If the accused wishes to make statements, the investigating judge shall receive them from him immediately. The judge should also advise the accused that he has the right to choose a lawyer for him. If he does not choose a lawyer, the judge shall appoint a lawyer for him on his own initiative if he requests it and shall note this in the record. The judge should also note his address, and the accused may choose a domicile for himself within the jurisdiction of the court”.

FIRST REQUIREMENT:

Defining the right to self-defense

Human beings' instinct for survival and continued existence makes the right to self-defense a natural right. It aims to repel anything that negatively affects their safety, whether materially or morally, and to defend against any danger that threatens their life, property, or freedom. It is considered one of the most prominent human rights. As a fundamental right, the right to self-defense is an established right, considered an indisputable principle.

Since it was not born of the current modern organizations, I have touched upon giving a historical background about it, through the definitional origin of it, starting from the emergence of the right of defense in ancient societies and civilizations up to contemporary societies. This will be explained in the first section, while the second section deals with the definition of the right of defense.³

The right to self-defense is as old as humanity itself. When God Almighty created Adam and placed him and his wife in Paradise, forbidding them from eating from the forbidden tree, yet they ate from it, God Almighty granted them the right to defend themselves before inflicting His punishment upon them, which was their descent to Earth.

2 Favoreu Louis et Gala Patrick et Ghevontian Richard et autres, *Droit des libertés fondamentales*, 4^{ème} édition, Dalloz, Paris, France, 2007. P 124.

3 Jean Pradal, *Droit pénal procédure pénale*, Tome 2, 7^{ème} édition, C.U.J.A.S, Paris, France, 1993, p 178.



After Adam and his wife were sent down to Earth and had their children, some animosity arose between them due to differing interests among humans, as each person prioritizes their own interests over those of others. This led to conflicts among them, often escalating to murder. The first murder occurred when Cain killed Abel after Abel won the right to marry Cain's sister, as ordained by God.⁴

The difference between them is that God Almighty accepted Abel's offering but did not accept Qabil's offering. Accepting Abel's offering is considered a form of protection for him from God Almighty.⁵

The right of defense enjoys a prominent position in positive legislation, in the charters, constitutions and internal laws of countries, due to its effective role in achieving criminal justice. However, most of them did not define the right of defense, which led criminal jurisprudence to define the right of defense.

Undoubtedly, the general rule in criminal law that the accused is presumed innocent refers to a temporary and ambiguous state that the accused goes through before his innocence of the charges against him is confirmed, and before his guilt is established.

This principle is considered fundamental in the democratic system of criminal procedure and a prerequisite for a fair trial; the House of Lords has described it as a golden thread in the fabric of criminal law⁶.

Despite the numerous definitions of the right of defense offered by jurists, a comprehensive and definitive definition has yet to be established, remaining an elusive goal. Every attempt to define it struggles to fully encompass its content. Among the definitions of the right of defense, we mention the following:

Immediate trial, or as it is called, speedy trial, speed in procedures, or trial within reasonable timeframes, is among the jurisprudential terms that relieve the burden on the criminal judiciary from the slowness in adjudicating the cases presented to it due to the complexity of the procedures followed in this field. This is done by creating simple procedures that are followed to reduce the complex procedures. This benefits society by reaching the perpetrator of the crime and

4 Roger Merle et André Vitu, traité de droit criminel, tome 1, droit pénal général, 6 ème édition Cujas, Paris, France, 1984.p 253.

5 Najib Ahmed Abdullah Thabit Al-Jabali, Arbitration in Yemeni Law: A Comparative Study, Al-Maaref Establishment, Alexandria, Egypt, 1996, p. 07.

6 Nasr al-Din Ashour, The Officer of Commitment to Protecting the Right of Defense of the Accused, Journal of Human Sciences, Volume 8, Issue 14, Mohamed Khider University, Biskra, Algeria, June 2008, (from page 227 to page 240), p. 233.



punishing him on the one hand, and on the other hand it benefits the civil party by fulfilling his right in the civil suit, and on the other hand it benefits the accused by acquitting him of the charge attributed to him if he did not commit the crime attributed to him, and convicting him in the event that he committed the crime attributed to him.

The right to defense is defined as: “It is represented in all forms and means that have the function of protecting the accused against the arbitrariness of the authorities of investigation, trial and prosecution, and in a narrow sense it is the use of a lawyer to defend him⁷”.

The right of defense is defined as: “enabling the accused to present to his judge the truth of what he sees in the incident attributed to him, and it is the same in this regard whether he denies committing the crime attributed to him, or confesses to it, for even if he seeks through his denial to reach confirmation of his innocence”.

His confession may highlight the surrounding circumstances, including indications that he was acting in legitimate self-defense, or some circumstances that exempt him from or mitigate his punishment⁸.

The right of defense is defined as: “A set of procedural activities undertaken by the accused himself or by his representative, in order to guarantee his rights and interests and to ward off the charge against him.”⁹

It was also defined as: “Giving the accused the opportunity to maintain the presumption of innocence, by refuting the evidence and inferences of the accusation before the investigating authority and before the court alike, by enabling him to express his statements freely, to hear his witnesses, and to respond to his requests and defenses”.

Either by responding to it if there is a basis for doing so, or by explaining its rejection if there is a basis for it. And in general, by investigating the defenses and requests presented by the accused.¹⁰

7 Mohammed Ben Mchirah, The Rights of Defense in the Trial Stage between International Conventions and Algerian Legislation, Communication in Economics, Administration and Law, Volume 21, Issue 2, Badji Mokhtar University, Annaba, Algeria, June 2015, (from page 52 to page 67), p. 54.

8 Abdul Hamid Amara, Guarantees for Litigants During the Criminal Trial Stage in Positive and Islamic Legislation, Dar Al-Khaldounia, Algeria, Algeria, 2010, p. 503.

9 Faraj Abdul Wahid Muhammad Nuwairat, Guarantees of the Accused During the Trial Stage in the Libyan Criminal Procedure Law, Dar Al-Fath for Printing and Publishing, Alexandria, Egypt, 2013, p. 280.



definitions provided, the right to defense can be defined as a private human right established by natural law. It is a fundamental principle for the immediate conduct of a trial within the framework of a fair trial. This right entitles the accused or the civil party to defend himself, whether through personal defense or through his freedom to choose a lawyer to defend him.

The right of defense allows the accused to express his opinion on the charge against him, to confront opponents and refute their claims, to confront witnesses and refute their testimonies, and to enable him to bring witnesses for the defense and any evidence that can refute the charge against him¹¹.

The penal order is a mandatory procedure in violations: Article 392 bis of the Code of Criminal Procedure did not clarify the permissibility or obligation of resorting to the penal order in the case of violations, but considering that the Public Prosecution has the discretionary power to initiate the public prosecution, but in the case of a simple violation, Article 381 of the Code of Criminal Procedure obligated: "Before every summons to appear before the court, the member of the Public Prosecution to whom the violation is referred shall inform the violator that he is authorized to pay an amount as a settlement fine, which is less than the minimum amount stipulated by law for the penalty of the violation."

It is concluded from this article that the legislator did not grant the Public Prosecution the discretionary power to initiate a public prosecution in minor offenses, but rather obliged it to follow the procedures for a settlement fine in offenses, the procedures for which are stipulated in Articles 381 to 393 of the Code of Criminal Procedure. When the Public Prosecution follows this path and the offender does not pay the fine within thirty days of the occurrence of the offense, in accordance with the third paragraph of Article 392 of the Code of Criminal Procedure, the Public Prosecution becomes obligated to refer the report of the offense to the judge of the judgment, who decides obligatorily on this report with a penal order within a period of ten days, in accordance with the text of Article 392 bis of the Code of Criminal Procedure.

10 Lenkar Mahmoud and Boualsalsal Nour Eddine, The Rights of Defense in Criminal Disputes, Al-Bahith Journal for Academic Studies, Volume 7, Issue 2, June 2020, Faculty of Law and Political Science, University of Hadj Lakhdar, Batna 1, Algeria, (from page 1284 to page 1302), p. 1286.

11 Jamila Far, Judicial Independence and Guaranteeing the Right to Defense to Ensure a Fair Trial, Journal of Judicial Reasoning, Issue 13, Laboratory of the Impact of Judicial Reasoning on the Legislative Movement, Mohamed Khider University, Biskra, Algeria, December 2016, (from page 151 to page 172), p. 155.



This means that the justification for this system lies primarily in practical considerations alone. Some crimes are minor in terms of the punishment prescribed by law, and their elements are often so clear and simple that they do not require detailed trial procedures. Most of these crimes are of the type called artificial or regulatory crimes, such as traffic violations, although there is nothing preventing its application to the scope of simple natural crimes.

SECOND REQUIREMENT:

The right to defense in international conventions

The right to defense, as a crucial guarantee of a prompt trial within the framework of a fair trial, has received considerable attention in international and regional conventions and is considered a fundamental human right. The Universal Declaration of Human Rights, in Article 11, paragraph 1, states: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence".

The International Covenant on Civil and Political Rights of 1966, in Article 14, paragraph 3(d), further enshrines this right, stating: "(d) The right to be tried in his presence and to defend himself in person or through legal counsel of his own choosing, and to be informed of his right to legal counsel if he has no legal counsel, and to be provided by the court, whenever the interests of justice so require, with legal counsel for his defence, without charging him for it if he does not have the means to do so." It can be concluded from the texts of these international conventions that the right to defense is considered one of the guarantees that must be protected for every individual during his trial¹².

These are: 1. the laws of the country in which the trial is being held; 2. the human rights treaties to which that country is a party, and 3. norms of customary international law⁶.

Before observing a trial, a monitor should read relevant materials pertaining to domestic legislation. Due to the various legal systems and legal orders involved, as

12 Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, Arlington: 1993) [hereinafter Nowak Commentary], at 244.



well as the differing stages of their development, it is not possible to devise a comprehensive list of essential texts. A minimum list would comprise: i) a state's Constitution, especially its provisions on human rights and the judicial system; ii) its Criminal Code and Code of Criminal Procedure; statutes on the establishment and jurisdiction of the courts and on the public prosecutor's office, and iii) landmark court decisions pertaining to human rights, particularly in common law countries. The aim of an observer at this level of examination is to assess whether the applicable provisions of domestic law guaranteeing a fair trial have been implemented and, if so, to

what extent. It is well known that while constitutions and statutes generally provide for some measure of fairness in criminal proceedings, implementation by the courts is often not adequate.

Before undertaking a trial observation mission, a monitor should find out to which human rights treaties the respective state is a party. The most important of these is the ICCPR, which contains several relevant articles in assessing the fairness of a trial¹³.

Therefore, based on the above, the penal order can be defined as: a procedure of criminal follow-up that the Public Prosecution resorts to in order to initiate a public lawsuit according to the discretionary authority it has in the field of initiating and filing a public lawsuit, whereby the misdemeanor or petty offenses court is notified by means of the judge issuing the penal order that includes acquittal or conviction of the accused with a financial fine without resorting to the known criminal trial procedures, and this is done in a secret session and without notifying the accused of the date of the ruling session.

The judge bases his proof of the minor misdemeanor or violation on the judicial police report, which leaves no room for doubt regarding the knowledge of all the personal information of the accused. It also leaves no room for doubt regarding the proof of the criminal act in the case of a fine. The penal order is considered a type of modern criminal trial that falls under the category of immediate trial, through respecting the principle of innocence, which is demonstrated by the ruling of acquittal or a financial fine only, in addition to respecting the right of defense. Although the one who examines the procedures of

13 Colangelo, A. J. (2008). Double Jeopardy and Multiple Sovereigns: A Jurisdictional Theory. Wash. UL Rev., 86, 769.



the penal order at first glance will find that there is no respect for the right of defense and no respect for other procedures of a fair trial.

However, it grants the parties—the Public Prosecution and the accused—the right to object to the penal order within the legally specified period. The Public Prosecution is granted a period of ten (10) days, and if it does not object, it proceeds with the execution of the order by notifying the accused. The accused is then granted a period of one month, starting from the date of being notified of the objection, to comply with its provisions. Therefore, after the objection to the penal order is filed, the traditional trial procedures are applied, ensuring a fair trial by respecting the right to a fair hearing.

THE SECOND TOPIC :

The penal order is a traditional form of summary trial.

The penal order is among the traditional procedural systems in the field of summary trials. Some trace its origins to the procedural legislation of Russia in 1846, while others trace them to German laws and Anglo-Saxon systems. Despite this debate, the penal order has become widespread in most European legal systems, such as Germany in 1848, Italy in 1865, Turkey in 1929, Belgium in 1935, Sweden in 1942, and France in 1972 for minor offenses and in 2002 for minor misdemeanors. In the Arab world, Egypt was the first to adopt it in 1939, while Algeria first stipulated it in its Code of Criminal Procedure in 1978 under Law 78-01 for minor offenses, specifically traffic violations. In 2015, under Order 15-02, it became applicable to all minor offenses and misdemeanors¹⁴.

This system adopts different and multiple terms in different legislations. For example, Algerian, French, Iraqi and Kuwaiti legislation share the term “penal order,” while Jordanian, Syrian and Lebanese legislation adopted the name “summary procedure.” Egyptian, Libyan and Italian legislation adopted the term “criminal order,” while Moroccan legislation adopted the term “judicial order.”¹⁵

14 Gaston Stefani, Georges Lovasseur, Bernard Bouloc, *Procédure pénale*, 24 éditions, Dalloz, Paris, France, 2014, p 861.

15 Hazit Mohammed, The system of follow-up through penal order procedures in criminal law, *Journal of Legal and Political Research and Studies*, Volume 6, Issue 2, Faculty of Law and Political Science, University of Blida 2 Lounici Ali, Blida, Algeria, (from page 346 to page 361), June 2017, p. 347.



The criminal legislator adopted the term “penal order” for the first time in the Code of Criminal Procedure by amending it with Law No. 78-01 in Article 392 bis, with regard to misdemeanors, and then adopted it by order by Order 15-12 amending and supplementing the Code of Criminal Procedure, which created Section Six bis “On the Procedures of the Penal Order” which includes eight (8) articles from Article 380 bis to Article 380 bis 7 of Chapter One “On the Judgment in Misdemeanors” of Part Three: On the Judgment in Misdemeanors and Misdemeanors” of Book Two “On the Judicial Bodies” of Part Two “On Criminalization” of the Code of Criminal Procedure.¹⁶

Article 392 bis stipulates that: "The judge shall rule within ten days from the date the case is filed, without prior hearing, by issuing a penal order imposing a fine that, under no circumstances, may be less than twice the minimum penalty prescribed for the offense.

The penal order must include the offender's name, title, date and place of birth, address, and legal description, the date and place of the alleged offense, a statement of the applicable legal provisions, and the amount of the fine, including prosecution costs. The judge is not required to provide reasons for the order, which is executed in accordance with the provisions of Article 597 and subsequent articles of this law.¹⁷

The penal order is not subject to appeal. However, the offender may file a complaint with the Financial Administration by registered mail with return receipt requested within ten days of being notified of the enforcement order issued by said Administration".

It is deduced from Article 392 bis above of the Code of Criminal Procedure that the penal legislator, under Law 78-01, adopted the penal order in minor offenses such as minor traffic violations, whereby the judge of the ruling becomes subject to a ruling within ten (10) days from the date of filing the case before him by the public prosecutor without prior pleading, i.e. without respecting the rules of traditional trial and without respecting the principles of a fair trial such as the right of defense, by issuing a penal order that includes a ruling of a fine that cannot in any case be less than double the minimum prescribed for the violation. With this ruling regarding the fine, which the legislator has obligated to be double the minimum, he has thus disregarded the principle of innocence and considered the

16 Mamoun Muhammad Salama, *Criminal Procedures in Egyptian Legislation*, Part One, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2004-2005, p. 334.

17 Muhammad Zaki Abu Amer, *Criminal Procedures*, University Press, Alexandria, Egypt, 1984, p. 1065.



accused, who is being prosecuted for violating the traffic law based on the report of the judicial police, to have actually violated the traffic law, and they considered that the reports of the judicial police have absolute authority and did not grant the accused the right to prove his innocence, and the penal order must include all personal information about the accused offender.¹⁸

To define a penal order according to Order 15-02, it is necessary to cite Articles 380 bis and 380 bis 1 of the Code of Criminal Procedure. Article 380 bis stipulates that: "Misdemeanors punishable by a fine and/or imprisonment for a term of two years or less may be referred by the Public Prosecutor to the Misdemeanor Court, in accordance with the procedures stipulated in this section, when:

-The identity of the perpetrator is known‘

-The facts attributed to the accused are simple and established based on physical observation and are not likely to warrant a formal argument‘

-The facts attributed to the accused are of minor seriousness and the perpetrator is likely to be punished only by a fine." Article 380 bis 1 stipulates that: "The penal order procedures set forth in this section shall not apply:

-If the accused is a minor‘

-If the misdemeanor is combined with another misdemeanor or violation that does not meet the conditions for applying the penal order procedures‘

-If there are civil rights that require a hearing to resolve them".

Articles 380 bis and 380 bis 1 establish that: The Public Prosecutor, in accordance with the discretionary power vested in him to initiate and prosecute public prosecutions, may refer the case file to the Misdemeanor Court in accordance with the procedures for a summary judgment, for misdemeanors punishable by a fine and/or imprisonment for a term of two years or less, provided that the identity of the perpetrator is known, the facts attributed to the accused are minor and established based on physical evidence and are not likely to warrant an adversarial hearing, and that the facts attributed to the accused are of minor seriousness and the perpetrator is likely to be punished only by a fine. However, the procedures for a summary judgment may not be applied if the accused is a

18 Mahmoud Naguib Hosni, *Explanation of the Criminal Procedure Law*, Part 2, Dar Al Nahda Al Arabiya, 2013, p. 1151.



minor, if the misdemeanor is combined with another misdemeanor or violation that does not meet the conditions for the application of the summary judgment procedures, or if there are civil rights that require adversarial proceedings for their resolution¹⁹.

The penal order is a mandatory procedure in violations:

Article 392 bis of the Code of Criminal Procedure did not clarify the permissibility or obligation of resorting to the penal order in the case of violations, but considering that the Public Prosecution has the discretionary power to initiate the public prosecution, but in the case of a simple violation, Article 381 of the Code of Criminal Procedure obligated: "Before every summons to appear before the court, the member of the Public Prosecution to whom the violation is referred shall inform the violator that he is authorized to pay an amount as a settlement fine, which is less than the minimum amount stipulated by law for the penalty of the violation." It is concluded from this article that the legislator did not grant the Public Prosecution the discretionary power to initiate a public prosecution in minor offenses, but rather obliged it to follow the procedures for a settlement fine in offenses, the procedures for which are stipulated in Articles 381 to 393 of the Code of Criminal Procedure. When the Public Prosecution follows this path and the offender does not pay the fine within thirty days of the occurrence of the offense, in accordance with the third paragraph of Article 392 of the Code of Criminal Procedure, the Public Prosecution becomes obligated to refer the report of the offense to the judge of the judgment, who decides obligatorily on this report with a penal order within a period of ten days, in accordance with the text of Article 392 bis of the Code of Criminal Procedure.

2 -The penal order is a discretionary procedure in misdemeanors: Most comparative legislations that have adopted the system of penal orders in their legal framework as a summary method for concluding public prosecutions almost unanimously agree that penal order procedures are discretionary or optional. Therefore, resorting to this method cannot be considered a necessity or a right of the accused, and consequently, they cannot request its application. The choice here rests with the public prosecutor, who holds the original right to initiate public prosecutions, to follow the penal order procedures or not²⁰.

19 Mohamed Chraïria, The Penal Order in Misdemeanor Cases under Law No. 15-02, Annals of the University of Guelma for Social and Human Sciences, Volume 11, Issue 2, University of 8 May 1945, Guelma, Algeria, June 2017, (from page 171 to page 201), p. 174.

20 Turley, J. 'Symposium on Trials of the Century; Transformation Justice and the Ethos of Nuremberg', 33 Loyola of Los Angeles Law Review 655 at 663.



Article 380 bis of the Code of Criminal Procedure begins by stating, “The case may be referred by the Public Prosecutor to the Misdemeanor Court...” It is clear from this paragraph and from the word “may” that the penal order is a discretionary procedure for the Public Prosecutor, according to the discretionary power he possesses. He may decide to refer the case by way of the penal order procedure whenever it appears to him from the facts presented to him that the incident is simple and proven against the accused, and he refers the file directly to the Misdemeanor Court to decide on it. Moreover, the discretionary power of the judge is not absent in this procedure, as it exists through his ability to refuse to decide according to the procedures of the penal order and return the file to the Public Prosecution to take the ordinary procedures for the trial. This is whenever the judge sees that the conditions for deciding by way of the penal order are not met, according to Article 380 bis 2.²¹

Again, recent research shows that practice regarding disclosure or access to the case file varies widely across member states. In most states, neither accused persons nor their lawyers have a right to information concerning the evidence relating to the alleged offence during the investigative stage. However, most member states do provide for a right to information by the accused person or their lawyer concerning the evidence at the trial or trial preparation stage, although the precise formulation of the right varies enormously and, in particular, depends upon whether the jurisdiction has an inquisitorial or adversarial tradition.³⁹ Some jurisdictions make a charge for copies.²²

National & Provincial Building Society and others v. the United Kingdom, 23 October 1999. Businesses often hesitate to invest in countries where the judiciary is perceived as unfair. Additionally, restricted access to courts exacerbates social tensions, affecting national and global security. Courts that mitigate such tensions contribute to stability, preventing internal conflicts from escalating beyond borders. International legal precedents indicate frequently violated fair trial rights. The HR Committee primarily addresses issues related to pre-trial and trial rights under the Optional Protocol. IHRL has consistently aimed to provide procedural guarantees at all trial stages. National criminal legislation must align with these

21 Ben Jeddou Amal, The Penal Order: A Mechanism for Resolving Criminal Disputes, Professor Researcher Journal for Legal and Political Studies, Volume 2, Issue 3, Faculty of Law and Political Science, Mohamed Boudiaf University, M'sila, Algeria, September 2017, (from page 613 to page 623), p. 616.

22 Wright Q Due process in International Law Vol 40 AJIL (1945) p398 at p402



international standards. A fair trial, adhering to HR law, reflects the credibility of a country's criminal justice system and its commitment to HR protection.²³

Therefore, the right to a fair trial, without delay, has become a fundamental right, falling under the constitutional right to a fair trial, which itself stems from the right to litigation.

The right to a fair trial is based primarily on a set of guarantees that accompany all stages of the public prosecution, safeguarding the accused's fundamental rights and freedoms. This includes the presumption of innocence, which necessitates that the accused be treated on this basis before the investigating bodies and the presiding judge. Related to the presumption of innocence is the right to defense, as the accused has the right to defend themselves.

Conclusion:

Traditional justice has proven incapable of addressing the rise in crime and its associated formalities that hinder case resolution. The procedural system is not only ineffective in combating crime, but sometimes reaches a point of complete inability to fulfill its role, where the right to justice is confined to punishment. All of this reflects the failure of the criminal justice system to confront the phenomenon of crime. The excessive number of cases a judge must adjudicate prevents a thorough examination of each case, allowing some criminals to escape justice. Consequently, we are faced with both an increase in the number of crimes and the phenomenon of cases being dismissed without investigation.

The principle of immediate trial, or trial within a reasonable timeframe, is a fundamental and essential principle in the criminal justice system. Its importance lies in limiting the time required for judicial proceedings in criminal cases and preventing the judiciary from being overburdened with cases. A slow pace of criminal justice poses a significant problem for the judicial system, as the judiciary is not bound by a specific timeframe for considering cases. The process varies from case to case depending on its nature, complexity, and other factors that influence the time frame. However, it is generally agreed that the principle of immediacy must be taken into account by the judiciary.

The system of summary proceedings addresses the problem of slow litigation procedures in the criminal field, a problem that has plagued human civilization, with the aim of expediting and simplifying procedures and ensuring swift

²³ The standards in international law that define the denial of justice are unfortunately vague” see Wright Q Due Process in International Law. Vol 40 AJIL 1946 p. 398 at . 406



resolution. However, it does not adhere to the established rules for ordinary court proceedings.

The Algerian legislator did not deviate from this policy, as embodied in the Code of Criminal Procedure, where it established the penal order as one of the concise, simplified, and rapid penal procedures that is not based on a trial with its preliminary arguments, final investigation procedures, and the general rules and guarantees of the rights of the defense. It does not take into account the principles of oral proceedings, publicity, and confrontation that prevail in ordinary trial procedures, with the aim of saving the time that the courts allocate to certain types of cases.

A penal order is a judicial decision issued by a judge to resolve minor offenses and violations by imposing a fine, without the need for an investigation or public trial according to normal procedures. This procedure aims to expedite the resolution of minor cases, reduce the burden on the courts, and ensure swift case resolution without compromising the guarantees of a fair trial. It is a judicial procedure issued by a judge or competent judicial authority, not an administrative procedure.

It is issued only in cases of minor offenses and violations, which are minor crimes for which the law stipulates a fine as the penalty.

The importance of the penal order lies in defining the legal value of procedural rules, particularly the guarantees of defense, which extend to its effectiveness throughout the course of the criminal proceedings until the final and conclusive judgment is issued. Furthermore, one of the objectives of the penal order is to obligate all competent authorities to respect and apply the principles of procedural legality and the guarantees of a fair trial.

Regarding the status of the right to defense in various legal systems, it can be said that they generally agree that the right to defense is a fundamental principle, considered one of the basic rights of the individual. This is perhaps due to the origin of this right, which stems from human nature, one element of which is the instinct to defend against any threat to one's life, property, or freedom. The right to defense has been given ample opportunity in all modern legal systems as an indisputable and acquired right of every human being. Therefore, this right has acquired great importance, making it worthy of being elevated to the level of a constitutional right.



Margins:

Abdul Hamid Amara, Guarantees for Litigants During the Criminal Trial Stage in Positive and Islamic Legislation, Dar Al-Khaldounia, Algeria, Algeria, 2010.

Ben Jeddou Amal, The Penal Order: A Mechanism for Resolving Criminal Disputes, Professor Researcher Journal for Legal and Political Studies, Volume 2, Issue 3, Faculty of Law and Political Science, Mohamed Boudiaf University, M'sila, Algeria, September 2017,

Corinne Renault-Brahinsky, Procédure pénale, Gualino éditeur, Paris, France, 2006.

Favoreu Louis et Gala Patrick et Ghevontian Richard et autres, Droit des libertés fondamentales, 4^{ème} édition, Dalloz, Paris, France, 2007.

Jean Pradal, Droit pénal procédure pénale, Tome 2, 7^{ème} édition, C.U.J.A.S, Paris, France, 1993.

Roger Merle et André Vitu, traité de droit criminel, tome 1, droit pénal général, 6^{ème} édition Cujas, Paris, France, 1984.

Najib Ahmed Abdullah Thabit Al-Jabali, Arbitration in Yemeni Law: A Comparative Study, Al-Maaref Establishment, Alexandria, Egypt, 1996,

Nasr al-Din Ashour, The Officer of Commitment to Protecting the Right of Defense of the Accused, Journal of Human Sciences, Volume 8, Issue 14, Mohamed Khider University, Biskra, Algeria, June 2008.

Mohammed Ben Mchirah, The Rights of Defense in the Trial Stage between International Conventions and Algerian Legislation, Communication in Economics, Administration and Law, Volume 21, Issue 2, Badji Mokhtar University, Annaba, Algeria, June 2015.

Faraj Abdul Wahid Muhammad Nuwairat, Guarantees of the Accused During the Trial Stage in the Libyan Criminal Procedure Law, Dar Al-Fath for Printing and Publishing, Alexandria, Egypt, 2013,

Lenkar Mahmoud and Boualsalsal Nour Eddine, The Rights of Defense in Criminal Disputes, Al-Bahith Journal for Academic Studies, Volume 7, Issue 2, June 2020, Faculty of Law and Political Science, University of Hadj Lakhdar, Batna 1, Algeria.



Jamila Far, Judicial Independence and Guaranteeing the Right to Defense to Ensure a Fair Trial, *Journal of Judicial Reasoning*, Issue 13, Laboratory of the Impact of Judicial Reasoning on the Legislative Movement, Mohamed Khider University, Biskra, Algeria, December 2016.

Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (N.P. Engel, Arlington: 1993) [hereinafter Nowak Commentary], at 244.

Colangelo, A. J. (2008). Double Jeopardy and Multiple Sovereigns: A Jurisdictional Theory. *Wash. UL Rev.*, 86, 769.

Gaston Stefani, Georges Lovasseur, Bernard Bouloc, *Procédure pénale*, 24 éditions, Dalloz, Paris, France, 2014.

Hazit Mohammed, The system of follow-up through penal order procedures in criminal law, *Journal of Legal and Political Research and Studies*, Volume 6, Issue 2, Faculty of Law and Political Science, University of Blida 2 Lounici Ali, Blida, Algeria, (from page 346 to page 361), June 2017.

Mamoun Muhammad Salama, *Criminal Procedures in Egyptian Legislation*, Part One, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2004-2005, p. 334.

Muhammad Zaki Abu Amer, *Criminal Procedures*, University Press, Alexandria, Egypt, 1984.

Mahmoud Naguib Hosni, *Explanation of the Criminal Procedure Law*, Part 2, Dar Al Nahda Al Arabiya, 2013..

Mohamed Chraïria, The Penal Order in Misdemeanor Cases under Law No. 15-02, *Annals of the University of Guelma for Social and Human Sciences*, Volume 11, Issue 2, University of 8 May 1945, Guelma, Algeria, June 2017, (from page 171 to page 201).

Turley, J. 'Symposium on Trials of the Century; Transformation Justice and the Ethos of Nuremberg', 33 *Loyola of Los Angeles Law Review* 655 at 663.

Wright Q Due process in International Law Vol 40 *AJIL* (1945) .

The standards in international law that define the denial of justice are unfortunately vague” see Wright Q Due Process in International Law. Vol 40 *AJIL* 1946 .