

## **Trial in Absentia of Persons Accused of Felonies**

**“According to the Palestinian Criminal Law” “Comparative Approach”**

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### **Abstract**

The trial in absentia of the accused persons in criminal cases is one of the most important and serious topics of criminal jurisprudence given the problems it raises of the general rules and the basic provisions and principles of criminal trial in accordance with the modern procedural legislation, since the original rule in trials is the presence of the accused. It is a substantive right for the accused to lawfully exercise his/her right to defend one's self and refute the evidences submitted against him/her. This right ensures one of the fair trial guarantees. However, some consider the presence of the accused a kind of submission and humiliation. Thus, the will of the accused shall govern his/her presence or absence. It is unreasonable and unacceptable to suspend the trial proceedings based on the will of the accused as this may obstruct the administration of justice, which in turn constitutes a threat to the personal liberty of the accused, most importantly, his/her right to defend his/herself, and the right to life. Therefore, achieving justice requires the availability of effective guarantees which in turn balance their interests. Thus, the criminal judgment in absentia has emerged as a means of pressure to force the accused, against his/her will, to attend the trial proceedings.

The presence of the accused in felonies, in person, before the court is mandatory, without any exceptions, according to majority of the comparative legislation; therefore, the presence of the accused in felony is necessary. The legislator has taken care that the accused attends the trial hearings based on the gravity of the crime and the seriousness of the possible sentence. Accordingly, the accused is under the court order so it can hear his/her defense and evaluate his/her personality. The matter of absence, especially before the Criminal Court, has received special attention by the legislator as one of the most important stages of criminal proceedings. This is mainly because in this stage the judge creates the final view on the instituted case.

In order to ensure a fair trial, the judgment in absentia has emerged as a means of pressure to force the sentenced, against his/her will, to attend the court proceedings. This resulted in the adoption of the system of criminal judgments in

absentia by the procedural legislation, which includes authorizing the sentenced to correct such judgments by turning him/herself in, or by being arrested leading to the abolition of the criminal judgment in absentia, or by entering an objection for the judgments issued for misdemeanors.

The study relied on the subjective, descriptive analytical methodology. It consists of two chapters. The first chapter addresses the concept and guarantees of trial in absentia, and the position of the procedural legislation in respect thereof. This chapter consists of four sections. The second chapter addresses the expiration of the criminal judgment in absentia, and it consists of two sections. In the conclusion, the study found the findings and recommendations.