

The Absence of the Defendant and the Penal Procedures

Prepared by: Qais Naji Ali Qatanani

Supervisor: Dr. Jihad Kiswani

Abstract

The subject of this study is “The Absence of the Defendant and the Penal Procedures”, which is considered one of the important issues that didn't get the attention it needs in the studies of the jurisprudence of penal procedures, and that is because it was only discussed in the general studies that didn't get into the details and give this subject the needed in depth analysis. That is what encouraged us to shed a light at this subject, because there are a lot of misunderstandings with it and with the basics and rules of the penal trials. And also with the rights that the laws and the constitutions the countries grant the defendant, whether it was regarding his right in attending the penal trial and his right in having an attorney that defends him or in regards to the country's right in punishing criminals and outlaws.

The absence of the defendant from the legal proceedings of his trial constitutes a big obstacle for the trial and in the process required by the basic rules and principles in penal trials. That is because his absence represents a waste and a reduction in his right to initiate proceedings based on a factual basis, which is one of the guarantees that is guaranteed by all national legislations and constitutions, because the requirements of justice necessitates the presence of the defendant at the trial and allowing him to defend himself before the judge makes a ruling of his guilt or innocence.

This issue raises a legal argument between supporters of the need to proceed in the trial proceedings even in the absence of the defendant, especially those who deliberately procrastinate to avoid attending the court hearing, and on the other hand those who reject this idea as they consider the absence of the defendant an absence of the truth which leads to a trial in absentia that lacks the minimum requirements of justice that necessitates hearing the defendant before convicting him.

And because the logic of matters requires questioning the offender, and not to suspend the right of the victim and society to the will of the defendant on whether to attend or not, and the desire of the legislator to reconcile the interests and the implementation

of the text of the law; the legislator resorted to the adoption of the so-called "absentee sentences" so that escaping from justice doesn't become a safe haven for those who commit criminal acts. And because those provisions don't often express the desired truth, the legislator created a way for the defendant to object to the ruling in absentia, giving him another opportunity to express his defense and remove the negative judgment of the misdemeanors and misdemeanors of defects and waste of rights, the legislator also considered the absentia ruling just a tyrannical ruling that can be canceled if the defendant turns himself in or is arrested, all of the above represents an admission from the legislator that the absentia ruling cannot be a clear ruling of the truth.