

The conclusion of investigation and disposition in the criminal proceedings in the Palestinian Code of Criminal Procedures

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Abstract

This study, however, has been entitled "**the conclusion of investigation and disposition in the criminal proceedings in the Palestinian Code of Criminal Procedures** in order to reflect the reality of the decisions taken by the prosecutor general, in terms of the extent of enjoying judiciary value and range of availability of formal and subjective elements into the judiciary work".

Also, this study shed light onto the discretion of the prosecutor in the case of disposing in the criminal action, which shall vary depending on the trends in legislation and comparative jurisdiction.

Whenever the primary investigation is finished, then the public prosecution represented in the public right in disposing of the primary investigations commenced, or which have been authorized to the judiciary order officers within the limits of the law itself, through what has been gathered of information and evidences that shall have led to promote the convincement of the public prosecution in regards of incident committed.

Henceforth, decisions onto the disposition with the primary investigation can not be but one of the two matters:

Either to issue a decision in preserving the lawsuit, or issue a decision in referring the lawsuit to jurisdiction. In the first case, certain conditions must be provided to issue the preservation decision, which the Palestinian legislator has restricted into the articles 149 and 152 of the Penal Procedures Code in effect, having these conditions as legal stipulations related to the pillars of crime, stemmed from the legal principle which says: "*no crime and no penalty shall be made but with provision to be based on*". Hence, no fact

of crime shall be considered if the legal pillar shall misfire, and then such shall be realized in the non-existence of a provision in the law itself that may criminalize the action nor its doer, and then such shall become permissible non-punishable actions.

Or, if such conditions shall be subjective ones, then their discretion shall refer to the investigating prosecutor based on circumstances and incident itself, and to the evidences brought forward and their relatedness with the accused himself.

Through this study, it has been stated that the Palestinian Legislator has not known about nor clarified the essence of new evidences, as like also did the comparative legislations, but has only given examples on what may be considered new evidence, and neglected stating the time of having these evidences and proofs appeared, whether these evidences have been known by the prosecutor before issuing the preservation decision, but has been unable to communicate them, or which he has not already known about, but accidentally appeared after having issued preservation decision. This what the researcher shall clarify within the dissertation.

Besides, the decisions in disposing of the primary investigation are considered decisions with judiciary nature, since these are issued by the public prosecution, prepared subject to the law itself, being a section of the judiciary authority, and such decisions are subject to appeal likewise other judgments; and these obtain authenticity and authoritativeness of judgments, even if preservation decisions obtain relative authenticity, due to the possibility of reopening investigation once again.

Through this study also, we have shown up the difference between judgments that are issued by the courts and the decisions of disposition into the primary investigation that are issued by the public prosecution.

Also, one can distinguish between the preservation decision, being one of the means of disposition into the primary investigation and the like of other decisions, whether of judiciary nature or administrative one, likewise the decision taken for preserving the papers, which is not preceded by primary investigations.

Nevertheless, through the study, many of the results and recommendations are extracted, most importantly appear the deficiency in the Palestinian legislation in regulating the decisions of disposing of primary investigation, the too many reasons that regulate the decisions of disposing of primary investigation, upon closing up the investigation process mixing the legal reasons such as cases of expiration of criminal lawsuit, cases of forgiveness, conciliation and compromise, as well as other reasons which are not provided in the Code of Criminal Procedures within the article 149 there of, upon which the preservation decision is built, but these reasons, however, have come scattered in many of the legal provisions and are not provided under the chapter of closing up the investigation and disposition of the criminal lawsuit.

Such shall have reflected its impact onto the practical application of the prosecutor, from one side, and on another side by referring to the subjective reasons of the preservation decision, it will be stated that the legislator himself has not detailed nor explained them, in order to prevent any confusion or intermixing of it, whereas the legislature has given the public prosecution the authority to investigate, and then charge and then has robbed such authority of the weighing the evidence and then has made it of the competence of jurisdiction.

This is, however, a general synopsis about the most important outcomes the researcher has come up with in this study which he has personally benefited from, in principally serving his job, with the hope that such a modest effort the jurists who are fully aware of, such as lawyers, judges and public prosecutor officials, or through those who work on such as legislators, university professors, researchers and the students themselves.

This study, thus, has come up with a set of findings and recommendations contained in the conclusion.

With Allah, Almighty, blessings!