

# CONDITIONS OF THE PENAL JUDGMENT THAT TERMINATES THE PUBLIC RIGHT LAWSUIT

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## Abstract

The final judgment that has gained the power of judgment may become wrong, especially since the judge is human and makes mistakes, and here the legal truth intersects with the actual truth, so we are facing a big problem, which is: It is not logical that we do not have a solution. In this regard, the legislator opened a window to enter the field of justice by appealing the final criminal judgment. It is considered one of the exceptional means of appeal and guarantees of achieving justice. This paper deals with ways to challenge peremptory penal rulings, bearing in mind that these judicial rulings are subject to the principle of legal stability of rulings. The principle is that the rulings that obtain the final degree become a title of the truth and it is not permissible to present them to the judiciary again, which prompts us to ask about ways to correct these rulings.

**Keywords:** Peremptory Ruling, Lawsuit, Peremptory Penal Judgments, Appeal of Final Judgments.

## 1. INTRODUCTION

Judgment is a procedure in the lawsuit and its purpose is to implement what is decreed to end the litigation and the issuance of the penal judgment. After this judgment acquires the peremptory degree, it becomes enforceable, and this implementation transforms the judicial judgment from mere ink on paper to reality. Preserving individual interests and freedoms is a matter necessitated by logic and justice. The principle of legal stability of penal judgments must be preserved, unified judgments and non-contradiction and strengthening confidence in peremptory penal judgments, especially since judgment is the title of truth and with the expiry of the lawsuit arising from this crime, it is not permissible to return to the lawsuit for any reason from The reasons are, because conducting a fair criminal trial is a matter that must be inevitable, and it is related to providing a quiet life for individuals in terms of peace and tranquility in respect of the judiciary and support for confidence in it.

But this peremptory judgment that has gained the power of the *res judicata* may become erroneous, especially since the judge is human and makes mistakes, and here the legal truth intersects with the real truth, so what is the way forward? In this aspect, the legislator opened a window to cross into the realm of justice concerning appealing the final criminal judgment through the extraordinary methods of appeal, which is the cassation by written proceedings (Article 291) Jordanian Criminal Procedures, Retrial Articles (292-298) Jordanian Criminal Procedures, which are one of the important topics in the Practical application, and from the reality of the courts. It is considered one of the extraordinary or exceptional means of appeal and is considered one of the guarantees of achieving justice in t the judge

The origin of the problem is that judgments that acquire a peremptory degree become a title of the truth and may not be brought before the judiciary again, which leads us to ask about ways to correct these judgments. The fact that Jordanian and comparative law has created several ways to correct judgments acquired a peremptory degree, and these methods are appeal in writing and retrial. The main research problem is divided into the following sub-questions: a) What is a peremptory ruling? b) What are the legal ways to appeal peremptory rulings? c) What are the provisions, conditions, and effects of appealing peremptory rulings?

## **2. THE NATURE OF PENAL JUDGMENT AND ITS CONDITIONS**

Building a general conception of the penal judgment requires us to analyze it, starting from defining its concept and its basic elements, and clarifying its objectives and the factors affecting the process of issuing it. The definition of the penal judgment requires standing on its linguistic, jurisprudential, idiomatic, and legal significance.

### **2.1. The definition of penal judgment: different perspectives**

Recognizing criminal judgment requires defining its concept by knowing its linguistic, idiomatic, jurisprudential, and legal implications and the conditions that must be met for it to be valid. This will be discussed in this part.

#### **2.1.1. The linguistic meaning of the penal judgment**

Judgment is the source of the act of judgment, which is: to judge with justice. Judgment: He judged, dismissed, and judged to convict a person: he considered him guilty or convicted him, and he judged his innocence: he acquitted him, and he ruled the country and took charge of its affairs. Judgment is the source of the verb. Judgment - ruling: a ruling, i.e., a judgment, comes from the wisdom that is to put a thing in its place and decide on an issue, and decide on it, and one of its qualities is precision, perfection, and good judgment after contemplation. The ruling in linguistic provision sinology is: the attribution of one matter to another, positively or negatively, affirming or negating<sup>1</sup>

#### **2.1.2. The jurisprudential meaning of the penal judgment**

Islamic Sharia jurists differed in the concept of the ruling, so their definitions varied, but most of them continued to revolve around the settlement of disputes by a binding legal ruling, by showing the Shari'a ruling in the incident, and researching and investigating the validity of the claim to settle the dispute. Presented to him by assistants from people of knowledge, advice, and experience, he issues his judgment after hearing the statements of the parties, investigating the means of proof, and trying to reconcile between the litigants. Trades in the arrangement of the laws: The judge by his decision in the litigation and his judgment by ruling only cuts one of the two differences and makes it agreed upon in the judiciary agreed upon its permissibility by most jurists<sup>2</sup>.

### **2.1.3. The idiomatic meaning of the penal judgment**

In the idiomatic sense of judgment, it means every decision issued by the judicial authority entrusted with settling disputes and putting an end to them, whether from a procedural or substantive point of view. Article 130/a) As for what is issued by the courts, he sometimes calls it a decision (Article 178) and sometimes he calls it a judgment (Article 236/1), but French jurisprudence distinguishes between the judgment *Lejugement* and the decision *L'arret*, the first is the decision issued by the courts of the first instance, and the second is the decision Issued by the Court of Appeal, the Criminal Court or the Court of Cassation.

We may find an explanation for this by reviewing the linguistic meanings related to the two provisions judgment, which is derived from the verb *juger* and means: judgment and judgment, and also comes in the sense of opinion based on report, guesswork, and perception, and the opinion is subject to disagreement and controversy, and it does not definitively end the matter, while the provisions *arret* is derived from a verb *Arreter* and it has the meaning of controlling for something and stopping at the end of the matter by a decision or a decisive matter for that indicates the judgments of appeal, judgments of crimes and judgments of cassation<sup>3</sup>.

### **2.1.4. The legal meaning of the penal judgment**

The Jordanian legislator did not address the definition of the ruling and left the matter of de-provisioning it to legal jurisprudence, like many Arab legislations. Therefore, due to the lack of a legal definition of it, jurisprudence addressed this task, as some defined it as: "A decision issued by the court in a dispute submitted to it according to the law, a chapter on its subject, or in an issue that must be resolved before deciding on the matter"<sup>4</sup>. While others defined it as: "a necessary and public pronouncement issued by the judge to adjudicate in a litigation submitted to him or in a dispute with it"<sup>5</sup>. Or it is: "A decision issued by the court that resolves a specific dispute, and it resolves the dispute by imposing the will of the legislator on the parties to the litigation. This ruling is an expression of the will of the law because it highlights to the parties to the lawsuit the legal rule that should apply to their relationship"<sup>6</sup>.

While some of the jurisprudence went to distinguish in the judgment between its broad meaning and its narrow meaning, as it was considered that the judgment in its broad sense includes all the decisions issued by the investigation or adjudication bodies in the disputes submitted to them, while it includes in its narrow sense the judgment issued by the courts only, whether before the decision on the subject or when deciding on it<sup>7</sup>.

## **2.2 The formal procedures necessary for the validity of the issuance of the judgment**

For the penal judgment to be valid, several formal procedures must be observed. These procedures are related to the formation of the court, the issuance of the judgment after legal deliberation, as well as the pronouncement of the judgment, its drafting, and its signature after its pronouncement.

### 2.2.1. Formation of the court

The judgment must be issued by a court that has completed the elements of its formation in accordance with the Jordanian Regular Courts Formation Law<sup>8</sup>, otherwise, the judgment will be void as it relates to public order. The Jordanian judge has the right to issue a judgment based on the evidence presented by the litigants during the trial and they discussed them publicly, in the consolidation of the foregoing, the jurisprudence went to say: "There is nothing in the penal principles that obliges the court to re-hear the witnesses when the ruling body changes, and the court that decides the lawsuit has the right of the court to decide the lawsuit. That it be based on the evidence heard by another body<sup>9</sup>. Emphasis on that "Article (148/1 of the Jordanian Code of Criminal Procedure) did not stipulate that the body that issued the judgment be the one that heard the testimonies"<sup>10</sup>, and that "the court may issue the judgment even if it changes." Forming it without the need to re-hear the evidence"<sup>11</sup>. In addition "the substitution of another judge in the lawsuit does not prejudice the defense aspects as long as the previous transactions were recited in the presence of the judge who participated in the lawsuit again"<sup>12</sup>

### 2.2.2. Deliberation

Article 236/1 of the Jordanian Code of Criminal Procedure stipulates regarding deliberation: "After the president announces the conclusion of the trial, the court sits in the deliberation room and scrutinizes the indictment, the seizure papers, the allegations and pleadings of the representative of the Public Prosecution, the personal plaintiff, and the accused, deliberating thereon and making its ruling unanimously. Opinions, or the majority thereof.

Based on the foregoing, the court, after completing the pleadings of the parties, closes the pleading and submits the papers for deliberation or scrutiny. and reviewing the statements of witnesses, and all other means of evidence presented in the lawsuit, taking note of all the requests and defenses submitted by the parties, and de-provisioning the legal text applicable to the incident so that the deliberation between them ends with a decision issued by the court according to its conviction and by most of its members. A public deliberation or after deliberation that took place in the absence of one of the court judges, or after deliberation in which judges other than those who heard the pleading participated<sup>13</sup>.

### 2.2.3. Pronouncement of judgment

The pronouncement of the judgment means the recitation of the oral pronouncement by the presiding officer or his representative, as it is stipulated (Article 183/4) of the Jordanian Code of Criminal Procedure that: "The president of the court or his representative reads the judgment in a public session and dates the date it was understood." The pronouncement of the judgment includes A spoken recitation, the reasons on which it is based, an explanation of the criminal act attributed to the accused, and the legal text that includes criminalization and punishment in the application of the rule that there is no crime or punishment except by a legal text. Strengthening trust and confidence in the judiciary<sup>14</sup>.

#### **2.2.4. Drafting and signing the judgment**

The issuance of the judgment is not complete by simply pronouncing it. Rather, it must be written down and include certain data required by the law for the validity of the judgment. Therefore, the judgment is not valid except by observing the formal procedures required by the law.

### **3. DIVISIONS OF PENAL PROVISIONS**

Judgments are divided in provisions of their subject matter into decisive rulings in the lawsuit and rulings before adjudication, and in provisions of their ability to appeal, they are divided into preliminary rulings and peremptory rulings. And in provisions of validity to valid provisions, invalid provisions, and non-existent provisions.

#### **3.1. Division of penal judgments according to their subject matter**

The penal provisions are divided in provisions of their subject matter and according to the extent of their resolution and adjudication in the dispute into decisive rulings on the subject, and rulings before adjudication according to the following.

##### **3.1.1. The peremptory rulings on the subject**

The judgment shall be decisive in the matter if it is decisive for the dispute, whether it is issued with innocence, conviction, or non-responsibility, as (Article 331) of the Jordanian Code of Criminal Procedure stipulates that: The facts ascribed to him by a peremptory judgment of acquittal, lack of responsibility, forfeiture, or conviction. If a judgment is issued on the subject matter of the criminal lawsuit, it may not be re-examined except by appealing against this judgment in the ways prescribed in the law, unless there is a text to the contrary.

The verdict of acquittal is distinguished from the verdict of non-responsibility in that the first is if the accused did not commit the act attributed to him, or in the lawsuit of insufficient evidence against him. As for the verdict of non-responsibility, it is when the act attributed to the accused does not constitute a criminal offense, or when it is not possible to judge the perpetrator shall be subject to a penal penalty for lack of responsibility, such as insanity, or for the existence of one of the reasons for justification, or the existence of a valid excuse<sup>15</sup>.

##### **3.1.2. The previous rulings on the matter**

It is divided into provisions related to the conduct of the investigation, temporary provisions, and peremptory provisions that resolve procedural issues.

###### **3.1.2.1. Judgments related to the conduct of the peremptory investigation**

The court may be forced, during the lawsuit, to issue several decisions that aim to clarify the truth, especially when the preliminary investigation is not sufficient to give it an accurate picture of the facts of the lawsuit that allows it to decide on the matter<sup>16</sup>. Examples of such decisions are:

Preparatory rulings: The court aims behind issuing these decisions to clarify the ambiguity or lack of clarity of some aspects surrounding the preliminary investigation. Technical Expert<sup>17</sup>.

Preliminary Judgments: The court aims behind issuing these decisions to investigate procedural issues that resulted in the dispute. These decisions express the court's view of the dispute and have an effect in proving or denying the act attributed to the accused. An example of this is the ruling to stop the lawsuit until it decides on a subsidiary matter before another court, on which the decision in the criminal lawsuit depends<sup>18</sup>.

### **3.1.2.2. Temporary provisions**

These are provisions that require a temporary measure to be taken to protect the interest of one of the litigants<sup>19</sup>, for example, the decision to hand over items that were previously seized to their original owner, or to release the accused who is in precautionary detention<sup>20</sup>.

### **3.1.2.3. Definitive rulings before the settlement of the entire dispute**

These are the rulings that decide part of the subject matter of the litigation or an issue branching from it in a decisive and irreversible chapter by the court that issued it. An example of this is the ruling on the defense of lack of jurisdiction or the termination of the case due to the availability of reasons for its nonsuit<sup>21</sup>.

We point out here that the decisive rulings on the merits of the case acquire the authority of the thing proceeding with it and are considered a title of the truth and may be challenged by the methods of appeal prescribed by law. As for judgments that are not decisive in the subject matter, they do not acquire authority, and it is not conceivable that they may be challenged independently of the appeal against the original judgment that decided the merits of the case<sup>22</sup>.

## **3.2 Division of penal judgments in provisions of their validity**

Penal judgments are divided into valid judgments, invalid judgments, and null judgments, based on the extent of their conformity or non-conformity with the provisions of the law. The correct ruling is the ruling issued by the court and it has been applied in its regard, and regarding the procedures on which the rules of the law are properly applied<sup>23</sup> while the invalid ruling is the ruling in which one of the conditions of its validity has been violated without this imbalance losing it as a cornerstone of its existence<sup>24</sup>, As for the ruling The non-existent is the one who disrupts one of its pillars and becomes non-existent, thus removing its legal capacity and making it non-existent, and it does not possess any force. Legitimacy<sup>25</sup>. An example of this is the judgment issued by a court that has no jurisdiction over the lawsuit, such as the issuance of a penal judgment by a Sharia court<sup>26</sup>.

The importance of dividing judgments into true, non-existent, and invalid in provisions of the authority of the judicial ruling appears. By doing so, he has acquired the force of the res judicata. As for the invalid judgment, it does not have any validity and is not considered one of the reasons for the lapse of the criminal lawsuit. As for the invalid judgment, it can



gain validity and it has the force of the *res judicata* despite its invalidity if it becomes peremptory, (i.e., not subject to appeal)<sup>27</sup>.

#### **4. CAUSING THE CRIMINAL JUDGMENTS THAT PROVISIONS IN THE PUBLIC RIGHTS LAWSUIT**

Causing judgments is a means and a tool to bring peace to the hearts of the litigants, for judgment without explaining its reasons is the same as whim<sup>28</sup>, and it also expresses the judge's emotional conviction based on real objective foundations and certainty<sup>29</sup>, which justifies the judge's issuance of the judgment in reality and the law, which ensures the proper functioning of the judicial system and supports confidence in the judiciary. Therefore, our approach to this topic will be through the first requirement, in which we study the nature of causation and its importance in penal judgments. In the second requirement, we will address the rules of causation.

##### **4.1. The nature of causation**

The validity of criminal judgments and their achievement of justice depends on their causation, and if the judgment is devoid of its causes, it loses its legal value and takes it away from the essence of justice that it seeks. Recognizing the nature of causation of rulings requires us to take note of the meaning of linguistic and jurisprudential causation.

##### **4.1.1. Linguistic signification**

Linguistic signification: causation in the Arabic language, a source derived from the verb, the cause of the matter: that is, it was a cause for it, and the causes: he created it and caused it to happen, and the reason is: what he leads to others<sup>30</sup>. Motive in the French language means motivation, which is derived from the verb motive, and the word motif in French means the cause, or the motive, which is the same meaning as the word motive in English, which is derived from the verb motivate as a verb that means: to motivate something and to give reasons, and the French word motive appeared for the first time in the 18th century. As legal provisions, it is intended to include in the judgment its reasons, the fewer motifs that led to its existence, and the causative judgment is the judgment motive, which means extrapolating the reasons that move the judgment and pushing it to its origins, and extrapolating the psychological motives that motivate it.

##### **4.1.2. Jurisprudence meaning**

In positive jurisprudence: Causing means explaining the factual and legal reasons that prompted the judge to pronounce the judgment<sup>31</sup>, and the reasoning of the judgment is a necessary form for the correctness of its issuance and through which the judge's personality, culture, and correct understanding of the provisions of the law, and his ability to infer origins emerge<sup>32</sup>. The apparent and exact matter that the Legislator made it a sign of the existence of the ruling and a manifestation of it, and the cause is the one that leads to the cause (i.e., premises that lead to a result, so proving the crime of murder, for example, is a reason for retribution)<sup>33</sup>.

## **4.2 The cause of causation and its role in penal judgments**

One of the requirements of justice is that there be an effective means that enables the judge to justify the judgment he has issued, and to clarify the reasons on which his judgment is based, which allows oversight of his judgment to the parties to the dispute, public opinion, and the judicial references competent to consider it upon appeal.

### **4.2.1. The role of causation in imposing litigants' control over the judgment**

Causing the penal provisions of the litigants in the lawsuit allows them to gain confidence and confidence about the reasons on which the judge based his judgment, and that this judgment was not the product of personal whims, or favoritism for one of the opponents, but rather was based on research, conclusion, and scrutiny of the facts, which distances the judge from the suspicion of control and tyranny because Reasoning is like an excuse for what the judge deems<sup>34</sup>.

### **4.2.2. The role of causation in imposing public opinion's censorship of judgment**

Causing the rulings achieves public opinion's awareness of the rulings issued by the judiciary in its name and enables it to monitor the extent of their validity and satisfy their sense of justice<sup>35</sup>. From my point of view, the issue of causation is a very important issue, as it is a way to monitor the judiciary, and the judge feels that he is being monitored, and it reduces the abuse of power, whether by increasing the penalty or reducing it.

### **4.2.3. The role of reason in imposing the Court of Cassation's oversight of the judgment**

Causing the criminal rulings allows the Court of Cassation to extend its control over the ruling, and to ensure that the judges considered the procedures required by law in issuing it, as the lack of causation of the ruling indicates that the judges pronounced it before they deliberated and agreed on its reasons and their belief was established based on it. Based on a vague idea whose features were not defined, it is a false judgment<sup>36</sup>. Where the Egyptian Court of Cassation considered that the reasoning is: "The manifestation of their doing what they have to do to scrutinize the research and look closely to know the truth that they announce in what they decide in the districts and by it alone they are free from the presumption of control and tyranny because it is like an excuse for what they think they present it in the hands of opponents and the public, and with it they reject what They may see in the minds of doubts and doubts, and they invite everyone to their justice, with confidence"<sup>37</sup>.

## **4.3 Rules for Reasoning Judgment**

The verdict of acquittal differs from the verdict of condemnation in provisions of causation. In the lawsuit of a verdict of acquittal, the court suffices to indicate one reason that calls it to declare the accused's innocence, but in the lawsuit of a verdict of conviction, the court must demonstrate the availability of the elements of the crime against the accused and the availability of his responsibility for it through the evidence before it. Because the conviction for a criminal offense described is based on certainty and certainty, not on



doubt and guesswork<sup>38</sup>, and it is not required that the court responds to all aspects of the defense presented to it if the reasons on which it based its judgment include in themselves the response and put forward those aspects and presumptions<sup>39</sup>.

#### **4.4 Conditions of the Penal Judgment**

Although the criminal judge enjoys a wide degree of independence in forming the emotional conviction that prompted him to issue the judgment, this independence is not absolute but is limited by several things that the judge must consider ensuring his correct inference about what he concluded in the judgment. The judgment proves it has a source in the lawsuit papers, that the evidence on which the judgment is based is legitimate, and has an acceptable estimate, that it is consistent with each other and not conflicting, and it reinforces each other. We can summarize the conditions of inference as follows.

##### **4.4.1. Relying on what the Judgment Proves is what is in the Case File**

What was inferred from the judgment must have an origin in the lawsuit, and it must be proven that the litigants could have discussed it or refuted it, and they expressed their opinion about it in a public and clear manner, as (Article 176) of the Syrian Code of Criminal Procedure stipulates that: with the evidence presented during the trial and in which the litigants are openly discussed. Thus, it becomes clear that the presence of a source of evidence in the papers is not sufficient for the validity of the conviction but must be accompanied by the presentation of evidence on the table of discussion by the opponents during the pleadings.

We point out here that the evidence for the types:

- a) Anecdotal evidence: an example of this is the confession, which is considered void. The judgment is based on the confession of the accused, quoting from the witness, contrary to what this witness decided<sup>40</sup>. If the judgment interferes with the witness's narration and takes it in a way that explicitly contradicts its expressions or based his judgment on assumptions that contradict his narration, the judgment is flawed, which requires its reversal<sup>41</sup>.
- b) Technical Evidence: An example of technical evidence is the experience conducted by the court. If the subject matter of the lawsuit was a crime of forgery, and the court said, in explaining its reasons, that it had derived evidence of its conviction that the accusation was proven from the expert's report, and there was no report in the lawsuit papers, its judgment was void<sup>42</sup>.
- c) Material Evidence: Examples of material evidence include documents and lawsuit documents. If the Court of Cassation finds that the trial court has already based its ruling on evidence that the lawsuit papers were devoid of, and this evidence had its impact on the ruling it ended with, it invalidates the ruling due to an error in the attribution<sup>43</sup>.

#### **4.4.2. The evidence on which the judgment is based must be legitimate**

The origin of the human being is innocence and every accused is innocent until proven guilty by a peremptory judgment (Article 101/4) of the Jordanian Constitution, and that respect for the values and ethics of justice, and respect for the rights of the defense requires the legality of the evidence of conviction<sup>44</sup>. The legality of the evidence of conviction requires that access to the evidence be provided in a manner stipulated by law, where it stipulates (Article 7/2) of the Jordanian constitution that: "Every attack on the rights and public freedoms or the sanctity of the private life of Jordanians is a crime punishable by law." In this context, jurisprudence went to Al-Syrian to say: "The house search and investigation, no matter how great the matter for which the procedure was taken, requires informing the concerned authority of the incident of this investigation and search, and reviewing the Public Prosecution after its notification and approval. Limitation of liability"<sup>45</sup>.

The evidence is legitimate if it is free from any pressure or coercion on the accused to push him to confess to committing a crime, and the evidence obtained by pressure and coercion has no legal value, and the court may not rely on it in the conviction as stipulated (Article 8/2) of The Jordanian constitution stipulates that: "Anyone who is arrested, detained, imprisoned, or whose freedom is restricted, must be treated in a manner that preserves human dignity. Any person under any unreported torture, abuse, or threat"<sup>46</sup>.

#### **4.4.3. The evidence must be reasonably estimated**

The authority of the trial court to verify the facts and assess its evidence is not absolute but rather restricted by its estimation being logical. Therefore, the court's freedom to distinguish between the evidence, to rely on some of them to infer what it has reached and to reason the judgment on its basis, and to be stunned by other evidence and not pay attention to it should be in harmony with Subsection Two: Responding to important requests and essential defenses<sup>47</sup>.

The request means that one of the litigants in the lawsuit submits to the court a petition related to the subject matter of the lawsuit, focused on achieving evidence in it<sup>48</sup>. Examples of requests include the accused's request from the court to move to conduct an inspection or experience, or a request to hear a witness. Examples of defenses are the accused's defense of the expiration of the criminal lawsuit for any reason for the lapse, such as the statute of limitations or pardon<sup>49</sup>.

#### **4.4.4. The evidence must be consistent and not contradict each other**

The evidence is consistent and not conflicting if the real reasons for these rulings express the content of the procedural activity of the judge<sup>50</sup>. The contradiction that invalidates the judgment is the one that occurs between the reasons for the judgment so that some of them negate what others prove, and one of its forms is that the judgment of condemnation depends on material evidence and another verbal contradiction between them without clarifying what raises this contradiction<sup>51</sup>.

#### **4.4.5. The evidence should be coherent and supportive**

The purpose of supporting and coherent evidence for each other is to form the conviction of the court and its position on this evidence taken together. If some of them were dropped or excluded, it is not possible to know the effect they had on the decision issued by the court<sup>52</sup>.

#### **4.5 Responding to important requests and essential defenses**

The request means that one of the litigants in the lawsuit submits to the court a petition related to the subject matter of the lawsuit, focused on achieving evidence in it<sup>53</sup>. Examples of requests include the accused's request from the court to move to conduct an inspection or experience, or a request to hear a witness. Examples of defenses are the accused's defense of the expiration of the criminal lawsuit for any reason for the lapse, such as the statute of limitations or pardon. The court shall respond to every important request or substantial defense made by one of the litigants if it fulfills the conditions of validity and was productive in the lawsuit, under pain of nullity of the judgment for breach of the right of defense, or lack of causation. Legal requests and defenses are based on either the Penal Code or the Code of Criminal Procedure.

##### **4.5.1. Legal defenses based on the Penal Code**

These requests are considered essential when their purpose is to petition the court to sentence the accused to the innocence of the crime attributed to him, to reduce his sentence due to the availability of mitigating circumstances, or to argue that one of the elements of criminal contribution is not available<sup>54</sup>, as well as payment By the absence of an element of responsibility, such as pushing insane or coercion<sup>55</sup>, or paying with denial of punishment because there is a legal excuse that is exempt from it<sup>56</sup>.

##### **4.5.2. Legal defenses based on the Code of Criminal Procedure**

Examples include the plea for the invalidity of pre-trial procedures such as inference procedures, preliminary investigations, or peremptory investigations such as the invalidity of arrest, inspection, interrogation, or confession. These defenses may also focus on formal procedures for filing the lawsuit and the court must respond to any defense submitted by the litigants, under pain of nullity of the procedure<sup>57</sup>.

For the court to respond to and discuss the pleas raised, the following conditions must be met.

- a) That the request or payment be important and substantial: the plea is important and substantial if it affects the decision of the lawsuit according to what we have previously mentioned. Examples of this are the plea for the insanity of the accused, the plea for the availability of a state of legitimate defense, the plea for the invalidity of the confession, and the plea for the inability of the victim must speak after an injury and pay a request to hear one of the witnesses of the incident<sup>58</sup>.

- b) The application shall be submitted before the end of the pleading, except if the court repeats the pleading due to the emergence of emergency reasons<sup>59</sup>.
- c) That the plea is closely related to the subject matter of the lawsuit, and this condition is met if the decision on the plea is necessary to decide on the lawsuit itself, otherwise, the judgment is not obligated to respond to it explicitly<sup>60</sup>.

## 5. CONCLUSION AND RESULTS

The study dealt with the subject of the conditions of the penal judgment that provisions note the public rights lawsuit. Through this study, I reached a set of results and recommendations as follows:

The peremptory penal judgment issued for conviction can be defined as a judgment that does not accept any way of appeal, either because it is peremptorily issued or because the litigants have missed or exhausted the deadlines for appeal, and the court that issued it, whether it is a regular or special court, is not considered. It is also Retrial is intended to reconsider the judicial rulings issued in felony or misdemeanor lawsuits on an exceptional basis, provided that these rulings have become peremptory and have acquired a peremptory degree, and the aim is to correct judicial errors and to give priority to the objective truth over the formal truth derived from the authoritativeness of the penal rulings. To accept the request for a retrial, the judgment requested to be reviewed must fulfill several conditions, which are that the judgment must be decisive in the criminal lawsuit, whether it was issued by ordinary or special courts. The judgment also requires that it be issued with a penalty following a conviction for a felony or misdemeanor, and peremptorily, the judgment requires that it be peremptory either because it has exhausted the means of appeal. After all, the litigants missed its deadlines, or because it was issued not subject to appeal. Given the importance of challenging a retrial, Jordanian and comparative law has taken care of enumerating the lawsuits in which a retrial is permissible, that is, they were mentioned exclusively and it is not permissible to compare them or add to them, to reach the truth and to correct the legal error.

## 6. RECOMMENDATIONS

The Jordanian legislator must intervene with a legislative text that allows the appeal to be appealed by appeal in writing of the rulings of the special courts, and the Minister of Justice shall be the reference in exercising the right of veto by written order, and we also call for a role for the Minister of Justice in supervising the course of justice in the courts. Military. In addition to Amendment (Article 291/c of the Jordanian Code of Criminal Procedure) that the judgment against the expert for falsifying his expertise, and the judgment for falsifying a paper presented during the lawsuit, is considered a reason for retrial, in addition to the judgment against the witness for false testimony, which this article stipulates, because that is lower To justice The concept of forgery includes testimony, experience, forgery of documents and is not limited to perjury. as well Restricting the right to request a retrial concerning the new incident stipulated in the fourth lawsuit of retrial is

only the Chief Public Prosecutor, whether on his own or at the request of the concerned persons because the matter is related to the assessment of facts or documents that may appear after the issuance of the peremptory judgment without being known to the trial court.

### Footnotes

- 1) Massoud, Gibran (2001), a modern linguistic dictionary, Dar Al-Ilm for Millions, Beirut, p. 498.
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