

Prosecutors' Criminal Procedures Manual

According to the Palestinian Criminal Procedures Law number 3 for 2001

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**By
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PREFACE

aims at achieving two important for 2001 number 3cedures Law Criminal ProstinianePal The objectives. First, it preserves society's interest in achieving security and stability by convicting criminals and penalizing them. However, these penalties would remain inactive, regardless of the severity of the crime, unless the Criminal Procedure Law came into play to activate them through the regulation of the criminal's arrest, trial, and imposition of penalty by the court.

Second, the Criminal Procedures Law aims at achieving another noble goal, which is the protection of the individual's rights and liberties. The rules stated in this law give individuals who are innocent of committing a crime the right to defend themselves and to prove their innocence.

This dual role of the Criminal Procedures Law obligates the members of the General Prosecution to achieve the needed balance between society's interest and the interest of the individual through the implementation of its rules. This guarantees a just relationship between both interests.

This manual constitutes the practical side of the Criminal Procedures Law. We hope that it will serve as a minaret, a high vantage point for General Prosecution members, and all law enforcement officials, that will lead us forward in our difficult judicial work.

Attorney General

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INTRODUCTION

Criminal procedure may be defined as: the group of rules that regulate and organize investigation methods from the time a crime is committed, through the trial, the imposition of the sentence, and the post judgment motions relating to the perpetrator. (Criminal procedure can be seen as the tool that is used in order to activate the penal code when its provisions are violated.

Criminal procedure is strongly connected to an important and basic human right: personal liberty. This right is protected by many international and regional conventions and declarations, as well as by national constitutions, in those nations that consider it to be a constitutional right. Contemporary criminal justice policies strive to create a balance between providing justice and security on the one hand, while protecting the individual's liberties on the other hand.

While fulfilling their duties in curbing crime, state's agencies and apparatuses use methods that may constitute restrictions on personal liberties and freedoms. The power to use such methods are given to the state agencies in order for them to have the ability to detect crimes and to apprehend perpetrators and bring them to justice.

By adhering to the provisions of the Criminal Procedures Law, law enforcement and judicial officers will be able to achieve the necessary balance between fighting crime and protecting personal liberties and freedoms.

This manual does not aim to analyze criminal procedures. Primarily, its intention is to create practical rules for the members of the General Prosecution when they implement the Criminal Procedures Law. Following these rules will aid these individuals in preserving the integrity and justice of this law.

This manual is divided into four chapters with an index of the most used forms by the prosecution. These chapters are organized as follows:

Chapter 1: Legal Terms and Definitions.

Chapter 2: Evidence Collection and Compiling Phase.

Chapter 3: Preliminary Investigation Phase.

Chapter 4: Trial Phase.

We hope that this manual will gain the acceptance of its intended users and will be committed to by those who really care about such an effort. We are not seeking perfection with this, because perfection is only for God

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CHAPTER 1 : LEGAL TERMS

1. EVIDENCE COLLECTION AND COMPILING PHASE

The actions and procedures performed by judicial officers in order to disclose crimes, pursue perpetrators, and collect material elements that lead to the conviction of those persons responsible for the commission of the crimes.

SEARCH AND FOLLOWUP OF LEADS

The process of gathering information and following up the chains of possible evidence produced by those events that create a logical picture for the examination of the criminal act in question.

PRELIMINARY INVESTIGATION

The criminal action phase conducted by the investigation authority to search and examine all the evidence related to the act, in order to decide if the act constitutes a crime and if judicial proceedings should be initiated.

CRIME REPORT

The report used to notify the authorities that a crime has been committed. Usually it is completed by the person who witnessed the crime, but who is not a victim of the crime. It is not a complaint.

COMPLAINT

The report used by the victim to notify authorities that a crime has been committed. The victim can delegate this act to another person .

INTERROGATION

An investigation measure executed by the competent authority. The interrogator is to confirm the accused's identity, notify the accused of the charges against him/her, and discuss the nature of the charges with the accused. In addition, the interrogator must face the accused with the available evidence in order to obtain additional evidence, such as a confession, that supports or negates the current evidence.

QUESTIONING THE ACCUSED

A procedure executed by a judicial officer to notifying the accused of the charges against him/her and to record, in the minutes, the accused's responses to the charges, The officer does not interrogate or face the accused with the available evidence.

CLARIFICATION

An act carried out by the court to clarify issues that arise during the trial. The court may direct questions to the defendant to learn more about an issue that was reported in the investigation.

CONFRONTATION

An investigation procedure that directly presents the accused with one or more pieces of evidence against him/her. The evidence here is limited to the testimony of a witness or another accused person.

INSPECTION

A measure carried out either by members of the General Prosecution or judicial officers in order to record the condition of persons and/or the locations that are related to the offence through direct observation and inspection.

HOLDING OF A PERSON

A precautionary measure taken by a public officer against any person who made himself or herself a suspect by acting abnormally under the circumstances. The holding of the person is to verify and clear the suspicion surrounding this person.

ARREST WARRANTS

A temporary order wherein the General Prosecution orders the arrest of a person and allows the use of force to carry out this arrest if deemed necessary. The arrest puts the accused person under the authority of the General Prosecution in order to start a legal action against him/her.

DETENTION

An investigation measure where the freedom of a person is revoked for a period of time determined by the interest in and/or the circumstances of the criminal case. This measure enables the General Prosecution to interrogate the accused and prevents the accused from tampering with evidence, influencing the witnesses, or threatening the victim. The measure also protects the accused from revenge directed against him/her.

RELEASE

The release of an accused person being held during the course of a criminal investigation, due to the absence of any reason for detention or arrest. Bail is considered a guarantee to ensure that the accused will appear when he/she is needed and that the accused will not evade serving a sentence that may be levied against him/her.

TESTIMONY

An act where persons who are not parties to the case are allowed to reveal the information they have regarding the criminal act in question before the investigation authority. Testimony is considered the most important method of proof in the Criminal Procedures Law. It is the usual way by which all crimes can be proved.

SEARCH

The investigation measure carried out by the General Prosecution or by whomever it delegates such power. This measure is usually taken in order to obtain evidence related to a crime that was committed in a private place that is protected by the law.

CHAPTER 2: THE EVIDENCE COLLECTION AND COMPILING PHASE

2.1 THE NATURE OF THE EVIDENCE COLLECTION AND COMPILING PHASE

Rule number 1: Evidence collection procedures are not considered a part of the investigation procedure, and are not related to criminal case procedures. They are merely a precautionary preliminary measure, taken to disclose the crime and to prepare for the investigation phase. This measure does not aim to collect evidence related to the intention of the defendant or to connect the crime to him/her.

Rule number 2: As a general rule, the evidence collection and compiling procedures do not include any measures for constraining personal freedom because they do not include, by their nature, any arrest or limitation on individual freedoms. Only when the suspect has been observed committing the criminal act, can such procedures be extended to include the arrest of the suspect and searching the crime scene.

Rule number (3): The evidence collection phase has a very important role in the criminal case. This importance stems from:

- a) Aiding in the criminal prosecution of the case through the collection of information that will enable the General Prosecution to determine if it is appropriate or not to file charges.
- b) Confronting crimes and limiting the effects of crimes when they happen.
- c) Enabling the investigator to give the criminal act the appropriate legal description.
- d) Initiating the criminal case, when possible, before the appropriate court in some simple offences, without the need to go through the preliminary investigation phase.
- e) Providing a real opportunity to protect personal freedoms and liberties from false complaints.

Rule number (4): The prosecution authority receives a large number of complaints, some of which are false. It does not have the enough time to verify the validity of each. *It generally does not have the capacity or resources to investigate by itself.*

Rule number (5): In order to give the investigation authority the time to execute its other important judicial duties, an apparatus was created to assist the investigation authority in its work of collecting evidence and preparing materials for initiating the investigation.

2.2: JUDICIAL OFFICERS AND THEIR DUTIES:

Rule number (6): Members of the General Prosecution shall assume the duties of the judicial investigation and shall supervise the work of judicial officers in their areas of jurisdiction.

Rule number (7): The Attorney General has overall supervisory powers over the judicial officers, and they are under his/her control while carrying out their official duties. The Attorney General has the right to ask the competent authorities to take the appropriate disciplinary actions against any judicial officer who does not fulfill his/her duties; this does not preclude the existence of any criminal responsibility.

Rule number (8): There are two types of judicial officers. They are as follows:

- a) Judicial officers who have private (limited) powers. These officers have power only to investigate certain crimes defined (and limited) by the nature of their work. Examples: agricultural inspectors who work at the Ministry of Agriculture, or technical officials at the Ministry of Industry.
- b) Judicial officers who have general power. According to article (21) of the Criminal Procedures Law. Judicial officers who have general powers are:
 - The Police Chief, his deputies, his assistants, and the districts' police chiefs.
 - Police officers and non-co (non-commissioned?) officers
 - Captains of sea and air ships.

Rule number (9): Judicial officers have important duties and powers in the criminal case preparation phase as their work starts just after the criminal act is committed. Their work has a very important impact on the judiciary because it is the basis for the preliminary and final investigations.

Rule number (10): As a general rule, judicial officers have no power to initiate the investigation. Their work is limited to receiving complaints and information about crimes and collecting the materials related to the criminal act through inspection. They do have the right to further the investigation through questioning suspects, victims, and witnesses. They also have the power to use experts without swearing them in. After completing their work, judicial officers complete a written report and send it to the General Prosecution for action.

Rule number (11): As an exception to the general rule, judicial officers are allowed to engage in some investigation procedures if there are conditions that support the accusations against the suspect, there is strong evidence against him or her, and there is no fear that there would be a misjudgment by the judicial officer that could jeopardize the case (?) The only act of evidence collection that is kept solely in the hands of the General Prosecution is the interrogation of a person accused of committing a felony.

Rule number (12): There are no time limitations that limit judicial officers in carrying out their duties. Therefore, they can conduct their duties after official work hours, or during holidays and vacations, and such action would have full legal effect.

Rule number (13): As a general rule, judicial officers' powers are limited to their area of jurisdiction. That does not mean that they lose all their legal powers if they are not in their area of jurisdiction. In such cases, they are at least considered public officials and can execute the powers that are granted to public officials, such as stopping anyone against whom there is strong evidence that he/she has committed a crime.

Rule number (14): The first duty of the judicial officer is to receive crime reports and stated/averred wrongs and possible actionable events. Such reports are usually submitted to judicial officers who then register and/or file official complaints/charges based on these criminal acts. The reports and averred wrongs must be written and signed by the person reporting the crime.

Rule number (15): When the judicial officer receives a crime report or averred wrong he/she should conduct the needed inspections to verify the information and then send the crime report or averred wrong to the General Prosecution to take suitable legal action.

Rule number (16): When reaching the scene of the crime, the judicial officer must search for any fingerprints that might have been left behind by the offender to enable them to be preserved by a fingerprint expert.

Rule number (17): The tools used by the offender usually leave their marks at the crime scene. Such marks could lead to the offender by hinting at his profession and how skillful he/she was in using them.

Rule number (18): The judicial officer has the right to video tape and/or photograph the crime scene. Such a procedure is very important technique in modern crime scene investigation, particularly as there are some crimes that cannot be described fully in writing, such as arson crimes. The importance of photographing or videotaping the crime scene lays in capturing an image of the scene, to give the investigator a real sense of the crime scene at the moment of its discovery.

Rule number (19): The judicial officer has the right to use informants in order to conduct investigations the officer cannot conduct in person. These informants may be ordinary people or state officials. The informants must not initiate any unlawful act. This allows the courts to rely on their information while weighing the evidence against the accused.

Rule number (20): The judicial officer has the right to place the accused in a line-up, for identification by the victim or the witness. In instances where there is no prior relation or acquaintance between the accused and the witness or victim. This may be done by lining up seven or eight people who have similarities with the accused in body structure, age, and height. None of these individuals should be living in the same area as the witness, the victim, or the accused. Neither the defendant nor the witness is allowed to see any of these people before the line up. The accused has the right to stand in the place he/she wishes in the line. If there is more than one victim or witness, they should observe the line separately from each other. If the accused is identified by the witness or the victim as the perpetrator of the crime, this identification is considered as evidence against the accused and the court has the power to weigh it.

Rule number (21): The judicial officer has the right to seek the help of experts who have knowledge and expertise in the issue in question. For example: if the issue is medical the officer could seek the help of a physician; if it is a forgery an expert in handwriting could be used, etc.

Rule number (22): When the accused is detained, the judicial officer has to hear and record in writing what the detainee has to say about the accusations against him/her. If there is no reason to release the detainee, the judicial officer has to refer him/her to the competent prosecutor in no more than 24 hours.

Rule number (23): The judicial officer has the right to question the witnesses about the crime without requiring them to take an oath. Each crime has its own nature and circumstances. Thus, no universal, preprepared set of questions can be used. The questions should be relevant and useful to the investigation of the crime; therefore, the judicial officer should not ask irrelevant questions that have nothing to do with the investigation.

Rule number (24): The correctness of the initial investigation depends, to a large extent, on the questions directed to the witness. The more the questions are focused and to the point, the easier it is to reach the truth. It is not proper to start asking the witness about the details of the crime. Rather, the witness should be left to give the information he/she has at the beginning of the investigation. This should be done without interruption, unless it is clear that what the witness is saying is irrelevant to the investigation, at which point, the judicial officer should begin asking the witness questions, and discuss what has been said with him/her to clear up any ambiguity or conflict with other testimony.

Rule number (25): To the best extent possible, the judicial officer should ask the witness about these conditions of the crime: time, location, perpetrator, method, and motive

Rule number (26): It is not preferable that the witness observe the complainant while giving his/her testimony, and the same is true regarding the complainant observing the witness's testimony.

Rule number (27): All actions taken by the judicial officer must be documented in either a clear handwritten report, using ink pens, or in a typewritten report.

Rule number (28): A carbon copy of the report should be kept, for future review, especially before trial testimony. The pages of the report must be given consecutive numbers. The report must also show the full date and exact time it was written, using both the Arabic numerals and Heigara systems; the later is important in identifying the state of the moon when the crime was committed.

Rule number (29): The general rule is that the written report should be a true reflection of the actions and procedures taken. For this reason, it should be written while the interrogation is occurring. Sometimes the investigator doesn't hear the testimony correctly and when he/she starts writing it down in the report later, remembers it incorrectly.

Rule number (30): The person being questioned has to sign every page of the written report either by writing his/her name, or by using his/her thumbprint. If the person refuses to sign or is unable to do so, the judicial officer has to document this in the report with the reasons given by the person for not signing the report.

Arrest Without a Warrant:

Rule number (31): The judicial officer has the power to arrest any person who is present at the scene if there is sufficient evidence to indict him/her, even without a warrant, in the following circumstances:

- a) If the person was caught while committing the criminal act, and the act constitutes a felony or a misdemeanor punishable by imprisonment for more than six months.
- b) If the person opposed the judicial officer while the judicial officer was executing his/her official duties, or if the person fled or tried to flee from the place where he/she was detained lawfully.
- c) If the person committed a crime, or was accused of committing a crime, in the presence of the judicial officer, and the person refused to give his/her name or address, or he/she does not have a known and permanent place of residence in Palestine.

Rule number (32): The judicial officer does not have the power to arrest a person, even if he/she was caught while committing the crime, if it is a crime that requires a complaint to initiate criminal investigation procedures. If the competent person who has the right to complain does so to the competent officer at the time however, the judicial officer does have the power to arrest the person.

Rule number (33): Being caught while committing a crime is a precondition for the arrest of the suspect in certain cases. In these cases, the arrest is unlawful, and null and void, if the criminal act is not committed before the arrest.

Rule number (34): The period of time between being caught while committing the crime and the actual arrest of the offender is irrelevant. However, the court has to demonstrate the reasons that made it believe that the offender was caught while committing the crime, in every case, even if the arrest came after the passage of a substantial period of time. If the court does not do this, its ruling is subject to reversal by the court of cassation.

Rule number (35): Before the court can validly claim that the person was caught while committing the crime, the following conditions must be present:

- a) The instances of being caught while committing the crime are:
 - The perpetrator is caught while the crime is being committed or within a short period of time after the crime was committed.
 - If the victim pursued the perpetrator of the crime, or the perpetrator was pursued by the public, and then was captured
 - If the accused was found, a short time after the crime was committed, having on him tools, weapons, papers, or any thing else that indicates that he/she is the perpetrator of the crime.
- b) Type of Crime:

If the crime constitutes a felony, then the judicial officer has the right to arrest the accused caught while committing the crime, without being authorized to do so by the competent authority, and regardless of the sentence provided for the crime. The reason for this is based on the seriousness of the crime, the fact that the person was caught while committing the

crime, and the need for speedy action so evidence does not vanish due to delay in making the arrest.

If the crime constitutes a misdemeanor, and is punishable by imprisonment for more than six months, then the judicial officer has the right to arrest the person without a warrant. .

c) The existence of evidence that can be the basis for indictment:

There must be evidence and clues that constitute the basis for indicting the person. The evidence and clues must exist in order to initiate any action that could harm the person's liberty and freedom. If this evidence does not exist, then the action to arrest, search, or detain the person is considered to be void and null.

Rule number (36): The fact that a person is on the street late at night, and gives contradictory information about his/her name and profession, does not mean that he/she is caught in suspicious circumstances. The judicial officer cannot arrest or search such a person.

Rule number (37): The weighing of evidence that validates the arrest of a person is an objective matter and differs according to the circumstances of each case. In general, the weighing of evidence is left to the discretion of the judicial officer who has to make the decision to arrest a person on a reasonable basis. The judicial officer cannot arrest a person solely on the basis of a complaint or on the basis of suspicion alone, because such an action would be considered null and void. The judicial official's discretionary power falls under the supervisory power of the investigation authority and the competent court.

Rule number (38): The judicial officer has the power, when at the scene of a crime, to prevent the people at the location from leaving the scene, until the report is written. The judicial officer has the power to bring in for questioning any individuals who might provide information that could explain what happened at the crime scene.

Rule number (39): With due attention to the rules regarding reconciliation, the competent judicial officers have to refer their reports, and any items seized while investigating infractions, to the competent court. Thereafter, the court can proceed with the case without a prosecutor.

Rule number (40): Anybody who has knowledge that a crime has been committed must report the crime to the General Prosecution. unless the law requires a complaint or a crime report by the victim be submitted to begin the legal action.

Rule number (41): Any state official or person providing general services to the public is obliged to report any crime committed, unless the initiation of legal action requires a complaint or a crime report by the victim to be submitted first.

Reconciliation:

Rule number (42): The competent judicial officer has the power, in infractions and misdemeanors punishable by fines only, to offer the parties reconciliation.

Rule number (43): Members of the General Prosecution have the power to offer reconciliation to the accused only in misdemeanors punishable by fine. This must be documented in the written report.

Rule number (44): An accused who accepts reconciliation has to pay an amount of money equal to one fourth of the maximum amount of the fine, or the minimum amount of the fine, if there is a minimum amount, within 15 days from the day after his/her acceptance.

Rule number (45): The criminal case is dismissed when the reconciliation money is paid. This does not affect any civil lawsuit.

2.3 ACTIONS TAKEN BY THE GENERAL PROSECUTION AFTER COMPILING THE EVIDENCE

Rule number (46): The prosecutor has to review all the evidence and lead collection reports that are sent to the General Prosecution from the Police Criminal Investigation Department after the latter has registered (?) these reports in the special register. The review is conducted to make sure that all procedures required by the law have been observed and that the reports have all the elements required to initiate legal action. If there is any deficiency in the reports, the prosecutor has to order the police to remedy such deficiency.

Rule number (47): The report written by the judicial officer, as a result of referring the papers to the General Prosecution, is considered as an evidence collection report, as long as the judicial officer was not seconded by the General Prosecution to conduct a specified act relating to the report or more of the investigation procedures.

Rule number (48): If the prosecutor decided, in an infraction or a misdemeanor, that the criminal case is ready and eligible to go to trial based on the evidence collection report, he/she has to prepare the indictment list and order the accused to appear directly before the competent conciliation court for trial

Rule number (49): If the prosecutor finds that there is any reason that obliges him/her to stop the legal action and inactivate the case, the prosecutor has to write a memo expressing his point of view and refer it to the Attorney General. The Attorney General then requires that the senior prosecutor then review this and submit a memo regarding the matter to the Attorney General, or one of his/her deputies, to take the action deemed appropriate.

CHAPTER THREE: PRELIMINARY INVESTIGATION PHASE:

3.1 GENERAL DIRECTIONS TO THE GENERAL PROSECUTION INVESTIGATOR:

Rule number (50): The General Prosecution investigator has to realize that he/she is in a continual struggle with the perpetrator of the crime: the investigator is seeking the truth and the perpetrator is working hard to thwart justice and hide the facts. Investigation is not only questions asked and answers written down; it is an art and a science. It is also a struggle between truth and fiction. Improper investigation might lead to the escape of a true criminal or the conviction of an innocent person.

Rule number (51): The General Prosecution investigator has to be patient, determined, alert, decent, self-confident, and have the ability to draw information out, overcome obstacles, and assess results.

Rule number (52): The General Prosecution investigator has to believe that he/she is a messenger representing a great message. The more he/she believes in the message, the more he/she will be motivated to work hard and to pursue the common interest over his/her own.

Rule number (53): The General Prosecution investigator has to insulate him/her self from any effects on his emotions or personal beliefs that that might arise from the crime. He/she should investigate the crime without any pre-existing convictions or position regarding it.

Rule number (54): When beginning an investigation, the General Prosecution investigator has to have control over him/her self and not be angered or provoked. The investigator should be patient in drawing conclusions regarding any evidence and the weight of such evidence.

Rule number (55): The General Prosecution investigator has to start the investigation with out any preconceptions regarding the incident, and he/she is not allowed to hear anything about it outside the investigation sessions. The investigator should not be affected by what the media is publishing regarding the incident in question.

Rule number (56): When starting the investigation about an event, the investigator may notice that the people who are being interrogated, whether the victim, accused or the other witnesses, are acting in an abnormal manner. This abnormal manner may be their complete silence, or nervousness, or loss of self-control. This may put additional pressure on the investigator. However, he/she has to control him/her self, and act normally realizing that the actions he sees may, in fact, be normal human conduct in such circumstances.

Rule number (57): Even if the investigation takes a long time and much effort to be completed, the investigator must not put a time limit on his/her work. He/she should pursue this work quietly as long as he/she is seeking the truth. This does not mean he/she should not stop the investigation if, for example, it takes an undue length of time. It simply means the investigator, alone, has the right to decide when to stop the investigation.

Rule number (58): The General Prosecution investigator should conclude the investigation procedures in the shortest time possible and act in a timely manner regarding any of its procedures. There are many procedures that have to be initiated and completed within a certain time or they will be rendered useless to the investigation.

Rule number (59): The investigator should not hesitate in taking any step he/she deems necessary and should be determined and focused in his/her decisions. For example, if an accused has been arrested, the investigator must determine whether to release or detain him/her.

Rule number (60): The investigation procedures should be carried out within the needed time frame and be completed altogether or in continuous sessions, without any prejudice to the rights of the people involved.

Rule number (61): Speedy action by the investigator should not in anyway affect the rights of others or harm the principles of justice. Acting in a speedy manner does not contradict the need to act slowly where the circumstances call for it.

Rule number (62): The General Prosecution investigator should focus his attention in an equal manner to all the people and incidents involved in the investigation.

Rule number (63): The General Prosecution investigator should not omit anything of any small merit out of his/her thorough inspection. Everything has its impact on the outcome of the investigation regardless of how unimportant or trivial it might appear.

Rule number (64): The General Prosecution investigator should be a person who has high concentration and observation skills, so he/she can focus his/her attention on all the details and persons involved, and be able to completely observe and comprehend the crime scene when inspecting it.

Rule number (65): The General Prosecution investigator should have a strong memory and good reasoning skills, so he/she can connect events and make relevant inferences between different incidents and acts, in order to reach the truth.

Rule number (66): The General Prosecution investigator should keep all the events of the investigation confidential to guarantee that the investigation is taking its natural course, and to protect the rights and interests of the people involved.

Rule number (67): The proceedings and results of the investigation are considered to be secrets that should be protected by the investigator. Nothing of the investigation should be leaked to any of the media in order to prevent any harm that might be caused to the investigation.

Rule number (68): The information received by the investigator in the course of his official work should be kept to him/her self. If the investigator shares information, for the benefit of the investigation with his/her colleagues to seek their help and advice, he/she should keep the identity of the people involved anonymous.

Rule number (9): The General Prosecution investigator has not only to be knowledgeable in the law he practices, but also in those other fields that are needed in his/her work. This will enable the investigator to be aware of everything that is relevant to investigating the crime.

Rule number (70): The investigator should be able to master English or French so he/she can post his/her legal knowledge and be able to contact international legal entities.

Rule number (71): The General Prosecution investigators should realize the importance and sensitivity of their work and that people scrutinize their conduct. Therefore, they should set an example for their employees to look up to.

Rule number (72): The General Prosecution investigators should avoid conduct that could appear to be suspicious and should appreciate human feelings and treat people in a good manner. They should be moral in their personal life.

Rule number (73): The General Prosecution investigators should be very balanced when dealing with adversaries and should not discriminate regardless of the social status of the people.

3.2 RULES GOVERNING THE INTERROGATION:

Initiating the Interrogation:

Rule number (74): The prosecutor should conduct the interrogation of the accused in all felonies, and in misdemeanors where the prosecutor deems it appropriate that he/she conducts the interrogation by him/her self.

Rule number (75): The interrogation must be done during the first twenty-four hours, starting from the time the accused was referred to the prosecutor with the power to order the accused into detention or release.

Rule number (76): There is no particular format for conducting the interrogation. Thus, it is left to the prosecution member who is conducting it. The prosecutor should adhere to the principles of honesty while interrogating the accused without limiting the prosecutor's freedom to use any suitable and legal methods to reach the truth.

Rule number (77): The success of the prosecutor in tying the accused to the crime, and having the latter confess, depends on how the prosecutor acts and conducts his/her work.

Rule number (78): The prosecution member should prepare his/her interrogation of the accused in advance by writing down the main structure of the interrogation. The interrogation should depend on the logical progression of events and should cover all points in the case file. The prosecutor must not direct his/her questions to the accused without any planning.

Rule number (9): The prosecution member must understand fully the events of the crime and the information provided by the witnesses and the accused. This would enable the prosecutor to identify the main points he/she wants to clarify by interrogating the accused. The prosecutor must also understand fully the technical and expert reports relating to the crime, such as the forensic reports. The prosecutor must point out the important points in the technical and expert reports in order to competently face the accused with them.

Rule number (80): The prosecution member should understand the different aspects of the accused's personality and be aware of his/her criminal history, if it exists, because such information helps in managing the interrogation.

Rule number (81): The prosecution member cannot prepare in advance all the questions he/she wants to ask the accused because there are many valuable questions that will only emerge from the

accused's answers. The prosecution member is not permitted to direct the accused's answers in order to set him/her up.

Rule number (82): The prosecution member should take precautionary measures to guarantee that the interrogation will go smoothly and safely. For example, searching the accused to make sure that he/she is not concealing any weapons that might threaten the lives of the prosecution member and any assistants attending the interrogation. Searching the accused might also provide evidence that could link the accused with the crime in question.

Rule number (83): The prosecution member has to inspect the suspect's body before starting the interrogation and has to record any visible marks as well as the reasons for such marks.

Rule number (84): The prosecution member must make sure, in cases where there are multiple suspects, that the suspects are held separately and that they cannot communicate with each other. This is to prevent them from falsifying and/or coordinating their testimonies, and to prevent them from affecting the witnesses.

Rule number (85): The prosecution member must not start the interrogation immediately upon meeting the accused. Instead he/she should start talking to the accused about topics that are irrelevant to the charges. The prosecution member should not be hostile to the accused while interrogating him/her and should not use intimidating terms that will lead the accused into an antagonistic position.

Rule number (86): The prosecution member should not use any insulting terminology.

Rule number (87): The interrogator cannot use emotional or physical force to extract a confession, nor can he/she use tricks and lies to reach the truth. Because such actions affect the free will of the accused. Instead, the accused should be treated with dignity and not be insulted.

Rule number (88): The prosecution member must enable the accused to defend him/her self and also enable him/her to produce the evidence that proves his/her innocence. If the accused gives the name of his/her lawyer, the lawyer should be called in to attend the interrogation, and should be enabled to observe any reports related to the investigation.

Rule number (9): The prosecution member should only allow persons permitted by law, due to their official status, to attend the interrogation. Confessions should not take place in the presence of other people. Thus, the prosecution member must make sure that none of the police officials are present while interrogating the accused, because such presence might affect his/her free will.

Rule number (90): If the evidence available to the interrogator is very weak and the innocence of the accused is more likely than his/her guilt, then the interrogator should ask the appropriate questions to clarify the situation.

Rule number (91): If the accused confesses to the crime during the interrogation, the confession should not be deemed as enough evidence, and cause the prosecutor to terminate the search for more evidence. Prosecution members should continue their search for evidence that supports any confession because confessions are only single pieces of evidence that can be proved wrong, as with any other evidence.

Directing Questions:

Rule number (2): The questions asked by the prosecution member should come in a coherent and consecutive order. He/she should start asking questions about the preparation phase of the crime, through the execution phase, and then the aftermath. This does not mean making the accused aware of the line of interrogation so he/she will find it easy to recall his/her previous answers.

Rule number (93): The prosecution member should create an environment in which the accused answers the questions freely, even if he/she is lying and trying to hide the truth with his/her answers. This does not mean the accused should be allowed to talk about irrelevant issues. If the accused does this, then the prosecution member should stop him/her and ask him/her to go back to answering the questions asked.

Rule number (94): The prosecution member should start by asking questions of a general nature related to the incident, and then should discuss with the accused his/her answers to clarify any ambiguity and inconsistency. After this, the prosecution member should ask questions that are related directly to the charges against the accused. This should be followed by the real interrogation, which should produce detailed and full information regarding each incident in a way the accused would find hard to retract, particularly when it comes with evidence, or the evidence comes with a confession that supports it.

Rule number (95): The prosecution member should be aware that a large number of unproductive questions means a waste of time and effort, and diverts the interrogation from its main goal. This situation may also make the interrogation an easy target for the defense.

Rule number (96): The prosecution member should form his/her questions in unambiguous, easily understood language so that the accused can understand and answer them. It is desirable that the prosecution member use open-ended questions that require detailed answers and avoid, where it is possible, the use of closed questions that can be answered by yes or no. It is not a condition that all the questions must be related to the incident directly; thus, the interrogator can ask a question that is not connected to the incident every now and then in order to ease the stress of the accused.

Rule number (97): The questions should be simple and short and asked in an easily understood form. Long and sophisticated questions might lead to confusion and give the accused enough time to think and escape from giving true answers. The questions should not be so short that they don't represent what the interrogator means by them. Questions asked can be direct or indirect questions.

Rule number (98): The different accents and dialects in the Arabic language might give different meanings; thus, each answer should be documented in the way it was said.

Rule number (9): Questions and answers must be documented, in writing, in the interrogation report without any omissions or editing, under the direct supervision of the prosecution member.

Rule number (100): The questions should be asked verbally, and the same is true regarding the answers. . The interrogator cannot direct his/her questions to the accused in a written form, nor can the accused can give his/her answers in writing, because this would contradict the nature and goal of the interrogation.

Rule number (101): The prosecution member must dictate the questions and the answers of the accused by him/her self to the reporter. Thus, the reporter cannot write down the questions and

answers by him/herself. The reporter must write down the answers, reading back what has been written, so the accused can object to it immediately if he/she wishes to do so.

Rule number (102): When the accused starts to answer, he/she has no right to review any documents or notes, because the answer should be based on his/her memory. If the answers need certain details or contain sophisticated information such as numbers or statistics, then the interrogator has the power to allow the accused to use relevant documents. The prosecutor can also remind the accused of some incidents from the case file and read them to the accused.. All this is under the discretionary power of the prosecution member.

Rule number (103): If the accused is a deaf person, then the prosecution member can write down the questions and the charges. The accused must answer the questions verbally. If the accused is a mute person, then he can answer the questions in writing.

Rule number (104): The interrogation must be conducted using the Arabic language, unless the accused indicates he cannot understand Arabic. In that case, see Rule (106) in line with reference to the territoriality of the criminal procedures.

Rule number (105): If the accused only speaks a foreign language, imperfectly understands Arabic, or speaks with an accent that can not be understood, then the law provides for the interrogator to seek the assistance of a professional translator who can be trusted to help the accused understand the questions and charges directed to him/her, and to clarify his/her answers.

Rule number (106): The translator must be sworn in before he she starts his/her job. His/her knowledge of the foreign and Arabic languages should be checked and verified. These procedures should be documented in the interrogation report before the interrogation starts. The prosecution member directs his/her questions to the translator, who translates them for the accused and then translates the answers back to the prosecution member, who then dictates them to the interrogation reporter.

The interrogation report

Rule number (107): The interrogation should be documented in writing to have its intended legal effects. Clearly, the prosecution member cannot rely on his/her memory regarding the interrogation of the accused. The interrogation report is an official document that has its own legal entity and effect.

Rule number (108): The prosecution member's testimony before the court that he/she has interrogated the accused cannot substitute for the interrogation's written report, if the report is absent. If it is proved to the court that a report was written however, then it is irrelevant if it has been lost and the prosecutor cannot give any reasons for its loss. It is still admissible. However, the court has the discretion to draw any conclusions regarding the interrogation in such an instance.

Rule number (109): The general rule states that there should be a reporter with the prosecution member during the interrogation that documents all the procedures and actions taken. When visiting the crime scene, the prosecution member should also be accompanied by a prosecution reporter.

Rule number (110): In cases where there was no reporter, for any reason, or in cases where the prosecution member reached the crime scene before the reporter, the prosecution member can begin the investigation, provided that a state official works as a reporter. Usually the state official can seek the help of judicial officer in such a task, after swearing that he/she will fulfill his/her job with

honesty and integrity. This procedure should be documented in the investigation report. If the prosecution reporter becomes available, he/she should take over and continue the job.

Rule number (111): The reason behind requesting the presence of the reporter is to keep the prosecution member focused on his investigative work, especially when he/she is conducting an investigation. When conducting other investigative work that does not need a written report, such as issuing arrest warrants, there is no need for the prosecution reporter to be present.

Rule number (1 2): To the best extent possible, the answers of the accused must be documented as he/she said them, word by word, even if the accused used some unacceptable terms, like profanity, with a clarification of their meaning.

Rule number (1 3): The interrogation report must be written in clear handwriting and must not contain any scratch-outs. The pages of the report must be given sequential numbers. Scratch-outs in the report could harm the value of the report and raise suspicions about its integrity.

Rule of law (114): The prosecution reporter must write down the questions directed to the accused, without any omissions or additions, under the direct supervision of the prosecution member. This will have a favorable affect on the accused, knowing that what is being written is only what has been said.

Rule number (115): The report should be clean and neat, and written in the Arabic language. If the report is written in a language other than Arabic, then it is considered to be null and void.

Rule number (116): It is allowable to use a typewriter or a computer to produce the report and it is allowable to use forms that have preprinted information on them.

Rule number (117): Before starting to interrogate the accused, the prosecution member has to caution the accused, and give him/her a choice, by saying to him/her: "You are not forced to answer to these allegations unless you want to do so. Every thing you say will be documented in writing and could be used against you as an evidence before the court".

Rule number (118): When the accused provides any defense, or evidence for his benefit, the prosecution member must make sure that it has been documented in the report and he/she must write down the names of any witnesses the accused mentions and summon them as soon as possible. The defense witnesses should all be heard, as soon as possible. Remember: even though the accused is in custody, it does not mean he will not attempt to communicate with these potential witnesses and affect their testimony.

Rule number (1 9): For the interrogation report to be a legal document and have legal effect, it has to contain all the information and data needed, such as the guarantees the law provides for the accused.,It must also include full details about the accused, such as his/her name, address, occupation, nationality, and religion. In addition, the prosecution member should check the accused's body and clothes and note down any unusual marks. The prosecution member can get the assistant of a physician to check the body of the accused. After noting down all this information the prosecution member has to tell the accused about the charges against him/her in full details and start interrogating him/her.

Rule number (120): It is not enough to mention the day, month, and year on the report but the prosecution member should also mention the time the interrogation started. This information is

important and vital because it shows if the interrogation came after or before any other investigation actions that may have taken place on the same day.

Rule number (121): The signing of the interrogation report is a very substantial procedure. It is the only proof that the report was produced by, an in-law, competent person. No other evidence from outside the report can substitute for a signature to prove that the report was completed by a competent authority.

Rule number (122): The lack of a signature cannot be substituted for by titling the report with the name of the competent prosecution member or by later testifying the report was produced by him/her without a signature. The signing of the report gives it its legal power as an official document. The signatures of the reporter and the accused also have to be next to the signature of the prosecution member on each page of the report.

Rule number (123): The accused should sign the report, stipulating that he/she has read it and is signing it under his/her own free will, without any duress or coercion. If the accused does not know how to sign, he/she has to stamp his/her thumbprint on the report. In cases where the accused can not stamp his/her thumbprint, then the reason for this must be indicated in the report. If there was a need to use a translator, then this should be indicated in the report, and the report should show that the translator was made aware of his/her responsibility and the extent of such responsibility, and he/she should also sign the report.

Rule number (124): The signature of the accused's attorney on the report is not required and it is enough to mention in the report that he/she attended the interrogation.

Rule number (125): All signatures have to be made in handwriting. Signatures should not be made by using stamps, or by any other method, unless it is impossible to use handwriting. If this is the case, it should be noted in the report.

Methods of noting down the questions and the answers to them:

Rule number (126): There are three ways to note down the questions and the answers. First, considered to be the best method, ask the accused the question and listen to his/her answer and then note down both the question and the answer. Second, ask the question, note it down, then listen to the answer, and note it down. Third, ask all the questions and listen to all the answers and note all of it down after the interrogation is finished.

Time of interrogation:

Rule number (127): The general rule is to conduct the interrogation immediately after learning of the accused's identity. This best serves the interests of both the prosecution and the defense.

Rule number (128): The prosecution members should move to investigate felonies and serious misdemeanors immediately after they come to their attention. As time passes between the crime and the arrest, the accused gains more opportunity to control him/herself, make and prepare excuses and alibis, and coordinate stories with his/her partners, if there are any.

The accused could also be frightened by what he/she did, which makes it easier for him/her to talk and confess to the truth, especially if the accused did not find enough time to prepare his/her defense.

Furthermore, early interrogation helps the innocent suspect to present his/her alibi in an early stage of the investigation so the allegations against him/her do not last for a long period of time. This minimizes any damage that might harm his/her reputation and freedom.

Rule number (1 9): The general rule states that interrogation is not limited to a certain period of time. This means that the investigation authority could conduct it at any stage of the investigation. Interrogation might be the first action taken, thus initiating the legal action; or, it could be done after hearing the witnesses, inspecting the crime scene, or conducting the search. It could be the last investigative action.

Rule number (130): In some instances it could be harmful to the investigation to reveal certain documents to the accused that are not yet completed. In such a case, the issues related to the documents should be kept confidential, temporarily, until all due procedures related to these issues are taken. This is important because the law obligates the prosecution to allow the accused's attorney to review all the case files before the prosecution member interrogates the accused.

Rule number (131): The interrogation should not be prolonged until the accused is exhausted. Such an interrogation, and the results that come out of it, have no legal effect, and are considered to be void and null. It does not conform with the neutrality of the prosecution member and the integrity that he/she should have.

Rule number (132): If the prosecution member cannot finish the interrogation in one session, or if he/she deems it necessary to resume it after a period of time, he/she has the right to adjourn the session, especially if he/she has to do so because of the work. The prosecution member has to observe the formalities only in the first session and does not have to repeat them in subsequent sessions.

Rule number (133): During the investigation, the prosecution member has the right to interrogate the accused more than once in order to confront him with any new evidence and discuss it with him/her. The prosecution member can, when interrogating the accused, ask him/her about issues that have been discussed in prior interrogation sessions. The legislature gave the prosecution member the right to interrogate the accused whenever the prosecution member deems such an action necessary, provided that the interrogation is not prolonged.

Rule number (134): An accused person who is arrested while committing the crime can be interrogated at the crime scene. This may lead to the accused confessing to the crime and giving up the names of his/her partner(s) and assisting in his/her indictment.

Rule number (135): The prosecution member is forbidden from going to the place of residence of the accused or the witness, regardless of their social status or official position, unless the accused or witness is sick or has adequate excuses that prevent him/her from coming to the prosecution department.

Rule number (136): The prosecution member has to choose an adequate place to conduct the investigation. This is left to his/her own discretion, for the benefit of the investigation.

Rule number (137): An adequate office that has a door that can be closed should be provided for conducting the interrogation. This is to achieve three goals: first, to avoid interruption of the investigation by anyone; second, to prevent the accused from fleeing; and, third, to preserve privacy in the interrogation. The interrogation room should contain the minimum of required furniture and it should be free of anything that might catch attention, such as pictures, decorations or statues.

Rule number (1 8): The interrogation room should be free of anything that might remind the accused that he is at police or public authority custody. The room should not contain any telephone, because of the interruption it might cause during the investigation, unless it is necessary to have it there. It is important to shut off all the cell phones in the room.

Rule number (1 9): The furniture in the room should be located in a way that does not prevent full observation of the accused.

Treatment of the accused:

Rule number (140): The accused has the right to say whatever he/she wants to say away from any elements that might affect his/her will, whether these elements are material or emotional ones. Annulment of the interrogation would be the result if the accused were subjected to any pressure that affects his/her free will, whether administrated by the investigative authority or any other party.

Rule number (141): The accused must be treated in a way that preserves his dignity and he/she should not be harmed emotionally or physically in any way or method in order to extract a confession from him/her. Such acts, or the threat to use such acts, will cause the annulment of any evidence that arises from these acts. It also makes whoever commits or orders such acts subject to criminal, civil, and/or disciplinary liability.

Rule number (1 2): The accused should be regarded as innocent until proven guilty by a final judicial verdict. The accused is not obligated to provide any evidence regarding his/her innocence because the burden of proof is on the prosecution authority.

Rule number (143): The accused has the right to remain silent and his/her silence should not be interpreted as evidence of his/her guilt.

Rule number (144): The prosecution member should make the accused fully aware of the charges and the evidence against him/her and the sources of such evidence, unless revealing the sources would harm the investigation. The accused must sign that he/she was made aware of the charges against him/her. If he/she refuses to do so, the prosecution member must document the accused's refusal in the interrogation report and note down the reasons for the refusal.

Rule number (145): The accused should be notified of the charges against him/her at the first interrogation session. If the accused is being interrogated for the second time, there is no need to notify him/her with the charges.

Rule number (146) There is no need to notify the accused of the legal nature and description of the charges against him/her in detail because it might be impossible to identify the exact legal nature of the charges at this point of the investigation. In addition, there is the possibility that the legal nature and description of the charges may change if new circumstances or evidence emerge.

Rule number (147): The accused should be notified of the charges in unambiguous, simple, and easy to understand language.

Rule number (148): If new evidence emerges that changes the charges against the accused, the prosecution member is obligated to conduct a preliminary interrogation and convey to the accused the new charges.

Rule number (149): When the accused is attending the investigation for the first time, the prosecution member must verify the accused's identity, name, address and profession. The prosecution member must interrogate the accused regarding the accusations against him/her. The prosecution member must also notify the accused that he/she has the right to seek the help of an attorney and that everything he/she might say could be presented as evidence against him/her during trial.

Rule number (150): The accused has the right to delay the interrogation for a period of twenty-four hours to secure the attendance of his/her lawyer. If the lawyer does not attend, or if the accused has waived such a right, then the interrogation can start immediately.

Rule number (151): The prosecutor can interrogate the accused without the attendance of his/her lawyer in cases of emergency, if the accused was caught while committing the criminal act, or if there is a founded fear that evidence might be lost. The reasons for proceeding without the accused's lawyer in attendance should be documented in the interrogation report. The accused's lawyer has the right to review his/her client's interrogation report.

Rule number (152): If the accused has no attorney to represent him/her or does not want one, then the prosecution member can start the interrogation process immediately. If the accused has more than one attorney, then the presence of one of them is enough to start the interrogation.

Rule number (153): The law does not require a specific formality to be followed in notifying the accused's attorney. The notification can be made with an official form or can be made verbally by the prosecution member, or by one of the general authority officials.

Rule number (154): The prosecution member is obligated to wait for the attorney to come and attend the interrogation for a reasonable period of time. If the attorney does not come, the prosecution member has the right to begin interrogating the accused.

Rule number (155): The prosecution member is not obligated to delay the investigation to the time and date suggested by the accused's attorney if the prosecution member thinks that such a delay could harm the investigation.

Rule number (156): Allowing the attorney to attend the interrogation is mandatory even if it was decided to keep the investigation secret. The accused and his/her attorney are considered as one person (entity) and no distinguishing factor can be made between them, for any reason.

Rule number (157): If the general prosecution comes to the conclusion that it should take any secret procedures without the knowledge of the accused, then it is not obligated to notify his/her attorney.

Rule number (158): The attorney cannot answer on behalf of the accused or tell him/her when to talk and when to keep silent. The attorney does have the right to request the prosecution member to ask certain questions. The attorney also has the right to make comments and object to the prosecution's questions, and have this documented in the interrogation report. The attorney has also the right to request the summoning of witnesses and the calling of experts.

Rule number (1 9): The attorney has the right to observe the integrity of what the reporter is noting down in the report in order to make sure that it is the same as what is being said. The attorney has to refrain from affecting the interrogation by directing questions that might bring the accused's attention to certain points that could benefit his/her status in the interrogation. The attorney should not interrupt the prosecution member while he/she is talking and should wait for him/her finish before asking to be allowed to present his/her comments. The accused's attorney should not be allowed to make a legal presentation during the interrogation as this can only be done in the courtroom.

Rule number (160): During the interrogation, the attorney cannot talk without the permission of the prosecution member. If the latter does not give him/her permission then this should be noted in the interrogation report.

Rule number (161): The attorney has the right to review the investigation procedures before the interrogation of the accused. Such a right is a basic defense right that is guaranteed by the basic law of Palestine and the human rights conventions and laws, because if the defense was not able to review the case file, then the accused would be helpless in proving his/her innocence.

Rule number (1 2): The attorney has the right to submit to the prosecutor a memo that contains his/her views and notes regarding the case the prosecutor is investigating.

Rule number (163): The accused, the victim, and the plaintiff in a civil case arising out of the same events all have the right to request, at their own expense, copies of the investigation documents and reports.

Rule number (164): The prosecution member is obligated to allow the attorney to review the whole case file including any procedures that were taken without the presence of the accused. The attorney should be allowed to photocopy and reproduce the existing documents. Not giving the attorney free and full access to the case file means that the General Prosecution has more privileges than the attorney in the case, and this is not allowed.

Rule number (165): The case file includes all the documents related to the case: the investigation reports, evidence, and every thing that has to do with the procedures and actions taken regardless of who took them, and whether they are secret or not. It is not relevant if the accused or his/her attorney knew about such procedures and actions or if it was taken in their presence or not. It is mandatory that the accused's attorney be able to review the full case file.

Rule number (166): The investigator cannot exclude any paper or document from the case file and the file must contain all the papers and documents it had before the start of the interrogation process. The prosecution member cannot claim that the document/s withheld are not of importance or irrelevant, there is a fear it is going to be lost, or that the documents contain secrets.

Rule number (167): If, after permitting the attorney to review the case file, more investigation is conducted or the prosecution member receives certain documents related to the case, such as an expert's report, the prosecution member is obligated to make such documents available to the attorney before starting any other interrogation. If the prosecution member does not do so, he/she cannot refer to such documents in the interrogation or ask any questions regarding them unless the accused's attorney waives his/her right to review them.

Rule number (168): Permitting the accused's attorney to review the case file is to permit him/her personally to do so and he/she has the right to waive such right unless the accused objects to such waiver.

Rule number (169): The prosecution member has to mention and note down in the investigation report that the case file was made available to the attorney. This notation is evidence that the formal procedures required by the law have been fulfilled.

Rule number (170): The prosecution member has the duty to assist and help the accused's attorney in defending his/her clients; thus, he/she should answer their requests within what the law permits, provided that such assistance will not hinder the investigation.

Rule number (171): Not every promise made by the prosecution member to the accused nullifies the interrogation. Such nullifications take place only when the promises cannot be resisted by the "ordinary" man or woman, impelling him/her to make a confession. An example of such a promise is promising the defendant to make him/her a witness in the case instead of being a defendant, promising him/her not to disclose his/her criminal history, or promises regarding the defendant's family.

Rule number (172): Any confession obtained by an illegal promise made by the prosecution member is presumed null and void even if it is a true confession. The court must investigate the relation between the promises and the confession obtained to decide if it is going to admit the confession as evidence.

Rule number (173): Threatening the accused is one of the most important forms of emotional abuse and it constitutes a pressure on the person's will in order to make him/her do a certain act. Threats can take many forms such as threatening to commit evil acts against the accused or the accused's family, arresting a member of his/her family, jailing the accused in odd places, or threatening the accused with depriving him/her of his/her basic needs as an inmate.

Rule number (174): The investigator is not allowed to swear in the accused or the interrogation is considered as null and void, because this constitutes an infringement on the accused's right of defense. It also puts him/her in a very critical situation by incriminating him/herself or by lying under oath.

Rule number (175): The prosecution member is prohibited from using any form of violence to conceal his/her incompetence in handling the investigation and/or putting in the necessary efforts to obtain incriminating evidence.

Rule number (176): If the prosecution member tries to exhaust the accused by interrogating him/her for very long time and directing many lengthy questions in order to force him/her to confess or give testimony which conflicts with his/her interest, such an act and the results arising from it are considered null and void. This act does not comply with judicial integrity and contradicts the impartiality of the prosecution.

Rule number (177): Putting the accused to sleep hypnotically and interrogating him/her is considered a form of coercion because it enables the interrogator to control the accused's will, even if this was done with the accused consent, and because the accused might think that refusing such a procedure would be interpreted as an evidence of his/her guilt.

Rule number (178): The prosecution member is forbidden from using medical products on the accused. If used, the evidence obtained is inadmissible. Such a method constitutes emotional and material coercion because it infringes on the accused's right to defend him/herself and his/her right to keep silent. It is very clear that confessions must not be coerced and must be the product of free will. Although the accused has the right to say what he/she wishes, he /she cannot agree to surrender his/her free will.

Rule number (179): If the accused claims before the General Prosecution that the case is not valid, for any reason, or claims that the General Prosecution has no jurisdiction over this case, then the issue must be referred to the Attorney General or one of his/her deputies for a ruling. This ruling can be appealed before the first instance court.

Rule number (180): The prosecutor can order by him/herself the performance of all the needed physical and emotional medical tests on the accused if he/she deems such a procedure as necessary.

1.1 RULES GOVERNING THE SEARCH OF PERSONS AND PROPERTY

Rule number (181): A search is an evidence collection procedure used in the course of investigating a felony or a misdemeanor that has already occurred. This means that judicial officers cannot use the search procedure in order to discover crimes.

Rule number (182): The general rule states that the General Prosecution is the body that has the search power. It is true that the law gives the judicial officers the power to search the accused if he/she was arrested while committing the crime, but such an act is not considered as a part of the investigation procedure. Rather it is evidence collection procedure.

Rule number (183): The General Prosecution has the right to use the search power it has at any stage of the preliminary investigation and it can redo any searches it has already done whenever it deems it necessary.

Rule number (184): The investigation authority is barred from conducting any searches if it has referred the case file to the court or ordered the case to be dismissed.

Rule number (185): Considering the accused as a party in the criminal case gives him/her a legal status, which provides him/her with many rights, such as the right of defense. Thus, the accused should not be considered as the target of the search procedures but rather a party to such procedures. Searches cannot be conducted before a complaint or a request is submitted or a permit is given according to the law.

Rule number (186): Houses may be searched based on the consent of the house resident and such consent provides legal basis for the search. The consent in such a case must include the consent to seize any materials that might help the investigation, or the consent will not be regarded as valid.

Rule number (187): Searches conducted based on consent are considered to be an evidence collection procedure, not an investigation procedure; thus, any search is not considered to be mandatory.

Rule number (188): Searches conducted based only on suspicion, without permission, are based on the mental status of the law enforcement official; therefore, they must be limited to serious cases; for

example, when a customs' official reasonably suspects a person while the official is performing his/her duties. In this case, the official has the right to search the person without getting the permission of the General Prosecution.

Rule number (191): The judicial officer has the power to strip any person he/she arrests to find any weapons he/she might have. In such instances, the judicial officer has to submit these weapons to the competent authority with jurisdiction over the arrested person.

Article number (190): The prison warden has the power to search inmates before booking them, or thereafter, as a precautionary measure to prevent the inmates from harming other inmates or fleeing from the prison.

Rule number (191): Administrative searches are excluded from being permitted or authorized by the General Prosecution. Officials without judicial officer status can do this kind of search. An example of an administrative search is when a medical emergency personnel searches a person in order to identify him/her.

Rule number (192): Public places are open places where people are allowed to enter and stay. Public places are divided into three categories. The first category is public places that are public *by their nature*. These are the places that are considered public and open always. These are locations where a person can enter at any time, such as public parks, forests, etc. Judicial officers can enter these places, and searching such places is considered to be an evidence collection procedure to determine if a crime is committed or not. The second category is public places *defined by the way they are used*. These are the places that have specific areas that that the public access at specific times, such as theaters and restaurants. Judicial officers have the right to enter such places based on two reasons: First, they are part of the public space; and second, the officers have the duty to implement the rules and regulations governing such places. : The third category is public places *by coincidence*. These kinds of places are private places, but the gathering of a number of people in them, by coincidence, made them a public place; for example, stores and private hospitals. The judicial authority can enter such places on the basis that he/he is an ordinary person.

Rule number (193): Public places are considered to be public not on the basis of the names given to them but on the basis of their true nature. If it is clear to the judicial officer that a certain place is a public place, he/he has the right to enter it and observe what is going on there, regardless of the status given by its owners or managers.

Rule number (194): Public places have the same status as private residences during the times the public cannot enter them. The right to enter such places is limited to the areas and parts the public is allowed to enter and cannot be extended to other parts such as offices and residences.

The importance of search:

Rule number (195): The importance of searching persons and places comes from the following reasons:

- a) To prove that a crime had been committed.
- b) To prove the time and place of the crime.
- c) To identify the crime tools. It is a common knowledge that the perpetrator of a crime usually rushes to hide the crime tools and any other evidence that might link him/her to the crime; for example, hiding the stolen property at his/her home.

- d) To identify the motive behind the crime. Searches may reveal the hatred that the perpetrator has against the victim i.e. finding documents or papers that show the desire of the perpetrator for revenge against the victim.
- e) To strengthen the evidence of guilt or innocence.

Rule number (196): Houses and places of residence are protected from unauthorized searches regardless of the legal status the resident has over the house; for example, if the person owns, is leasing the house, or even is residing at the house illegally.

Rule number (197): The protection of the place of residence is not limited to houses built by bricks. The house could be a tent, a shack, a cabin or a boat, and it could be movable or fixed.

Rule number (198): The place of residence could be assigned to one occupant or more. The number of residents does not affect the unity of the residence, unless they live separately, in which case each one would have his/her own residence; for example, renting a room at a family house).

Rule number (199): Private places include the place where the person practices his/her commercial, industrial, scientific, or political activity, such as law firms, doctor's clinics, stores, and workshops. These places have the same protection the place of residence has. The definition of the place of residence for the purpose of search is very wide. The search rules aim at protecting the secrets and privacy of individuals therefore any place the person chooses to practice his/her privacy, away from the eyes of the public, is protected by these rules.

Rule number (200): The utilities and attachments to the place of residence are not required to be directly attached to the main residence or building to be protected. It is enough to be designated for the benefit and service of the place.

The search of the means of transportation:

Rule number (201): There are three categories of transportation. The first category is public means of transportation such as busses and trains: these are governed by the same rules governing the search of public places. The second category is private means of transportation: these have two forms of protection, depending on location. If the vehicle is parked at a house, then it is considered as a part of the house and benefits from the protection the house has. If the vehicle is parked away from the house, then it benefits from the personal protection its owner or user has and it is treated the same way his/her luggage or clothes are treated. The third category is taxis and other forms of this kind of transportation that are in the possession of the owner and the commuters at the same time. If the owner or one of the commuters is caught while committing a criminal act, then the appropriate legal authority is allowed to search the accused and the taxi at the same time. This means it is treated the same as the person and not the place of residence.

Rule number (202): The legislature might grant some places or persons some kind of immunity that protects them from being searched. For example, diplomats and diplomatic missions and their places of residence. Such protection stems from the rules of international law that guarantee the independence of those individuals. Some places need certain kinds of permission to be searched, such as the places of residence of parliament members who have parliamentary immunity, or the places of residence of members of the judiciary who have judicial immunity. Such immunity is not absolute and can be waived in order to conduct a search. In cases where the criminal act was observed in action, a search can be conducted without the need of authorization of any kind. This latter case does not apply to diplomatic situations.

Rule number (203): If any location has lost its privacy status, such as being opened up for the public, then it can not be considered as a private place or residence, and is be subject to the rules regulating the search of public places.

Rule number (204): A search cannot be conducted before the commission of a felony or a misdemeanor crime, regardless of its seriousness or nature. A search warrant cannot be issued if the crime is an infraction.

Rule number (205): A search cannot be used as a means to spot a crime before it occurs. The crime, by itself, is not sufficient to conduct the search, Charges must be first pressed against a person that he/she committed the crime or acquired materials related to the crime, or the purpose of the search must be to acquire materials that benefit disclosure of the truth.

Rule number (206): The General Prosecution is the only party that has the power to issue search warrants. Therefore the person who authorizes the search must be empowered to conduct the procedure he/she is authorizing.

Rule number (207): If the competent person is not empowered to conduct the search because he/she is out of his/her geographical jurisdiction, or the case itself does not fall within the jurisdiction of his/her powers, then the competent person cannot authorize a judicial officer to conduct the search.

Rule number (208): The law requires that search permission be clear, limited as to the people and places to be searched, and be issued by a competent authority that has geographical jurisdiction over the matter. The law also requires that the permission should be written by the competent person and signed by him/her.

Rule number (209): The person authorized to conduct the search must have a subject matter and a geographical competency to conduct the search. It is not enough that the authorization comes from a competent authority, but also it has to be issued to a competent, legally empowered person., Ordinary individuals or general authority personnel cannot be authorized to conduct the search because they don't have such a power by law. This does not prevent the authorized and competent judicial officer from seeking the help of his/her assistants even if they don't have the status of a judicial officer, as long as the work is done under his/her direct supervision.

Rule number (210): The person who is authorized to conduct the search cannot, under any circumstances, delegate such a power to any other person. If the authorization was given to more than one judicial officer then anyone of them can do the job.

Rule number (211): The authorization to conduct the search must be done by naming the judicial officer/s by name. It is not enough to mention the official title in the authorization.

Rule number (212): The authorization to conduct the search is not conditioned on the acceptance of the person authorized, because judicial officials are obliged to execute the orders of the investigation authority. A judicial officer has no right to refuse the execution of the search authorization or any other procedures he/she is authorized to do. In cases where a judicial officer might be embarrassed to conduct the search because of a relationship between him/her and the accused, he/she can ask to be relieved of such a duty.

Rule number (213): Verbal authorization to conduct the search is considered to be null and void and this cannot be remedied by issuing the written authorization after the search is done. The judicial officer is not required to carry the original copy of the written authorization with him/her when conducting the search as such a requirement might hinder the investigation process which requires speedy actions. A clear copy of the authorization is considered enough to conduct the search.

The Search Warrant:

Rule number (214): The search warrant has to be produced in two original copies one of which has to be handed to the accused, if he/she is present, or to one of his/her family members, anyone who is in possession of the place to be searched, anyone who works for the accused, or the guard of the place. If none of the persons mentioned is present then the search can proceed without handing the copy of the search warrant to anyone.

Rule number (215): The search warrant has to be signed by the person who issued it because the signature is the only evidence that can prove it was issued by the competent authority. The signature cannot be proved by evidence outside the warrant itself.

Rule number (216): The search authorization must contain the name, post, and signature of the person who issued it, and the name and post of the authorized judicial officer who is being authorized to conduct the search. It must also contain the name of the owner of the house to be searched, and the address and the charges against the accused. In addition, the authorization should contain the period of its validity.

Rule number (217): The search warrant must contain the date of its issuance so it can be used to determine if the search was done before or after the warrant was issued. The date of issuance is a basic element of the search warrant because after the search is done, many legal results might occur, such as interrupting the statute of limitations.

Rule number (218): The search warrant must also contain the time it was issued. This is a very important detail because it will indicate if the search was conducted after or before other investigation procedures that took place on the same day.

Rule number (219): If the search warrant issued by the General Prosecution was issued without containing any details to identify the person to be searched and/or his/her residence address, and it was so ambiguous that it could be applicable to any person, the search warrant cannot be considered as a serious warrant and any actions that were taken based on such a warrant are considered null and void.

Rule number (220): If the search warrant was issued by the competent authority and contained all the legal elements required by the law, it is considered by itself as an investigation procedure regardless if it was executed or not. If it was the first investigation procedure taken, then it is considered to be the act initiating the criminal case.

Rule number (221): The person who is authorized to conduct the search must limit his/her work to what he/she was authorized to do, and if he/she conducts any act he/she was not authorized to do, such an act would be considered as null and void

Rule number (222): The authorized person, while conducting the search, must adhere to all the applicable procedural rules, especially the rules set to protect personal rights and liberties.

Rule number (223): The authorized person must be accompanied by the investigative reporter during the search and the investigation reporter must sign the search report with the authorized person.

Rule number (224): The search must be executed during the period stated in the search warrant; this period can be renewed before or after it is expired.

Rule number (225): The Palestinian law requires the search warrant to be reasoned. Reasoned means that the prosecution member states the elements from which he/she concluded that there is sufficient evidence to order the search. This is done in order to allow the court to scrutinize the weight and seriousness of such evidence and to determine if the search is aimed at fulfilling the goals of the search as defined by the law. If it does not have these elements, the search is considered null and void.

Rule number (226): The reasoning of the search warrant should not be in the form of preprinted forms to be signed by the prosecution member whenever he/she wants to issue a search warrant. Such a procedure does not reflect the seriousness of the reasoning and it does not show that the prosecution member studied the facts that led him/her to issue the search warrant.

Rule number (227): The general rule is to document all the investigation procedures in writing. The person who is conducting the search should note down in the search report the things that were found and seized during the search.

Rule number (228): The law does not require a certain form for the search report. What is important is that the report must include the procedures followed, the time the search was done, the place of the search, things that were found and seized, their description, and the places where they were found. It also should contain the names of the persons present at the time of the search and the observations of the accused. Each page of the report shall be signed by that person who conducted the search. It must also be signed as well as by the relevant persons who witnessed the search. The accused and any relevant person has the right to obtain a copy of the search report upon request.

Rule number (229): The search report should be written in clear, legible hand-writing without any omissions or scratches, as scratches would affect the value of the report and its integrity. Each page of the report should be numbered with sequential numbers. If there is an urgent need to scratch or remove any thing from the report, or add to it, then the person who is conducting the search, the reporter, and the witnesses all must sign on the report's margin to indicate that this was done officially.

Rule number (230): The report should be organized and neat, easy to understand, and written in Arabic. The Arabic language requirement comes in line with the locality of the criminal procedures and its sovereignty. If the report was written in any other language than Arabic, it is considered to be null and void.

Rule number (231): A search is considered to constitute a limitation on the openness of the investigation regarding the adversary rule, because the search is attended by the accused as well as those officials who are conducting the search. The reason for this is that searches reveal the secrets of others, which the law forbids revealing, unless in the instance of necessity. Therefore, the victim and the plaintiff in the civil case cannot attend the search.

Rule number (232): In order to increase the confidence in the search and its results, and to give the accused the opportunity to face the evidence that emerges through the search, the law requires that the search is to be done in the presence of the accused or the person who has possession of the place. If the accused was not able to attend, then the search should be done the presence of two persons who are neighbors or relatives of the accused.

Rule number (233): Searches cannot be conducted by anyone other than the prosecution member or the judicial officer authorized to do so by him/her, or a person who has the legal power to do so without authorization.

Rule number (234): The rule is to use no force while conducting the search and the exception is to use it. It is allowable to use force to enter the place that is the subject of the search if the person in charge of the place refuses to let the competent officials enter the place.

Rule number (235): If there is an unjustified use of force in order to conduct the search, such use of force might constitute a crime and might lead to imposition of disciplinary action against the person who used such force.

Rule number (236): The person conducting the search has the right to find ways and methods that facilitate his/her job as long as they do not contradict the general morals and the humane morals stemming from Islamic jurisprudence. So, entering the place from a way other than through the main door or entrance without the need to do so is considered to constitute an act that contradicts honor, human dignity and public morals.

Rule number (237): Any force used to conduct the search must only be aimed at overcoming any resistance against the search. This force has to be directed towards the source of resistance to overcome it, and must be proportionate to the resistance. The force ends with the end of the resistance.

Rule number (238): The official conducting the search has the power to put under supervision the persons present at the place of the search if he/she fears that they would obstruct the search. He/she has to release them after the search is completed.

Rule number (239): The rule is to conduct the search to find the materials that will help in revealing the truth in the case in hand. As an exception to this rule, the law allows the official who is conducting the search to seize any materials the possession of which constitutes a crime, or the seizure of which would help reveal the truth regarding another crime, provided that these materials were un-earthed in the course of the search without any prejudice. This means that it is not allowable to search in places where it is impossible, by their nature, to find any of the things or materials sought by the search.

Rule number (240): The law gives the judicial officer the power to search anyone who is present at the search location if he/she has the reason to suspect that this person is hiding any of the materials being sought by the search.

Rule number (241): The judicial officer has to make his identity known to the owner of the house to be searched and has to inform him/her about the nature of the mission before entering the place. The judicial officer has also to show the relevant person the search warrant and hand him/her a copy. If such procedures are not followed then the owner of the house has the right to defend his/her property.

Search of a female

Rule number (242): If the person to be searched is female then she may only be searched by another female authorized to do so by the official who is supervising the search. This rule is set in order to protect the norms of public morality.

Rule number (243): It is allowable to search and touch the sensitive parts of the female body under the supervision of a doctor in his/her capacity as an expert. This should not exceed the need to take the suspected hidden material from the female's body. If these rules were not observed then any act to this end is null and void, regardless of the female's consent, because it contradicts public morality.

Rule number (244): If the person who is conducting the search is not able to call one of the female judicial officers to search the female then he has the right to authorize any female to do the search on the condition that her identity is documented in the search report. The judicial officer is not allowed to swear in such a female unless he/she fears that it would not be possible to hear her testimony later.

Rule number (245): The privacy of the search location has to be preserved and protected unless provided otherwise by the law. Therefore the law forbids searches at night because it could amount to a form of coercion, especially when the accused is sleeping and forced to wake up to attend the search. Note: The exception to this is if it is an *urgent* situation.

Rule number (246): If the search started before the start of the night ban then the investigator has the right to continue the search, even at night, as long as it is a continuous procedure. If the search started before the end of the night ban ends then it is considered to be null and void and a violation of the law, even if the search was concluded after the end of the night ban.

Rule number (247): The only goal of the search is to reveal and seize any documents, weapons, tools, or anything that might have been used in committing a crime, was produced by the commission of a crime, or was the subject of a crime. In other words, the goal of the search is to seize anything that might help in revealing the truth because the material seized is incriminating or because it proves innocence.

Rule number (248): The subject of search could be any movable objects such as weapons, documents, tools used in a crime, and any other objects found during the search that could help in revealing the truth. Immovable property such as real estate could be sealed off and secured as a precautionary measure in order to preserve the clues and materials that might help in revealing the truth.

Rule number (249): The rule is to conduct the search to find materials that would help in revealing the truth regarding the crime being investigated. The law provides two exceptions to this rule. First, the law allows the official who is conducting the search to seize any materials the possession of which constitutes a crime and, second, the law also allows the seizure of any materials that would help in revealing the truth regarding another irrelevant crime. It is not permitted to seize any materials, documents or communications, which are in the possession of the accused's attorney as long as these materials were given to him/her by the accused in order to benefit his/her defense and not for concealment purposes. This rule can be derived from article (211) of the Criminal Procedures Law.

Rule number (250): The seized materials and objects should be described in the seizure report and should be presented to the accused or his/her representative for comment. The seizure report should be signed by the accused and whoever else attended the search.

Rule number (251): If the judicial officer conducting the search finds any sealed documents or papers he/he is not allowed to open them because such a power is only given to the competent prosecutor as they might contain private or secret information that cannot be revealed.

Rule number (252): The seized materials should be kept in a closed sack, which should be sealed. Information regarding the date of seizure, the place the material was seized from and the case it is related to should be noted on the sack. The sack should be kept at the prosecution department storage room or at any place the General Prosecution decides to store it at.

Rule number (253): The judicial officer conducting the search should organize an inventory sheet that includes all the items seized during the search. The judicial officer and all other relevant persons must sign the sheet. A copy of the inventory sheet can be given to the person who owns the place where the items were seized. This is done to prevent any future disputes regarding the nature of these items.

Rule number (254): The sack that contains the seized items can only be opened in the presence of the accused, his/her representative, or the person who owns the place where the items were seized. This is required in order to prevent any allegations of evidence tampering.

Rule number (255): The order to return the seized materials to its owners can only be given by the General Prosecution or the competent court during trial. Any person who has the right to get back the seized items such as the accused, the person who owns them, or the plaintiff in a civil case, can submit a request asking to get back the items.

Rule number (256): In case there is a dispute over the ownership of the seized items, the relevant persons must submit the matter to the competent court to decide.

Rule number (257): The seized materials can be returned before the case is concluded unless such materials are needed in the trial and are not to be seized permanently.

Rule number (258): The general rule states that the seized materials have to be returned to the person that they were seized from even if he/she was not the owner of such materials, unless the materials are the subject or product of the crime. In this case, they have to be returned to the person who lost them. The person who claims the seized materials has to pay any costs the state paid to preserve them.

Rule number (259): The decision to inactivate the case or the court judgment should mention the action that should be taken regarding the seized materials.

Rule number (260): If it is feared that the seized materials would be damaged by the passing of time, or if the costs of keeping such materials is more than their real value, then the General Prosecution or the court has the right to auction such materials, provided the investigation will not be harmed by such sale. In such a case, the proceeds from the sale of the materials should be kept in the court's safe and the owner can claim the money within a year from the date the case is concluded. If there is no appropriate claim, the money is transferred to the state treasury without the need of a court order to do so.

3.4 HEARING THE WITNESSES:

Rule number (261): The prosecution member has the power to summon all the persons whose statements he/she deems might be helpful in revealing the truth. This can be done no matter if the names of the persons summoned were mentioned in the complaints or not. The prosecution member also has the power to hear the testimony of any witness who volunteers to testify without being summoned, provided that this is documented in the investigation report.

Rule number (262): The prosecution member has to respect the witness and treat him/her in a good manner and not undermine him/her so he/she would refuse to testify and thus harm the justice process.

Rule number (263): The prosecution member must order the competent authorities to notify the witness through summons notes at least twenty-four hours before the scheduled date.

Rule number (264): The prosecution member should work towards keeping the witnesses separated from each other and from the public so they cannot coordinate their testimonies.

Rule number (265): Before hearing the witness's statements and noting them down, the prosecution member should make sure of the witness's identity, his/her name, age, and address, using his/her ID or any other official document.

Rule number (266): The witnesses testify individually before the prosecution member in the presence of the investigation reporter.

Rule number (267): The law does not require a certain format for the oath to be sworn by the witness. Analyzing Article (225) of the Criminal Procedures Law the oath statement could be "I swear to tell the truth the whole truth and nothing but the truth".

Rule number (268): The witness's statements must be focused on what he/she saw or felt with his/her own senses and not on his views and beliefs.

Rule number (269): The witness should testify verbally and is not allowed to use any written memos unless he/she has the approval of the prosecution member to do so. The reason for this is that it is hard to weigh the testimony if it was provided in a written format, because the witness's state of mind, his/her face expressions and the way he/she acts are all important elements in weighing the credibility of the testimony.

Rule number (270): The testimony can only be heard if it is related to issues and facts related to the case in hand and it is productive for the case.

Rule number (271): The prosecution member has the authority to rehear the testimony of the witness in order to clarify any ambiguities.

Rule number (272): The prosecution member should not show his/her suspicions regarding the witness's testimony through remarks that would frighten the witness and prevent him/her from telling the truth.

Rule number (273): The prosecution member should avoid the presence of the public or police members during the hearing of the witness's testimony to avoid affecting the witness's will by their presence.

Rule number (274): The prosecution member has to have a strong sense of observation in observing the witnesses' conduct. If the prosecution member notices that the witness would be affected by the presence of one of the adversaries or the police, he/she must order such a person to leave and must give the witness the needed assurances that what ever he/she says remains confidential in the case file.

Rule number (275): The prosecution member should start hearing the prosecution witnesses according to the importance of their testimony. He/she should discuss their statements with them in order to verify the information given and also to enable him/her to weigh its credibility. The prosecution member should face the witnesses with any contradicting testimonies they gave earlier and should discuss such contradictions with them.

Rule number (276): It is not preferable that a prosecution member begin by asking the witness about the specifics of the incident. He/she should allow the witness to narrate the information he/she has without interrupting him/her, unless it is obvious that the witness's statements are irrelevant. After this, the prosecution member should start discussing the testimony and the information the witness gave to him/her in order to clarify any ambiguity or contradictions in the testimony.

Rule number (277): The prosecution member should ask the witness about the time and place of the crime, and also about the perpetrator and the method and the motive. The prosecution member should be aware that persistence, patience, and self-confidence are characteristics that help in solving the mystery of the crime.

Rule number (2 8): The prosecution member should pay attention to the logical consistency of the questions directed to the witness, because a large number of incoherent and unorganized questions could result in a waste of effort and the shifting of the investigation from its intended goal. It also makes the investigation the target of the defense objections and motions.

Rule number (2 9): The prosecution member should not rehear the prosecution witnesses who have been heard during the clue and evidence collection phase and were found not to have any substantive information that would aid in the case.

Defense witnesses:

Rule number (280): The prosecution member has to hear the defense witnesses immediately after he/she is done interrogating the accused in order prevent any coordination of their testimony. The fact that the accused is being detained cannot be relied upon to delay hearing the defense witnesses because it would not be difficult for the accused or his/her family to communicate with the witnesses.

Rule number (281): The prosecution member should make the suspects face the witnesses to clarify their contradicting statements if there is a need to do so.

Rule number (282): The investigation reporter has to note down all the questions asked of the witness and the witness's complete answers and statements without any editing or summarization. This has to be done under the direct supervision of the prosecution member.

Rule number (283): No omissions, scratching or additions should be done to the testimony minutes. If these changes are made, then the prosecution member, the investigation reporter, and the witness all have to sign the minutes, or the omissions and additions will be considered void and null.

Rule number (284): The statement of the witness should be read to him/her before he/she signs it or stamps on it with his thumbprint. If the witness refuses to do so or if he/she can not do so for any reason, it should be noted in the minutes. All the minute's report pages have to be signed by the prosecution member and the reporter.

Rule number (285): The adversary attorneys have the right to request that the prosecution member, after he/she is done hearing the testimony of the witness, allow them to ask the witness about points that were not mentioned in the witness's testimony. The prosecution member has the power to refuse to allow the witness to be asked any question that is not related to the case or is unproductive in revealing the truth.

Rule number (286): The statements of any person who is under fifteen years old can be heard. Such a person can give his/her statement without swearing the oath.

Rule number (287): The wife, parents, grandparents, children, and grandchildren of the accused are excused from swearing the oath unless the crime was committed against one of them.

Rule number (2 8): If the investigation requires that the accused be shown to one of the witnesses to be identified, the prosecution member has to take all precautionary measures necessary in order not to make such a procedure vulnerable to objections and motions. Therefore, the witness should not be allowed to view the accused before he/she is shown to him/her at the line-up and all efforts should be made to avoid making any gesture or move that would help the witness identify the accused. The names, addresses, and profession, in addition to the age and the ID numbers of all the people who participated in the identification line-up, have to be documented. It is desirable that such people are similar to the accused in shape, look and age.

Rule number (2 9): If the witness does not attend the investigation session after being summoned for the first time, another summons note has to be sent to him/her, If he/she still does not attend, a bring in note has to be issued by the prosecution member for the witness.

Rule number (290): The prosecution member should set the investigation session dates by him/herself and should not leave this to the investigation reporter. The prosecution member should take all the necessary steps needed to guarantee the attendance of the witness in order to avoid any unnecessary delays or continuances in the investigation. If some of the witnesses attend and some do not, then the prosecution member can hear the testimony of the ones who attend, if this will not harm the investigation.

Rule number (291): The prosecution member is not allowed to summon the witnesses for their statements more than once without a need to do so. The prosecution member should only delay hearing the testimony of the witnesses for compelling reasons and must schedule hearing the testimony for the earliest date possible, even if it happens to be an official holiday, as long as it serves the investigation's interest.

Rule number (292): The prosecution member is not allowed to go to the witness's place of residence to hear his/her testimony, regardless of the witness's status or official position, unless the witness is sick and there are compelling reasons that prevent him/her from coming to the investigation place.

Rule number (293): If the witness is not able to attend the hearing for medical reasons, then the prosecution member should go to his/her place of residence, if it is located within the prosecution member's local jurisdiction. If the witness's place of residence is located outside the prosecution member's local jurisdiction, then the prosecution member has to second a competent prosecution member to hear the witness's statements after sending the latter a detailed memorandum explaining the case, the investigation steps taken, the questions to be asked. The witness's statement should be sealed in an envelope and sent to the prosecution member conducting the investigation.

Rule number (294): If the prosecution member finds out that the medical condition of the witness does not prevent him/her from coming to the investigation place, then the prosecution member can issue a bring in warrant against him/her.

Rule number (295): If the witness refuses to give his/her testimony or refuses to swear the oath without any valid excuse, then he/she should be charged with declining to testify or declining to swear in a criminal action, and should be referred by the general prosecution to the conciliation court to be fined no less than fifty and no more than one hundred JDs and/or to be imprisoned for one week. If the witness changes his/her mind before the conclusion of the trial then he can be relieved from the sentence.

Rule number (296): If the prosecution member finds that swearing the oath is against the witness's religious beliefs then he/she can relieve the witness from doing so after the latter confirms that he/she is going to tell the truth.

Rule number (297): If a clergyman is summoned to testify and asks to swear before his religious superior, he should be allowed to do so and must come back with a confirmation that he swore to tell the truth.

Rule number (298): The prosecution member, upon the request of the witnesses, has to estimate the costs and expenses they endured because of their attendance to testify.

Rule number (299): The testimony given by the accused is considered valid as long as he/she was not a suspect when he gave it. The investigator should not continue hearing the witness's under-oath testimony if the evidence is clear that he/she might be a suspect as this will cause the testimony to be considered void and null.

Rule number (300): If there is a need to hear the testimony of the head of the state then the prosecutor and the investigation reporter have to go to his/her place of residence in order to hear his/her testimony.

Rule number (301): Diplomatic personnel are to be notified to testify through summons notes sent to them through the Foreign Ministry.

Rule number (302): If the person to testify is an army member then he/she should be notified through his/her brigade commander.

3.5 SUMMONS AND ARREST WARRANTS

Rule number (303): The arrest warrant is not conditioned on the issuance of an attendance summons. The prosecution member has the right to issue the arrest warrant directly without taking any previous measures.

Rule number (304): The person arrested cannot challenge the arrest warrant before the courts or appeal it but instead he/she has the right to know the reasons for his/her arrest and has the right to challenge these reasons before the body that issued the arrest warrant.

Rule number (305): The arrest warrant cannot be issued unless there is an open investigation being conducted by the competent authority and there is evidence that compels the issuance of such a warrant.

Rule number (306): The prosecution member has the right to issue an attendance summons to the accused and if he/she does not comply and attend the hearing, or the prosecution member fears the accused's escape, then the prosecution member is permitted to issue an arrest warrant against the accused.

Rule number (307): As a general rule, arrests can be made only upon a warrant being issued by the competent investigation authority who has the discretion in showing its reasons and conditions. Such discretion is always under the court's scrutiny and supervision.

Rule number (3 8): The person arrested is not allowed to go wherever he/she wishes. He/she must follow the orders of the person arresting him/her regardless of the arrest period.

Rule number (3 9): In cases of the lawful arrest of the accused, the judicial officer has the right to search him/her and note down a list of any seized materials to be signed in by him/her and the accused. The seized items have to be kept in the place designated for them.

Rule number (310): The judicial officer or anyone who arrests the accused has the right to strip him/her of any weapons and tools that are in his/her possession at the time of the arrest and to hand them over to the competent authority.

Rule number (311): The arrest of the accused makes it possible to hear his/her statements or interrogate him/her. This might lead to the detention of the accused or his/her release on bail, according to the applicable law.

Rule number (3 2): The arrested person should be notified of the reasons behind his/her arrest immediately and he/she has the right to call a family member or lawyer to tell them about his/her arrest and seek the assistance of a lawyer.

Rule number (313): The summons note is designed to notify the accused or the witness that he/she has to be present at the location and the time mentioned in the summons note. The aim of the note is to bring in the accused to ask him/her about the charges against him/her, to interrogate him/her, or to face him/her with other suspects or witnesses.

Rule number (314): The summons note cannot be executed by force, because the accused or the witness has the right to respond to the note by obeying the summons. The person serving the note has no power to force the accused or the witness to comply with the note.

Rule number (31): The general authority officials cannot force the person summoned to fulfill the summons note. However, an arrest warrant can be issued by the competent authority against a person who has refused to comply with the summons note to bring him/her to the necessary legal action.

Rule number (31): The judicial officer has the right to arrest any person without an arrest warrant when there is evidence to charge him/her in the following instances:

- a) Being caught while committing crimes that constitute felonies or misdemeanors that are punishable by imprisonment for more than six months.
- b) If the person resists or obstructs the judicial official while fulfilling his/her official duty, or if the person was legally detained and fled from his/her detention or tried to do so.
- c) If he/she committed a crime or was charged with committing a crime in the presence of the judicial officer, and refused to give his/her name or address or he/she did not have a known permanent place of residence in Palestine.

Rule number (31): Any person who witnesses a perpetrator committing a felony or a misdemeanor has the right to apprehend him/her and surrender him/her to the nearest police station without the issuance of an arrest warrant by the General Prosecution.

Rule number (3): A person accused of committing a crime cannot be arrested even if he/she was caught while committing the crime, if the crime requires an official complaint to be submitted in order to initiate legal action. In this case, the person can be arrested if the person who has the right to complain makes a complaint to any competent general authority member who is present at the scene.

Rule number (3): The law requires many conditions before allowing the arrest of a person caught while committing the criminal act.

As provided by article (26) of the Criminal Procedures Law, these circumstances which allow arrest include:

- a) If the victim followed the perpetrator of the crime, or if he/she was followed by a crowd of people who were shouting and making noise about the crime.
- b) If the person accused of committing the crime was seen only a short period after the crime was committed carrying tools, weapons, or any other objects that indicate that he/she is the perpetrator, and where there are signs and marks supportive of such an assumption.

Rule number (32): The perpetrator has to start committing the criminal act before his/her arrest in order for the *person caught while committing the act* condition to be present, otherwise the arrest is null and void and cannot be remedied by the commission of the criminal act after the arrest.

Rule number (32): If the perpetrator was *caught while committing the criminal act* there is no time limit for when he/she has to be arrested.

Rule number (32): If the crime constitutes a felony, the judicial office has the power to arrest the suspect regardless of the penalty provided for such a crime. The judicial authority can do so without having to go back to the competent investigation authority.

Rule number (): If the crime constitutes a misdemeanor then the judicial officer has the power to arrest the suspect, as long as the crime is punishable by more than six months imprisonment.

Rule number (): The law conditions the arrest on the presence of evidence that connects the accused with the crime, and such evidence must be present in order to take any measure that would limit personal liberty, whether in the form of an arrest, search, or detention. If such evidence does not exist then the measure taken would be arbitrary and void.

Rule number (32): The discretion over whether there is enough evidence to arrest the suspect is left to the judicial officer, who has to build his decision on an appropriate basis. Therefore, arrests should not be made based on a complaint alone or on mere suspicion. The discretionary power given to the judicial officer in this regard is under the scrutiny of the General Prosecution and the supervision of the competent court.

Rule number (32): The prosecution member has to take into consideration many elements before issuing the arrest warrant. These include evidence against the accused; his/her sex, age, and social status; the seriousness of the crime committed; and the possibility of the accused running away.

Rule number (32): The arrested person should be informed immediately after his/her arrest of the reasons for his/her arrest and should be allowed to call whomever he/she wants of his/her family members to notify them of the arrest.

Rule number (3): The General Prosecution has the discretionary power regarding the issuance of the arrest warrant concerning any person. The General Prosecution performs such power as the head of the judicial police.

Rule number (3): Arrest is allowable even in cases where the detention of the accused is not permitted, provided that the accused did not comply with the summons note, or there is a fear that he/she will run away.

Rule number (3): Arrest is not a prerequisite measure for detention. Rather it is a measure aimed at enabling the investigator to complete the investigation through interrogating the accused. Arrest is a means to conduct the interrogation and not a first step towards the detention of the accused.

Rule number (3): The arrest warrant must include the accused's name, physical description, and full address. The warrant must also include the criminal act the person is charged with and the penal code article under which he/she is incriminated. The warrant must be signed and stamped and it must contain the date of issuance.

Rule number (33): The request directed to the criminal investigation police by the General Prosecution to start the search and inspection for the unknown perpetrator of a crime and arrest

him/her is not considered an arrest warrant according to the law. Article (110) of the Criminal Procedures Law requires that the accused be identified in the arrest warrant issued against him/her.

Rule number (33): The reason why the arrest warrant should adhere to all the formalities described in the law is to make sure that the competent authority issued the warrant, and that the person arrested is the person intended in the warrant. If the warrant was issued without including all the formalities described in the law it is considered to be void and any evidence that might had been provided by it is be also considered void and inadmissible.

Rule number (3): The arrest warrant issued against a person is considered to be as a sword directed against such person's liberty and freedom. The natural result of the arrest warrant is the arrest of the person described in the warrant, but it is unknown in advance when this arrest is going to take place. Therefore, the law limits the validity of the search and makes it valid only for three months.

Rule number (33): The wisdom behind limiting the validity of the search warrant to three months is to stress the importance of executing the warrant as quickly as possible and also to give the competent authority the ability to retract its decision and cancel the warrant. The time limit also provides protection to the individual so he/she doesn't stay threatened for an indefinite period of time.

Rule number (33): The arrest warrants are valid in any place in Palestine during the day or night.

Rule number (33): The law permits the general authority officials to enter any house without a warrant if they are pursuing a person who must be arrested or who ran away from the detention place he/she was detained at lawfully. The law also permits the official who is executing the arrest warrant to enter by force any place he/she thinks, for probable reasons, that the intended person is present.

Rule number (3): Entering houses in order to execute an arrest warrant is considered to be an administrative measure related to the execution of a legal order issued by a competent authority. Thus, the execution of the warrant can be done anywhere using the method that would achieve the goals behind issuing the search warrant.

Rule number (3): The general rules require that the warrant be executed in a location that is within the jurisdiction and power of both the official who issued the warrant and the official who is executing it. The exception is when conditions force the judicial officer, while pursuing the accused, to cross the lines of his/her area of jurisdiction in order to arrest him/her.

Rule number (34): If the warrant is executed in area that is located outside the jurisdiction area of the competent authority that issued the warrant, then the arrested person should be sent to the prosecution member whose area of jurisdiction the person was arrested within. The prosecution member has to verify the arrested person's identity and notify him/her of the charges and question him/her about them. All such procedures should be documented in written minutes that must be sent with the arrested person to the General Prosecution where the investigation was initiated and is taking place.

Rule number (34): An arrest warrant is executed by taking that named person into custody and keeping him in the place designated for arrested prisoners for that period of time designated by the law. Executing the arrest warrant is not to be left to the arrestee's choice, but rather it must be forced on him/her if he/she does not comply willingly.

Rule number (34): The official who is executing the arrest warrant has to inform the arrestee of the warrant's substance and show him/her a copy of the warrant. This is a procedural rule that is only used when executing the warrant.

Rule number (34): If the investigation requires the arrest or detention of one of the National Authority officials, or one of its employees, the General Prosecution has to notify the administration responsible for such person immediately after the issuance of the arrest warrant or after his/her detention.

Rule number (34): The General Prosecution has the right to publish and broadcast the arrest warrant across the country – using all available and possible media means– if the person wanted is not present or if his/her place of residence, is not known, or in cases of emergency. In such cases, the airports, seaports, and border crossing authorities have to be notified of the arrest warrant.

Rule number (34): The basic rule in executing the arrest warrant is not to use force. The exception is the use of force related to the resistance of the arrest by the person whom the arrest-warrant was issued against. Such assumptions do not reach the level of certainty because the person might surrender without any resistance. The judicial officer has the power to execute the arrest warrant using force if it is necessary to do so.

Rule number (34): If the intended person resists his/her arrest or tries to run away, a judicial officer has the power to use necessary and reasonable power in order to arrest him/her.

Rule number (34): If the person does not resist his/her arrest or try to run away, and the judicial officer in charge of the arrest uses force to execute the warrant, the use of such force is considered to be unjustifiable and might constitute a crime if the elements of such a crime were present. In addition, the judicial officer might come under civil and disciplinary liabilities.

Rule number (3): In cases where the law allows the arrest of the accused, the judicial officer has the power to search the accused and prepare a list of the materials seized from the accused that should be signed by the judicial officer and the accused. The material seized should be kept in the place assigned for it. The reason behind this is that as long as the law allowed the freedom of the person to be restricted through arresting him/her, it is understandable that he/she could be searched. The search of a person is less serious than arresting him/her and it might be beneficial to the investigation by preventing the accused from destroying the crime tool or hiding it. It might also serve the interests of the accused in some cases by preventing him/her from hurting him/herself.

Rule number (3): After arresting the accused, the judicial officer has to hand him/her over to the police station and the official in charge at the station has to hear immediately what the accused has to say. If the accused cannot provide a reason for his/her release, he/she has to be handed over to the general prosecution within twenty-four hours of his/her arrest, and the prosecutor must interrogate him/her immediately.

Rule number (35): The official in charge of the police station has to detain the accused in the two following instances:

- a) He/she committed a felony, fled, or tried to flee the place where he/she was being lawfully detained.

- b) If he/she committed a misdemeanor and he/she has no permanent or known place of residence in Palestine.

Rule number (35): The investigator has to immediately interrogate the arrested suspect. If it is impossible to conduct the interrogation immediately, then the suspect should be detained until he is interrogated. The detention period in such a case should not exceed twenty-four hours.

Rule number (35): The general authority official has only the right to tail and observe a suspected person. If it becomes evident that the person has committed a crime, then the official has the right to start the applicable legal procedures.

Rule number (35): Stopping an individual is considered to be an administrative measure. Thus, it is within the power of the security officials to stop a person whenever they suspect him/her and for any kind of crime.

Rule number (35): Stopping a person gives the police officers the right, even if they are not judicial officers, to ask the person for his/her name, address, and the place he/she is going to. The person cannot be held, even for few minutes, unless the judicial officer discovered by him/herself that there is enough evidence to allow the person's arrest.

3.6 EXAMINATION AND INSPECTION:

The importance of examination and inspection

Rule number (35): Inspection and examination is part of the investigation process and it has a vital importance in criminal investigation for the following reasons:

- a) Determining if a crime was committed.
- b) Identifying the extent of truth in what the parties have to say about the incident.
- c) Verifying if the incident was committed deliberately or by accident.
- d) Identifying the legal description of the incident.
- e) Identifying any mitigating or aggravating factors regarding the incident.
- f) Identifying where and when the incident occurred.
- g) Identifying the motive behind the crime.
- h) Identifying the instrument or tool used to commit the crime.
- i) Identifying the number of who people committed the crime.
- j) Identifying the relationship between the victim and the perpetrator of the crime.
- k) Identifying the criminal style and method of the perpetrator.

Rule number (35): The prosecution member must go to the crime scene within the appropriate time in order to examine and inspect it in the presence of the accused and the witnesses. The prosecution member has to describe the scene and verify what needs to be verified for the interest of the investigation, such as distances and directions related to the crime scene. He/she should look for material traces and prints which might help in revealing the truth. He/she should seek the guidance of whomever he/she sees as beneficial to his inquiry.

Rule number (35): Inspecting and examining the crime scene can be done without the presence of the accused if he/she is not able to attend. A judicial officer can do this without being authorized to do so by the competent prosecution member, as long as the judicial officer was notified that a crime was committed. In such a case, the inspection and examination is considered to be a clue and evidence collection procedure.

Rule number (3): In inspecting a homicide scene, it should be kept in mind that the scene might be spread over many locations. The inspection in such a case usually starts at the place where the dead body was found (the primary crime scene) and then it extends to the other scenes which can include the places where the body was transferred from and the places where physical traces were found.

Rule number (3): In order for the inspection and examination of the crime scene to be productive , the following should be observed:

- a) The crime scene should be secured and controlled by identifying all the people present, and noting all their personal information and their relation to the crime and its parties. In addition, they should be prevented from staying at the crime scene so they do not affect the evidence and traces at the scene. All material related to the incident must also be secured.
- b) To make sure that the traces and instruments at the crime scene are not touched, it is preferable that the person entering the crime scene puts his/her wears gloves.
- c) All the trace experts, each one according his/her area of expertise should be notified. The first expert to be notified is the criminal photographer.

Rule number (36): Due attention and consideration have to be given when dealing with homicide crimes because of their importance. The state and location of the body must be observed and recorded. A full description of any traces or prints on the body must be noted down without touching the body itself. The general condition of the place where the body was found must be described, including the location of its contents, if it was found organized or not, and the condition of the doors and windows.

Rule number (36): It is permitted to seek assistance of specialized experts during the inspection and examination of the crime scene if there are issues that need clarification.

Rule number (36): The prosecution member, when deciding when he/she should examine and inspect the crime scene, should focus on when the inspection is most beneficial to the investigation. If the accused is denying all the charges against him/her, the inspection should take place before the accused is interrogated, because there is a possibility that facing the accused with the results of the inspection might be effective in revealing the truth. If the accused has confessed to the crime, then the interrogation should be completed before the inspection of the crime scene to verify the defendant's story.

Rule number (36): Inspecting and examining the crime scene should be done immediately after the crime is discovered, regardless of the time of day or night. Delay gives the perpetrator of the crime a chance to run away or dispose of the crime tools. If the inspection is conducted at night, lighting equipment should be used and the scene should be re-inspected during the daylight.

Rule number (36): The remarks made during the inspection, by the people attending the inspection, and the witnesses to the inspection, must be noted down in the inspection minutes.

Rule number (36): Inspection and examination of the crime scene should be done in an organized and sequential way:

- a) Identify a starting point to begin the inspection. This should also serve as the conclusion point.
- b) The search and inspection should start from the bigger to the smaller.
- c) Don't move from one place to another place until the prosecution member is sure that first place has been fully inspected and nothing is left uninspected.
- d) Start inspecting and examining the scene from the right side to the left side.

Rule number (36): A sketch of the crime scene should be drawn whenever it is possible. There are no conditions regarding the size of the sketch. The sketch should be clear and balanced, have a focus point, show the main four directions, and show all the items present at the location. It is preferable to use different colors to illustrate. It is important to write the information in a simple way on the sketch and to use signs such as arrows to illustrate directions and distances.

Rule number (36): It is preferable to photograph or videotape the crime scene or . This must be done during the preliminary inspection, which occurs immediately after the crime is discovered, and , again if the accused can show how he/she committed the crime. Photographing and videotaping make it easy to revisit the crime scene and also give the opportunity to focus on a certain location at the crime scene in order to inspect and examine a certain trace or clue.

Rule number (3): The crime scene has to be secured after finishing the inspection procedure so that the investigator can revisit it whenever he/she needs to clarify all aspects of the investigation.

Rule number (3): When the prosecution member is conducting the inspection and examination of the crime scene, it is desirable that he/she has a perception about how the crime was committed. This perception should be derived from information supplied to him/her by the witnesses or from the police investigations.

Rule number (3): The prosecution member should refrain from including final conclusions in his/her inspection report or any other conclusions regarding the inspection he/she conducted. He /she should leave such conclusions until he/she discusses them with the relevant persons, such as the accused and the witnesses, or presents them during his/her arguments before the court.

3.7 RULES GOVERNING THE USE OF EXPERTS AND FORENSIC EXAMINERS

Rule number (3): The prosecution member is allowed to seek the help and assistance of experts who are equipped with the necessary knowledge of, and expertise in, issues that arise in the investigation. For example, if the issue is medical the prosecution member can seek the assistance of a physician, if it is a forgery he/she can seek the assistance of a calligraphy expert, etc.

Rule number (37): The competent prosecutor must seek the assistance of a physician and other relevant experts to prove the status of the crime committed. The authorized physician and the other experts have to conduct their work under the supervision of the investigation authority. The investigator has the right to be present while the experts are conducting their duties, if the investigator deems that the interest of the investigation requires him/her to be present.

Rule number (37): The expert has to submit a technical report concerning his/her work during the period set by the investigation prosecutor.

Rule number (37): The expert has to be limited in his/her work to what is in the authorization order. If the expert comes across issues that the authorization order did not authorize him/her to deal with, then these issues should be disregarded and will have no effect on the investigation. The defense counsel has the right to discuss with the expert aspects of his/her report unless the investigator sees that the issue has already been clarified.

Rule number (37): The accused has the right to seek the assistance of a consulting expert and he/she also has the right to ask to view the documents and papers, provided that such a request does not delay the investigation procedures.

Rule number (37): If the consulting expert's mission requires him/her to photocopy the documents, then he/she should be enabled to do, otherwise it will be considered a violation of the suspects' right of defense.

Rule number (37): The technical expert is permitted to conduct his/her work/analysis in the absence of the accused's attorneys.

Rule number (3): The prosecution member has the power to replace the expert if the latter does not fulfill his/her duties or does not submit his/her report during the specified period.

Rule number (3): Before starting to perform his/her duties, the expert has to swear an oath given by the prosecutor that he/she will perform his/her duties in an honest and dignified manner. If the expert is registered in the legally approved list of experts, he/she does not need to swear the oath.

Rule number (38): The expert has to submit his reasoned report and sign each page of it.

Rule number (38): The defense attorney has the right to request the dismissal of the expert if there are serious reasons for making the request. The request of dismissal must be submitted to the investigation prosecutor and the reasons must be included. The prosecutor has to refer the request to the Attorney General or one of his/her deputies for a decision within three days from its submission. The expert cannot proceed in his/her work when a request for dismissal is submitted unless it was decided otherwise through a reasoned decision.

Rule number (38): The authorization of experts to carry out work is considered to be an investigation measure that stops the statute of limitations, provided the authorization was prior to the expiration of the statute of limitations.. If the authorization was made after the statute of limitations has expired that the expert's acts and work themselves do not stop the statute of limitations; therefore, if the prosecutor authorized an expert to conduct a certain mission and the statute of limitations has passed starting from the date of the authorization without the expert finishing the work he was authorized to complete, such a case would be terminated because the statute of limitations had passed.

Rule number (3): If the expert refuses to do the job he/she is designated to do then the general prosecution has to notify the body or institution the expert works for in order to take the necessary disciplinary measures against him/her.

The use of forensic doctors:

Rule number (38): Forensic doctors can be used for the following:

- a) To examine persons who were injured by a criminal act in order to describe the injury, its cause, and the date it was inflicted, , in addition to the tool used to inflict the injury, and the time it will need to heal.
- b) To perform autopsies on the dead bodies of the victims of criminal cases in cases where there is a question about the cause of death, in order to determine the cause of death, and the relation between the death and the injuries inflicted on the body.
- c) To exhume the bodies of people who died under suspicious circumstances in order to perform an autopsy on them.
- d) To give technical opinions regarding the criminal incidents and to evaluate the responsibility of doctors.
- e) To give age estimates in cases required by the law, or where this information is needed for investigation, such as estimating the age of delinquent juveniles, or the victims of rape, or any other cases where it is impossible to obtain a birth certificate or a certified copy of such a certificate.

Rule number (38): If the prosecution member decides to assign one of the forensic doctors for a certain job, he/she should notify the doctor directly of the assignment and send him/her the medical records available.

Rule number (38): The prosecution member can assign serologists and other forensic experts to conduct blood and semen tests and also to compare hair samples and fibers. They can also test samples taken from the bodies of the victims to learn about the diseases they suffered from.

Rule number (38): The prosecution member can use chemists in the universities and other certified and approved institutions to analyze seized materials in criminal cases such as narcotics, poisons, ammunition and any other materials that need to be analyzed and tested.

Rule number (3): Forgery experts can be used to examine documents that are suspected of being forged, to examine and compare handwriting, and to test counterfeit banknotes and money.

Rule number (3): If the prosecution member discovers a new point after the medical report has been submitted, and this point has to be verified by the forensic doctor, then the prosecution member must send the doctor a memo describing the issues that need to be verified. The prosecution member has the right to call upon the forensic doctor to discuss with them the reports they submitted regarding the work they were assigned to do.

Rule number (3): If the General Prosecution decides to assign the forensic doctor a certain job then it has to notify him/her directly of the assignment, and send him/her the papers and documents related to the assignment, such as the medical records and X-ray photos. Such documents have to be accompanied with a memo that describes the circumstances of the crime and the issues that need to be clarified.

Rule number (39): If the investigation requires the forensic doctor to go to the crime scene to conduct urgent work, it is the duty of the prosecution member to accompany him/her whenever it is possible, or he/she has to order a judicial official to accompany the doctor and to take all steps necessary to enable him/her to do his/her job.

Rule number (39): When there are no criminal suspicions, an autopsy is a procedure that offends most people, especially the family of the deceased, and it also overburdens the forensic doctors without any due reason. Therefore, the prosecution members should not order an autopsy unless there is no other choice but to perform it. They should assess the circumstances of each case individually.

Rule number (39): The prosecution members should allow the burial of bodies as soon as possible without any undue delay. When assigning the forensic doctor to perform autopsies, prosecution members should attach a burial permit to the assignment form so the body can be buried after the autopsy is performed, unless there are reasons not to do so. They also should inquire into receiving a summary report of the autopsy before the doctor drafts his/her full autopsy report.

Rule number (39): In the case of body exhumation, the prosecution member should attend the procedure with the forensic doctor. It is also important to invite some of the deceased family members and the undertaker who buried him/her to witness the exhumation. Such individuals should be asked about the dress the deceased is wearing and the condition of the body at the time of its burial and about any other information that would clear any uncertainty about the identity of the body.

Rule number (39): An autopsy should not be performed at night . It is also forbidden to inspect the corpses at night, unless there is a pressing need to determine the time of death through the inspection of the body. The General Prosecution has to indicate the reasons that compelled such inspection during the night hours.

3.8 RULES GOVERNING THE PRECAUTIONARY DETENTION:

The importance of precautionary detention:

Rule number (39): The basic rule is that individual liberty and freedom must not be violated through imprisonment unless the individual has committed a crime and a judicial judgment has been pronounced. Until such a judgment is pronounced, the person is to be considered innocent. Nonetheless, the law allows the violation of individual freedom in order to protect the general interest by constraining such freedom through the precautionary detention of the accused. This can happen when there is sufficient evidence against the accused and it is feared that he/she will become a fugitive, and also if it is obvious that the accused will affect the investigation into the crime through evidence tampering and/or affecting the witnesses to prevent them from testifying against him/her or to make them testify in his/her benefit.

The order to detain the accused in such a case would also play a positive role in lessening the public outrage that might accompany certain types of crimes and thus prevent the revenge lust.

The detention of the accused can be considered as a measure to protect the life of the accused from the revenge of the victim's family and tribe. Leaving the accused without protection and in a non-secured place would in some cases make him/her vulnerable to the victim's family revenge.

Precautionary detention also makes the accused always available for interrogation and there to face witnesses, which can help the investigation reach the truth in the fastest time possible.

Finally, precautionary detention serves as a guarantee that the penal sentence will be imposed on the convict. Otherwise, he/she might think of escaping the sentence, especially if he/she is expecting a severe sentence.

Rule number (39): The official in charge of the police station has to keep the accused in the two following instances:

- a) If he/she committed a felony, fled or tried to flee the place where he is being lawfully detained.
- b) If he/she committed a misdemeanor and he/she has no permanent or known place of residence in Palestine.

Rule number (): Precautionary detention must be imposed in all felonies and theft misdemeanors, and other crimes that violate the general security, whenever there is sufficient evidence against the accused, unless the case circumstances have elements that justify the release of the suspect. The release of the suspect has to be taken into consideration whenever the case subject matter needs prolonged periods of investigation. Female s should not be detained except in very severe crimes.

Rule number (): The accused should not be detained under arrest for more than twenty-four hours, in all cases. The General Prosecution should be immediately notified of the arrest.

Rule number (4): If the investigation procedures require the continuation of the accused's detention for more than twenty-four hours, then the prosecutor has the right to request the conciliation court judge extend the detention for a period not to exceed fifteen days.

Rule number (40): The Conciliation Court judge, after hearing the arguments of the prosecution representative and the accused, has the power to detain the accused for a period not exceed fifteen days, and he/she also has the power to renew the detention periods for no more than forty-five days.

Rule number (40): No person shall be detained for more than forty-five days unless a request, is submitted at the end of this period by the Attorney General or one of his/her assistants to the competent first instance court.

Rule number (40): The General Prosecution has to bring the accused before the competent court before the three months' detention period expires, in order to extend his/her detention for another period.

Rule number (40): The detention periods must not, under any circumstances, exceed the period of six months, and the accused must be released immediately unless he/she is referred to the competent court on order to try him/her.

Rule number (40): The accused must not be detained, under any circumstances, for a period that exceeds the prison sentence stated for the crime he/she is charged of.

Rule number (40): A detention order cannot be issued against the accused while he/she is absent unless the judge is convinced, on the basis of the medical reports submitted to the court, that it is impossible to bring the accused before him/her because of illness.

Rule number (40): A copy of the detention order has to be given to the warden when handing over the accused to the correction and rehabilitation center, after he/she (the judge)) signs the original order.

Rule number (4): If the investigation requires the arrest or the precautionary detention of a general authority official or one of its employees, the General Prosecution has to notify the administration that employees of the administration have been subjected to such measures.

Rule number (4): Every detainee has the right to contact his/her family and seek the help of an attorney.

Rule number (4): The correction and rehabilitation center warden is not permitted to allow anyone to contact the detainee unless a written approval issued by the General Prosecution is provided. If the General Prosecution has provided this approval, the warden has to note in the center's notebook the name of the person allowed to contact the accused, the date and time of the visit, and the substance of the permit. All this has to be considered without any prejudice to the right of the detainee to meet with his/her attorney, absent the presence of anyone else.

Rule number (41): No person shall be detained or imprisoned in any place other than the correction and rehabilitation centers and the detention places designated by the law. The warden of any center is not permitted to accept any detainee unless there is an order signed by the competent authority, and he/she cannot keep the detainee for a period that exceeds the period described in the order.

Rule number (41): Prosecutors and chief judges of appellate and first instance courts have the right to inspect the correction and detention centers located within their jurisdiction in order to make sure that there are no inmates who are held illegally. They also have the right to view the centers' registers and the detention and imprisonment orders, to take copies of such orders, and to contact any detainee or inmate in order to hear any complaint he/she might have. Wardens and other officers are obliged to provide the inspectors with all needed help in order to obtain the information they ask for.

Rule number (41): Each detainee or inmate has the right to submit a written or oral complaint to the General Prosecution, through the warden of the correction center who is obliged to accept it and inform the General Prosecution about it, after registering the complaint in a special registrar.

Rule number (41): Anyone who has it come to his/her attention that a person is detained or imprisoned illegally or detained in a place which is not designated for such purpose, must inform the

Attorney General or one of his/her assistants, who then has to order an investigation into the matter and the release of the detainee.

Rule number (41): Every detainee or inmate who is being held in accordance with the law in one of the correction or detention centers has to be submitted to personal identification procedures. He/she has to be photographed, checked, and fingerprinted in order to register the necessary information for proving his/her identity.

Rule number (41): The victim, or the plaintiff in a civil law suit, cannot request the detention of the accused, and their arguments are not to be heard in the discussions related to his/her the release.

Rule number (41): The prosecution members have to give due consideration to the circumstances surrounding the cases before them and they must carefully consider the need for imposing precautionary detention on the accused. In doing so, due consideration must be given to the suspect's social circumstances and his/her family duties, in addition to the seriousness of the crime he/he is accused of committing.

Rule number (4): The prosecution members have to request the extension of a precautionary detention according to the dates specified by the law or the requests may be dismissed. They also have to personally request the extension in important cases in order to justify the extension request before the competent judge and not leave such an important issue to the police or one of the criminal investigators.

Rule number (4): If the accused was put under precautionary detention in a criminal case, and there is a need to detain him/her in another criminal case, then the prosecution member has to order the accused's precautionary arrest, which starts after his/her first detention ends. The arrest order in the second case has to be noted clearly on the first case file.

Rule number (4): For the benefit of the investigation, the prosecutor has the power to ban any communications with an accused who is charged with a felony for a period of time not to exceed ten days. This period can be renewed only once. This ban does not include the suspect's attorney who has the right to communicate with his/her client any time he/she wishes and without any constraints or scrutiny. The General Prosecution should permit the attorney's visits in writing.

Rule number (42): If the General Prosecution has ordered the release of the accused, then it has the power to order his/her arrest if the evidence against him/her becomes more compelling or if he/she has violated the conditions of his/her release.

3.9 RULES GOVERNING THE DELEGATION OF INVESTIGATION POWERS:

Rule number (42): The Attorney General or the competent prosecutor has the power to delegate and authorize one of the competent judicial officers to carry on any investigation procedures in a specific case, excluding the interrogation of the accused in felony crimes.

Rule number (42): The general delegation of powers should not be delegated by a prosecutor to any police officer.

Rule number (42): The person delegated has all the powers of the prosecutor, within the limits of the delegation.

Rule number (42): The person who issues the delegation of powers has to have the legal power to conduct the procedure that is the subject of the delegation. If the person is not empowered to conduct the procedure him/herself for any reason, such as lack of jurisdiction, then he/she cannot delegate such a power to the judicial officer.

Rule number (42): The person authorized by the delegation of powers to conduct a certain procedure has to have geographical and subject matter jurisdiction. It is not enough that the person who issued the delegation of powers is empowered to do so. It is also important that the person authorized is empowered by the law to be delegated the powers in question. Therefore, the delegation of investigation powers to state officials other than the judicial officers is considered void and null.

Rule number (42): There is nothing that prevents a judicial officer who has been delegated certain powers from seeking the help of his/her assistants in order to execute his/her delegated duties, even if such assistants are not judicial officers, provided that they conduct the work under his/her direct supervision. In any case, the person delegated the powers cannot delegate these powers to another person, unless the delegation order gives him/her such a right explicitly.

Rule number (4): The power of a judicial officer can be general, which includes all kinds of crimes, or it can be limited to certain kinds of crimes. The judicial officer who has been delegated the power to carry out certain procedures has to have the power to carry out such a procedure. Therefore a judicial officer with limited powers cannot be delegated the power to conduct a procedure regarding a crime which does not fall within his/her power.

Rule number (4): The delegation of powers is not conditioned on the acceptance of the person who has been delegated the power, because judicial officers are obliged to execute the orders of the investigation authority. Thus a judicial officer cannot refuse the order to question a witness, conduct a search or other such procedures. If a judicial officer feels embarrassed about carrying out the order; for example, if there is a family relationship or if there is animosity between him/her and the accused, then he/she is under the duty to relieve him/her self from carrying out the order.

Rule number (43): The law does not provide for a certain form to be used in the delegation of powers as long as the order is issued by a competent authority. It also does not stipulate certain phrases to be used, as long as the order is in writing, dated and signed by the person who issued it. The order has to be explicit in delegating the powers.

Rule number (43): The verbal delegation of powers is considered invalid and cannot be corrected by the subsequent writing of an order, if any procedures or actions were taken upon the verbal order. The judicial officer is not required to carry with him/her the original delegation of powers order while executing his/her duties, because such a requirement might hinder the investigation process, which requires immediate actions to be taken. Thus it is permitted to fax the delegation of powers, as long as it is in written form and it is legible.

Rule number (43): The delegation of powers order has to contain the name, post and signature of the person who issued it as well as the post of the judicial officer to whom it is addressed. It also has to have the name of the accused, the charges against him/her, and the actions that need to be taken.

Rule number (43): The delegation of powers order has to contain the date of its issuance in order to make certain that the action is taken after the order was issued not before it.

Rule number (4): The competent person must sign the delegation of powers order as it is the only admissible evidence that the order was issued by the competent person. Without a signature, this could not be proven in any other way. The fact that the order is drafted in the person's handwriting, or that there is his/her testimony that he/she issued it, cannot substitute for the signature requirement.

Rule number (43): A valid delegation of powers order is considered to be an investigation procedure in itself, and it has all the effects that law gives to investigation procedures, such as stopping the statute of limitation.

Rule number (43): The person who has been delegated the powers is considered to have the same powers, authorities, and duties that the investigators have. He/she has to observe the following requirements:

- a) To be limited to the powers and duties delegated to him/her.
- b) To respect the procedural rules governing the investigation.
- c) To be limited by the period stated in the delegation order.

3.10 RULES GOVERNING RELEASE ON BAIL

Mandatory release:

Rule number (43): When the causes for detaining the accused cease to exist, the competent authority has to release him/her immediately without exercising any discretionary power. This is applicable to the following circumstances:

- a) The General Prosecution has decided to stop processing the case; it is mandatory to release the accused immediately utilizing an order issued by the Attorney General or one of his/her assistants.
- b) If it was proven to the General Prosecution, through its investigations, that the incident does not constitute a crime that permits the detention of the accused, such as if the incident constitutes an infraction punishable by fine only.
- c) If the detention period determined by the competent authority has expired and no extension is provided.
- d) If the six months' period provided by the law has expired and the accused has not been referred to trial before the competent court.
- e) If the accused was found innocent, was sentenced to pay a fine, or was put on probation, he/she should be released immediately, even if the General Prosecution has appealed the verdict.
- f) If the detainee is sentenced for a period equivalent to, or less than, the period he/she spent in precautionary detention.

Discretionary release

Rule number (4): If the release of the accused constitutes a mandatory measure as provided by the law, then his/her release falls under the discretionary power of the competent authority. If the reasons for detaining the accused cease to exist, and the competent authority finds that the interest of the investigation does not require such detention anymore, then it has the power to release him/her. The following issues must be considered:

- a) If the detainee was a former convict, it is hard to order his/her release because he/she constitutes a danger: he/she has not learned from his/her past conviction and it did not stop him/her from committing another crime. On the contrary, if the detainee has no criminal past, then it is most probable that he/she should be released.
- b) The medical condition of the detainee might play a major role in his/her release if it is proven through medical reports that his/her health cannot withstand the detention conditions or his/her health will deteriorate as a result of such detention because of the lack of medical care.
- c) If the security and the emotions of the victim and his/her family were the causes behind the detention order, then the reconciliation of the parties, and the victim's dismissal of his/her complaint and his/her consent to the release would create a logical reason for the competent authority to release the accused.

Rule number (4): The accused has the most to benefit from his/her release and so he/she has the right to ask competent authority for his/her release. The accused can submit such a request by him/herself or through his/her attorney unless there is an *in absentia* court judgment against him/her, in which case, it is not permitted to release him/her on bail after being apprehended.

Rule number (4): The law does not require a specific format for the release request submitted to the competent court or the General Prosecution. It only has to be in writing and signed by the petitioner, with the date and all other relevant, such as the name of the accused, his/her place of residence, the number of the case, the charges against him/her, and the justifications for the release.

Rule number (44): The basic rule is that the competent authority, which has the power to grant the release of the accused, is the General Prosecution, as it is the authority that ordered the detention and it has the power to assess if the reasons for the detention still exist. All this is conditioned on the fact that the investigation is still under the authority of the General Prosecution. If the case is transferred to the competent court then the court has the power to review the release request.

Rule number (44): The prosecution members have to personally supervise the release process. The reports indicating the occurrence of the release should be kept in the case file.

Rule number (44): If the General Prosecution orders the release of the accused, it still has the power to rearrest him/her and put him under precautionary detention, if the evidence against him/her grows or new circumstances emerge

Rule number (44): A bail request must be submitted to the competent judge who has the power to order the detention of the accused, on the condition that the General Prosecution did not refer the accused to the court. A release on bail request has to be submitted according to the following requirements:

- a) The bail request has to be submitted to the conciliation judge within the first forty-five days of the detention.
- b) After forty-five days have passed, the request has to be submitted to the first instance court regardless of whether or not the accused was referred to the court.

Rule number (44): After the referral of the detainee to the court to stand trial, the bail request has to be submitted to the same court, even if there is no hearing date set. The court gains such authority the moment the indictment list is registered at the court clerk's office.

Rule number (44): If the competent court convicted the accused, then it is the same court that has the power to release him/her on bail. The court's decision regarding the bail request may be appealed before the appellate court that the trial court's judgments are appealed to.

Rule number (44): The court can only look into the bail request in the presence of the prosecutor and the detainee (whether he is a suspect or a convict). If the detainee is absent his/her lawyer can substituted for him/her.

Rule number (4): After verifying the presence of the defendant, the court hears the arguments of both sides regarding whether it should grant or deny the bail request. After the arguments are done, the court has the power to decide the following:

- a) To release the detainee on bail, in which case the correction or detention center warden has to release the detainee immediately, unless he/she is detained on other charges.
- b) To refuse the detainee release on bail.
- c) To reassess the prior order issued by the same court.

Rule number (449): If the court orders the release of the accused on bail, then he/she has to sign the bail document that contains the amount of money determined by the court. The document can also be signed by his/her guarantors if the court deems it acceptable.

Rule number (450): The guarantor has the right to submit a request before the competent court asking it to invalidate the whole bail bond or the part related to him/her.

Rule number (451): The court, when viewing such a request, has the power to decide the following:

- a) To invalidate the whole bail bond or the part related to the requester.
- b) Order the redetention of the accused, unless he/she provides another guarantor or a cash guaranty, the amount of which is determined by the court.

Rule number (452): The competent court has the power, if it is proven that the detainee violated the conditions for his/her release as stated in the bail bond, to decide the following:

- a) Issue a summons order against the released detainee and order his/her detention.
- b) Order the payment of the full amount of the bail bond if it was not already deposited at the courts cashier.
- c) Order the seizure of the cash guarantee or its amendment.

Rule number (453): If the guarantor dies before the collection or seizure of the bail bond amount, his/her heirs are to be relieved from any obligations related to the bail. In this case, the court that granted the release can order the detention of the accused, unless he/she provides another guarantor or a cash guaranty.

Rule number (454): The General Prosecution and the accused are both given the right to petition the competent court to reassess its decision regarding the bail request. The request has to be submitted to the same court that issued the decision regarding the bail on the condition that one of the following situations is present:

- a) The discovery of new facts related to the case.
- b) A change in the circumstances present when the court issued its decision regarding the bail request, such as the reconciliation between the accused and the victim.

Rule number (455): The court, when reassessing its decision regarding the bail request, and after hearing both the arguments from both sides, has the power to decide the following:

- a) Order the release of the detainee on bail.
- b) Cancel the release on bail order and redetain the accused.
- c) Amend its prior order.

Rule number (456): The court's decision regarding the bail request can be appealed by the General Prosecution or the detainee, through a petition submitted to the competent court. The competent court has the power to release the detainee on bail, cancel the release on bail order and order the detention of the accused, or amend the prior order of the court.

Rule number (457): The law allows either the General Prosecution or the accused to submit the request for reassessing the decision regarding the release on bail, according to the situation stated above.

Rule number (458): The accused or another person can provide the bail bond. It is not permitted to pay the bond amount in installments. The court has the power to release the detainee without a cash bond, after providing a guarantor, or after receiving a personal commitment from the accused him/herself.

Rule number (459): If it is convinced that the accused cannot provide a bail bond, then the court can substitute the bond with a personal commitment from the accused that he/she will report to the police station on the dates determined in the release order.

Rule number (460): The court has to ask the accused to select a place of residence other than the one where the incident took place.

Rule number (461): The prosecution member has to be present during bail hearings and all the formal and substantive pleas that supports its standing regarding the denial of bail for the accused.

3.11 RULES GOVERNING THE COMPLETION OF THE INVESTIGATION AND THE ACTION TO BE TAKEN BY THE GENERAL PROSECUTION:

Referring the accused to the competent court:

Rule number (462): If, after concluding the investigation a prosecution member finds that the incident constitutes an infraction, then he/she has to refer the case file to the competent conciliation court in order to try the accused.

Rule number (463): If after concluding the investigation the prosecutor finds that the incident constitutes a misdemeanor, then he/she should direct the charges to the accused and refer the case file to the competent conciliation court in order to try him/her.

Rule number (464): If the prosecutor finds that the incident constitutes a felony, then the prosecutor has to charge the accused and send the case file to the Attorney General or one of his/her assistants.

Rule number (465): If the Attorney General or one of his/her assistants finds that the incident does not constitute a felony, but rather it constitutes a misdemeanor or an infraction, then he/she should order the amendment of the charges and resend the case file to the related prosecutor in order to have it referred to the competent conciliation court.

Rule number (466): If the Attorney General realizes that other investigations should be made, he/she must send back the case file to the related prosecutor, to have the investigations carried out.

Rule number (467): If the Attorney General or one of his assistants finds that the indictment is correct and complete, then he/she has to order the referral of the accused to the competent court for trial.

Rule number (468): The referral to the court order has to contain the name of the claimant, and the name of the accused, his/her age, place of residence, date of birth, and the date he/she was detained, in addition to a summary of charges, the date the crime was committed, the type of crime, and the law article numbers that enumerate the actions committed.

Rule number (469): The prosecutor should prepare the indictment sheet. This has to include the name of the accused, the date of his/her detention, the type of crime he/she is charged with, the date the crime was committed, and the law article number enumerating the acts committed, in addition to the victim's name and the names of the witnesses.

Rule number (470): The prosecution member has to register all the cases he/she receives and organize an indictment sheet for submission to the competent conciliation court, if the crime constitutes an infraction or a misdemeanor. If the crime constitutes a felony, then the prosecution

member has to organize a draft indictment sheet and submit it with the case file to the Attorney General's Office for review by senior prosecutors.

Rule number (471): The senior prosecutor has to review the file and prepare a legal memo, which summarizes the facts of the case, and submit it to the Attorney General with the draft indictment sheet. If the senior prosecutor finds that the legal work of the prosecution member is correct, he/she has to approve it, and if it is not, he/she must correct the work and organize a new draft indictment sheet to be submitted to the Attorney General for the ultimate decision.

Rule number (472): All legal memos must be drafted in writing using ink pens, have a date, and be signed by the relevant prosecution member. All memos have to be kept in the case file.

Rule number (473): If the prosecution members have to start the litigation process for cases where the suspects are under precautionary detention, such action should not be delayed pending the detention of other suspects. The rules governing the fugitive suspect are to be applied so as not to prolong the detention period without just cause. .

Rule number (474): It is not permitted, when giving the criminal act its legal description, to limit it to some of the crime's elements and neglect another elements. It is also forbidden to ignore the existence of factors that can affect the legal description of the crime.

Rule number (475): The litigation process cannot be initiated before all the case's elements are present. This requirement prevents any unnecessary continuances by the court or the alteration of the legal description of the crime.

Rule number (476): If the initiation of the litigation process depends upon the trial results of another criminal case, the prosecution member must delay the initiation of the litigation process until the court concludes the other case.

Rule number (477): If the initiation of the litigation process is pending on the conclusion of a personal status issue, then the prosecution member has to give the accused, or the plaintiff in a civil case, or the victim enough time to bring the matter before the competent authority. If the time given by the prosecution member has passed without settling the personal status issue, the prosecution member can either set another time limit, if he/she finds that there are compelling reasons to do so, or can initiate the litigation process.

Rule number (478): Only the Attorney General or one of his/her assistants can initiate the litigation process against state officials or the members of the judicial police if such person committed a crime while acting in his/her official capacity or during the performance of his official duties.

Halting the proceedings in the case:

Rule number (479): If after concluding the investigation, the prosecution member finds that the action committed does not constitute a crime, or the case cannot be prosecuted because of the statute of limitations or the death of the perpetrator, or the crime was dismissed by a general amnesty, or the accused was tried and sentenced before for the same action, or the accused is not legally responsible for his/her acts due to his/her age or mental capacity, the prosecution member has to express this opinion in a legal memo to the Attorney General for legal action .

Rule number (480): The case must be referred to one of the senior prosecutors at the Attorney General's Office so he/she can prepare a legal memo concerning the incident and submit it to the Attorney General or one of his/her assistants to take the necessary action. If the Attorney General or one of his/her assistants finds that the opinion of the senior prosecutor is correct, then he/she should issue an order to halt the proceedings in the case and release the accused if he/she is under detention.

Rule number (481): If the halting of the procedures is because of the suspect's mental capacity, the Attorney General has the power to communicate with the relevant institution in order to provide him/her with medical care.

Rule number (482): If the Attorney General or one of his/her assistants finds that the action-committed does not constitute a crime, or the case cannot be prosecuted because of the statute of limitation, or the accused was tried and sentenced before for the same action, or the accused is not legally responsible for his/her acts due to his/her age or mental capacity, or because evidence is absent, or the identity of the perpetrator of the crime is not known, then the Attorney General has to order the halting of the proceedings in the case.

Rule number (483): If it is proved to the prosecution member, after the conclusion of the investigation and the clearing of all the circumstances related to the criminal incident, that the charges are absolutely not applicable to the accused, or there is no opportunity for convicting the accused, then he/she has to order the halting of the proceedings in the case. The prosecution member must not try the accused and let the court acquit him/her of the charges, because the trial in itself constitutes a very serious process that affects the suspect's reputation and could also burden him/her financially and emotionally.

Rule number (484): The halting of the proceedings, as related in the case memo, should mention the incident, a thorough discussion of all the investigations conducted, and the reasons behind the prosecution's decision to show that the prosecutor is fully aware of all the aspects of the case.

Rule number (485): The order to halt the proceedings can be issued for the following reasons:

- a) The inability to identify the perpetrator of the crime. A request to the criminal police to continue their search for the perpetrators should be made.
- b) The lack of evidence.
- c) The incident did not take place.
- d) If the incident was not important; for example, if the accused is the victim's brother, and the latter dismisses his complaint after reconciling with his brother.
- e) When it is not permitted to initiate the criminal case, as in crimes that need a complaint to be submitted to initiate criminal investigation, and no complaint was submitted to the competent authority.
- f) The expiring of the statute of limitations that governs the crime or the death of the perpetrator.

Rule number (486): The General Prosecution has the power to halt the proceedings in the case, even if all the elements that constitute the crime were present, in order to preserve the general good; for example, if the crime was a very minor, one or the victim is related to the accused and they reconciled. The halt of the proceedings in cases of minor crime is permanent.

Rule number (487): The General Prosecution has the right to summon the father or guardian of any minor suspect, when it halts the proceedings in the case, in order to notify him/her of the severe consequences if the minor suspect repeats such acts.

Rule number (488): It is not permitted to halt the proceedings in a case before inspecting all the facts and evidence related to it. If the prosecution member has suspicions regarding the evidence, he/she cannot halt the proceedings based on these suspicions only. He/she has to complete the investigation in the most reasonable time possible in order to confirm or dismiss such evidence, because it is the right of the accused to be cleared of the charges against him/her completely.

Rule number (489): The order to halt the proceedings is considered to be a judicial judgment. Thus, it has to be documented in writing and it has to be reasoned. The prosecution member has also to include the facts of the case and discuss the evidence the order.

Rule number (490): When the order to halt the proceedings has been given, notification must be given to the victim, or the plaintiff in a civil lawsuit. If the victim or plaintiff has died, the notice should be sent to his/her heirs. The notification form has to be kept in the case file after being signed (and returned?) by the person to be notified.

Rule number (491): The plaintiff in a civil lawsuit has the right to petition the Attorney General regarding the halting order.

Rule number (492): The Attorney General has to rule on the petition within one month of its submission through the issuance of a final decision.

Rule number (493): The plaintiff in a civil lawsuit has the right to appeal the Attorney General's decision on a criminal case before the court that has the jurisdiction to try the case. The court ruling in such a case shall be final. If the court has dismissed the Attorney General's decision, then the case has to be heard by another panel or judge

Rule number (494): When the proceedings are halted temporarily, as when they are insufficient or the perpetrator could not be identified, the Attorney General has the power to cancel the halting of the proceedings order if new evidence emerges, or the perpetrator is identified.

Rule number (495): If the testimony of a new witness, that was not summoned or heard by the general prosecution in the past, could strengthen the existing evidence and lead to the truth, then such testimony can be considered new evidence.

The course of action when the case documents are stolen or damaged:

Rule number (496): If the original copies of the papers and documents related to the investigations and procedures taken in the case were lost, damaged, or stolen before the issuance of a decision, the General Prosecution has the right to rearrange and reproduce such papers.

Rule number (497): If there is no indictment decision or it cannot be found, then the procedures documented in the lost or damaged papers have to be repeated. If some papers and documents are lost from a homicide case file, such as the inspection report and the testimonies of the witnesses, the prosecutor has to re-question the witnesses, re-inspect the scene and document why such procedures were repeated.

CHAPTER 4 THE TRIAL PHASE

4.1 GENERAL RULES

Jurisdiction in Criminal Cases:

Rule number (498): The court's territorial jurisdiction is based on the location where the crime was committed, the suspect's place of residence, or the place where the suspect was arrested. All these three locations have the same defining impact on jurisdiction.

Rule number (499): In cases of an attempted crime, the crime is considered to be committed in each and every place where acts of preparation for the crime took place. In continuous crimes, the place of committing the crime is every place where the continuous act took place. In the case of habitual and consecutive crimes, the place of committing the crime is any place where any one of these acts was committed.

Rule number (500): If a crime, which falls under the provisions of the Palestinian law, was committed outside of Palestine, and the perpetrator of such a crime has no place of residence in Palestine, and he/she was not arrested in Palestine, then the case against such a person has to be brought before the competent first instance or conciliation court in Jerusalem.

Rule number (501): If parts of the criminal act fall within the jurisdiction of the Palestinian courts, and other parts fall outside such jurisdiction, and the act would have constituted a crime under the Palestinian penal code i.e. it was fully committed under the Palestinian courts' jurisdiction, then every person who committed any parts of such an act within the Palestinian court's jurisdiction can be tried according to the Palestinian penal code, as if he/she has committed the whole act under the jurisdiction of the Palestinian courts.

Rule number (502): The conciliation courts have the power to try all infractions and misdemeanors that fall within their territorial jurisdiction, unless the law provides otherwise.

Rule number (503): The first instance court has the power to try all the felonies and misdemeanors related to it that are referred to the court by the Attorney General or one of his/her assistants.

Rule number (504): If a single act constituted more than one crime, or if more than one crime was committed for a single purpose, and the crimes were interrelated with each other in a way they cannot be split, then if one of these crimes falls under the first instance court's jurisdiction, the court in such a case has the power to try all the cases.

Rule number (505): If the first instance court finds that the incident as it is described in the indictment sheet constitutes a misdemeanor, it should rule that it has no jurisdiction over the case and refer it to the competent conciliation court.

Rule number (506): If the conciliation court finds out the crime it has before it constitutes a felony that falls under the jurisdiction of the first instance court, the conciliation court has to rule that it is not the competent court to try the case and refer it to the General Prosecution.

Rule number (507): If the conclusion of the criminal case is based on the adjudication and conclusion of a personal status issue, the criminal court has the power to stop the case proceedings and give the accused, or the plaintiff in a civil lawsuit, or the victim a period of time in which to submit the issue in question to the competent court. Such a procedure does not prevent the implementation of precautionary and urgent measures.

Rule number (508): If, during the conciliation court's hearing session, an infraction or misdemeanor is committed, the conciliation judge has the power to try the perpetrator immediately and sentence him/her after hearing arguments from the prosecution's representative and the defense. The ruling of the judge in such a case can be contested through post judgment motions described in the law. If the crime committed during the hearing constitutes a felony, the judge has to organize a minutes report regarding the incident and refer the accused to the General Prosecution.

If any crime, regardless of its type, is committed during a hearing session before the first instance, appellate or high court, the court has to organize a minutes report regarding the incident and refer the accused to the General Prosecution.

The trial of the accused in such cases cannot be based on the condition that a complaint has to be submitted, even if the crime committed is of the kind that requires such an action.

Rule number (509): The rules of jurisdiction in criminal cases are related to the public order and thus can bring before the court any of the adversaries, regardless of the status of the case, even if the case is before the cassation court, and the court has to settle any jurisdiction issues itself, even if these issues were not brought up by the parties

Rule number (510): If the conclusion of a criminal case is pending on the conclusion of another criminal case, the court has to halt the proceedings regarding the first case until the second one is concluded.

Rule number (511): The competent criminal court has the power to settle all the issues, where the conclusion of the criminal case is pending on (the conclusion of another criminal case?), unless the law provides otherwise.

Jurisdiction in civil cases:

Rule number (512): The competent criminal court has the power to adjudicate a civil lawsuit stemming from the crime regardless of its value. The civil lawsuit has to be litigated after the criminal one.

Disputes over jurisdiction:

Rule number (513): The subject matter jurisdiction is determined according to the legal description given to the incident by the General Prosecution, not according to the sentence imposed by the judge after trying the case.

Rule number (514): If a crime was committed and two different courts start trying it on the basis that both courts have jurisdiction over it, or two courts decide that they don't have jurisdiction over it, or if a court decides that it has no jurisdiction over a case referred to it by the General Prosecution,

this would result in a dispute over jurisdiction that would obstruct justice. Such disputes have to be solved through the appointment of the competent court.

Rule number (515): All the parties concerned have the right to request the appointment of the competent court through a petition submitted to the cassation court. The petition must be sent with all the papers that support the request. If the request is related to a dispute between two conciliation courts, which are under the same first instance court, then the request has to be submitted to the first instance court.

Rule number (516): If the request to appoint the competent court is submitted by the plaintiff, or the defendant in a civil lawsuit, the chief judge of the court to which the request is submitted has to order that a copy of the request be given to the other party and the General Prosecution has the duty to notify the two courts that have the jurisdiction dispute of the request.

Rule number (517): The General Prosecution or the accused, or the plaintiff in a civil lawsuit, has to give his/her opinion regarding the request to appoint the competent court within one week of his/her notification of the request.

Rule number (518): If two courts decide that each one of them has jurisdiction over the case, and they were both notified that a request to appoint the competent court was submitted, then both courts have to halt the trial proceedings, or the issuance of judgment in the case, until the competent court is appointed.

Rule number (519): If a jurisdiction dispute occurs that results in the issuance of two different judgments in one single case, the execution of both judgments has to be halted until a decision regarding the appointment of the competent court is issued.

Rule number (520): If the accused, or the plaintiff in a civil lawsuit, is not found to be correct in submitting the request to appoint the competent court, then the court has the power to fine him/her with a fine not to exceed fifty JDs or the equivalent, or can order him/her to compensate the affected party according to his/her request.

Rule number (521): The court reviews the request submitted to it after reviewing the General Prosecution's opinion regarding the matter, unless the court sees otherwise. Then the court issues its decision appointing the competent court. It has also the power to rule on the correctness of the procedures and action taken by the court that was found incompetent to try the case.

Referring the case to another same level court:

Rule number (522): In felony and misdemeanor cases, the competent appellate court has the power to decide, according to a request by the Attorney General, to refer the case to another same level court, if it finds that trying the case by the competent court would violate public security.

Rule number (523): The court of appeals reviews the referral request without a hearing. If the court decides to refer the case to another court, it has to confirm the correctness of the procedures taken by the competent court that was trying the case.

Rule number (524): The refusal to refer the case to another court does not prohibit the Attorney General from submitting a new request for its referral based on new reasons that emerge after the refusal decision.

Notifying the parties:

Rule number (525): Judicial papers have to be served through a server, or one of the police members, and they must be delivered to the relevant individual personally or at his place of residence. If it is impossible to do so, then one of his/her family members who is living with him/her, and who by his/her appearance indicates that he/she is eighteen years old or older, may be notified. The competent court's clerks' office is to organize any notification mechanism.

Rule number (526): If the person to be notified or one of his family members refuses to accept the notification papers or refuses to sign the copies, then the server or the police member has to document this on the original note. The court has the right to consider such a notification as valid.

Rule number (527): If the address of the person to be notified is located within the jurisdiction of another court, the judicial papers shall be given to the clerks' office of that court to be served, and then returned to the competent court that issued the papers accompanied by a report on the procedures that were taking regarding the notification by the court that had the papers referred to it.

Rule number (528): The notification form should be produced in two identical copies, one of which is to be handed to the person to be notified or the person described by the law. If there is more than one person to be notified, then each person must be given a copy of the notification form.

Rule number (529): No judicial papers shall be served before 7:00 am or after 7:00 pm, or during official holidays, unless in cases of urgency, provided that there is a written permission issued by the conciliation judge or the chief judge of the court.

Rule number (530): The notification form should include the following information:

- a) The name of the court and the case number.
- b) The name of the person who asked for the notification, his/her address, and representative.
- c) The name of the person to be notified and his/her address and capacity.
- d) The subject of the notification.
- e) The date, day, and time of the notification.
- f) The name of the person who carried out the notification and his/her signature.
- g) The name and capacity of the person who received and signed the notification form .

Rule number (531): The notification of the adversaries in infraction cases has to take place one day before the hearing date. The notification must be given three days before the hearing date in misdemeanors.

Rule number (532): The clerks' office of the competent first instance court has to notify the accused of the indictment sheet a week before the hearing date.

Rule number (533): The notification of an accused that is detained and/or imprisoned has to be done through the warden of the correction center or the person in charge.

Rule number (534): Soldiers and officers serving in the police or security apparatuses or the general security have to be notified through their commanders.

Rule number (535): The chief clerk is obliged to permit the adversaries to review the case file and papers after they have been notified to appear before the competent court.

Rule number (536): The notification of diplomatic corps members has to be done through the Ministry of Foreign Affairs.

Preserving order during hearing sessions:

Rule number (537): The maintenance of order and the management of the hearing sessions are the duties of the chief judge of the court, whether it is a first instance, appeals, or cassation court. The conciliation judge has duty to maintain order during the hearing sessions.

Rule number (538): If, during the hearing session, one of the public expresses his satisfaction or dissatisfaction, or he/she makes any noise or violates that session's order, the head of the hearing session has the power to order him/her out. If the person who was ordered to leave refuses to do so or returns to the hearing, then the head of the hearing session has the power to order the person's imprisonment for three days. Such an order is considered a final order.

Rule number (539): If the violation of the hearing session's order is committed by a court official, then the court's chief judge can impose on such a person, during the hearing session, the disciplinary action that can be imposed on him/her according to the law.

Rule number (540): The court has the power, before the conclusion of the hearing session, to retract its decision.

Rule number (541): Crimes that are committed during the hearing sessions, upon which the court does not rule during the hearing, are required to be tried according to the general rules

Rule number (542): If an attorney, while executing his/her duties during the hearing, commits a criminal act or what could be considered a disruption of the hearing's order, the head judge has to prepare a report regarding what happened. The court has the power to decide whether to refer its report to the General Prosecution if the act committed by the attorney constitutes a crime, or to refer it to the president of the Bar Association if the act requires a disciplinary action to be taken. The judges who were present when the attorney committed the criminal act are prohibited from trying the case.

Proving the criminal case:

Rule number (543): The judge cannot rule based on his/her personal knowledge or information about the case.

Rule number (544): In criminal cases evidence can be introduced by all means available unless the law specifies a certain means of proof to be used.

Rule number (545): If there is no proven evidence against the accused the court shall declare him/her innocent of the charges.

Rule number (546): The court's judgment can only be based on evidence that is presented and discussed during the hearings in the presence of the adversaries.

Rule number (547): The court by itself, or according to the adversaries request, has the power during the trial to order the presentation of any evidence it might see necessary to reveal the truth, and it also has the power to hear any witness who volunteers to testify.

Rule number (548): The testimony of an accused against another accused, in the same case, constitutes an imperfect proof and the court cannot base its conviction exclusively on such a proof. Thus, no suspect shall be convicted based on the testimony of another suspect unless there is other evidence that supports the testimony. The accused has the right to cross-examine the other accused who brings testimony against him/her.

Rule number (549): The court is obliged to implement the provisions of the Commercial and Civil Evidence laws while adjudicating a civil lawsuit that stems from the criminal case.

Rule number (550): The procedures to be applied in a civil case are the procedures stated in the Criminal Procedures Law.

Rule number (551): No incident shall be proven through the letters and conversations that take place between the accused and his/her attorney.

Rule number (552): The minutes reports organized by the judicial officers regarding the infractions and misdemeanors that fall within their jurisdiction are considered to constitute a proof, regarding the incidents documented in such minutes, unless it is proved otherwise.

Rule number (553): For the minute report to have an evidentiary effect it has to:

- a) Comply with the formalities described by the law.
- b) The person who prepared it has to have witnessed the incident by him/herself.
- c) The person who prepared it has to have done this during his/her official duty and within his/her powers.

Rule number (554): Confession is the accused's admission that he/she committed the incidents that constitute the crime. For the confession to be valid the following conditions have to be present:

- a) It must be a voluntarily confession made without any pressure or physical or mental intimidation, and without any threats or promises.
- b) It must be consistent with the facts within the conditions of the crime.
- c) It must be straightforward and frank that he/she committed the crime.

Rule number (555): Confession is a mean of proof that is subject to the court's discretionary power. Confession does not have to be inclusive and detail the whole incident of the crime and the motives behind it. Confession can still be valid even if it is less than a complete explanation.

Rule number (556): The court has to search by itself for the truth regarding the crime and the motives behind it. The court must look at the confession as only a piece of evidence, and if it finds that the confession is not a true one, it has to disregard the confession. Trying the criminal case is the right of society, and not only the accused, and the punishment must be imposed only on the guilty person.

Rule number (557): The confession can be used as evidence only against the person who confessed.

Rule number (558): The accused has the right to remain silent and his/her silence should not be interpreted as a confession.

Rule number (559): The accused should not be punished for the false statements he/she made in order to defend him/herself.

Rule number (560): Finger, hand, and footprints are admissible evidence in the trial. Photographs can also be used in order to identify the accused and anyone who is related to the crime

Rule number (561): All the chemical reports organized by the person in charge of the government labs, or any other officially recognized labs, regarding the results of chemical tests performed on any suspicious substance are considered to constitute admissible evidence. There is no need for such a person to testify during the trial unless the court deems it necessary.

Rule number (562): If any of the accused's relatives or his/her spouse is called to testify in the trial by the accused, then such a person's testimony can be used to prove that the accused committed the crime.

Rule number (563): It is permitted to accept the testimony of a person who had heard from a person who was present when the crime was committed, or within a short period before or after its occurrence, if such testimony is related directly to the criminal incident or to incidents that are related to it, and the person whom the witness is quoting is himself/herself a witness in the trial.

Rule number (564): It is permitted to accept the testimony of a person who had heard from the victim within a short period before or after the incident, or before his/her death, and if what he/she heard is related to the criminal incident. Such testimony is acceptable even if the victim was not able to attend the trial.

Rule number (565): The testimony, which is heard on the basis of enlightening the court, is not enough to convict unless supported by other evidence.

Rule number (566): The statement of the accused given before the judicial officers by which the he/she confesses to the crime is admissible evidence before the court, if the General Prosecution provides evidence regarding the circumstances that surrounded the confession, and the court is convinced that the confession was made willingly.

Rule number (567): The court has the power to weigh the value of the witness's testimony and it can make notes regarding their conduct and behavior in the hearing's minutes.

Rule number (568): If the testimony does not match with the incidents or there is contradicting testimony, the court can choose that which it believes.

Rule number (569): The judgments issued by the personal status courts (Sharia), which fall under their jurisdiction, have a conclusive presumption before the criminal courts.

Judges' recusal:

Rule number (570): The judge should refrain from participating in the trial of a case if he/she was the victim of the crime committed, or if he/she became involved in the case as a judicial officer, as the attorney of one of the suspects, as a prosecution member, or as an expert. The judge also cannot participate in the appeal of a judgment if he/she was the one who issued it.

Rule number (571): The adversaries have the right to ask for the judges' recusal if one of the situations prescribed in the Civil and Commercial Procedures Law is present. These situations are:

- a) If the judge or his/her spouse is a party to a case similar to the case he/she is presiding over.
- b) If the judge or his/her spouse is in judicial dispute with one of the parties, unless such a dispute was initiated in order to recuse the judge.
- c) If the judge's divorcee or one of judge's relatives or his/her in-laws is in a dispute that is pending before the courts with one of the parties, or his/ her spouse, in the case, unless the dispute was initiated in order to recuse the judge.
- d) If one of the parties works for the judge or there was animosity or a friendship between the judge and one of the parties that would affect the judge's impartiality.

Rule number (572): It is not permitted to request the recusal of the General Prosecution members or the judicial officers

Judicial recusal procedures:

Rule number (573): If any of the recusal reasons is present, the judge has to report this to the chief judge of the court so the court can decide if that judge should be excluded from the deliberations. Besides the recusal reasons described by the law, the judge is permitted to ask the court or the chief

judge to excuse him/her from presiding over the case if he/she felt that there were reasons that would cause him/her embarrassment.

Rule number (574): The person requesting the recusal of the judge has the right to submit a request that contains the reasons that prohibit the judge from hearing the case.

Rule number (575): The petitioner seeking recusal has to submit his/her request before the court starts hearing the case, unless the reason for recusal emerges after the start of the trial. In this case, the request has to be submitted in the first hearing that comes after the reason for the recusal request has emerged. The recusal request cannot be accepted after closing the arguments.

Rule number (576): The recusal request should be submitted to:

- a) The chief judge of the first instance court, if the judge to be recused is a conciliation court judge or one of the first instance court judges.
- b) The chief judge of the appellate court, if the judge to be recused is the first instance court chief judge or one of the appellate court judges.
- c) The chief justice of the cassation court, if the judge to be recused is the chief judge of the appellate court or one of the cassation court judges.

Rule number (577): The judge who is the subject of the recusal procedures has to give his/her written response to the recusal request within three days from receiving it. If the judge does not give his/her response within the three-day period, the competent chief judge has the right, when the reasons stated for recusal are valid and correct, to issue an order banning the judge from hearing the case and to second another judge to hear it.

Rule number (578): The competent chief judge has to review the recusal request in the presence of the requester and he/she has to give his/her decision regarding it within seven days from the day the request was submitted. The chief judge's decision in such a case is subject to appeal or cassation unless the decision was issued by the Chief Justice of the cassation court.

Rule number (579): It is prohibited, when reviewing the recusal request, to interrogate the judge or ask him/her to swear.

Rule number (580): All proceedings in the case have to be stopped when the recusal request is submitted, until a final decision regarding the request is issued. In cases of urgency, and upon the request of one of the parties, the chief judge can second another judge to preside over the case.

Rule number (581): If the recusal request is rejected or dismissed, the court has to fine the requester no less than a hundred JDs and no more than five hundred JDs, or the equivalent in the usual currency.

Rule number (582): If the judge who was the subject of the recusal request sued the requester for damages or submitted a complaint against him/her to the competent authority, then he/she should refrain from litigating the case.

4.2 THE CIVIL LAWSUIT

Rule number (583): Every person who sustained damages because of the crime has the right to submit a request in his/her capacity as a plaintiff to the competent prosecutor or to the court where the case is being tried in order to seek compensation for the damages he/she sustained.

Rule number (584): The civil claim cannot be brought before the appeal's court so that the defendant in the criminal case is not deprived of one of the adjudication levels.

Rule number (585): The reason behind a civil case that stems from a criminal case is that there were personal damages sustained as a result of the crime. Thus, no civil claim can arise from crimes where there were no personal damages sustained; for example, holding a weapon without a license.

Rule number (586): The following conditions have to be present in any damage in order to have a civil claim before the criminal court:

- a) The damage has to be a result of the crime committed by the accused.
- b) The damage has to be the direct result of the crime.
- c) The damage has to be certain to occur whether in the present or the future.

Rule number (587): A civil claim can be made only by the person who personally sustained damage. Such a person is generally the victim of the crime but it could be somebody else, such as the wife who files a civil claim for damages sustained by her because of the killing of her husband.

Rule number (588): The civil claim has to be made through a request submitted to the competent prosecutor or to the court that is hearing the relevant criminal case. The request has to be reasoned and include the evidence and proof that justify it.

Rule number (589): The civil claim case can be subsequent to the criminal case and submitted to the competent criminal court, or it can be submitted separately to the competent civil court. In this case the proceedings in the civil case should be halted until a final ruling regarding the criminal case is issued, unless the proceedings in the criminal case were halted because of the insanity of the accused.

Rule number (590): If the plaintiff brought his/her claim before the civil court then he/she is forbidden from bringing such a claim before the criminal court, unless he/she dismisses his/her claim before the civil court.

Rule number (591): The right of the person who sustained the damages to choose the civil claim jurisdiction finds its justification in the following:

- a) The civil claim brought before the criminal court obliges the criminal court to hear both the civil claim and the criminal case together. This benefits the plaintiff with the application of the easy and quick criminal procedures now used on the civil case.

- b) The criminal court, when assessing the crime and its effects during the criminal case, would be more efficient in weighing the damages resulting from such a crime and assessing the compensation to be imposed.
- c) It serves the principles of justice because when the criminal judge hears both cases, it prevents the issuance of contradicting rulings regarding the points of dispute in both cases.

Rule number (592): The plaintiff has the right to bring up the civil claim before the criminal first level court, regardless of the stage the criminal case is at, as long as this happens before the closing arguments.

Rule number (593): It is not permitted to bring up the civil claim if the criminal case was sent back to the first level court, regardless of the reasons.

Rule number (594): The civil claim should not delay the proceedings in the criminal case. If it does, the court should reject it.

Rule number (595): The plaintiff in the civil claim has the right to renounce his/her claim and this shall not affect the criminal case.

Rule number (596): The plaintiff in the civil claim has the obligation to pay the fees and judicial costs unless the court decides to relieve him/her from paying or delays the payment.

Rule number (597): If the General Prosecution decides to halt the proceedings in the case, or if the court acquits the accused, it is possible to relieve the plaintiff from paying the fees or enable him/her to get the money back.

Rule number (598): If the General Prosecution decides to halt the proceedings in the case, or if the court acquits the accused, then the accused has the right to sue the plaintiff in the civil claim for damages before the competent court, unless the later acted in good faith.

Rule number (599): The competent court according to a request from the General Prosecution has the power to appoint a legal representative for the incapacitated or injured person if he/she does not have one to represent him/her in the civil claim.

Rule number (600): The plaintiff in the civil claim has to have an address located within the jurisdiction of the court that hears his/her claim, and if the plaintiff does not, he/she must obtain one in order to be notified of the procedures

Rule number (601): The accused has the right to object to the plaintiff initiating a civil case with the defendant as a party.

Rule number (602): If the civil claim is accepted, the plaintiff becomes a party in the civil case only, while the defendant becomes the defendant in both the civil and the criminal cases. The civil case has nothing to do with the criminal case where the adversaries are the accused and the General Prosecution.

Rule number (603): The compensation for the damages resulted from the crime might take different forms, such as an amount of money, returning the objects the accused acquired through committing the crime, or paying the litigation costs.

Rule number (604): The criminal judgment issued by the competent court in the criminal case, whether acquitting or convicting the accused, is conclusive before the civil court in the pending case regarding the occurrence of the crime and its legal description and in relation to the perpetrator.

Rule number (605): The acquittal judgment has this power whether it is based on the non-existence of the charges, or the deficiency of the evidence.

Rule number (606) The acquittal judgment does not have this power if it is based on the fact the act committed does not constitute a crime.

Rule number (607): The judgments issued by the civil courts do not have the power of conclusive evidence before the criminal courts regarding the occurrence of the crime or relating it to the perpetrator.

4.3 CRIMINAL PROCEDURES APPLIED BEFORE THE CONCILIATION COURTS:

Rule number (608): The conciliation court is constituted with one single judge who has the power to try misdemeanor and infraction cases, unless there are exceptions provided by law.

Rule number (609): No person shall be referred to the conciliation court on a misdemeanor charge without an indictment sheet being submitted against him/her by the General Prosecution.

Rule number (610): The conciliation judge is to manage the hearings and take the necessary actions to keep order. All hearings in misdemeanor cases have to be held in the presence of the prosecutor and the court reporter.

Rule number (611): When the indictment sheet is submitted at the conciliation court clerks' office, the court has to organize the summon note and serve it to the General Prosecution, the accused, and the claimant in the civil lawsuit.

Rule number (612): The summons note shall include the date and time of the hearing session.

Rule number (613): If the accused does not show up at the time and date of the hearing session, which he/she was notified of, the judge shall try the accused *in absentia*.

Rule number (614): If the accused attends the initial hearing session, and he/she stops from attending the subsequent sessions, the conciliation judge has the power to start hearing the case or continue hearing it, as if the accused was present. The judgment of the court in this instance can only be challenged through appeal.

Rule number (615): The accused, in a misdemeanor that is not punishable by imprisonment, can delegate to his/her attorney the power to confess to the crime or to take any other procedure, unless the conciliation judge decides that the accused should be present in person.

Rule number (616): In cases where the law does not require the attendance of the General Prosecution in the hearings, it is permitted that the claimant or his/her representative attend the hearing and present the evidence he/she has.

Rule number (617): Hearings should be publicly held unless the conciliation judge decides to hold the session *in camera* in order to protect the general order or morals. It is permitted in any case to prevent minors or any other group of people from attending the trial sessions.

Rule number (618): The General Prosecution has power to direct the accusations to the accused before the court as a procedural adversary who represents the state, in order to reveal the truth and to practice the state's power in imposing criminal penalties.

Rule number (619): The accused should attend the hearing sessions without being shackled or handcuffed. The accused must be put under the appropriate supervision and scrutiny while attending the hearing session and must not be removed from the sessions unless he/she commits an act that requires his/her removal. In such a case the conciliation judge has the duty to inform the accused of all the procedures and action taken in his/her absence.

Rule number (620): The conciliation court judge has to ask the accused about his/her name, profession, place of birth, age and place of residence, in addition to his/her marital status.

Rule number (621): If the suspects in one crime were indicted independently, the conciliation court judge has the power to join some or all these cases together by him/herself, or upon a request submitted by either the General Prosecution or the defense.

Rule number (622): If the conciliation court judge finds out at any stage of the trial that it is more appropriate to try each suspect separately, he/she can order each suspect to be tried separately for the charge/s presented against him/her in the indictment sheet.

Rule number (623): The judge must alert the accused that he/she should listen carefully to what will be read on him/her. Then the judge must order the prosecutor to read the charges and the indictment sheet.

Rule number (624): The prosecutor is the one who reads the charges mentioned in the indictment sheet and he/she shall not mention any charges that are not listed in the indictment sheet. If he/she does so, the accusations will be null and void.

Rule number (625): After the prosecutor reads the accused the charges against him/her in simple and easily understandable language, or after the claimant in the civil lawsuit clarifies his/her demands, the court must ask the accused about his/her response to the charges against him/her and the demands submitted by the claimant.

Rule number (626): If the accused has confessed that he/she committed the crime, the hearing reporter shall document his/her confession in terms similar to those used in the confession. In such a case, the conciliation court judge has the power to convict the accused as charged and to ask the General Prosecution to present the evidence against the accused in order to strengthen his/her confession.

Rule number (627): If the conciliation court judge convicts the accused, the General Prosecution has to present the arguments regarding why punishment should be aggravated. The convicted person or his/her attorney should present the arguments regarding why punishment should be mitigated. After hearing both arguments, the judge orders the punishment he/she deems appropriate.

Rule number (628): If the accused denies the charges or refuses to answer to them, or he/she keeps silent, the conciliation judge has to start hearing the General Prosecution presentation of evidence.

Rule number (629): The General Prosecution has no right to call any witnesses that were not mentioned in the witness list unless the accused or his/her attorney were notified in writing with the name of the witness, or they do not object to such an action.

Rule number (630): The conciliation court judge has to take all the necessary steps to prevent witnesses from talking or communicating with each other during the trial. Each witness has to give his/her testimony separately.

Rule number (631): The judge shall ask each witness about his/her name, age, profession, and place of residence, and his/her relationship with the victim. The witness has to give his verbal testimony while he/she is under oath.

Rule number (632): The adversaries have the right to discuss with the witness his/her testimony.

Rule number (633): According to the witness's request, the judge has to estimate the costs the witnesses required in order to attend the hearing and testify. The court's cashier shall pay the costs.

Rule number (634): After hearing the evidence presented by the General Prosecution, the judge asks the accused if he/she wishes to speak and if he/she has any witnesses. If the accused chooses to speak then the prosecutor has the right to discuss his statements with him/her.

Rule number (635): The judge, on the suspect's expense, should summon the defense witnesses unless the law provides otherwise.

Rule number (636): The accused should not be asked any question in order to reveal his/her criminal past unless she/he provides such evidence.

Rule number (637): The conciliation court judge, at any stage of the trial, has the power to order any witness to repeat his/her testimony that was heard during the trial.

Rule number (638): If it is proven during the trial that a witness gave a testimony, that substantively contradicts testimony he/she gave in the preliminary investigation, then such a witness would be charged with the crime of perjury, and the conciliation judge has the power to convict him/her with the charge and sentence him/her accordingly.

Rule number (639): The witness should not leave the court room unless he/she gets the permission of the judge to do so.

Rule number (640): The claimant in a civil claim has the right to examine any of the prosecution or the defense witnesses, and also has the right to present his/her evidence after the prosecution has done so. The claimant is not permitted to submit any evidence, or to address the court regarding the

conviction of the accused, or to examine and interrogate any of the prosecution witnesses regarding the conviction of the accused unless he/she gets the judge's approval to do so.

Rule number (641): If any of the suspects or the witnesses does not know the Arabic language, the judge can appoint a certified translator, who must swear that he/she will translate the statements with honesty. If such procedures are not observed, the actions taken will be void and null.

Rule number (642): Either the accused or the prosecutor has the right to request the dismissal of the appointed translator, provided they give their reasons for such a request. The conciliation judge is to decide on such a request.

Rule number (643): The translator cannot be one of the witnesses or the conciliation judge him/herself, even if with the suspect's and the prosecution consent.

Rule number (644): If the accused or the witness is deaf, mute and illiterate, the conciliation judge has to appoint a person to work as a special interpreter to communicate with such an accused or witness using sign language.

Rule number (645): If the deaf and mute person knows how to read and write, then the court's reporter should write down the questions directed to him/her and hand them to him/her so that he/she can answer in writing. The reporter is to read such answers during the hearing.

Rule number (646) If it is proven to the conciliation judge that the accused, when he/she committed the crime, was suffering from a sickness that affected his/her mental powers and made him/her unable to assess his/her actions, or know that it is forbidden to commit such actions, the judge has to order the accused to be admitted to a medical institution to be put under observation for the period the judge deems necessary.

Rule number (647): If it is proven to the judge during the trial that the defendant is insane or mentally ill to a degree that prevents his/her trial, the judge has to order the accused to be admitted to a medical institution to be put under observation for the period the judge deems necessary. If it is proven through such observation and the testimony of two official physicians that the accused is mentally fit, the judge has to start the trial procedures in order to try him/her or to order his/her admission to a mental illnesses hospital.

Rule number (648): The conciliation judge has the power at any stage of the trial to direct any question to the adversaries he/she deems necessary to reveal the truth, and he/she also has the power to allow the adversaries to ask such question. The judge must prohibit any questions of the witness that are not related to the case, as well as any statements or remarks that might lead to the disruption of the witness's thoughts or scaring him/her. The judge has the right to abstain from hearing the testimony of any witness regarding incidents that the judge sees as clear.

Rule number (649): The conciliation judge has the power to prevent the accused or his/her attorney from lengthening their statements before the court if they repeated such statements or did not limit their statements to the subject matter of the case.

Rule number (650): The conciliation judge has the power to order the prosecutor and the suspect's attorney to submit their pleas and statements in a written format during a specified period of time where they should be read and attached to the hearing minutes, after being signed by the judge.

Rule number (651): The court's reporter has to note down all the procedures and actions taken during the hearing sessions in the hearing-minutes and he/she has to sign the minutes along with the judge.

Rule number (652): After concluding the evidence hearing phase, the prosecutor should present his/her arguments, or the claimant in the civil claim should present his/her requests, and the accused should present his/her defense. After this, the trial should be concluded and the conciliation judge issues his/her judgment. In any case, the accused must be the last to speak at the trial.

Rule number (653): The conciliation judge has the power to amend the charges directed against the accused as long as the amendment is not based on incidents and evidence that are not presented before the court. If the amendment would subject the accused to a tougher penalty without amending the type of the crime (infraction or misdemeanor), the trial has to be postponed for the period seen appropriate by the court in order to give the accused enough time to prepare his/her defense against the amended charge.

Rule number (654): If the conciliation judge finds out that the crime constitutes a felony, he/she has to refer the case file to the first instance court, as he has no jurisdiction to try it. The first instance court has to proceed in the case starting from the point reached by the conciliation court.

Rule number (655): The conciliation judge has to acquit the accused when there is no evidence to convict him/her, or there is insufficient evidence, or the accused was found incompetent to stand trial, or the act committed does not constitute a crime. The judge has to convict the accused when it is proven that he/she committed the criminal act. The sentence should be pronounced after hearing the prosecution and defense arguments.

Halting the execution of penalty procedures:

Rule number (656): The conciliation judge, when imposing a fine sentence or an imprisonment sentence that does not exceed one year, has the power to order the halting of the execution of the sentence if the judge sees that the morals of the convict, or his/her history, or age, or the conditions surrounding the crime, indicate that he/she will not violate the law again.

Rule number (657): The conciliation judge has to relate the reasons that stand behind the halting of the judgment's execution.

Rule number (658): The halting of the sentence execution order is valid for three years, and starts from the day the court's judgment becomes final.

Rule number (659): The halting of the sentence execution can be canceled for one of the following reasons:

- a) If during the halting period the accused is sentenced to be imprisoned for a month or more for an action he/she committed before or after the halting period.
- b) If it appears during the halting period that the convicted person was imprisoned for more than one month for another crime before his or her sentence was halted and the court did not know about it at that time.

Rule number (660): The cancellation order is to be issued by the same conciliation court that ordered the halting of the sentence execution, upon a request submitted by the General Prosecution, and after summoning the convicted person. If the conviction that the cancellation was based upon was issued after the halting of the sentence order, then the court that issued the new conviction has the power to cancel the halting order on its own initiative, or upon a request submitted to it by the General Prosecution.

Rule number (661): The cancellation of the halting order results in the execution of the sentence.

Summary procedures:

Rule number (662): If the charges against the accused constitute a violation of municipal or health ordinances and laws, then summary judgments (procedures?) must be implemented.

Rule number (663): Summary procedures can only be implemented when the penalty provided for the infraction is a fine. If the penalty is imprisonment then the regular procedures should be implemented.

Rule number (664): Summary procedures are not applicable when there is a civil claimant in the case.

Rule number (665): After the infraction report has been prepared by a competent judicial officer the report has to be sent to the competent conciliation court.

Rule number (666): The chief clerk of the competent conciliation court has to prepare the case file and present it to the competent conciliation judge who has the power to impose the sentence prescribed by the law without the attendance of the General Prosecution representative. The judge has to issue his/her verdict within ten days unless the law provides otherwise.

Rule number (667): The conciliation judge has the power to order the case file referred to the General Prosecution after it had been presented to him/her in order to initiate a criminal case through the regular path.

Rule number (668): If the infraction report is prepared and drafted according to the law, then the conciliation judge is obliged to consider the incidents it contains as indisputable evidence. This means the accused cannot present a defense.

Rule number (669): The verdict has to include the criminal act, its legal description, and the legal article applicable to it.

Rule number (670): The convicted person and the General Prosecution have to be notified of the verdict according to the stated rules.

4.4 CRIMINAL PROCEDURES APPLIED BEFORE THE FIRST INSTANCE COURTS:

Rule number (671): The court's hearings have to be held in public unless the court decides to hold its hearings *in camera* in order to protect the general order or public morals. A public hearing means that spectators from the public should be allowed to attend the court's hearings, and this requirement

cannot be fulfilled by the presence of the adversaries or their representatives only. In all cases it is permitted to prohibit children or a certain group of people from attending the court's hearings.

Rule number (672): The chief judge is to manage the hearings and has to take the necessary actions in order to keep the hearings' order. All the first instance court hearings have to be held in the presence of the prosecutor and the court's reporter.

Rule number (673): The General Prosecution is to perform the prosecution duties before the first instance court in its capacity as a procedural adversary in the criminal case in order to reveal the truth and to strengthen the state's power in imposing criminal penalties.

Rule number (674): The General Prosecution is an integral part of the court's formation. Thus, the court loses its legal formation if the General Prosecution member is absent during any hearing. This leads to the nullification of the court's judgment.

Rule number (675): General Prosecution members, while performing their duties before the first instance court, have to take care of their appearance and respect the hearing's dates to preserve the integrity of the institution they represent and for the sake of the good management of the criminal justice system .

Rule number (676): The prosecution member has to come early to the court before the beginning of the hearing sessions in order to make sure that the suspects and witnesses have been notified according to the law and to make sure that the items and objects seized are available to the court, so he/she is ready to perform his/her duty in the best possible way.

Rule number (677): No accused should be referred to the first instance court unless the Attorney General or one of his/her assistants has submitted an indictment sheet against him/her.

Rule number (678): The accused should attend the hearing sessions without being shackled or handcuffed. The accused must be put under the appropriate supervision and scrutiny while attending the hearing session and he/she should not be removed from the sessions unless he/she committed an act that requires his/her removal. In this case, the court has the duty to inform the accused of all the procedures and actions taken in his/her absence.

Rule number (679): The chief judge has to ask the accused if he/she has an attorney of his/her choice in order to defend him/her. If the accused has no attorney because of his/her poor financial status, the chief judge must assign an attorney for his/her defense who has been working as a practicing attorney for no less than five years, or who has worked in the General Prosecution or the judiciary for no less than two years before working as an attorney.

Rule number (680): The court at the end of the trial has to estimate the appointed attorney's fees, which must be paid by the court's cashier out of the court's budget. .

Rule number (681): If the accused does not attend the hearing at the time and date described in the notification note, he/she should be renotified. If the accused does not attend for a second time, an arrest warrant should be issued against him/her.

Rule number (682): If the suspects in one crime are indicted independently, the court has the power to join some or all these cases together by him/herself, or upon a request submitted by the General Prosecution or the defense.

Rule number (683): If the court finds, at any stage of the trial, that it is more appropriate to try each suspect separately, it can order each suspect to be tried separately for the charges presented against him/her in the indictment sheet.

Rule number (684): The court has to ask the accused about his/her name, profession, place of birth, age, place of residence, and marital status.

Rule number (685): The court shall alert the accused that he/she should listen carefully to what will be read about him/her. Then the judge shall order the prosecutor to read the charges and the indictment sheet

Rule number (686): The prosecutor is the one who reads the charges mentioned in the indictment sheet and he/she cannot mention any charges that are not listed in the indictment sheet. If the prosecutor does so the accusations will be null and void.

Rule number (687): After the prosecutor reads the charges to the accused in simple and easily understandable language, or after the claimant in a civil lawsuit clarifies his/her demands, the court must ask the accused about his/her response to the charges against him/her and/or the demands submitted by the claimant.

Rule number (688): If the accused confesses that he/she committed the crime, the hearing's reporter shall document his/her confession in terms similar to those used in the confession. In this case, the court has the power to convict the accused as charged and to request the General Prosecution present the evidence against the accused in order to strengthen his/her confession.

Rule number (689): If the accused denies the charges, refuses to answer to them, or keeps silent, the court has to start hearing the General Prosecution's presentation of evidence.

Rule number (690): The General Prosecution has no right to call any witnesses that are not mentioned in the witness list, unless the accused or his/her attorney were notified in writing of the name of the witness, or they do not object to such an action.

Rule number (691): The court has to take all the necessary steps to prevent witnesses from talking or communicating with each other during the trial. Each witness has to give his/her testimony separately.

Rule number (692): The court should ask each witness about his/her name, age, profession, place of residence, and his/her relation to the victim. The witness has to give his verbal testimony while he/she is under oath. The witness cannot use written notes during his/her testimony unless he/she is permitted to do so by the chief judge.

Rule number (693): The testimony has to be based on what the witness saw or felt, and cannot be based on what witnesses personally believe or on their point of view.

Rule number (694): The adversaries have the right to cross-examine the witness's testimony.

Rule number (695): The family members of the accused, to the third degree, his/her in-laws, or his/her spouse have the right not to testify against him/her unless the crime committed was against one of them.

Rule number (696): An oath means the commitment to say the truth before God. It is considered to constitute a very important guarantee for not contradicting the truth and it works to remind the witness that God is observing him/her. There is no prescribed format on how to swear the oath. The witness may say, “I swear by God almighty to say the truth the whole truth and nothing but the truth”.

Rule number (697): If a clergyman has been summoned to testify before the court and requests that he be allowed to swear before his religious superior, he has to be granted such a request. The clergyman must swear that he will answer truthfully the questions he will be asked, and then must return to the court with a certificate that he swore before his superior so that the court can hear his testimony.

Rule number (798): If the court is convinced that swearing the oath is against the religious beliefs of a witness it has the right to hear his/her testimony after he/she submits guarantees that he/she will say the truth.

Rule number (799): Witnesses who are under fifteen years old can give their statements to be used in a case without swearing the oath.

Rule number (700): The claimant in a civil case can be heard as a witness after swearing the oath.

Rule number (701): The first instance court has the power to order the recitation of the testimony given during the preliminary investigation stage, if it is proven impossible to bring the witness before the court for any reason, or if the accused or his/her attorney agrees to such a procedure.

Rule number (702): If the witness is not able to come before the court because he is sick or old, the court has the power to move to his/her place to hear his/her testimony. If the court finds that the excuses are false it has the right to refer the witness to the General Prosecution to take the necessary legal actions against him/her.

Rule number (703): If the witness states that he/she cannot remember a certain incident, the prosecution member can recite from the witness’s testimony during the investigation or from his/her statements during the evidence collection phase. Such a procedure should be taken when there is a contradiction between the witness testimony in the hearing and his previous statements.

Rule number (704): If the witness was notified according to the rules and he/she does not attend the hearing to testify, the court has the power to summon him/her or issue an arrest warrant against him/her. The court also has the power to fine him/her the amount of fifteen JDs or the equivalent in the used currency.

Rule number (705): If a witness who is fined by the court comes during or after the trial and presents an applicable excuse for his/her absence, the court has the power to relieve him/her from paying the fine.

Rule number (706): If the witness refuses to take the oath or refuses to answer the court’s questions without presenting any legal excuse, the court has the power to sentence him/her to prison for a period not to exceed one month. If the imprisoned witness agrees during his/her prison term, and before the conclusion of the trial, to take the oath and to answer the court’s questions, the first instance court can order his/her immediate release after he/she testifies.

Rule number (707): If the case proceedings lead to the need to hear the President's testimony, the chief judge or the judge appointed by him/her and the court's reporter have to move to the President's place of residence in order to hear the testimony. The President's testimony has to be recorded in a minutes according to the general rules and has to be kept in the case file.

Rule number (708): The court, upon the request of the witness, has to estimate the costs the witness deserves and order its payment by the court's cashier out of the court's treasury.

Rule number (709): After hearing the General Prosecution's presentation of evidence, the court has to ask the accused if he/she has anything to say, and if he/she has any defense witnesses. If the accused chooses to present a statement then the prosecutor has the right to discuss his/her statements with him/her. If the accused expresses his desire to present evidence, then the court has to hear such evidence.

Rule number (710): The defense witnesses have to be called to testify at the accused's expense unless the court decides otherwise.

Rule number (711): It is not permitted to direct any question to the accused in order to show that he/she was convicted in the past, unless the accused presents by him/her self anything that relates to his/her past in his/her defense.

Rule number (712): The court has the power at any stage of the trial to order any person to repeat his/her testimony that was given before the court.

Rule number (713): If it was established during the trial that a witness, after taking the oath, gave a testimony that primarily contradicts the testimony he/she gave during the preliminary investigation, the witness is considered as lying under oath and the court has the power to convict him/her with the crime of perjury and sentence him/her accordingly.

Rule number (714): The witness should not leave the court's hall unless he/she is permitted to do so by the chief judge.

Rule number (715): The claimant in a civil claim has the right to discuss the testimony of any of the prosecution witnesses and to present his/her evidence after the General Prosecution concludes its presentation of evidence. It is not permitted for the claimant to present any incriminating evidence against the accused or to address the court regarding his/her guilt unless the court gives its consent for him/her to do so.

Rule number (716): If any suspect or witness does not know the Arabic language, the chief judge has to appoint a certified translator, who must swear that he/she will translate the statements with honesty. If such procedures are not followed, the actions taken will be null and void.

Rule number (717): Both accused and the prosecutor have the right to request the dismissal of the appointed translator, provided they give their reasons for the request. The court has the power to decide on such a request.

Rule number (718): The translator cannot be one of the witnesses or one of the panel judges, even with the consent of the accused and the prosecution.

Rule number (719): If the accused or the witness is deaf, mute and illiterate, the chief judge has to appoint a person to work as a special interpreter to communicate with him/her using sign language.

Rule number (720): If the deaf and mute person knows how to read and write, then the court reporter should write down the questions directed to him/her and hand them to him/her to answer in writing. The reporter then must read the answers during the hearing.

Rule number (721): If it is proved to the court that the accused, when he/she committed the crime was suffering from a sickness that affected his/her mental powers and made him/her unable to assess his/her actions or to know that it is forbidden to commit such actions, the court must declare that he/she is not criminally responsible for his/her actions.

Rule number (722): If it is proven to the court during the trial that the defendant is insane or mentally ill to the degree that prevents his/her trial, the court must order the accused to be admitted to one of a medical institution to be put under observation for the period the judge deems necessary. If it is proven through such observation and the testimony of two official physicians that the accused is mentally fit, the judge has to start the trial procedures in order to try him/her. Or, if that judge finds the defendant mentally incompetent he/she shall order his/her admission to a mental illnesses hospital.

Rule number (723): The court has the power at any stage of the trial to direct any question to the adversaries it deems necessary to reveal the truth, and it also has the power to allow the adversaries to ask such questions. The court has to prohibit any questions of the witness that related to the case, as well as any statements or remarks that will lead to the disruption of the witness's thoughts or that might frighten him/her. The court has the right to abstain from hearing the testimony of any witness regarding incidents that the judge sees as apparent to the court.

Rule number (724): If the court asks the prosecution member to clarify some issues regarding the pleas presented during the trial, and the prosecution member is not ready to answer the court's questions, then he/she can ask the court to postpone the hearing in order for him/her to prepare the answer.

Rule number (725): The prosecution members have to ask the court to order the seizure of all materials and objects to be obtained for the case, whenever the law permits such seizure.

Rule number (726): The court has the power to prevent the accused or his/her attorney from extending their statements before the court, if they repeat such statements, or do not limit their statements to the subject matter of the case.

Rule number (727): The court has the power to order the prosecutor and the suspect's attorney to submit their pleas and statements in a written format during a specified period of time where they shall be read and attached to the hearing minutes after being signed by the presiding panel.

Rule number (728): The court reporter has to note down all the procedures and actions taken during the hearing sessions in the hearing's minutes, and he/she has to sign it, along with the court's panel.

Rule number (729): The court has the power to amend the charges directed against the accused as long as such an amendment is not based on incidents and evidence that are not presented before the court. If the amendment would subject the accused to a harsher penalty, the trial has to be postponed for the period seen appropriate by the court to give the accused enough time to prepare his/her defense against the amended charge.

Rule number (730): If the court is convinced that the action committed constitutes a misdemeanor or an infraction, it has to amend the charges and try the case based on the new charges.

Rule number (731): After concluding the evidence-hearing phase, the prosecutor should present his/her arguments, or the claimant in a civil claim should present his/her requests, and the accused should present his/her defense. After this, the trial should be concluded. In any case, the accused must be the last to speak at the trial.

Rule number (732): After the conclusion of the hearings, the panel of judges has to confer in the deliberations room in order to review the evidence submitted during the trial and then it issue its verdict. The verdict must be unanimous in capital penalty cases and by majority in all other cases.

Rule number (733): The judge trying a suspect is restricted only by those provisions of law which constrain his/her actions. The court issues its rulings in the case based on its belief that was freely reached during the trial. The court cannot make its ruling upon evidence that was not presented during the trial or on evidence that was illegally obtained and presented. The court is not limited by the preliminary investigation report or the evidence collection phase report unless it is obliged to do so by law.

Rule number (734): Any statement by the accused or the witness that was taken under duress or threat is null and void and cannot be used.

Rule number (735): The result of a criminal trial is based on the personal conviction of the judges involved. These convictions have to be reached through hearing the evidence presented during the trial. A judge cannot be asked to consider some evidence and not to consider other evidence. The court has the power to build its opinion and belief based on the evidence it deems reliable as long as it was reached in a legal way.

Rule number (736): The court's judgment has to be issued in a public hearing even if the trial was held *in camera*.

Rule number (737): The court has to acquit the accused when there is no evidence or insufficient evidence to convict him/her, the accused was found incompetent to stand trial, or the act committed does not constitute a crime. The court has to convict the accused when it is proved that he/she committed the criminal act.

Rule number (738): If the court decides to convict the accused, the sentence should be pronounced after hearing the arguments from the prosecution, or the claimant in a civil claim, and the defense.

Rule number (739): The court's judgment has to include a summary of the incidents mentioned in the indictment sheet, as well as the summary of the prosecution, or civil claimant requests, and a summary of the defendant's defense. The judgment has to include the reasons behind convicting or acquitting the accused, the number of the legal article applicable, the penalty imposed, and the civil compensation that has to be paid.

Rule number (740): The judges have to sign the judgment and it has to be announced publicly in the presence of the prosecutor and the accused. The chief judge has to explain to the accused that he/she has the right to appeal the judgment within the period prescribed by the law.

Rule number (741): If the court acquits the accused he/she should be released immediately unless he/she is detained for another reason.

Rule number (742): The court has the power to order the convicted person in any crime to pay the court fees and all other trial expenses unless he/she received the death penalty or life in prison.

Rule number (743): The civil claimant must be ordered to pay the case fees and expenses if his/her requests were denied. If it is proven to the court that the claimant was acting in a good faith and he/she is not the one who initiated the criminal case, then he/she could be exempted from paying all or part of the fees and expenses.

Rule number (744): The court's judgment has to be registered at the court judgments registrar. The original copy of the judgment has to be filed in the case file.

Rule number (745): The court has to provide the Attorney General's Office, on a regular basis, copies all the judgments issued.

Rule number (746): If the judgment has a material error, which does not cause its nullification, the court that issued such a judgment has to correct it by itself or upon the request of one of the adversaries. The correction of the judgment has to be done in the deliberation room. Upon a request by the prosecutor, the court has the power to correct any material error in the indictment sheet.

Rule number (747): The criminal judgment can only be challenged through the post judgment motions described in the Criminal Procedures Law.

Rule number (748): The first instance court, when imposing a fine or an imprisonment sentence that does not exceed one year, has the power to order the halting of the execution of the sentence of the same verdict, if the court finds that the morals of the convict, his/her history, or age, or the conditions surrounding the crime, indicate that he/she will not violate the law again.

Rule number (749): The court has to mention the reasons that stand behind the halting of the judgment's execution.

Rule number (750): The halting of the sentence execution order is valid for three years starting from the day the courts judgment becomes final.

Rule number (751): The halting of the sentence execution can be canceled for one of the following reasons:

- a) If during the halting period the accused was sentenced to be imprisoned for one month or more for an action he/she committed before or after the halting period
- b) If it appears during the halting period that the convicted person was imprisoned for one month or more before or after the issuance of the halting order, and the court did not know about this conviction at that time.

Rule number (752): The cancellation order is to be issued by the same court that ordered the halting of the sentence execution upon a request submitted by the General Prosecution, and after summoning the convicted person. If the conviction that the cancellation was based upon was issued after the halting of the sentence order, then the court that issued the new conviction has the power to cancel the halting order on its own initiative or upon a request submitted to it by the General Prosecution.

Rule number (753): The cancellation of the halting order results in the execution of the sentence.

4.5 GENERAL PROSECUTION ARGUMENT:

Rule number (754): The basic criminal procedures rules demand that judgments must be built on investigations, discussions, and oral arguments presented before the court in the presence of the accused so he/she is aware of the evidence provided against him/her. All the evidence contained in the case file must be under the court's sight and subject to oral discussions in order to clarify such evidence and reveal its truth, so the judge will build his/her belief upon the weighing of evidence and the assessment of its value.

Rule number (755): The court has the power to order the prosecutor and the suspect's attorney to submit their pleas and statements in a written format during a specified period of time where they should be read and attached to the hearing minutes, after being signed by the presiding panel.

Rule number (756): Prosecutors have to document all the actions and procedures they took regarding the case in the work sheet, which is attached to the case file.

Rule number (757): Arguing before the court is a conflict, or it could be considered a confrontation that has to be conducted only with honorable tools, that is the strength of evidence, logical reasoning, and the use of emotions (to a certain degree) in order to draw the judge's sympathy to get his leniency or his/her severity.

Rule number (758): The support of the charges needs more than just narrating the prosecution evidence. The prosecution must support the evidence with proof, using logic.; The prosecution must also extensively explain the presence of the elements that constitute the crime and discuss the accused's state of mind and the motive behind the crime to aid the court in its deliberations and review of the evidence.

Rule number (759): If the crime is a serious one, the person who argues before the court has to give such a case a great deal of his/her time and effort in order to explain to the court the details of the case.

Duties and obligations of the prosecuting attorney:

Rule number (760): The General Prosecution member's mission is to defend society's rights. Such a mission requires him/her to have many special characteristics such as being intelligent, having broad vision, logical reasoning and the wisdom to reach correct conclusions. He/she should be aware of society's events in addition to the social norms. He/she has to have courage to face unpleasant situations. The prosecuting attorney has many obligations and duties, including:

- a) Unquestionable belief in the case he/she is prosecuting. If the prosecuting attorney is not wholly convinced in the case he/she is prosecuting and the sufficiency of the evidence against the accused, then he/she will not be able to perform his/her duty.
- b) Studying the case file with great care, in great detail, and with close attention before the hearing session so he/she has a full understanding of the different facts and circumstances of the case. This requirement is based on article (4) of the Attorney General's instructions for 1994, which states: "It is understood that prosecuting a case comes after a full study of the case file and all the procedures that had been taken in the case."

- c) Respect the position of the judge of any court. It is prohibited to show disrespect to the judge or to be seen as an educator to him/her, regardless of the degree of the prosecuting attorney's knowledge and seniority, because he/she is the judge and is in control.
- d) The preservation of his/her objectivity, and the preservation of the integrity of what he/she says during court arguments. The French say that: "position obligates." This means what might be allowable for attorneys and other individuals may be completely prohibited for the Prosecuting attorney.
- e) Proper appearance includes wearing the litigating robe. The judicial profession has many practices and customs that should be preserved, such as wearing a suitable outfit when prosecuting a case before the court.

Rule number (761): The prosecuting attorney who is appearing before the first instance court has to prepare written arguments in the cases he/she is prosecuting. Such written arguments should be kept in special files so they can serve in evaluating the prosecuting member when his/her work comes under inspection. Such written arguments would aid the prosecutor if they were under his/her supervision. However, while prosecuting the case the prosecutor should not simply read from the written argument.

Rule number (762): When arguing before the court, the prosecutor has to pay attention to the words he/she uses and should refrain from irrelevant remarks and statements. He/she should explain the incidents and the incriminating evidence in order to convince the court to indict the accused and to support the peoples' confidence in the court's judgment.

Rule number (763): If the crime's circumstances oblige the prosecutor to ask for the death penalty to be imposed on the accused, he/she should not refrain from doing so, and he/she should justify such a sentence and convince the court to impose it in order to protect the society that the prosecutor represents.

Rule number (764): The structure of the argument before the court is very important in order for the prosecuting attorney to achieve his/her goals. This requires hard work, correct planning, and preparatory work. Arguing before the court requires the organization of words and thoughts. Hence, the prosecutor starts with the simple idea or thought and then continues in a coherent way to reach the peak of his/her argument, where he/she has to show his/her emotions, the strength of his/her voice, and the strength of his/her statements. There are certain elements that have to be present in the argument and should be the basis of the argument. These elements are:

The conviction argument

1. Introduction: the introduction to the argument does not allow the prosecutor to start narrating the facts of the case before the court. Rather the prosecutor should start with an interesting introduction that immediately draws the attention of the judges. This introduction can include the damage the crime caused to the norms of society and the impact of the crime on the community. The introduction should:
 - a) Be interesting and able to draw the listeners' attention.
 - b) Start with clear comprehensible sentences and clear thoughts that are easily understood.

- c) Be very closely related to the subject of the argument so there is no gap between the introduction and the argument itself. The argument has to be an extension of the introduction.
 - d) Be neither very long nor very short, because if it is very short that it will not be effective and if it is very long, then it will take away from the argument.
2. Incident description: the incident has to be described not by repeating what is in the indictment sheet but by replaying it as it happened at the crime scene.
 3. Definition of the prosecution evidence and its indications: when moving from the main idea to the evidence that supports the idea, the prosecutor must make sure the evidence is clear, and connected with what he/she is aiming to prove. Each piece of evidence has to be analyzed and cleared of any doubt that might arise regarding it.
 4. Refuting the defense evidence: the prosecutor has to discuss and refute all defense evidence.
 5. Response to the defense: the prosecutor must respond to the defense and its pleas and illustrate the applicable law.

Sentencing phase argument

The sentencing phase argument is the most strategic point in the prosecution's presentation. What the person has to say at the end of the trial is the most memorable. Due to its importance, experts stress writing down the argument and memorizing the appropriate phrases. The sentencing argument has to be clear in requesting the applicable sentence. The argument is composed of:

- a) Argument's introduction.
- b) The extenuating and aggravating factors.
- c) Requesting the sentence.

Rule number (765): When arguing before the court the prosecuting attorney should :

- a) Not rely solely on his/her verbal abilities and expressive skills. The prosecutor has to prepare his/her argument as if he/she doesn't have any of these skills.
- b) Be clear and expressive, because proof is only effective when it is well explained.
- c) Teach him/her how to benefit from the hearing's incidents, and how to present his/her proof at the right moment to have more effect. The prosecutor should know when to attack, when attack is necessary, and when to keep silent when it is important to do so; when to smile; when to use emotional effect; and when to appeal to the judges' conscience (?).

- d) Not argue to the public, because his/her argument will lose much of its weight if the judge feels that the prosecutor is not trying to convince him/her, but rather is trying to convince the public.
- e) Respect fellow attorneys because it is this also respect for the sacred message of justice and its messengers.
- f) Work hard to obtain the judge's attention the moment the prosecutor starts his/her argument. The prosecutor should summarize the subject matter of the argument in few, clear statements so to ensure that the judge is following what he/she is saying till the end of the argument.
- g) Know where to start the argument, and more importantly, know when and how to conclude the argument, because repetition and lengthening the arguments can be harmful to the case.
- h) Not talk about axiomatic or unrelated issues, nor mention a person who is not related to the case.
- i) Remember that talking in obscure statements about clear incidents makes the incidents hard to comprehend, while the clear statements used to explain mysterious incidents make the incidents more obvious and understandable.
- j) If the case is a weak one, there is no benefit in trying to hide the point of weakness and defending it. It is better to acknowledge what you cannot deny. Such a practice would make it easier to convince the court of what you want, because honesty in presenting the facts and examining the evidence are the most efficient weapons the prosecution has.
- k) Not ask for anything from the "court's justice" rather than asking for his/her right from the court itself, because if the "court's justice" is present, there is no need to address it and if it is not present, addressing it will not make it present.
- l) The first step towards convincing the court is drawing the attention of the court, and if the prosecutor does not do so, then his/her skills and the strength of his/her proof and evidence would go in vain.
- m) Pay more attention to the hard part of the case than to the easy part, because the easy part will take care of itself.
- n) Not negate what the defense attorney could not prove because by doing so you would provide the missing link in his/her evidence.
- o) Do not limit an expert's role to preparing the weapons to be used before the court, but also include how and when to demonstrate such weapons.
- p) Not commit any mistakes, because while committing a mistake is easy, mitigating its effects is very hard.

4.6 THE TRIAL OF FUGITIVE SUSPECTS AND PRECAUTIONARY ATTACHMENTS ON PROPERTY:

Trying fugitive defendants:

Rule number (766): If a felony was committed and the competent authority could not arrest the accused, and he/she did not surrender, the prosecutor has to refer the case papers to the Attorney General accompanied with a memo expressing his/her opinion regarding the case. In such case, the Attorney General has to indict the accused *in absentia* and issue an arrest warrant against him/her.

Rule number (767): A senior prosecutor at the Attorney General's Office, after the case papers are referred to him/her, has to draft an indictment sheet that includes the name of the witnesses, and have it approved by the Attorney General or one of his/her assistants. Once it has been approved, the indictment sheet should be referred to the competent prosecutor. The competent prosecutor, after receiving the indictment sheet, should serve it to the suspect's last known place of residence. After serving the indictment sheet, the Attorney General refers the case to the first instance court for trial.

Rule number (768): The first instance court, after receiving the case file, has to issue a decision giving the accused a period of ten days to surrender to the judicial authorities. The decision has to include the felony type the accused is charged with, the arrest warrant, and instructions to all persons who know where the accused is to report his/her location.

Rule number (769): The decision to give the accused ten days to surrender has to be published in the Official Gazette or in one of the local newspapers, and it should also be hung on the door of the residence of the accused and on the court's announcements board.

Rule number (770): If the accused fails to be present for the trial it is possible for his/her relatives or friends to submit a legitimate excuse for his/her absence.

Rule number (771): If the accused does not surrender within the required ten-day period he/she is to be considered a fugitive.

Rule number (772): If the fugitive suspect does not surrender to the judicial authorities, the court orders his/her trial *in absentia* after making sure that the papers were served and the ten-day decision was published. After all these procedures have been followed, the trial is to be conducted according to the Criminal Procedures Law.

Rule number (773): The fugitive suspect has no right to be represented by an attorney during his/her trial *in absentia*.

Rule number (774): The absence of one of the suspects does not delay the trial of the rest of the suspects.

Rule number (775): The General Prosecution has the duty of notifying the fugitive suspect of the court's judgment within ten days of its issuance. Serving the judgment can be done through publishing it in the Official Gazette or one of the local newspapers, or hanging it on the door of the fugitive suspect's place of residence or at the announcement board of the first instance court which issued the judgment. The Land Registrations Department must also be notified of the judgment.

Rule number (776): The *in absentia* judgment becomes executable starting the second day of serving it according to the relevant rules.

Rule number (777): The General Prosecution has the right to appeal the *in absentia* acquittal judgment before the court of appeals according to the stated rules of appeals.

Rule number (778): If the fugitive suspect surrenders him/herself, or is arrested before the expiration of the statute of limitations, then the judgment and all other procedures taken are considered to be null and void, and a retrial has to be conducted according to the relevant procedures.

Rule number (779): If the court acquits the fugitive suspect after his/her surrender, he/she should be exempted from the *in absentia* court fees and costs. The acquittal judgment has to be published in the Official Gazette.

Rule number (780): If the fugitive suspect is convicted in a crime against public property, he/she must be banned from managing or disposing of this property.

Rule number (781): The rules governing the fugitive suspect's trial are applicable when the suspect has fled his/her place of detention.

Precautionary attachment on property

Rule number (782): In all cases where there is sufficient evidence of the seriousness of the charges in public property crimes, the Attorney General, whenever he/she deems that precautionary actions should be taken regarding the suspect's property, has to submit the issue to the competent criminal court, which has the power to put the suspect's property on precautionary attachment and prevent him/her from disposing it.

Rule number (783): The court has the power, upon the Attorney General's request, to include the property of the fugitive suspect's spouse in its attachment order and his/her minors, provided that the court is convinced that such property was acquired as a result of the crime committed.

Rule number (784): The court has to appoint a protector in order to manage the attached property after making an inventory in the presence of the fugitive family, a representative of the General Prosecution, and the court appointed expert.

Rule number (785): The protector is obliged to preserve and manage the attached property and return it with any revenues after the end of the precautionary attachment.

Rule number (786): Any person who has standing in the case has the right to challenge the court's precautionary attachment order, or its decision to appoint a protector, within three months before the same court.

Rule number (787): While the fugitive suspect's property is under precautionary attachment, the court has to allocate a stipend to the suspect's spouse(s), children, parents, and whomever he supports.

Rule number (788): The claimant in a civil claim has the right to obtain an order from the competent court in order to receive any of the compensation he/she was granted by the court.

Rule number (789): The Attorney General has to notify the Land Registration Department immediately of the precautionary attachment decision in order to put the attachment note on the fugitive suspect's property.

Rule number (790): If the property attached is perishable or the court sees that selling such property would benefit its owner, the court has the power to issue an order to sell it and deposit the receipts in the court's treasury.

Rule number (791): The order prohibiting the suspect from managing or disposing his/her property can only be lifted when the financial penalties are executed.

Rule number (792): After the trial of the suspect, the court has the power to return the seized materials kept in the court's safe-storage to its owners, provided that a report that includes its kind, description and quantities be drafted.

4.7 POST-CRIMINAL JUDGEMENT VERDICT MOTIONS:

General rules:

Rule number (793): The ordinary post criminal verdict motions are objecting to the judgment, and appeal. Extraordinary post criminal verdict motions are cassation and retrial.

Rule number (794): Contesting the verdict is based on the existence of an interest, and post judgment motions should not harm the position of the person contesting the judgment.

Rule number (795): Requesting the court to correct material errors in the verdict is not considered to be a post verdict motion.

Rule number (796): The General Prosecution, as a representative of the public interest, has the power to appeal the verdict even if it does not have, as an indicting authority, any personal interest in doing so, and the contesting of the verdict is in the convicted person's interest.

Rule number (797): Official holidays should not be counted when calculating the periods for post verdict motions unless these holidays occurred at the end of the period.

Objecting to in absentia Judgments

Who has the right to object?

Rule number (798): The person who has been convicted in a misdemeanor or an infraction *in absentia* has the right to object to the verdict that was issued against him/her within ten days of his/her notification of the verdict.

Rule number (799): The claimant in a civil claim cannot object to the verdict.

Objection procedures:

Rule number (800): The objection has to be submitted through a list of the objections to the clerks' office of the conciliation court that issued the verdict. The request has to be signed by the convicted person or his/her attorney. It has also to include a full description of the verdict and the reasons supporting the objection.

Rule number (801): The conciliation court that issued the *in absentia* verdict has to appoint a hearing date in order to review the objection and notify the adversaries of the date.

Rule number (802): Two important effects result from the objection. The first is the halting of the execution of the related verdict. The second is re-trying the case before the same court that issued the verdict.

Rule number (803): The death of a person convicted *in absentia* who dies before the expiration of the objection period, or before the court issues its decision regarding the objection request, results in the dismissal of the verdict and the criminal case.

Rule number (804): The prosecutor who is attending the objection hearing has to ask the court to not consider the objection, if the objector did not attend the first hearing after being notified of its date, according to the applicable rules.

Rule number (805): If the objector did not attend the hearing date without having a legitimate excuse, the court has to reject his/her objection request and the objector cannot re-object to the verdict.

Rule number (806): The court has to reject the objection request on the grounds of not observing the formality rules if it was submitted after the ten-day period or because the objector has no standing, or for any other reason related to formalities.

Rule number (807): The decision or rejection of the objection request can be appealed, and the period for appealing such decision starts from the second day of its issuance, if it was issued in the presence of the objector, or the second day of its notification to the objector, if the decision was made *in absentia*.

Rule number (808): If the conciliation judge found that the objection passes the formality test, he/she has to try the case according to the rules stated in the law.

Rule number (809): If the conciliation judge finds that the objection has no legal or factual basis he/she has to reject it.

Appeal:

Rule number (810): Appeal is an ordinary way to deal with post verdict processes. It allows the reexamining of the subject matter of the case by a higher court; therefore, it is a realization of the two levels of adjudication. Appeal aims at nullifying the appealed verdict or amending it.

Rule number (811): The appeal system realizes three goals, which are:

- a) Achieving justice requires the existence of the possibility of remedying any mistakes that were made by the first level court. The appeal is to be brought before a panel of two or more judges who have more judicial experience than the first level court's judge or judges.
- b) The possibility of appealing the verdict makes the first level court judge more interested in studying the case before him/her and more cautious to not err in his/her verdict.
- c) The existence of an appellate system contributes, to certain extent, in unifying the courts' legal interpretation of the laws.

Verdicts that can be appealed:

Rule number (812): The adversaries have the right to appeal criminal case verdicts according to the following procedures:

- a) If a conciliation court issued the verdict, it has to be appealed before a first instance court in its appellate capacity.
- b) If a first instance court issued the verdict it has to be appealed before the court of appeals.

Rule number (813): All verdicts and judgments for which the laws provide for an appeal have to be appealed according to the Criminal Procedures Law rules of appeal.

Rule number (814): Decisions that do not conclude the subject matter of the dispute can only be appealed with the final verdict. If the final verdict is appealed, the other decisions that were issued during the trial may also be appealed by law. It is permitted to independently appeal the court's decisions regarding the rejection of a case due to the expiration of the statute of limitation or due to a lack of jurisdiction, if such claims were raised at the beginning of the trial, and before the court enters a final verdict in the subject matter of the case.

Rule number (815): The court's judgments in civil claim cases can be appealed, if such judgments would be subject to appeal if they had been issued by a civil court.

Rule number (816): A judgment rejecting an objection that has been submitted to the conciliation courts by a convict in a misdemeanor or an infraction can be appealed.

Rule number (817): Death penalty and life imprisonment convictions have to be appealed even if no appeal was submitted by the defendant.

Appeal procedures

Rule number (818): The list of appeals should be submitted to the clerk's office of the court that issued the appealed verdict, or the court of appeals clerk's office, within fifteen days. This period starts the day after the verdict was issued, if the convict was present at the hearing, or the day after the verdict was notified to the convict, if it was an *in absentia* verdict.

Rule number (819): The correction center warden has to receive the appeal list of the appealing inmate and he/she has to submit it within a week to the court of appeals.

Rule number (820): The General Prosecution has the right to appeal the verdicts issued by the conciliation and first instance courts within thirty days. This period starts after the day of its issuance.

Rule number (821): The list of appeals has to include a full description of the appealed verdict, the number of the case, the date the verdict was issued, the status of the appellant and the respondent, and the reasons supporting the appellant's requests. This list of items must be signed by the appellant.

Rule number (822): If the list of appeals is submitted at the clerks' office of the court that issued the verdict, it has to be accompanied with the case file and submitted to the court of appeals within three days of receiving the list.

Rule number (823): The convict and the claimant in the civil claim should not be harmed as a result of their appeal.

Rule number (824): The same rules that govern the trial courts' hearings and procedures govern the hearings of the court of appeals. The court of appeals has the powers stated in the special sections regarding the trial of fugitive suspects who fled custody or did not appear before the court, after being notified of the hearing date.

Rule number (825): The court of appeals has the power to hear the witnesses if they must be heard before the trial court, and it has to power to complete any shortcomings in the investigation.

Rule number (826): The court should approve the appealed verdict if it finds that the appeal should be rejected on the grounds of informality, or after reviewing the subject matter of the appeal.

Rule number (827): If the court decides to nullify the appealed verdict because the act does not constitute a crime, does not require a penalty, or there isn't enough evidence for a conviction, then the court has to acquit the appellant of the charges against him/her.

Rule number (828): If the verdict is annulled for contradicting the law or any other reason, the court has to try the case or refer it back to the trial court accompanied by the court of appeals instruction regarding the trial of the case.

Rule number (829): The person who receives a prison term sentence and does not surrender to the authorities loses his/her right to appeal the verdict.

Rule number (830): The court has the right to postpone the execution of the verdict until the appellate court issues its judgment, if the convict expressed his/her desire to appeal the verdict.

Rule number (831): If the list of appeals is not submitted during the period prescribed by the law, and the appellant requests within fifteen days of the end of the appeal period the extension of the period, the court of appeals has the right to give him/her a grace period not to exceed ten days to submit his/her appeal, if the court finds that there is a legitimate reason for such delay.

Rule number (832): If the General Prosecution submits the appeal, the court has the power to approve the verdict against conviction, or annul or amend it.

Rule number (833): The appellate court cannot aggravate the penalty imposed on the convict and it cannot nullify the acquittal verdict unless all the judges agree on such a judgment.

Rule number (834): The appeal has to be rejected on grounds of informality if it was submitted after the passage of the appeal period or for any other reason related to formalities.

Rule number (835): Pleas regarding the nullification of procedures cannot be submitted before the appellate court unless such pleas are related to public order or if such pleas are first submitted to the first level court.

Judgments Contested Through Cassation:

Cassation of criminal verdicts

Rule number (836): Contesting the verdict through cassation is an extraordinary post verdict motion because it does not aim at reconsidering the case. It aims at reviewing the computability of the verdict with the applicable law. This is true regarding the objective legal rules that were applied to the facts of the case or the procedural rules that are essential for issuing the verdict.

The cassation court is a law court. It makes sure that the law was correctly applied to the facts of the case, and that the procedures followed were correct. If the cassation court finds that the verdict contradicts the law, it reverses the verdict. Otherwise it rejects the motion.

Rule number (837): Criminal verdicts issued by the first instance court in its appellate capacity, and the judgments of the court of appeals in felony and misdemeanor cases can be contested through cassation, unless the law provides otherwise.

Rule number (838): First instance court criminal and court of appeals judgments that reject the plea of lack of jurisdiction, or that reject the case because it was tried before, can be contested through cassation.

Rule number (839): Verdicts and decisions of criminal courts cannot be contested through cassation if they are still subject to objection or appeal.

Rule number (840): Contesting the judgment through cassation can be done by the following:

- a) The General Prosecution: restricted to verdicts issued in criminal cases. It has no power to contest judgments issued in civil cases.
- b) The convicted person: he/she has the right to contest the verdict against him/her whether it is related to a criminal case or a civil case, or both.
- c) The claimant in a civil claim: he/she has only the right to contest the judgment issued in the civil case.

Rule number (841): All death and life imprisonment sentences have to be contested through cassation by the law, even if the convicted person does not contest the verdict.

Basis behind contesting the verdict through cassation

Rule number (842): Contesting the verdict through cassation can only be accepted for the following reasons:

- a) If the procedures were invalid and affected the verdict or judgment.
- b) If the court that issued the verdict wasn't composed according to the law or the court lacked jurisdiction over the case.
- c) If two contradicting verdicts or judgments were issued at the same time in regard to the same incident.
- d) If the judgment or verdict exceeded the adversaries' requests.
- e) If the judgment or verdict was based on contradicting the law or on an error in applying or interpreting it.
- f) If the court lacked the reasons the verdict was based on, or the reasons were insufficient, ambiguous or contradicted each other.
- g) If the court contradicted the jurisdiction rules or exceeded its legal powers .

Rule number (843): The contesting party cannot raise the invalidity of some of the procedures that were taken by the conciliation or first instance courts, if he/she did not raise the issue before the court of appeals.

Rule number (844): The contesting party cannot provide any evidence taken from incidents that were not mentioned in the reasons of the contested verdict or judgment.

Rule number (845): The court can revoke the verdict or judgment by itself, if is clear that the verdict was based on a violation of the law or on an error in implementing or interpreting the law; or the court that issued it was not composed according to the law, or lacked jurisdiction over the case; or if a law was enacted after verdict was issued and is related to the case subject matter.

Cassation procedures

Rule number (846): The General Prosecution, the convicted person, or claimant in a civil claim, has to contest the verdict or judgment within forty days.

Rule number (847): The period for contesting the judgment or verdict through cassation starts from the day after the verdict or the judgment was issued, if the petitioner was present, or starts from the day after the verdict or judgment was notified to him/her, if the verdict or judgment was made *in absentia*.

Rule number (848): The cassation list has to be submitted to the clerks' office of the court that issued the verdict or judgment, or to the cassation court clerks' office.

Rule number (849): The petitioner or his/her attorney should sign the cassation list. The cassation list should include the reasons for the petition, and the names of the adversaries. The fees payment receipt has to be attached to the petition. The clerks' office has to put the date the petition was registered on the cassation list.

Rule number (850): If the cassation request is submitted to the clerks' office of the court that issued the verdict, the clerks' office has to refer it to the cassation court accompanied with the case file within a week of submitting the list.

Rule number (851): The chief clerk of the cassation court has to notify the respondent against whom the cassation was submitted of the cassation list within a week after the registration of the list at the cassation court.

Rule number (852): The respondent has fifteen days, starting the day after his/her, notification to submit a list of response to the cassation court clerks' office.

Rule number (853): When the cassation file is complete, the chief clerk has to send the file to the General Prosecution.

Rule number (854): The cassation papers and documents have to be registered in the General Prosecution register and must be referred with the case file to the Attorney General in order to note down his/her remarks and notes on it. The Attorney General has to send back the case file after fifteen days of its referral to him/her.

Rule number (855): If the person who is contesting the verdict through cassation is under detention, he/she has to submit his cassation request to the warden of the correction center he/she is held in. The warden has to submit the request within twenty-four hours to the cassation court clerks' office.

Rule number (856): A cassation request to contest a verdict has to be dismissed if the requester was convicted and sentenced to imprisonment, and he/she did not surrender in order to execute the verdict, before the cassation hearing.

Rule number (857): The cassation court reviews the cassation request by reviewing the papers and documents in the case file, and if it deems that it is necessary to hear the General Prosecution and the attorneys for the adversaries, it has right to set a hearing for such purpose.

Rule number (858): If the court rejects the basis of the cassation request, and it finds no grounds for such request, it has to reject the request.

Rule number (859): If a cassation request is submitted by a party other than the General Prosecution, then the judgment shall be dismissed for the benefit of that party which contested it.

Rule number (860): If the cassation request is submitted by one of many convicts and the basis for such a request is related to another convict, in such a case if the court revokes the verdict, the revocation applies to the other convict or convicts as well.

Rule number (861): If the basis of the cassation request is that the trial court erred in citing the law's provisions, or in giving the legal description of the crime or the description of the convict, and if the sentence imposed is the same sentence the law provides for the crime, then it is not permitted to revoke the verdict. The court merely corrects the errors and dismisses the cassation request

Rule number (862): The convict cannot delay his/her cassation request to halt the execution of the verdict issued against him/her.

Rule number (863): Only the parts of the verdict that are contested through cassation can be revoked, not the whole verdict, unless it is not permissible to divide the verdict.

Rule number (864): If the judgment revoked by the cassation court is a judgment that accepts a legal reason that forbids the court from proceeding in trying the case, and the cassation court refers the case back to the trial court, the trial court is obliged to follow the cassation court's ruling.

Rule number (865): If the cassation court accepts one of the reasons that the cassation is based on, or finds that there is a reason for revoking the judgment or verdict by itself, it has do so and then send the case back to the trial court that issued the verdict so that the case can be retried by another panel of judges.

Fourth: Effects of the cassation court rulings

Rule number (866): If the cassation court decides to reject the cassation request the verdict or judgment becomes final and cannot be contested again by the same person for any reason.

Rule number (867): If the judgment is contested for the second time then the cassation court has to try the case by itself.

Cassation by a written order

Rule number (868): The Minister of Justice has the power to request the Attorney General, in writing, to refer the case file to the cassation court if the judgment or verdict issued contradicts the law, even if it was final, provided that the cassation court did not review it before. The Attorney General can request the nullification of the procedure contested or the revocation of the judgment or decision. The cassation court has the power to nullify the procedure or revoke the judgment.

Retrial (trial de novo): Situations where it is permitted to conduct a retrial:

Rule number (869): It is permissible to conduct a retrial even if the verdict was final in the following situations:

- a) If a person was convicted of homicide and it was proven that the victim is still alive.
- b) If a person was convicted of committing a crime and another person was convicted for the same crime by another court, and it was obvious that the two verdicts contradict each other and one of the convicted persons has to be innocent.

- c) If the verdict was based on false testimony or on a forged document and this testimony or document was the basis of the conviction verdict.
- d) If new evidence or documents appear after the verdict was issued and such documents or evidences would have proved the innocence of the convict, if they were available during the trial.
- e) If the verdict was based on a civil or personal status court judgment that had been revoked and nullified.

Who has the right to request retrial:

Rule number (870): The retrial request has to be submitted to the Minister of Justice by:

- a) The convict, or his/her attorney or legal representative if the convict is incompetent.
- b) The convict's spouse, or his/her children, or his/her successors.

Retrial procedures

Rule number (871): The retrial request has to be submitted to the Minister of Justice within one year starting from the day the persons requesting the retrial learned about the existence of the reason that allows them to request a retrial. Otherwise, their request should be rejected.

Rule number (872): The Minister of Justice refers the retrial request to the Attorney General, who has to refer it to the competent prosecutor to conduct the needed investigations, and prepares an opinion memo. The Attorney General has to submit the request with the investigations that were made to the cassation court accompanied with his/her opinion, and the basis of the request, within a month after receiving the retrial request.

Rule number (873): The retrial request does not halt the execution of the verdict unless it is a death sentence.

Rule number (874): The cassation court has the power to order the halting of the verdict's execution when it accepts review of the retrial request.

Rule number (875): If it was not possible to hold any hearings in the retrial because of the convict's death or the dismissal of the case because of the statute of limitations, the cassation court can review the request without a hearing and nullify the illegal parts of the verdict.

Rule number (876): The retrial verdict that acquits the convicted person has to be hung on the courthouse door or in the public places in the town where the first verdict was issued, at the crime scene, the place of residence of the person who requested the retrial, and at the last place of residence of the convict if he/she is dead.

Rule number (877): The acquittal verdict must be published in the Official Gazette, and upon the request of the person who requested the retrial, has to be published in two local newspapers chosen by him/her, at the state's expense.

Rule number (878): Revoking the verdict results in revoking any compensation judgment that was issued and all compensation that has been paid must be returned to the convict. This has to be done with respect to the applicable statute of limitations.

Rule number (879): If the request for a retrial is rejected it cannot be requested on the same basis in the future.

Rule number (880): All decisions and judgments related to the subject matter of the retrial can be challenged through all means of post judgment motions. The convict should not get a harsher sentence as a result of the retrial.

Compensating the convicted person:

Rule number (881): The convicted person who was acquitted as a result of the retrial has the right to request the state to compensate him/her for the damages that resulted from his/her conviction.

Rule number (882): If the convicted individual is dead, requests for compensation may be submitted by a spouse, children or parent.

Rule number (883): The state has the right to have recourse to a civil plaintiff or a witness who lied under oath if his/her claim or testimony was the reason for convicting the convict.

4.8 GENERAL RULES GOVERNING JUDICIAL ANNULMENT (NULLIFICATION):

What is judicial annulment?

Rule number (884): Nullification is a procedural penalty, which means a procedure or legal measure is incorrect and is vulnerable to attack. Despite the material existence of the measure or procedure it has no legal existence. If the procedure or measure was not annulled it would have its effect despite being defective.

Rule number (885): Nonexistence means that the procedure or measure itself was not taken, or was not documented when the law makes it obligatory to document it. An example is the absence of the defense attorney in a felony hearing. Nonexistence means that the procedure or measure has no legal existence.

Rule number (886): Article (474) of the Criminal Procedures Law states “the procedure or measure is considered to be void and null if this is specifically provided by the law or if it was defective to the extent that it would not realize the goals it was supposed to achieve.”

From this provision we can conclude that the legislature adopted the theory of legal annulment and the theory of self-annulment and combined them together.

Another article that provides for annulment is Article (52) of the Criminal Procedures Law, which is related to the inspections rules. The article provides “annulment should be the result for not considering any of this chapter’s rules”.

Rule number (887): The phrase in article (474), which is stated above: "...or if it was defective to the extent that it would not realize the goals it was supposed to achieve," leaves great opportunities for different interpretations. It is very well known that goals do not justify the means used to achieve them. Thus, a measure or procedure might achieve its intended goal but still not be acceptable or the effects it has on proof may not be unacceptable. For example, the goal of interrogating the accused is to know the truth; this does not mean to coerce the accused to reach such truth. In such a case the measure or procedure used is void and null. The same is true regarding any legal effects that were realized as a result of such act.

Absolute Annulment:

Rule number (888): Absolute annulment is when the annulment of the measure or procedure is related to the public order. Such annulment results when a procedural rule that is related to the public order was contradicted by the measure taken.

Absolute annulment is provided for by article (475) of the Criminal Procedures Law, which enumerates the situations where such a penalty has to be imposed. The article states: "Annulment is the result of any measure or procedure taken if such measure does not adhere to the law provisions which are related to the formation of courts, their jurisdiction and any other rules which are related to public order. Such plea can be raised at any stage of the trial and can be decided by the court itself."

Rule number (889): In cases that are not specified by the above mentioned article, public order can be measured based on the interest the legislature wanted to achieve when enacting the procedural rule, because every procedural rule is enacted to preserve and protect a certain interest. If such interest is related to the effectiveness and efficiency of the Judiciary in achieving criminal justice, then the procedural rule is certainly related to the public order.

Some of the defense rights given to the accused are related to the public order and some are not. For example, if the legislature wanted to achieve a general interest with a certain defense right, and decided not to leave the practice of this right to the accused's discretion so it is guaranteed by the law despite the suspect's will, then the interest is a public and not a private one. If the legislature in some instances leaves the decision regarding a defense right to the accused's discretion, then the interest is a private one, and it is not related to the public order.

Rule number (890): If the case is concluded and the verdict becomes final there is no way to contest and annul the defective measure or procedure, as long as it passed all the trial phases without being contested by the court itself or by one of the adversaries.

Rule number (891): The legislature specified some of the procedural rules that are related to public order and left the rest to be concluded by the courts and jurists. Some of the following measures can be regarded as basic procedural rules related to public order:

- a) Appointing an attorney to defend the accused of a felony before the criminal court.
- b) Rules governing the initiation and prosecution of the criminal case by the General Prosecution.
- c) Rules governing the seizure of all materials related to the crime.

Proportionate Annulment:

Rule number (892): Proportionate annulment is not related to the public order as stated in article (478) of the Criminal Procedures Law: "In other annulment cases than the ones related to public order there is no right to request the annulment of procedures related to the collection of evidence or preliminary investigation or interrogation procedures as long as the accused had an attorney present and he/she did not contest the procedure taken, the General Prosecution cannot request the annulment of any measure or procedure taken if it had not done so at the time when the measure or procedure was taken".

Rule (893): Proportionate annulment can be remedied by accepting the defective measure or procedure by the side for whom the measure would do harm to his/her interest. Such acceptance might be explicit or implied when the party who has the right to invoke this right does not do so within the time limit stated by the law.

Rule number (894): In order to invoke proportionate annulment the following conditions have to be present:

- a) The adversary invoking the annulment has to have a direct interest in the observation of the rules that were not observed and thus caused the measure to become void.
- b) The adversary invoking the annulment should not have been the cause of or participated in violating the rules, regardless if he/she did so on purpose or by accident. For example the accused who swears the oath by him/herself before being interrogated cannot request the annulment of the interrogation, as long as he/she was not asked to swear but chose to do so himself.
- c) Invoking the annulment cannot be done after closing the arguments in the trial nor can this be done for the first time before the cassation court. The person who has the interest in invoking the annulment can abate such right either explicitly or implicitly by not invoking such right within the time limit prescribed by the law.

Distinguishing between absolute annulment and proportionate annulment:

Rule number (895): The judge has to order absolute annulment by him/herself, even if the adversaries invoked it. Any person who has an interest at any stage of the trial can invoke absolute annulment and it can be invoked before the cassation court for the first time. In contrast, only the related person can invoke proportionate annulment; the court cannot order it by itself. The person who has the right to invoke proportionate annulment can abate his/her right. Proportionate annulment can be invoked at any stage of the trial and can be invoked before the court of cassation for the first time.

Rule number (896): Absolute annulment cannot be remedied by abating the right to invoke it, while proportionate annulment can be remedied by abating the right to invoke it.

Rule number (897): Absolute annulment is based on the power of the law and thus it does not need a court's ruling to confirm it, while proportionate annulment needs to be confirmed by the court, otherwise the defective measure will have its legal effect on the trial.

Rule number (898): Absolute annulment can be invoked by any person who has an interest at any stage of the trial, while proportionate annulment has to be raised before the trial court or the right to invoke it lapses.

Rule number (899): Invoking proportionate annulment regarding a measure or procedure taken in the trial does not require that the court annul the measure, because the court can correct the measure and keep its legal effect .

Conditions regarding invoking the annulment of the measures or procedures taken in the trial:

Rule number (900): In order to invoke the annulment of a measure or procedure, two conditions have to be present:

- a) Interest has to be present in every case, plea, or motion. Thus, it has to be present when a person invokes his right to annul a measure taken in the trial. Interest here does not mean to have an interest in annulling the measure; rather it means to have an interest in adhering to the rules that have been violated.
- b) The person who invokes annulment should not be the cause of the procedure's violation.

Rule number (901): If the measure to be annulled is related to public order then every person with an interest can invoke the annulment, and the court can order it by itself. If the court does not order the annulment of the measure then its ruling would be illegal. If the annulment of the measure is provided for the adversaries' interests then the related person has the right to invoke it.

Rule number (902): Requesting the annulment of a measure or a procedure that is related to public order can be invoked at any stage of the trial and can be raised before the cassation court for the first time. The right to invoke proportionate annulment lapses if the accused had an attorney and the defective measure or procedure was taken in his/her presence without him/her contesting it. If the accused did not have an attorney, he/she keeps his/her right to request the annulment of the defective measure or procedure. However, the accused cannot keep such right indefinitely. He/she has to exercise it within a certain period of time.

Rule number (903): Whenever it is determined that an interrogation is null and void, it becomes illegal, as if it never existed. Thus, any evidence that was obtained through such an interrogation has to be dismissed; the interrogation does not stop the statute of limitations, and the accused person's confession cannot be held against him/her.

Rule number (904): As a result of the annulment of any measure or procedure, any subsequent measure or procedure to the annulled one has to be annulled as well, if there is a relation between the two, or if the first procedure or measure is vital to the legality of the second one in any way.

Rule number (905): The general rule provides that the annulment should only affect the defective measure or procedure, and the measures and procedures that are related and subsequent to it. It should not affect any other unrelated and correct measures or procedures. For example, a valid confession, which is obtained prior to an illegal search, is a legal confession and should not be annulled, as there is no relation between the defective search and the confession.

4.9 REHABILITATION OF THE CONVICT (CLEARING NAME AND REPUTATION):

Rule number (906): The judicial rehabilitation of a convicted person means eliminating all future criminal effects of the conviction. Starting from the date the rehabilitation judgment is issued, the convict becomes as any other citizen who was never convicted of a crime. Judicial rulings, upon a request by the convicted person, can restore a person's name and reputation effective starting from the day of the judgment's issuance.

Rule number (907): Rehabilitating the convict is applicable to any person who is convicted of a felony or a misdemeanor, regardless of the sentence imposed or the type of crime, because the law does not state any limitations. It is applicable to all kinds of crime, whether the crime violates honor or not, and whether the penalty imposed was a financial or a freedom restricting one.

Rule number (908): It is natural that the legislature did not include infraction crimes in the convict's rehabilitation system because they do not have criminal effects on the convicted person and they do not appear in the convict's criminal record.

Rule number (909): The convict's successors cannot request the rehabilitation of their predecessor because the law does not give them such a right.

Rehabilitation conditions:

Rule number (910) The penalty has to be fully executed, or a general pardon issued, or the penalty dismissed due to the expiration of the statute of limitation.

Rule number (911): The sentence has to be fully executed by spending all the imposed time and/or paying the whole fine imposed. The reason behind this lays in the importance of executing the sentence in order to deter the convict and rehabilitate him/her, which makes him/her eligible for the rehabilitation of his/her reputation.

Rule number (912): If the convict is on probation then he/she can only clear his/her name after the expiration of the three-year probation period.

Rule number (913): The general pardon is equivalent to the full execution of the sentence imposed.

Rule number (914): If the period stated for the execution of the sentence passes without the sentence being executed, then the sentence has to be dismissed, and it is not permissible to execute it. The reason behind this is that after a period of time, the verdict would be forgotten, and it would serve no one's interest to evoke the crime's memories after it had been forgotten. Therefore the dismissing of the sentence after the passing of the specified time is related to public order.

Rule number (915): The legislature conditioned the rehabilitation of the convict on the passage of a specific length of time after the sentence is executed, or the general pardon is issued, or the sentence is dismissed due to the expiration of the statute of limitations, in order to make sure that the convict's conduct is right and he/she is behaving in a good manner. The legislature stipulated this condition in article (438) of the Criminal Procedures Law which states: "if the crime committed constituted a felony, five years have to pass, and one year has to pass if the crime constituted a misdemeanor. In cases of repetition the period has to be double d."

Rule number (916): The doubling of the period for a person who escaped the execution of the sentence, until it was voided by the expiration of the statute of limitation, is logical in order to differentiate between those who submit to court's verdict and those who don't. Doubling the period in cases of expiration is based on the assumption that the court needs more time to make sure of the good conduct of the convict.

Rule number (917): In order to rehabilitate the convicted person's reputation he/she has to pay all fines, costs, and compensation imposed on him/her. The court has the power to ignore this condition if the convict proves that he cannot pay the fines.

Rule number (918): The legislature requested the good conduct of the convict and gave the court the power to measure the convict's conduct, in order to issue its judgment regarding whether or not to rehabilitate his/her reputation.

Rule number (919): If there was more than one verdict against the convict, then he/she cannot request the rehabilitation of his/her reputation, unless all the conditions stated above are fulfilled regarding each verdict. The calculation of periods has to be based on the newest conviction.

Rehabilitation procedures:

Rule number (920): The convict has to submit a written petition to the Attorney General. The petition has to include all information needed to identify the convict such as his/her full name, date of birth, and ID number. The petition has to also include the date the verdict against him/her was issued and the places he/she resided. Upon receiving the petition, the Attorney General has to order one of the General Prosecution members to conduct the needed investigation regarding the petition in order to verify the conduct of the petitioner in every place he/she resided since his/her conviction, as well as any other necessary information. After completing the investigations, the investigation file has to be attached to the petition and submitted by the Attorney General to the first instance court within one month of having the petition submitted to the Attorney General. The investigation file and the petition also have to include a copy of the verdict against the petitioner and a conduct report during his/her stay at the correction center.

Rule number (921): The court reviews the petition and has to make a decision regarding it in the deliberations room. The court has the right to hear the General Prosecution and the petitioner provided that that the court notifies the petitioner eight days before the hearing date. The court has also the right to ask for any needed information. The ruling of the court regarding the petition can be appealed according to the rules stated in the Criminal Procedures Law.

Rule number (922): After the rehabilitation judgment is issued, the Attorney General has to send a copy of the verdict to the court that issued it, in order to mark the clearing of it and the court has to mark the clearing of the convict on the individual's personal records.

Rule number (923): The legislation permits the revocation of the rehabilitation judgment in two instances:

- a) If it appeared that there were other convictions against the petitioner and the court was not aware of them when it issued its judgment. It is permitted to revoke the judgment even if the conviction that the court was not aware of has all the conditions needed for rehabilitating the convict, as long as the clearing judgment is upon the court's discretion. Therefore, the court

might not grant the convicted person such judgment if it was aware of the other conviction and it is worth submitting the issue before it again in order to decide.

- b) If the petitioner was convicted of a crime that was committed before the issuance of the rehabilitation judgment. If the crime was committed after the court's judgment then it does not affect such judgment.

Rule number (924): The revocation of the rehabilitation judgment falls under the court's discretion powers therefore it might decide not to revoke the judgment if it finds that the crime or the conviction which it was not aware of when it ordered the rehabilitation of the convict's reputation would not have changed its ruling even if it was made aware of it.

Rule number (925): The legislation only permits the rehabilitation of the convict's reputation for one time only. Thus if a convict was cleared and committed, another crime he/she would not be eligible to be rehabilitated again. In such a case the court has no discretion powers and has to reject the petition in grounds of the stricture before it reviews its subject matter.

Legal rehabilitation:

Rule number (926): Legal rehabilitation rehabilitates the convict's reputation without judicial interference or a request by the convict. Legal rehabilitation occurs after the passing of a long period of time since the penalty was executed or a pardon was issued or the penalty was dismissed due to the expiration of the statute of limitations.

Rule number (927): The legislature states the legal rehabilitation conditions in Chapter Five of the Criminal Procedures Law:

- a) The execution of the penalty imposed, pardoning the convict, or the dismissal of the penalty due to the expiration of the statute of limitations.
- b) The testing period has to be passed after the execution of the penalty, the pardoning of the convict, or the dismissal of the penalty. The testing period varies according to the crime and the penalty imposed:
 - i. The testing period is ten years for any person who was convicted of a felony, or was convicted of theft, keeping stolen property, forgery, fraud, or breach of trust misdemeanor
 - ii. The testing period is three years if the convict was convicted of a misdemeanor other than the ones stated above. If the penalty was dismissed due to the expiration of the statute of limitations, then the period is five years.
 - iii. The convict must not be convicted of any felony or misdemeanor that is recorded in his/her personal sheet during the testing period. This means that indicting the convict alone, without convicting him/her, does not deprive him/her of his/her right of legal rehabilitation. If the person to be rehabilitated was convicted by more than one verdict, then the condition has to be present for all these verdicts in order to rehabilitate his/her reputation.

The effects if Rehabilitation:

Rule number (928): The rehabilitation judgment, whether it is a judicial or a legal one, eliminates the effects of the criminal conviction regarding the future such as depriving him/her from certain rights. All the effects the criminal judgment has before the rehabilitation judgment stay as they are, such as dismissing the convict from his official post; even if he/she rehabilitated his/her reputation, he/she would not be eligible to retain his/her official post.

Rule number (929): The rehabilitation judgment cannot be used to relieve the convict from his/her obligations regarding the compensation of the injured. The injured person's right of compensation should not be affected by the rehabilitation judgment because the judgment only affects the criminal effects of the crime not the civil ones.

4.10 JUDGMENT EXECUTION:

Judgments that must be executed:

Rule number (930): Criminal penalties stated in the law must not be carried out unless there is a legal verdict issued by a competent court that provides for such execution of the penalty

Rule number (931): Criminal verdicts issued by criminal courts cannot be executed unless the verdicts are final or the law states otherwise.

Rule number (932): The General Prosecution executes criminal verdicts according to the rules stated in the Criminal Procedures Law. It has the power to seek police assistance if such assistance is needed.

Rule number (933): Judgments regarding a civil claim in a criminal case can be executed upon the request of the civil claimant according to the rules stated in the Civil Procedures Law.

Rule number (934): If an accused who is detained, is acquitted by the trial courts' verdict or is sentenced to pay a fine, he/she should be released immediately, unless he/she is detained for any other reasons.

Rule number (935): If the accused spent more time in precautionary detention than the period he/she is sentenced to, he/she has to be freed immediately.

Rule number (936): Contesting the verdict through cassation does not halt the execution of the sentence imposed unless the sentence is the death penalty.

Rule number (937): Every convicted person who gets a prison sentence for a period that does not exceed three months has the right to request from the General Prosecution an order to work outside the rehabilitation center unless the verdict issued deprives him/her from such an option. The request has to be submitted to the Attorney General or one of his/her assistants.

Rule number (938): If the accused is acquitted of the charges against him/her, the period he spent in precautionary detention has to be deducted from any prison sentence he/she might get regarding another crime that he/she committed during his/her detention.

Rule number (939): If there is more than one freedom-restricting sentence issued against the convict then the precautionary detention period has to be deducted starting from the lighter sentence.

Rule number (940): If the person who was sentenced to imprisonment was pregnant then it is permitted to delay the execution of the sentence until three months after she delivers. If it was decided to execute the sentence imposed on the pregnant convict or it was proven that she is pregnant after starting the prison term, then she has to get the same treatment precautionary detainees receive at the rehabilitation center.

Rule number (941): If the convict who is sentenced to prison has a life threatening sickness or the execution of the sentence would threaten his/her life then it is permitted to delay the execution of the sentence.

Rule number (942): If the convict who is sentenced to prison suffers from mental illness the General Prosecution has to order his referral to a mental illness center until he is cured. In such a case, the period he/she spends at the mental illnesses center has to be deducted from his/her sentence.

Rule number (943): If a man and his spouse are sentenced to prison for less than one year, and they were never imprisoned before, it is permitted to delay the execution of the sentence of one of them until the other one finishes his/her term. . This is permitted on the condition that they take care of a minor who is less than fifteen years old and the have a known place of residence in Palestine.

Rule number (944): If in any case the court decides to delay the execution of the sentence imposed on the convict, it has the right to order the convict to provide a bail bond which will guarantee that he/she will submit to the authorities when the it is time to execute the sentence. The bail amount has to be mentioned in the delay order,

Rule number (945): Excluding the cases stated by the law, it is forbidden to free the person imprisoned before the end of his/her prison term.

Rule number (446): The imprisonment day is twenty-four hours and the month is thirty days and year is twelve months.

Rule number (447): The freedom-depriving sentence starts from the day the convict is arrested, according to the sentence.

Rule number (448): The day in which the sentence execution starts has to be calculated in the imprisonment term and the convict has to be released at noon on the day his/her sentence ends.

Rule number (449): If the imprisonment term is twenty-four hours then it ends on the second day after the day the convict was arrested.

The execution of the death penalty:

Rule number (950): When the death penalty becomes final, the Minister of Justice has to immediately submit the case papers to the President of the state.

Rule number (951): The death penalty cannot be carried out without the President's consent.

Rule number (952): The Attorney General, or whomever he/she authorizes, has to supervise the execution of the death penalty. The execution of the penalty has to be witnessed by:

- a) The Attorney General or his/her representative.
- b) The warden of the rehabilitation center or his/her representative.
- c) The district's police chief.
- d) The reporter of the court that issued the sentence.
- e) The physician of the rehabilitation center.
- f) A clergyman from the convict's faith.

Rule number (953): The relatives of the convict have the right to meet with him/her before the execution of the death sentence in a place that is away from the execution place.

Rule number (954): If the convict's faith requires him/her to confess or practice any other rituals before death then all necessary means should be taken in order to enable him/her to do that.

Rule number (955): At the sentence execution place the verdict has to be recited in the presence of the convict and the witnesses to the execution. If the convict wants to say anything, the Attorney General or his/her assistant has to document what the convict says.

Rule number (956): It is prohibited to carry out the death penalty if the convict is pregnant. If the convict gives birth, and the child is alive, then the court that issued the verdict has to amend the death penalty and sentence her to life in person instead.

Rule number (957): The death penalty is carried out by hanging if the convict is a civilian and by firing squad if he/she is in the military.

Rule number (958): The court's reporter has to document the execution of the death penalty by writing a report, which has to be signed by the representative of the Attorney General, the warden, the physician, and the reporter. The report should be kept at the General Prosecution.

Rule number (959): The death sentence must not be carried out during official holidays or the religious holidays of the convict's faith.

Rule number (960): Death penalties can be carried out only at the state's rehabilitation centers.

Rule number (961): The state is obliged to bury the convict at its own expense if there are no family members to claim the body for burial.

Judgment execution problems:

Rule number (962): A judgment execution problem is a complementary case that does not aim at changing the verdict of the court but rather to complain about its execution.

Rule number (963): Any problem raised by the convict regarding the execution of the verdict has to be referred to the court that issued the verdict.

Rule number (964): The General Prosecution must refer the problem to the court. The persons concerned should be notified of the hearing date. The court rules on the issue after it hears the prosecution requests and from the persons concerned. The court has the right to conduct the needed investigation, and it has the right to halt the execution of the judgment until it gives its decisions.

Rule number (965): When considering the judgment's execution problem, the court is not permitted to discuss the subject matter of the verdict, its validity, or any faults that affect the verdict or the case procedures.

Rule number (966) Before referring the judgment's execution dispute to the court, the General Prosecution has the power to temporarily halt the execution of the judgment for health reasons of the convicted person. The General Prosecution does not have such power if the issue is referred to the court.

Rule number (967): If there is a dispute related to the identity of the convicted person, the dispute has to be solved according to the law.

Rule number (968): If a dispute arises which does not involve the convict, with respect to the execution of the judgment on the convict's property, the issue has to be referred to the civil court according to the rules stated on the Civil Procedures Law.