

## **Right to Legal Representation during Pre-Trial Stages: The Victim vs. The Accused: Where Does the Law Stand? A Critical and Comparative Review**

**Prof. Mouaid M. Al Qudah \***

**D. Mamoun M. Abu-Zeitoun\*\***

**D. Ahmad M. Hayajheh\*\*\***

**Received: 10/5/2017.**

**Accepted: 13/5/2017.**

---

### **Abstrac**

This article is a critical and comparative review of the right to legal representation under the procedural Acts of Jordan and United Arab Emirates (UAE) during pre-trial stages. It tries to answer how such right is guaranteed during these stages of criminal proceedings under both Acts and to what extent. Central to this purpose is to explore whether the law provides equal legal protection of this right for both victims of crime and criminal defendants, and to point out any potential procedural flaws or imbalances that might exist. Comparative analysis revealed that, although preliminary criminal proceedings are of a major significant and have major impact on both parties' rights and interests, and on the outcomes of the criminal case, yet, neither the accused nor the victim has the right to legal representation during this stage in both jurisdictions. The victim of crime does not also have this right during primary criminal investigation stage under the UAE Act. Comparatively, although the right exists in Jordan, yet the role of the victim's attorney is limited. The accused's right to legal representation during primary investigation exists under both Acts with differing degrees of variations, and limitations in relation to both of its scope and the extent to which it is guaranteed. The Act in Jordan, however, provides better guarantees of the accused's right to an attorney in this stage, especially during criminal interrogation pursuant to the last amendment of the Jordanian Act 2017 No 32.

**Keywords:** criminal proceedings; right to attorney; victim of crime; the accused; Jordan; UAE.

---

• Faculty of law, Yarmouk University, Irbid, Jordan.

\*\* University of Sharjah, Faculty of law, Yarmouk University, Irbid, Jordan.

\*\*\* University of Jordan, Faculty Member, University of Sharjah.

الحق في التمثيل القانوني خلال مراحل ما قبل المحاكمة الجزائية: الضحية في مواجهة الجاني وردة  
فعل القانون: مراجعة نقدية مقارنة

د. مؤيد محمد القضاة

د. مأمون محمد سعيد أبو زيتون

د. أحمد موسى الهياجنة

### ملخص

يقدم هذا البحث مراجعة تحليلية نقدية مقارنة موضوعها حقا لمجني عليه في مواجهة حق الجاني في التمثيل القانوني في ظل القانونين الإجراءيين الأردني والإماراتي خلال مراحل ما قبل المحاكمة الجزائية، وذلك في محاولة لبيان نطاق، ضوابط، ومحددات تقرير هذا الحق في كل القانونين بالنسبة لكلا الطرفين، وتسليط الضوء على مدى احترامهما ومراعاتهما لهذه الضمانة من ضمانات المحاكمة العادلة خلال هذه المراحل الهامة من مراحل الإجراءات الجزائية. كما يهدف البحث إلى بيان فيما إذا كان كلا القانونين يوفران حماية إجرائية متوازنة لطرفي الخصومة الجزائية في ما يخص هذا الحق من حقوق الدفاع، ورصد مواطن الاختلالات الإجرائية التي اعترت تنظيمه القانوني. وتحقيقا لهذه الغاية، فقد قسم البحث إلى قسمين، تناول الأول من هما الأساس الفلسفي والقانوني لأهمية التمثيل القانوني في الإجراءات الجزائية، وفي القسم الثاني، تمت المقارنة بين حق المجني عليه في مواجهة حق الجاني حول هذا الموضوع الهام لإبراز فيما إذا كان كلا القانونين يقرران هذا الحق وضمن ذات الضوابط لكلا الطرفين أمل تحقيق المبدأ الموازنة الإجرائية بين الخصوم. وقد تبين من خلال فحص واستقراء القواعد القانونية ذات العلاقة أنه رغم أهمية مرحلة تحقيقات الشرطة، وبالغ أثرها على ضمان حقوق ومصالح أطراف الخصومة، وعلى نتائج الدعوى الجزائية عموما، إلا أن حق الاستعانة بمحام غير مقرر لكلا الطرفين الجاني والمجني عليه خلاله هذه المرحلة في كلا القانونين. كما أن المجني عليه لا يتمتع بهذا الحق خلال مرحلة التحقيق الابتدائي في القانون الإماراتي، خلاف النظيره الأردني، الذي رغم إقراره إلا أن ضوابط ومحددات دور المحامي أمام المدعي العام تجعل من حضوره حضور شكلي ليس إلا. بالمقابل، كشفت الدراسة المقارنة أن كلا القانونين يقرران حق التمثيل القانوني للجاني خلال مرحلة التحقيق الابتدائي على اختلاف وتباين في النطاق والضوابط، علما بأن ضمانات تفعيل هذا الحق أفضل في القانون الأردني لاسيما خلال استجواب المشتكى عليه خاصة في ظل التعديل الأخير بموجب القانون رقم 32 لسنة 2017 .

الكلمات الدالة: التحقيق الابتدائي، تحقيقات الشرطة، الإجراءات الجزائية، حق التمثيل القانوني، ضحايا الجريمة، الجاني، الأردن، الإمارات

## 1. Introduction

This Article is a comparative and critical review of the victims' of crime right v. the accused's right to legal representation during the pre-trial stages under the Act of Criminal Procedures of Jordan 1961 No. 9 (ACPJ), and the Act of Criminal Procedures of UAE 1992 No. 32 (ACPUAE). Under both Acts, the criminal case<sup>(1)</sup> consists of two stages. The primary criminal investigation stage which is carried out by public prosecution, and the criminal trial stage. Prior to these two stages, there is a preliminary investigation stage which is conducted by law enforcement officers or the judicial police. Criminal proceedings undertaken by law enforcement agencies, in each of these stages, affect the rights and interests of both the accused and the victim of the crime. It is, therefore, essential that the law should provide both parties with the procedural rights and tools which are necessary for both enabling them to some form of effective participation in criminal proceedings, and ensuring proper and equal administration of justice during these proceedings.

Equal participation of both parties in the criminal case proceedings is essential, and therefore its mode, boundaries, and scope must be properly identified by the law. It must be the object of a delicate balancing carried out in the knowledge that the overarching purpose of criminal procedures is to provide fair trial and justice for those involved in criminal litigation; that is the accused and the victim.

The right to fair trial is a norm of human rights designed to protect the offenders involved in criminal proceedings from unlawful and arbitrary curtailments or deprivation of other basic rights and freedom. The most prominent of these rights are the right to life and liberty, and, at the same time, to allow a proper administration of justice to the victims of crime. In this paper, we argue that the right to fair trial is not limited to the accused; rather it is applicable to victims of crime as it forms their legal conduit to achieving justice. This right, therefore, encapsulates a set of minimum guarantees, each of which must be respected without any infringement, and it is guaranteed under various international legal instruments including the International Covenant on Civil and Political Rights (ICCPR) which states in Article (14) that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

---

(1) This paper explores the right to an attorney for both the accused and the victim of the crime in relation to criminal cases, and not civil cases. The criminal case consists of various criminal procedures which are conducted by the public prosecution and the competent criminal courts. The purpose of such procedures is to establish whether a crime has been committed or not, and if proven to be committed by the accused, and upon his or her conviction, then he or she shall be punished pursuant to the relevant law: see M S Namoor, *The Explanation of the Law of Criminal Procedure*, Dar Althaqafah, Amman, 2016, 157-158.

The standards against which a trial is to be assessed in terms of fairness are numerous, and amongst other standards, the right to legal assistance or the right to a criminal defense attorney is one of the fundamental and cornerstones of fair trial guarantees. This right should be recognized for both the accused and victims alike pursuant to the principle of equality before the law which underpins criminal proceedings from the outset, and entails providing litigants with equal procedural rights before law enforcement agencies.

Victims of crime play a critical role in the criminal justice system in both Jordan and UAE. They often provide eyewitness information to public prosecution, which helps in the capture of offenders. Furthermore, public prosecution and judges usually rely heavily on the victims' testimony in courts. Yet, and despite its reliance on victims, the criminal justice system in both Jordan and UAE, especially during primary criminal investigation, has emphasized the rights and interests of offenders. Consequently, the needs and concerns of the victims of crime have become subordinate to those of the offenders. In this paper, it is argued that this inequitable and inadequate treatment of victims needs to be revisited. This is important as, although public prosecution is deemed to be representing victims, the victims' interests are not the same as those of the prosecutor, and therefore, should be given independent recognition.

Based on that, this article provides a critical and comparative review of the right to an attorney which is of fundamental importance for both the victim of the crime and the accused under the criminal procedural Acts of Jordan and UAE. It tends to explore the extent to which such right is recognized and guaranteed under both Acts during pre-trial stages of criminal proceedings through casting light upon its rationale, precise scope and limitations in both jurisdictions. Through highlighting the relevant law on this right, the paper tends to trace the gaps and defects and any procedural flaws or imbalances in the laws of Jordan and UAE. Central to its purpose is to provide insight into how this comparative study might contribute to any potential law reform on this contentious issue under both Acts.

To achieve this purpose, the paper is divided into the three sections. Section 1 highlights the rationale of the right to an attorney. Section 2 addresses the extent to which such right is guaranteed for both the victim and the accused under both Acts during the preliminary investigation stage. Section 3 explores the same issue during the primary criminal investigation. The paper concludes by comparing and contrasting the respective positions of the two jurisdictions to provide insight into how this comparative analysis might contribute towards any potential law reform in relation to this contentious issue.

## 2. Why Legal Representation?<sup>(1)</sup>

The recognition of the right to an attorney during pre-trial stages is important and crucial for all parties for many reasons. It is important because it helps to guarantee an efficient implantation of the accused and the victim procedural rights before the law enforcement agencies; that is police officers, public prosecutors, and judges. It is essential in relation to the accused to insure his or her right to an effective defense and for the purpose of protecting his or her physical and mental integrity especially during their arrest or pre-trial detention or while being questioned by police officials or interrogated by public prosecutor. The right of the accused to an attorney is provided as a fundamental right in international human rights instruments and in criminal procedural Acts in most countries. So, according to Article (14/3/b) of the ICCPR: “Everyone charged with a criminal offense shall have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing”.

The right to legal counsel has been emphasized by numerous judgments of the European Court of Human Rights (ECHR). To this effect, it was held that the right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental feature of a fair trial.<sup>(2)</sup> And as a rule of law, a suspect should be granted access to legal assistance from the moment he or she is taken into police custody or pretrial detention. The accused has the right to effective participation in the process, and such participation includes not only to be present in the trial, but also the right to receive legal assistance if necessary.<sup>(3)</sup> By the same token, the court also asserted that the mere presence of the lawyer cannot compensate for the absence of the accused, and the fact that the defendant, despite having been properly summoned, does not appear cannot justify depriving him of his right to be defended by a lawyer.<sup>(4)</sup> For the right to legal assistance to be practical and effective, and not merely theoretical, its exercise should not be made dependent on the fulfilment of unduly

---

(1) This paper is the second article in which we explore the right to legal counsel for both the accused and the victim of the crime during *pre-trial stages* under the laws of Jordan and UAE. The first one, dealt with the same right during *trial stage* under both laws. Therefore, and as the rationale of the right to legal representation is basically the same during all phases of criminal proceedings, then some of the key concepts and ideas used in this section has been also cited in the first paper.

(2) *Salduz v. Turkey* [GC], application no. 36391 /02, 2008, ECHR, 51.

(3) *Dayanan v. Turkey*, 13 October 2009 31; *Lagerblom v. Sweden*, 26891 /95, 2003; *Galstyan v. Armenia*, 26986/03 [2007] ECHR 936.

(4) *Zana v. Turkey*, 18954 /91, 25- 11- 1997; *Van Geyseghem v. Belgium*, 26103 /95, 21-1-1999, 34; *Pelladoah v. the Netherlands*, 27/1993 /422 /501; *Galstyan v. Armenia*, 26986 /03 [2007] ECHR 936.

formalistic conditions; it is for the court to ensure that the counsel attending the trial is defending the accused and should be given the chance to do so.<sup>(1)</sup>

The right to fair trial is also recognized under the constitutions of Jordan and UAE. To this effect, Article (28) of the UAE Constitution 1971 states that: "Punishment shall be personal. An accused shall be deemed innocent until he has been convicted by means of a legal and just trial. The accused shall have the right to appoint the person who shall conduct his defense during the trial. The law shall prescribe the circumstances in which the presence of a counsel for the defense shall be obligatory". Similarly, the wording of Article (7) of the Jordanian Constitution 1952 implies the existence of the right to legal defense by stating that: "Personal freedom shall be guaranteed", and assumingly, by ways of deduction of the spirit of the wording of this Article, one can say that the protection of such freedom, during pre-trial stages of criminal proceedings, entails granting the accused the right to retain an attorney to defend him or her during all phases of such proceedings. This is important as the right to legal defense is a basic subordinate to the presumption of innocence according to which no one is guilty unless the contrary is evident.<sup>(2)</sup>

It is argued that victims of the crime are also entitled to legal representation before law enforcement agencies as this will entitle them to some form of participation in criminal proceedings which are deemed to be their legal conduit to the achievement of justice. The victim who does not have access to an attorney is clearly at a disadvantage, and the law must therefore provide for the victims' right to an attorney to remedy this vulnerable situation and ensure an equal treatment for both parties to criminal proceeding.<sup>(3)</sup> Presence of an attorney would contribute towards, informing victims of their procedural rights, helping them exercising these rights, and ensuring that the law agencies including police officials, prosecutors and judges are properly performing their duties in the administration of justice and would make the process as transparent as possible.<sup>(4)</sup> There is no doubt that victims of crime may, if given the chance to participate in criminal proceedings, contribute towards establishing the truth, and consequently achieving their sought legal rights through the conviction of the accused.

---

(1) Van Geyseghem v. Belgium, 26103/ 95, 21-1-1999, 33. See also High court of Jordan, judgment no 1785 /2016, criminal, 20-10-2016.

(2) See, J.H. Robert, la protection de la loi du 4 janvier 1993, *xiiie Journées de l'Ass-Fr. dr. Pen*, mars 1994, PU AIX- Marseille, 105.

(3) See, F. Alshatheli, around the participation in criminal proceedings: A comparative study, Dar alnahdah Press, Egypt, 1986, 90.

(4) S. Zappala, "The Rights of Victims v. The Rights of the Accused", (2010) 8 (1) *Journal of International Criminal Justice*, 137, 9.

The victim involvement in the criminal process is a form of balancing participation, which is necessary for proper balancing of the conflicting interests of both victims of the crime and the accused throughout all phases of criminal proceedings. Under the current state of law in both Jordan and UAE, victims are still viewed as merely witnesses in the criminal case, the party of which are both the accused and the state.<sup>(1)</sup> It is, however, submitted that criminal cases should not continue to be regarded as only a legal battle between the accused and the state, rather the victim ought to be given more chances to be involved in the criminal process during police investigation as well as the investigation held by the public prosecutor. That is, with the law agencies continue to pay increasing attention to the rights of the accused, the victims' of the crime right and interests had been overlooked.<sup>(2)</sup>

Thus, it has been, rightly, argued that "the criminal justice system has lost an essential balance ... [as] the victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed".<sup>(3)</sup> Therefore, victims of the crime should have a voice in these proceedings, be informed throughout the process as they are the ones who feel the immediate damage caused by the crime. Some form of victims' participation in criminal proceedings is essential if they are to be able to assert their legal rights in the criminal case,<sup>(4)</sup> and be satisfied with the outcome of the criminal justice system.<sup>(5)</sup> Presence of an attorney to their side would, arguably, contribute towards a more effective role of the victim of crime as a party to criminal proceedings rather than being as witnesses.

The victims of crime and the accused should both have the right to speak during criminal proceedings either by themselves or through their lawyer contributing to such process through the presentation of evidences, information, views, requests, concerns or objection to any improper handling of criminal proceedings by law agencies. Victims' involvement in criminal proceedings through the submission of representations and opinions essentially aims at satisfying their special needs or interest in the good administration of justice,

- 
- (1) See, M. S. Alani, *The Origins of Criminal Procedure*, University Book Shop, Sharjah, 2015, 77-107. See also, M. S. Najeen, *The law of Criminal Procedures of Jordan*, Dar Althaqafah Press, Amman, 1996, 45, 58-94; K. M. Kanam, F.M Qorari, *The General Principles of the law of Criminal Procedures of UAE*, AlafaqAlmohshreq Press, Amman, 2011, 42.
  - (2) See, G. C. Paul, J. M. Nathanael and J. E. Bradley, "Crimes Victims' Rights during Criminal Investigation", Vol. 104, No.1, 2014 *Journal of Criminal law and Criminology*, Northwestern University School of Law, USA, 59-104, 63
  - (3) President's Task Force on Victims of Crime, Final Report, cited in Paul et al, supra, 2014, 63.
  - (4) C. D. Robert, A. James, W. Julie and H. Susan, Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Right Clinic, National Center for Victims of Crime, U.S.A, 2009, 21
  - (5) R. Ruddy, "The Victim's Role in the Justice Process", *Internet Journal of Criminology*, ISSN 20456743 (online), 2014, 2.

and might contribute towards ensuring the conviction of the accused. Whereas, the accused' contribution to these proceedings, either in person or through an attorney, enables him or her to maintain their innocence, and consequently avoiding the imposition of criminal liability. The right to legal defense is, therefore, an essential right for all parties to the criminal case, and, at the same time, it is considered to be a necessary requirement for justice. It is a natural right of great importance among all other rights,<sup>(1)</sup> which should not be denied whether being articulated by law or not.<sup>(2)</sup> Yet, the explicit articulation of this right by law is essential as it imposes a duty on the law enforcement agencies to respect it, and would, certainly, form a basis for establishing social and legal ground towards enhancing the exercise of such right.

The deprivation of the victim or the accused of their right to have a lawyer present with them would surely have a negative impact on their rights. It would result in having both unable to properly submit their evidences, leaving them to fight a long battle of legal process full of concepts and procedures outside the scope of their legal and personal knowledge and expertise. And this might well lead to their failure to proving their rights when not being accompanied by a competent legal defense helping and guiding them throughout the various stages of criminal proceeding.<sup>(3)</sup> The attorney helps his clients, and compensates for any lack of legal knowledge in their side, guiding them through the criminal process and saving them any unnecessary difficulties involved.<sup>(4)</sup> The attorney presence with his client also helps in monitoring the proper execution of criminal procedures and would ensure a better application of the law by law enforcement agencies.<sup>(5)</sup> It also builds self-confidence of both the victim and the accused, and eliminates their anxiety and fear while responding to questions posed by legal authorities.<sup>(6)</sup> In general, the attorney supports his or her client at almost every phase of criminal proceedings. And thus, the enjoyment of having a lawyer by the accused is considered a basic guarantee of the right to defending oneself before the courts.<sup>(7)</sup>

- 
- (1) H. S. Almarsafawi, *the Safeguards of fair trial in the Arabic legislations*, Moharam Bake Press, Alescandarah, 1973, 14.
  - (2) A. A. Alfeqi, *the Police and the Rights of the Victims of Crime*, Dar Alfajer Press, Egypt, 2003, 85-86.
  - (3) See, M. A. Eabad, *Confidentiality of Investigation and the Right to defense*, Maktabat Alhamed Press, Amman, 2015.
  - (4) B. Alsrehan, *the Law of Civil Procedures*, University Press, Sharjah, 2013, 110-11.
  - (5) C. D. Robert, A. James, W. Julie and H. Susan, *Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Right Clinic*, National Center for Victims of Crime, U.S.A, 2009, 42.
  - (6) F. Niaziatabay, E. P. Fard, A. Hassni and E. P. Fard, "Examining defense rights of the accused at the stage of preliminary investigation in Iran laws with a human rights approach", (2014) 3 (1) *Journal of Natural and Social Sciences*, 164-175, 170.
  - (7) High court of Jordan, judgment no 23 /1983, criminal, 1983.



### 3. The Victim's v. the Accused's Right to an Attorney during Preliminary Criminal Investigation Stage

Under the ACPJ and ACP UAE, preliminary investigation is a stage of criminal proceedings which proceeds primary criminal investigation and trial stages of the criminal case, and is usually conducted by law enforcement officials or the judicial police.<sup>(1)</sup> In its broad sense, this stage is not considered as one of the criminal case stages. Yet, it is one of the most important phases of criminal proceedings which has a major impact and role on the preparation of the criminal case,<sup>(2)</sup> and if being carried out appropriately may guarantee achieving criminal justice, and contributing towards meeting the interest and rights of both the accused and the victim of the crime. This is because, at this stage, the crime is recently being committed, and thus it can be better providing the truth finding ways as the likelihood of the accused fleeing is reduced and the evidences necessary to prove or not to prove the commission of the crime are still intact.<sup>(3)</sup>

The preliminary investigation process are a set of criminal procedures, actions and inquiries which are conducted by judicial officials, either directly or pursuant to an order by public prosecutor, and usually starts from the moment when the police officers have knowledge of the commission of the crime and continues until the information and evidences gathered are being filed and sent to the public prosecutor. In other word, the prime purpose of the preliminary investigation stage is to detect crimes, finds perpetrators, and gather therelevant evidences which would help the public prosecutor to take a decision as to whether to initiate a criminal case or not.<sup>(4)</sup> Moreover, investigations involved in this stage of criminal proceedings, under the criminal Acts of Jordan and UAE, form the foundations of criminal cases according to which criminal judgments could be laid down when the crime investigated is either misdemeanor or contravention.<sup>(5)</sup> Thus, the legal principles governing the preliminary investigation proceedings are of a major significant value and importance since

---

(1) See, Alani, 2015, 155-161.

(2) Ibid, 2015, 162-163.

(3) F. Alkalani, lecture in the Law of Criminal Procedures of Jordan, part 2, Dar Almoraj Press, Bayroot, 1995,

(5) S. I, Almasarwah, "the right to lawyer in the preliminary investigation: A comparative study", (2013) 56

(6) *Journal of Shari'a and Law, United Arab Emirates University*, 183-228, 192.

(7) M. N. Husseni, *Explanation of the Law of Criminal Procedures*, Dar alnahdah Press, Egypt, 1995,377.

(8) Article (118 repeated) of the ACP UAE states that: "if the public prosecutor, in cases of misdemeanors and contraventions, finds that the criminal case is ready for trial as per the preliminary investigations, the prosecutor shall service the accused with a notice to appear before the competent court directly without conducting primary investigation. But if the prosecutor finds that there is no case against the accused, he or she shall close the case". Similarly, Article (11) of the Magistrate Act of Jordan 1952 states that: "the criminal case can be initiated before the magistrate court either pursuant to a complaint from the victim or based on the preliminary investigations report, and the case shall be tried according to the rules as stated in the Act of criminal procedures unless provided otherwise by this Act". See also, Articles (150, 151) of the ACPJ.

the law enforcement officials who are responsible for carrying out these procedures have the authority for conducting and performing numerous legal procedural duties with the highest potential of impacting the legal and personal rights and interests of the accused and the victim of the crime.

Amongst many other procedural duties, police officials, under the criminal procedural Acts of both Jordan and UAE, have the jurisdiction to accept criminal complaints, obtain necessary information and explanations concerning the committed offence, perform the necessary inspections of crime scene, verifying facts reported to them by victims or that become known to them in any other ways, and take all the necessary measures and steps to secure the evidences of the crime.<sup>(1)</sup> The judicial officer can also, upon his or her arrival at the crime scene (or in situations involving a red-handed crime) prevent people present at the scene from leaving or going away until a report is drafted.<sup>(2)</sup> The officer can also immediately call upon anyone who may have any clarification about the incident to give his statement.<sup>(3)</sup> In addition, the judicial officer has the jurisdiction to arrest or order the arrest of the accused present at the scene of the crime where sufficient evidence as to his or her involvement in the crime exist<sup>(4)</sup> pursuant to Article (45)<sup>5</sup> of the ACP UAE, and Articles (37, 46)<sup>(6)</sup> of the ACPJ.

Police officers' duties also involve searching offenders and their premises or residences in all cases in which the law give them the right to arrest the accused.<sup>(7)</sup> They also can take affidavits and questions the accused within 24

---

(1) See Article (35) of the ACP UAE, Article (8) ACPJ.

(2) Article (44) of the ACP UAE, Articles (31, 44, 46) of the ACPJ.

(3) Article (44) of the ACP UAE, Articles (37, 44) of the ACPJ.

(4) High court of Jordan, judgment no 815 /2000 criminal, 8-10-2000.

(5) Article (45) states that: "The judicial officer may order the arrest of the accused present at the scene of the incident when there is sufficient evidence that he or she has committed the crime in any of the following situations: 1. When the crime is a felony. 2. When the crime is a misdemeanor punishable by sentence other than a fine. 3. in misdemeanors punishable by sentence other than fine when the offender is being under police surveillance. 4. In misdemeanors of theft, fraud, breach of trust, trespassing, resistance of public servants by force, crimes against public morality, offences related to weapons and ammunitions, liquors and drugs".

(6) Article (46) states that: "judicial police officials, who are mentioned in Article (44), must, in situations involving red-handed offence or when being requested by household, draft criminal report, take witnesses' testimonies, search houses, and conduct all procedures which are in these situations falling within the jurisdiction of the public prosecutor, and all these procedures shall be carried out pursuant to the legal rules as established in the chapter in which the duties of the public prosecutor are articulated". Article (37) states that: "1. the public prosecutor in situations involving red-handed crime which is punishable by felonious sentence can arrest any present person whom he or she suspects to be the perpetrator of the offence. 2. If that person is not present at the sense of the crime, the prosecutor shall issue a warrant of arrest".

(7) Article (51) of the ACP UAE, and Articles (44, 46, 81-89) of the ACPJ. See, High court of Jordan, judgment no 994 /2009 criminal, 25-8- 2009.

hours<sup>(1)</sup>, take witness testimonies<sup>(2)</sup> as well as seek the help of experts, if necessary, to collect and secure the evidences of the crime.<sup>(3)</sup> Moreover, any confession made by the accused during police questioning is admissible in criminal trials and could form the basis for conviction as long as the public prosecutor submits what proves to the court that such confession was made voluntarily.<sup>(4)</sup> The standard piece of evidence by which such voluntariness is established by the prosecutor is the testimony of the police officer who was in charge for taking and signing the accused's confession, and without the accused's statement being taken in the presence of his or her attorney, the likelihood of police fabrication exists.

Clearly, preliminary criminal investigation is a stage of criminal proceedings which encompass a wide range of procedures that commence from the moment of the crime's detection in different ways, to issuance a decision of initiating the criminal case by public prosecutor or not based on the preliminary investigation file. The procedures undertaken during this stage are usually carried out in a speedy fashion on the hands of police officials lacking, sometimes, the necessary legal expertise and knowledge of the substantive and procedural aspects of criminal law. Added to that, the presence before those officials whether as a victim or an accused is usually associated with fear, anxiety, and this could affect their confidence and ability to present their cases and defend their rights.<sup>(5)</sup> Thus, this stage is one of great importance which could have major effects on the subsequent criminal proceedings and on the rights and personal interests of the accused and the victim of the crime. In one possibility, it could lead to the dismissal of the criminal case if not being conducted probably, and this would undermine the victim of the crime right to justice. And on another possibility, it could infringe upon the accused personal liberty and rights without sufficient justifiable causes.

Based on the foregoing analysis, it is necessary, therefore, in preliminary investigation stage for both of the accused<sup>6</sup> and the victim of the crime to have an attorney of their choice to be present with them during this stage of criminal proceedings. It is the right of the accused to defend himself or herself in person or by an attorney of his or her choice, and to be informed of such right at the

---

(1) High court of Jordan, judgment no 1573 /2014, criminal, 3-12-2014. See also, High court of Jordan, judgment no 857 /2007, criminal, 26-11-2007.

(2) Article (35) of the ACP UAE, and Articles (8, 46,) of the ACPJ.

(3) Article (40) of the ACP UAE, and Articles (39, 44, 46) of the ACPJ.

(4) Article (159) of the ACPJ. See, High court of Jordan, judgment no 366 /2009, criminal, 14-4-2009.

(5) Almasarwah, 2013, 183-228, 186.

(6) Some have argued against granting the accused the right to an attorney during preliminary investigation stage, whereas, others, with whom we agree, have argued for providing the accused with this right. On these different points of view, see Ibid, 2013, 203-208.

time of his or her arrest as this is one of most important legal guarantees for defensive rights of the accused. Yet, and contrary to other criminal procedural Acts,<sup>(1)</sup> there is no explicit legal provision in ACPJ<sup>(2)</sup> or in the ACP UAE which provides and guarantees this right for the accused during the preliminary investigation stage. And this makes both Acts in an urgent need for reform to address this contentious issue.

Similarly, although the assistance of an attorney is a primary way to ensure protecting the rights and interests of the victim of the crime, especially near judicial officers. Yet, there is no explicit legal articulation of such right in the fore-mentioned Acts, which make both of them in need for reform to remedy this legal defect. It is of great importance to amend both Acts to explicitly guarantee the right to an attorney for both parties during preliminary investigation stage of criminal proceedings. This is because including such right within the Act imposes a duty on judicial officers to allow both the accused and the victim to enjoy the legal assistance of an attorney in this stage, and does not leave this matter to their discretion. As has been argued, to assume that someone has a certain right is to say that he or she is owed an obligation of some kind by other persons,<sup>(3)</sup> and any denial of this right should have some consequences. In this case, rendering the procedures undertaken by police officers void. This is so as a meaningful possession of a right entails the protection of that right in circumstances in which it is violated or appears likely to be violated. As, rightly, has been pointed out, 'to have a right, then, is, I conceive, to have something which society ought to defend me in the possession of'.<sup>(4)</sup>

#### 4. The Victim's v. the Accused's Right to an Attorney during Primary Criminal Investigation Stage

Primary criminal investigation is the first stage of criminal case under the ACPJ and ACP UAE. The criminal proceedings involved in this stage are carried out by public prosecutors, and usually commence from the moment of

---

(1) The right of the accused to an attorney during preliminary investigation stage is recognized under various Acts. For example, it is recognized under the Italian criminal procedural Act 1988 No 477 in Article (225), the Germany criminal procedural Act 1964, Article (136), the Canadian bill of right (Article 2), and the French criminal procedural Act 2004 No. 204 (Article 63), cited in Almasarwah, 2013, 195-199.

(2) See, S. A. Shdafat and A. A. Aljabrah, "The Role of Human Rights through the Stage Inference in Ensuring the Authoritative Testimony before the law Enforcement Officers", (2016) Vol 7 No 4, *Jordanian Journal of law and Political Science, Mutah University*, 53-93.

(3) S. I. Benn, *a Theory of Freedom*, Cambridge University Press, New York, 1988, 236. See also, W. N. Hohfeld, "Fundamental Legal Conceptions AS Applied IN Judicial Reasoning", (1916- 1917) 26 *Yale law Journal* 710-770; W. N. Hohfeld, "Some Fundamental Legal Conceptions AS Applied IN Judicial Reasoning", (1913- 1914) 23 *Yale law Journal* 16 -59.

(4) Mill, *Utilitarianism* (1861, 66) cited in W. A. Edmundson, *An Introduction to Rights*, Cambridge University Press, UK, 2004, 71.

the initiation of criminal case, in different ways, to the issuance of a decision of prohibiting (preventing) prosecution, dismissal or committal of the case to the competent criminal court by the public prosecutor.<sup>(1)</sup> To put in another word, primary investigation proceedings, under both Acts consist of three related types of proceedings which have crucial influence upon the rights and interests of the accused and the victim of the crime, and eventually on deciding the fate of criminal case in general.

The first type of these proceedings is evidence-gathering related procedures, the primary purpose of which is to establish whether a crime has been committed or not, and if yes, deciding whether it has been committed by the accused or not. These procedures involve taking victims' and witnesses' testimonies,<sup>(2)</sup> searching places and individuals with connection to the commission the crime,<sup>(3)</sup> interrogation of the accused,<sup>(4)</sup> examining crime scenes,<sup>(5)</sup> appointment of experts<sup>(6)</sup> and seizure of things and evidences relating to the crime<sup>(7)</sup> and so forth. The second type of primary criminal investigation proceedings concerns interference with the accused liberty related procedures which include arresting<sup>(8)</sup> and detaining<sup>(9)</sup> the accused after being charged and interrogated. The third type of proceedings involved in this stage includes decision-making procedures re-the fate of primary investigation. These usually include issuance of either a decision to close the investigation and preventing criminal trial<sup>(10)</sup> or the committal of the case to the competent criminal court.<sup>(11)</sup>

#### **4.1. The Accused's Right to an Attorney during Primary Investigation Stage**

In the course of criminal investigation, the accused right to an attorney is strongly linked to the right to defense.<sup>(12)</sup> That is, anyone charged with a crime, and being the subject of criminal investigation, shall have the right to defend himself or herself in person or through legal assistance of his or her own choosing, and to be informed, if he or she does not have an attorney, of this right, and to have a lawyer assigned to defend him or her without payment if he

---

(1) Alani, 2015, 195-197. See also, Najeen, 1996, 237-239.

(2) See Articles (88-95) of the ACP UAE, and Articles (68-80) of the ACPJ.

(3) See Articles (72-79) of the ACP UAE, and Articles (81-89) of the ACPJ.

(4) See Article (99) of the ACP UAE, and Article (63) of the ACPJ. See, High court of Jordan, judgment no 815 / 2000, criminal, 8-10-2000.

(5) Article (71) of the ACP UAE, and Article (29, 30) of the ACPJ.

(6) Article (96-98) of the ACP UAE, and Articles (39-41) of the ACPJ.

(7) See Articles (80-87) of the ACP UAE, and Articles (32-38) of the ACPJ.

(8) Article (101-104) of the ACP UAE, and Articles (31, 37, 111-113) of the ACPJ.

(9) Article (106-110) of the ACP UAE, and Articles (114-120) of the ACPJ.

(10) Article (118) of the ACP UAE, and Article (130, 133/4) of the ACPJ.

(11) Articles (120-130) of the ACP UAE, and Articles (130/b, c; 132, 133/1, 2, 5; 135, 136) of the ACPJ.

(12) See, M. A. Obaid, *Confidentiality of investigation and defense Rights*, Alhamed Press, Amman, 2015.

or she does not have sufficient means to pay.<sup>(1)</sup> The right of the accused to retain a lawyer, during the stage of criminal investigation, is of fundamental importance as this right is a crucial guarantee for defending oneself, and reflects the lawreadiness to respecting the presumption of innocence which is supposed to underlie all phases of criminal proceedings. The right to legal representation is also essential as the attorney will explain to the accused his or her procedural rights, and help him or her to effectively exercise these rights,<sup>(2)</sup> especially during his or her interrogation after being charged with the crime. That is, charging the accused represents a dramatic shift in the criminal proceedings, with the accused finding him or herself faced with the prosecutorial forces, and immersed in the intricacies of substantive and procedural criminal laws.

The right to have a lawyer in primary investigation, and the necessity of his or her presence and legal activity in defending his or her client's rights is considered as a substantial guarantee for maintaining individual rights, freedoms and depriving disturbance in defense right. Presence of the attorney causes to self-confidence of the accused, eliminate anxiety, fear, and reduce the coercive pressures that are inherent in criminal procedures involving interrogation after the accused is being taken into custody.<sup>(3)</sup> It also helps the accused in presenting his or her requests to the public prosecutor, objecting and challenging his or her decisions, presenting evidences that could lead to eventually settling the fate of criminal case by increasing the chances for reaching a decision to prevent trial by the prosecutor. And, in general, the attorney presence at this stage of criminal case helps the accused to participate in criminal proceedings, through the exercise of his or her other procedural rights, in a manner that might help him or her to maintain his or her innocence, and consequently escape criminal liability.

The right of the accused to legal representation during the stage of primary criminal investigation exists under both the ACPJ and ACP UAE, although with differing degrees of variations regarding its scope and limitations. Accordingly, Article (100) of the ACP UAE states that: "the attorney of the accused must be allowed to attend the investigation with him or her, and shall be given access to the investigation reports unless the public prosecutor

---

(1) Article (14/3/d) of the ICCPR.

(2) Example of these rights, during primary investigation, include the accused's right to contend that the public prosecutor does not have the jurisdiction to investigate the case, or that the case has abated by the lapse of time, or that the action committed by him or her is not an offence under (Article 67) of the ACPJ. And certainly, the presence of the attorney is essential to bring these rights to his or her client's attention and help him or her to use them before the public prosecutor. The attorney would also inform his or her client of his right to appeal the decision of his or her detention as established in Article (110) of the ACP UAE, and help him or her filing such appeal. Furthermore, the attorney can also help the accused to apply for a temporal release on bail pursuant to Articles (111) of the ACP UAE, and (121, 122) of the ACPJ.

(3) Niazatabay et al (2014) 3 (1), 164-175, 170.

considers this not to be in the interest of the investigation”. According to this Article, the present lawyer of the accused has the right to attend the investigation with his or her client. But if the lawyer was not present at the time of the investigation, the law does not impose any duty on the public prosecutor to wait for his or her arrival, nor does Article (100) require the public prosecutor to inform the accused of this right prior to his or her interrogation, and it does not obligate the public prosecutor to allow the accused anytime to conclude a lawyer contract. Rather, Article (100) permits the public prosecutor to conduct the investigation in the absence of the accused’s lawyer, and states that he or she could have access to the investigation file unless the prosecutor decides otherwise. Therefore, one can argue that the legal principles as laid down in Article (100) of the ACP UAE does not provide sufficient guarantee for the accused’s right to legal representation, and accordingly undermines his or her defensive rights.

Comparatively, the accused’s right to legal representation during this pre-trial stage is set out in Articles (63, 63 repeated, 64, 65 and 66) of the ACPJ, which provide for better guarantees of such right throughout primary criminal investigation. To this effect, Article (63) sets out certain procedural rights for the accused during his or her interrogation by stating that:

1. When the accused appears before the public prosecutor, the prosecutor shall record all of his or her related personal details, inform him or her of the crime charged. The prosecutor shall then ask the accused for his or her reply to the criminal charge and must inform the accused of his or her right not to reply without the presence of an attorney of his or her choosing, and shall write this in the investigation report. If the accused refuses to appoint a lawyer, or if his or her lawyer does not attend the investigation within 24 hours, then the prosecutor can carry out the interrogation in his or her absentia.
2. In cases of emergency and for the purposes of preserving evidence, the prosecutor can interrogate the accused in the absence of his or her lawyer provided allowing him or her access to his or her client’s affidavit.<sup>1</sup>
3. If the accused provides answers to the questions of the public prosecutor, then these answers shall be recorded, read to the accused, signed by him or her as well as the prosecutor and the clerk, and if the accused has refuses to sign, then the reason of his or her omission shall be recorded and signed by the public prosecutor and the clerk
4. If the public prosecutor does not abide by subsections 1, 2, 3 of this Article, then the affidavit given by the accused shall be considered null.

---

(1) See, High court of Jordan, judgment no 266 /2000, criminal, 9-5-2000.

And pursuant to article (63 repeated) of the last amendment of the ACPJ2017No 32, the accused or his or her lawyer has the right to access the investigation file before the interrogation is being conducted by the prosecutor. And if his or her alleged offence is punishable by imprisonment ten years or more, then it is obligatory to have his or her lawyer attending every interrogation session. It is the prosecutor duty to assign a lawyer for the accused if he or she was unable to retain one. Moreover, if the Lawyer does not attend the interrogation session, then the prosecutor must clearly state in the interrogation report how the accused has contacted his Lawyer if the latter was not being informed of the session beforehand. And pursuant to the same article, if these rights are not respected, then the interrogation is considered null.

So, these Articles guarantees the following specific procedural rights for the accused before public prosecutor during interrogation:

1. The right to be informed of the alleged criminal charges.<sup>(1)</sup>
2. The right to be interrogated in the presence of his or her attorney, and if this right is not respected, then the interrogation shall be null.<sup>(2)</sup>
3. The right to be informed of the right not to respond to criminal charges without the presence of the attorney.<sup>(3)</sup>
4. The right to be allowed 24 hours to appoint the attorney if the accused chooses not to waive his or her right to have an attorney.<sup>(4)</sup> And if the accused freely waives his right to retain a lawyer, then any confession on his part is admissible.<sup>(5)</sup>
5. The right to silence.
6. The right to approve his or her affidavit, or not to do so.
7. The right to access the investigation file before the interrogation.
8. The right to have his or her Lawyer attending every interrogation session if the crime is punishable by imprisonment ten year or more.

---

(1) See, High Court of Jordan, judgment no 2266 /2014 criminal, 29-3-2015.

(2) High Court of Jordan, judgment no 2266/ 2014 criminal, 29-3-2015. See also High court of Jordan, judgment no 590 /2002, criminal, 18-6-2002; High court of Jordan, judgment no 1828 /2008 criminal, 2-4-2009; High court of Jordan, judgment no 1532 /2008, criminal, 10-11-2008. Although the confession before the public prosecutor is considered null if the accused is not being informed of his right not to speak without a lawyer, his or her confession before the court is considered sufficient for conviction: High court of Jordan, judgment no 30 /1995, criminal, 30-1-1995.

(3) High court of Jordan, judgment no 715 /2003, criminal, 23-7-2003.

(4) High court of Jordan, judgment no 228 /1995, criminal, 8-6-1995.

(5) High court of Jordan, judgment no 237, 2012 criminal, 14-4, 2012. See also High court of Jordan, judgment no 1573 /2014 criminal, 3- 12- 2014; High court of Jordan, judgment no 480 /2010, criminal, 14-6-2010; High court of Jordan, judgment no 1001 /2005, criminal, 31-10-2005.



Moreover, Article (64) of the ACPJ grants the accused the right to attend primary investigation procedures in person or through his or her Lawyer. This Article states that:

1. The accused, the person responsible for civil rights, the victim who is claiming compensation and their Lawyers shall have the right to attend all primary investigation procedures except hearing of witnesses.
2. The persons mentioned in para 1 shall have the right to access the investigation that being carried out in their absentia.
3. The public prosecutor shall have the right, in situations requiring immediate interference or if he or she considers that it is necessary for uncovering the truth, to conduct criminal investigation in the absentia of the person mentioned above, and his or her decision in this regard is final. He or she, however, must after the completion of the investigation allow the aforementioned persons to access the investigation being carried in their absentia.

The accused right to retain a lawyer during primary criminal investigation, and the role of the Lawyer is articulated in Article (65). According to para (1) of this Article “All parties shall have the right to only a single attorney to be present with them before public prosecutor [during primary criminal investigation]”. Para (2) of the same Article indicates that the present attorney is not allowed to speak during the investigation unless being permitted by the prosecutor to do so and the prosecutor has the authority to deny him or her the right to speak if he or she considers this necessary for the purpose of the investigation.<sup>1</sup> Para (2) states that: ‘The attorney shall have the right to speak only with the permission of the public prosecutor’. Arguably, the restriction of the defense attorney’ right to speak contradicts the right to defense, which is a fundamental guarantee for the accused, and would render the presence of the attorney meaningless.<sup>2</sup> However, pursuant to para (3) of the same Article “if the public prosecutor does not allow the attorney to speak, this should be indicated in the record, and the attorney shall have the right to submit a written memo stating his or her remarks or reservations about the investigation”.

Article (66) of the ACPJ provides that although the public prosecutor has the right and authority to prevent the detained accused from contacting anybody, if he or she finds that to be necessary for the purpose of investigation, this prohibition does not apply to the accused’ attorney. That is, all detained offenders must have adequate opportunity to be visited and communicate with

---

(1) See, F. Alkalani, *lectures in the law of criminal procedures of Jordan*, Dar Althaqafah Press, Amman, 1985, 143.

(2) B. Genevois, *un statut constitutionnel pour les estranger*, R.F.D. AD 1993, 283.

their Lawyers in full confidentiality without any interception or censorship.<sup>(1)</sup> Article (66) states that: “1. the public prosecutor shall have the right to prevent the detained accused from contacting anyone for a period not exceeding ten days. 2. This prohibition does not include the accused’s attorney who has the right to meet with him or her in full confidentiality at any time”.

#### **4.2. The Victim’s Right to an Attorney during Primary Investigation Stage**

Victims of crimes, in their capacity as parties to criminal proceedings, should be granted various procedural rights in order to enable them to effectively take part in these proceedings during primary criminal investigation stage. One of these procedural rights is their right to the presence of a retained attorney as this would make them independent participants, rather than mere witnesses, and, consequently, provide them with the opportunity to participate in the process in a meaningful manner. This is important because the personal interests of the victim of the crime at this stage are vast. It is well known that, under both the ACPJ and ACP UAE, this stage involves, as mentioned earlier, various kinds of criminal procedures and decisions with high potential of affecting the victims’ rights. These include interviewing of witnesses, interrogation of the accused, presenting evidences, releasing the detained offender, issuance of a decision to prevent trial or dismissal of the criminal case. Therefore, protecting victims’ legal rights and interests implicated in this stage requires special legal knowledge that might only be provided by the victim’s attorney.<sup>(2)</sup>

Arguable, there is a considerable risk that the victim of the crime will not be able to effectively attend and participate in criminal proceedings through presenting his or her evidence, cross-examine witnesses, objecting or challenging the decision of the public prosecutor if not be allowed to have an attorney present during investigatory procedures.<sup>3</sup> Thus, protecting the rights of the victim of crime requires allowing those who have secured the assistance of an attorney to enjoy the benefits of their attorney’s legal knowledge and expertise in asserting their rights. And any denial of such right would involve denying them access to the very basic tools that are necessary to defend their interests meaningfully before public prosecutors.

---

(1) See, M. M. Mostafa, *Explanation of the law of criminal procedures*, Dar Alnahdah Alarabyah, Egypt, 1988, 268.

(2) See, A. A. Alfeqi, *Public Prosecution and the Rights of the Victims of Crime*, Dar Alfajer Press, Egypt, 2003, 54.

(3) Ibid, 2003, 54.

Despite the importance of legal representation for the victim of the crime during primary investigation stage, and contrary to other Acts,<sup>(1)</sup> there is no explicit provision in the ACP UAE which provides the victims of crime with the right to legal representation during primary criminal investigation stage, and this makes this Act in need for urgent amendment to remedy this legal defect and guarantee the victims' right to an attorney during this investigatory stage of criminal case.

Comparatively, the right of the victim of the crime to legal representation is guaranteed under the ACPJ pursuant to para (1) of Article (65) which states that: "All parties shall have the right to only a single attorney to be present with them before public prosecutor during primary criminal investigation". And the term "all parties" includes the accused as well as the victim of the crime and any person (other than the victim) who has been affected by the crime and claiming restitution or compensation. Yet, pursuant to this Article, public prosecutor is not required to inform the victim in advance of his or her right to have an attorney present with him or her during carrying out the investigation. Rather, it allows for conducting the proceedings in the absentia of the attorney, and if present, he or she is not allowed to speak without the prosecutor's permission. To this effect, para (2) of Article (65) states that: "the attorney shall have the right to speak only with the permission of the public prosecutor". The present attorney can, however, if being denied the right to speak, submit a written memo stating his or her remarks, requests or objections pursuant to para (3) of Article (65) which says that: "If the public prosecutor does not allow the attorney to speak, this should be indicated in the record, and the attorney shall have the right to submit a written memo stating his or her remarks or reservations about the investigation".

## 5. Conclusion

This paper sought to provide a comparative study of the right to legal representation, for both the accused and the victim of the crime during pre-trial phases of criminal proceedings under the ACPJ and the ACP UAE. Central to this purpose was to provide insight into whether this right is guaranteed for both parties and to what extent in both jurisdictions. Based on the analysis undertaken in this paper, it has been shown that, the initial step in criminal trial process is the preliminary investigation stage which is conducted by police officials, and has major impacts on the rights and interest of both the accused and the victim of the crime. This is because it involves a wide range of criminal procedures with highest potential of affecting the accused's personal liberty and

---

(1) See, for example, the Act of Criminal procedures of Egypt 1952 Article (77), the Act of Criminal procedures of Kuwait 1960 Article (75), the French Act of criminal Procedures 1921 Article (114).

privacy as well as the victim's interest in establishing a case against the offender. The proceedings at the stage might well form the foundations of criminal case in both jurisdictions, and usually carried out in a speedy fashion by officials lacking solid knowledge of the substantive and procedural laws. Yet, and despite the importance of legal representation during this stage, there is no explicit provision under both Acts which guarantees this right for both the accused and the victim of the crime. Accordingly, and in the absence of such legal provision, there is an obvious need for legislative intervention to explicitly address this issue and guarantee the right to legal representation during this stage of criminal proceedings for both the accused and the victim of the crime.

It was also shown that, under the Acts of Jordan and UAE, primary criminal investigation is the first stage of the criminal case consisting of three related types of criminal proceedings which have curtail influence upon the rights and interests of the accused and the victim, and eventually on deciding the fate of criminal case. Accordingly, the right to defense attorney is essential for both parties during this stage, and can be a foundation to ensuring a meaningful exercise of all other procedural rights. Yet, the victims of the crime right to an attorney does not exist under the ACP UAE, whereas, despite its recognition under Article (65) of the ACPJ, the role of the attorney is limited before the public prosecutor who has the authority to deny him or her the right to speak defending his client pursuant to the same Article. Arguable, this denial of the right to speak cannot be compensated for by allowing the attorney to submit a written memo including his or her remarks.

As for the accused's right to legal representation during primary investigation stage, comparative analysis showed that this right is better guaranteed under the ACPJ, especially during criminal interrogation pursuant to articles (63 and 63 repeated). This is so as, contrary to the ACP UAE, the accused has under the CLPJ various specific rights including: the right not to speak without the presence of an attorney of his or her choosing, the right to be informed of this right, and if not waving the right to the presence of an attorney, the accused must be given adequate time to be able to retain one. The ACPJ also provides that if these rights are not being respected, then the interrogation shall be considered null. Accordingly, and in the absence of these specific rights of the accused under the ACP UAE, it is suggested that any potential law reform of the ACP UAE could be informed by the principles as established in the ACPJ. However, the ACPJ states that the attorney shall have the right to speak only with the permission of the public prosecutor who has the authority to deny him or her this right. And as the restriction of the defense attorney's right to speak contradicts the right to defense, and would render the presence of the attorney meaningless; a legislative intervention is required to address this issue.

### **Recommendations:**

Based on the foregoing analysis undertaken in this article, the following recommendations can be offered for any potential law reform on the right to legal counsel under both Acts of Jordan and UAE:

1. The Acts of criminal procedures in both Jordan and UAE should be amended to explicitly recognize the accused's right to retain a lawyer during police investigation. It must be the law that the accused should be granted access to legal assistance from the moment he or she is taken into police custody. And the accused must be informed of such right by the arresting officer. If such right is not being respected, then any confession of the accused must be rendered inadmissible even if Article 159 of the ACPJ is applied.
2. Both procedural Acts of Jordan and UAE should be amended to allow the victim of the crime the right to have an attorney of his or her choice present with him or her during police investigation.
3. The ACP UAE should be amended to grant the victims of the crime the right to an attorney during primary criminal investigation, and he or she must be informed of such right by the public prosecutor.
4. Articles 64 and 65 of the ACPJ should be amended to grant the lawyer present with either the victim or the accused the right to attend all investigating procedures including hearing witnesses and to be able to cross-examine them before the prosecutor. And the lawyer should be informed of the time of the investigation beforehand.
5. It is suggested that the ACP UAE should adopt the rules as established by the ACPJ in Articles (63 and 63 repeated, 64, 65 and 66) concerning the accused rights to legal representation before the public prosecutor as highlighted above (see above 4.1).

## References:

### Acts:

- The Criminal Procedures Act of UAE 1992 No 32 .  
The Criminal Procedures Act of Jordan 1961 No 6.  
The Jordanian Penal Act 1960 No. 16.  
The Penal Act of UAE 1987 No. 3.

### Books and Articles:

- A A Alfeqi, the Police and the Rights of the Victims of Crime, Dar Alfajer Press, Egypt, 2003.
- A. A. Alfeqi, Public Prosecution and the Rights of the Victims of Crime, Dar Alfajer Press, Egypt, 2003,
- B Alsrehan, the Law of Civil Procedures, University Press, Sharjah, 2013.
- B. Genevois, un statut constitutional pour les estranger, R.F.D. AD 1993.
- C D Robert, A James, W Julie and H Susan, Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Right Clinic, National Center for Victims of Crime, U.S.A, 2009.
- F Alshatheli, around the participation in criminal proceedings: A comparative study, Dar alnahdah Press, Egypt, 1986.
- F Kasasbeh and M Al Qudah, "The effectiveness of the proposed Jordanian consumer protection Act: an analytical and critical study for the proposal's scope of means of execution", (2010) 24 (43) Journal of Shari'a and Law, United Arab Emirates University, 141-193.
- F Niaziatabay, E P Fard, A Hassni and E P Fard, "Examining defense rights of the accused at the stage of preliminary investigation in Iran Laws with a human rights approach", (2014) 3 (1) Journal of Natural and Social Sciences, 164-175.
- F. Alkalani, lectures in the law of criminal procedures of Jordan, Dar Althaqafah Press, Amman, 1985.

- G C Paul, J. M. Nathanael and J. E. Bradley, "Crimes Victims' Rights during Criminal Investigation", Vol. 104, No.1, 2014 Journal of Criminal Law and Criminology, Northwestern University School of Law, USA, 59-104, 63.
- H S Almarsafawi, the Safegaurds of fair trial in the Arabic legislations, Moharam Bake Press, Alescandarrah, 1973.
- JH Robert, la protection de la loi du 4janvier 1993, xiie Journnees de l'Ass-Fr. Dr. Pen, mars 1994, PU AIX- Marseille, 1994.
- K M Kanam, F.M Qorarri, The General Principles of the Law of Criminal Procedures of UAE, Alafaq Almoshreqh Press, Amman, 2011.
- M A Eabad, Confidentiality of Investigation and the Right to defense, Maktabat Alhamed Press, Amman, 2015.
- M S Alani, The Origins of Criminal Procedure, University Book Shop, Sharjah, 2015.
- M S Najeen, The Law of Criminal Procedures of Jordan, Dar Althaqafah Press, Amman, 1996.
- M S Namoor, The Exaplanation of the Law of Criminal Porcedure, Dar Althaqafah Press, Amman, 2016.
- M. A. Obaid, Confidentiality of investigation and defense Rights, Alhamed Press, Amman, 2015.
- M. M. Mostafa, Explanation of the law of criminal procedures, Dar Alnahdah Alarabyah, Egypt, 1988.
- R Ruddy, "The Victim's Role in the Justice Process", Internet Journal of Criminology, ISSN 20456743 (online), 2014.
- S Zappala, "The Rights ofVictims v. The Rights of the Accused", (2010) 8 (1) Journal of International Criminal Justice, 137.
- S. A. Shdafat and A. A. Aljabrah, "The Role of Human Rights through the Stage Inference in Ensuring the Authoritative Testimony before the law Enforcement Officers", (2016) Vol 7 No 4, Jordanian Journal of law and Political Science, Mutah University.
- S. I. Benn, a Theory of Freedom, Cambridge University Press, New York, 1988.

W. A. Edmundson, *An Introduction to Rights*, Cambridge University Press, UK, 2004.

W. N. Hohfeld, "Fundamental Legal Conceptions AS Applied in Judicial Reasoning", (1916- 1917) 26 Yale law Journal.

W. N. Hohfeld, "Some Fundamental Legal Conceptions AS Applied IN Judicial Reasoning", (1913- 1914) 23 Yale law Journal.