

Abstract
THE EFFECT OF THE ABSENCE OF DEFENDANT DURING THE
PROCEDURES OF THE PENAL SUIT
-A comparison study-

There is no doubt that the presence of the defendant during the procedures of the penal suit until the issuing of the final verdict, helps in showing the legal and judicial fact and its conforming with the judicial certainty.

Every system for the criminal procedures aims to ensuring the state's right in penalization of the criminal as much as concern about protecting innocents and achieve the truth, its aim correlated strongly with the rule of the two authorities of investigation, **accusation and judgment with the extent of balancing among different authorities in the penal suit in order not to defend someone on the behalf of another.**

The defendant is considered a primary party of the penal suit and the feature of accusing follow the human as an urgent feature that describe the person after availability of a bunch of apparent evidences from it, the personal presence of the defendant in the penal suit is a pure right for the community and the defendant should not waiver unless it's all reasons will vanish, the project focused on the importance of the presence of the defendant during the stages of the penal suit and should be notified because notification is efficient to ensure the presence of the defendant first, second it is considered as a legal joint between the defendant and the judgment.

The absence of the defendant is a common case in the criminal law and the legal nature for the absence of defendant triggers many legal troubles that referred to the circumstances of application the legal texts that contrasts from suit to another.

Studying the concept of the presence of defendant demands being specified in the legislations to enact a rule of summon the defendant and specify its cases and obliged the defendant to attend the court personally or being represented by his agent in another cases, in case of breaching the rules of attendance he will be considered as absent legally.

The pre-judgment procedures are considered as primary stage of the penal suit, it aimed to making sure of the occurring crime and probing the evidences for it, finding its criminals, investigating and auditing proofs in order to report the suit to the specialized courts.

Some of them see that always the defendant is absent during the procedures of investigation and probing processes of legal suit as these processes are mere collecting information and investigations about the occurred crime, experts see that procedures of investigations and collecting the evidences are primary works preceding to moving the penal suit.

The criminal law issued that its unaccepted to create a file without notifying all parties with its creation as the legislations say that like the Iraqi enactor in the item (87 , 88) of the Iraqi penal judgments, the enactor emphasized on the presence of the defendant in front of investigations authorities as a means to concentrate his right of defense via a document including the following " Explanation of the charge against him and legal items of penalization in order to give the chance for the defendant to prepare his defense".

It's the responsibility of the judgment to apply the law properly via penal procedures that aim to issuing the penal rule according to the procedural legal stipulations .

In the stage of trial, being specifying finally the legal position of the defendant from his charge and his trial will not be held in case of his absence or escaping unless being sentenced by the criminal court in a case then he attend after that or being arrested.

The absence of the defendant should not be a reason may cause the stoppage of the court or the penal sentences.