

THE PRINCIPLE OF EMOTIONAL CONVICTION AND THE AUTHORITY OF THE CRIMINAL JUDGE IN THE JORDANIAN CRIMINAL LEGISLATION

O PRINCÍPIO DA CONVICÇÃO EMOCIONAL E A AUTORIDADE DO JUIZ PENAL NA LEGISLAÇÃO PENAL DA JORDÂNIA

Article received on: 11/27/2025

Article accepted on: 2/26/2026

Ibtisam Mousa Saleh*

*Amman Arab University, Amã, Jordânia

Orcid: <https://orcid.org/0000-0002-5993-0785>

ibtisam@aau.edu.jo

Rola Nael Salameh*

*Amman Arab University, Amã, Jordânia

Orcid: <https://orcid.org/0009-0008-5433-829X>

r.salameh@aau.edu.jo

Fadel Mansour Aljuneidi*

*Amman Arab University, Amã, Jordânia

Orcid: <https://orcid.org/0009-0006-8554-9546>

f.junidi@aau.edu.jo

The authors declare that there is no conflict of interest

Abstract

This study aims to clarify the role of the criminal judge, according to the Jordanian Criminal Procedures Law, in evaluating the evidence before the criminal judge for proof in criminal actions, and the extent of his powers in assessing the evidence, and whether his powers differ in terms of evaluating the evidence from his acceptance and the controls for evaluating the evidence. As well as the extent to which the trial court and the court of cassation supervise the evaluation of the evidence by addressing the position of the Jordanian judiciary regarding the evaluation of the evidence. To achieve the desired goals of this study, the researcher followed the descriptive and analytical approach to the texts of the Jordanian Criminal Procedures Law, reinforced by judicial decisions. One of the most important findings of the study is that the extension of criminal judge's authority to assess his conviction has its limits because the legislator did not leave it unrestricted, but rather the legislator restricted it with limits and controls and provided some exceptions to it against which the criminal judge does not have any freedom in assessing the value of the evidence. The study recommended the need for the Jordanian legislator to intervene to make the necessary amendments with the conviction of the criminal

Resumo

O presente estudo tem como objetivo esclarecer o papel do juiz criminal, de acordo com a Lei de Processo Penal da Jordânia, na avaliação das provas que lhe são apresentadas para fins de comprovação em processos penais, bem como o alcance de seus poderes na apreciação das provas e se tais poderes diferem, em termos de avaliação das provas, de sua admissão e dos controles aplicáveis à avaliação das provas. Além disso, analisa até que ponto o tribunal de primeira instância e o tribunal de cassação supervisionam a avaliação das provas, abordando a posição do judiciário jordaniano em relação à avaliação das provas. Para atingir os objetivos pretendidos deste estudo, o pesquisador seguiu a abordagem descritiva e analítica dos textos da Lei de Processo Penal da Jordânia, reforçada por decisões judiciais. Uma das conclusões mais importantes do estudo é que a extensão da autoridade do juiz criminal para avaliar sua condenação tem seus limites, pois o legislador não a deixou irrestrita, mas sim a restringiu com limites e controles e previu algumas exceções às quais o juiz criminal não tem qualquer liberdade na avaliação do valor das provas. O estudo recomendou a necessidade de intervenção do legislador jordaniano para realizar as alterações necessárias no que diz



judge, such as determining the value of non-judicial recognition, which is appropriate to the relevant legal texts.

Keywords: The Principle of Emotional Conviction, The Criminal Evidence, The Principle of Oral Trial, The Reasoning/Causation of the Judgement, The Legitimacy of Evidence, The Presumptions.

respeito à convicção do juiz criminal, tais como determinar o valor do reconhecimento extrajudicial, de forma adequada aos textos legais relevantes.

Palavras-chave: *Princípio da Convicção Emocional. Provas Penais. Princípio do Julgamento Oral. Fundamentação/Causalidade da Sentença. Legitimidade da Prova. Presunções.*

1 INTRODUCTION

One of the basic principles of contemporary criminal law is the concept of emotional conviction. and this is what the Jordanian legislator stipulated in the Jordanian Criminal Procedures Law. Art. 147. The judge is free to assess the persuasive value of each piece of evidence. bearing in mind that the persuasive value of all evidence is not subject to the supervision of the Court of Cassation. The judge is not required to explain the circumstances surrounding his conviction. the features of the principle of his emotional conviction. its applicability. or the list of factors that contributed to that conviction. The principle of emotional conviction refers to the judge's strong conviction based on realistic evidence. extrapolating the evidence before the judge. and examining it carefully until the judge reaches a conclusion. The judge must have sufficient evidence to support his conclusions to prove or deny the facts as stated in the judgement and assign them to the accused.

The judge in criminal proceedings is satisfied solely on the basis of the evidence submitted to him; No other evidence otherwise can be used to convince the judge. The Criminal Court accepts any evidence in its full has full discretion regardless of the order or grading of the criminal means of evidence.

The Court of Cassation is responsible for verifying the availability of all legal conditions for the judgment. ensuring that there are clear and detailed reasons and justifications for it. and that the evidence on which it is based is legally proven. Accordingly. the role of the Court of Cassation revolves around the legal – but not the actual - aspects of the judgment. as the conviction in the evidence is left to the trial court. and either to benefit from it in issuing a valid final judgment or to reject it if there is doubt

about it. Thus, this requires the presence of adequate clarifications and explanations in the judgment, and the avoidance of ambiguity and inaccuracy in its formulation, in order to facilitate the task of the Court of Cassation in assessing the validity of the judgment.

2 THE NATURE OF EMOTIONAL CONVICTION PRINCIPLE

2.1 Definition of emotional conviction principle

2.1.1 The jurisprudential meaning of emotional conviction

Many criminal law jurists have examined the idiomatic meaning of emotional conviction in an attempt to define it. The definition of Dr. Muhammad Naguib Hosni is one of them, so the emotional conviction is defined as follows: the judge accepts all the evidence submitted to him by the parties to the case, as there is no evidence that the law previously prevents from accepting it; Excluding any evidence that he is not satisfied with. Then, the judge has full discretion, and he weighs the importance of each piece of evidence on Case by case basis. Finally, he has the authority to examine the evidence submitted to him, in order to reach a logical conclusion (Husni, 1998, p. 774).

The researcher agrees with this exhaustive definition, because it gives the criminal judge the freedom to form his emotional conviction in the innocence or conviction of the incident attributed to him by any legal means he deems necessary, because the role of the judge is not limited to adherence to the evidence submitted in the proceeding only, but rather he has to search in any evidence provided that the evidence is logically and mentally acceptable without emotional conviction reaching the degree of over-control, arbitrariness and tyranny.

Jurists believe that the precise meaning of emotional conviction is that it enables the judge to evaluate the importance of the evidence submitted to him in a rational, logical and causal manner. This is because his conviction was directed with the intention of knowing that truth, and his training/experience, culture, and intelligence help him in that (Fadel, 2005).

It was also defined as “a strong belief in the validity of the facts submitted by the litigants, and reliance on them, and they have a deep impact on the soul of the judge. This

leaves the judge to issue a decision based on a strong emotional conviction and a strong sense of the correctness of his judgment” (Najm. 2009. p. 28).

2.1.2 The judicial meaning of emotional conviction

The trial judge has the discretion to evaluate the evidence, making this a substantive issue outside the Supreme Court's jurisdiction. Considering that the judge's conviction was observed in the Criminal Court, this may indicate the direction of the judiciary to preserve the principle of the judge's freedom to convict in the criminal case. As a result, the judge builds his conviction and derives his certainty from previous evidence that has its origin in the case papers, without taking into account his judgment regarding the order of the evidence imposed on him, whether he upholds it or not (Zebda. 2001. 202).

With regard to the principle of emotional conviction in the judgements of the Jordanian Court of Cassation, the judgement of the Court of Cassation in its penal capacity in Decision No. 273 of 1994 stated the following:

“Proof in criminal cases shall be established by all means of proof.” and the court shall rule according to its emotional conviction, so it takes what it is comfortable with and excludes what it is not comfortable with, in accordance with the text of Article (2/147) of The Jordanian Criminal Procedures Law. Thus, not to violate the law, the court shall not allow the two witnesses whom the advocacy requested to be heard on the grounds that they were close to the court's yard during the hearing of the witness who preceded them; as the court's doctrine consists of a combined intention according to a rule that supports the evidence, and the court's duty is to order even on its own during the examination of the proceeding at any phase of trial, and in any evidence submitted, and it shall summon any witness it deems necessary for the truth to come out.

As stated in the Court of Cassation Decision No. 815 of 1999, in its criminal capacity:

Evidence in criminal cases shall be established by all means of proof: the judge shall rule according to his personal conviction, pursuant to the provisions of the first paragraph of Article (147) of The Jordanian Criminal Procedures Law: for the judge's conviction, he can take the statements of some witnesses and exclude those are not

reassuring, and he may uphold part of these testimonies and refuse the rest, even if that leads to the division of some statements.

Through the foregoing, the researcher believes that it can be said: The judiciary in Jordan relies on the principle of wide freedom in evaluating evidence and the how the judge's personal conviction is aroused up or how he grew convinced, in accordance with the rules of trial in force in Jordan.

2.1.3 The characteristics of the principle of emotional conviction

The characteristics of the principle of emotional conviction are as follows:

First: the conviction of the criminal judge: When the judge reaches the state of conviction, this means that all the components and characteristics of the practical truth have met and settled in his conscience, and his conscience is satisfied with the mental image that was produced and fixed in his mind regarding this truth (Al-Jawhary, 1999).

Second: The positive role of the judge: The role of the judge is formed by extrapolating from the facts that were submitted to him, and the role of the constructive judge comes from the possibility of reaching a high degree of certainty as a result of excluding doubt that is affected by the person's response to motives (Mustafa, 2001). The role of the judge is not limited to the idea of emotional conviction, but rather seeks to prove the absolute truth in order to preserve justice, and may complete the incomplete evidence submitted by the litigants (Hosni, 1988, 429).

Third: Issuing Evidence: When it comes to the principle of emotional conviction, there is no specific amount of evidence because the other party is free to use any evidence that supports his case. Since the fact that criminals operate in secret, commit their crimes knowingly and in a covert manner, and some make valiant attempts to obscure the details of the crime after it has already occurred, it is difficult to prove the guilt in criminal cases. Furthermore, new criminal tactics have emerged as a result of scientific progress. If society wants to combat crime, it must give the judiciary the power to use all available means of evidence (Muhanna, 1988).

Fourth: The use of knowledge and science: The principle of emotional conviction is characterized by its use of both science and knowledge as an aid to reveal the truth and

assist the judge in his emotional conviction. thus. mitigating potential judicial errors (Suwaidan. 1985).

2.2 Scope of application of the principle of emotional conviction

All types of courts and all phases of criminal cases are covered by the general idea of emotional conviction (Abu Amer. 1985. 164). The scope of practical application of this principle is based on the two elements mentioned below:

First: Applying the principle of emotional conviction in all types of courts

Law and jurisprudence accept the principle of emotional conviction in all sections of criminal justice. including criminal courts. misdemeanors. and infractions (Hilali. 2000).

The Jordanian legislator stipulated in Article (147) of the Jordanian Criminal Procedures Law that " Proof in felonies. misdemeanors and infractions shall be established by all means of proof and the judge shall rule according to his personal conviction."

Second: The principle of emotional conviction extends to all phases of the criminal case.

The investigation phase and the trial phase are two basic phases in the criminal case in felonies and misdemeanors. The investigation phase is the first phase in a criminal case according to Article (130) of The Jordanian Criminal Procedures Law. and it is not viewed as an adjudication. As a result. the investigator is not allowed to make a final decision on the case because doing so goes against the notion that the preliminary investigation comes before the trial phase.

Investigating judges issue verdicts that express the depth of their convictions; But this evidence need not be exhaustive; It is sufficient to support the claim that there is reason to believe that the accused committed the crime. Since the accusation is based on suspicions and evidence. the suspicion is interpreted against the accused during the investigation phase and in his favor during the trial phase (Shwish. 1988. 164).

As for the trial phase. before proving innocence or conviction. the outcome of the criminal case is determined after checking the elements of evidence. The Jordanian legislator stipulated the principle of the criminal judge's emotional conviction with regard

to this phase in The Jordanian Criminal Procedures Law. as is clear from the text of Article (147).

3 RESTRICTIONS AND EXCEPTIONS TO THE FREEDOM OF THE CRIMINAL JUDGE

3.1 Restrictions on the freedom of the criminal judge

The judge's emotional conviction is the basic standard of criminal proof. and he is free to make decisions according to this conviction. Furthermore. he has free access to the truth without being restricted by predetermined facts. The authority of the judge is not an arbitration authority; It is a verification authority. There are important rules that place limits on this power and guarantee the accused against errors of justice. as well as the preservation of his right to defend himself. and these rules also serve as guidelines for the proper administration of justice. These restrictions are seen as a safety valve against the judge who deviates from his duties so that the judgements do not become disturbed. If the judge exceeds these restrictions. control is exercised over him (Fadel. 2005. 168).

These restrictions are as follows:

First: The limits of the judge's authority over evidence:

Evaluating evidence entails understanding its significance as evidence and determining its persuasive power. As a result. the judge's discretion in evaluating evidence is considered objective. Thus. the judge exercises his discretion in this case according to the principle of personal conviction (Fadel. 2005. p. 93). The Jordanian Court of Cassation has ruled that evidence shall be established in felonies. misdemeanors. or infractions by all methods of proof. and the judge shall rule according to his personal conviction. based on the principle of the freedom of the criminal judge to evaluate the evidence. and extract the truth and reality from it (Court of Cassation – Criminal. 930/1999. 2000; 1142/2012. 2012; 1493/2012. 2012; Article 247/2. Jordanian Criminal Procedures Law).

Second: The judge's authority to accept evidence or the requirements for establishing evidence:

1. The evidence submitted for legal proof shouldn't be contrary to the legal text. Hearsay testimony. for example. shall be admissible provided that such witness

was informed of the information by a person who is a witness in the case (Article 156. Jordanian Criminal Procedures Law). Audio testimony is also not admissible if the court excludes the testimony informed by it. It is not permissible to depend on the testimony of a witness taken by the public prosecutor without discussing it with the litigants before the court (Article 148/1. Jordanian Criminal Procedures Law). It is admissible to hear the testimony of witnesses under fifteen years of age without having to take the oath, provided that it is proven that they don't understand the nature and ramifications of the oath (Article 158/1. Jordanian Criminal Procedures Law). It is also not permissible to rely on the accused's police statements or the confession of a juvenile accused made in the absence of his guardian and the conduct officer (Court of Cassation – Criminal. 896/2004. 2004; 22/1952. 1953; 174/1977. 1977).

2. The evidence submitted for proof shall be legitimate; that is, it must not be obtained illegally or through a crime. It is not permissible to depend on a confession issued under violence or coercion (Court of Cassation – Criminal. 2298/2012. 2013; 1797/2012. 2013; 2013/2014. 2014). Judges may not derive their conviction from evidence obtained illegally, even if the evidence suggests innocence. Illegal methods include breaching a home, voyeurism, theft, fraud, or other criminal acts. Adopting otherwise would imply that “the end justifies the means,” which is not a valid legal principle. This leads to the collapse of the principle of procedural legitimacy in the legitimacy and legality of evidence, whether the evidence is submitted for conviction or innocence (Raouf. 1989. 737).
3. The evidence submitted for proof shall be sufficient and exhaustive in proving the facts that constitute the crime, and in attributing it to the perpetrator. Accordingly, if the evidence is not exhaustive, it cannot be relied upon to prove the facts or to attribute them to the perpetrator. A judgment of conviction may not be based on insufficient evidence (Articles 178 and 236/2. Jordanian Criminal Procedures Law).
4. The evidence submitted for proof shall be supported by other evidence. In other words, the evidence must support and complement one another. The criminal judge derives his conviction from the **totality of evidence**, coordinating between testimonies of witnesses, confessions of the accused, technical evidence, and other

admissible evidence. as long as they complement each other. False evidence or contradictory evidence that undermines relevance cannot be used as a basis for conviction. It is not required that every piece of evidence definitively prove the crime and its attribution; rather. the conviction can be formed from the totality of supported evidence. A corroborative rule allows multiple pieces of evidence—any or some of which—together to form the court's conviction. even if others are excluded. For example. if the offender confesses to stabbing the victim in self-defense. and this confession is supported by witness testimonies detailed in the police court's decision. the police court. having formed its conviction from these legal evidences. does not violate the rule supporting the evidence or relevant legal provisions (Court of Cassation – Criminal. 436/2002. 2002).

5. Evidence in criminal matters supports and complements each other. Together. the court's belief is formed. so no specific evidence is seen to be discussed separately without the rest of the evidence. Rather. it is sufficient for the evidence to be in its entirety as a unit leading to what the judgement intended and producing in the completeness and assurance of the court's belief. (Numour. 2021. 389)

Third: The judge's restriction to the principle of oral trial

This means that the judge's power of evidence is limited to his power to assess the evidence submitted during the trial and which parties publicly discussed. Or what is known as the principle of oral trial. This is a restriction mentioned by the legislator in Article (148/1) of the Jordanian Criminal Procedures Law. which stipulates that: “A judge can only rely on evidence submitted during the trial and which the parties publicly discussed.”

It also follows from this principle that the judge may not base his judgment on his personal information. as it is not permissible for a judge to rule on his personal knowledge (Article 3 of the Evidence Law). Rather. he judges by the evidence before him. He is not entitled to obtain information he heard outside the trial session. or based on what was stated in another case. which did not appear as evidence and was not submitted before him in the case. and the parties discuss it. He shall not rule on an incident that he witnessed himself outside the scope of the trial session. because he is not permitted to be a witness in a case in which he decides. It also follows from this principle that the judge may not base his conviction on what he knows in advance about the parties. For example. if he is

convinced of his previous knowledge that the accused is one of the criminal record holders. Likewise, it is not permissible to rely on any papers submitted to the court during the deliberation period and without presenting them to the parties and discussing them (Al-Kilani, 1981, 345).

Fourth: The judge's obligation of the judgment's reasoning / causation:

The reasoning/causation of the judgement means that the judge states in his judgement the reasons for this judgement. The reasons for the judgment are the reasons on which the judgment is based. It is also called the "recitals of judgment". The basis for the judgement (its reasons and arguments) deals with the factual, legal and logical reasons for criminalization or not. This is so that the judgement is not written in general terms or put in a general form that does not achieve the purpose intended by the legislator, and does not enable the control of the correct application of the law to the facts. The factual reasons for the judgment, in addition to the fact that the court obtained (established facts), include the evidence that formed the judge's conviction. The judgment must include a statement of every evidence on which the judgment was based in proving the incident, and its meaning (i.e. stating its content); In order to show the extent of its support for the fact that the judge was convinced in, and the extent of his agreement with the rest of the evidence approved by the judgement, and the extent to which it agrees with the rest of the evidence approved by the judgment, and even the inference becomes clear. This is without obligating the judge to state how he is convinced of that evidence or the reason for his conviction in it. As this is included in his discretionary power of evidence, as long as this evidence is derived from an established origin in the documents, and it was legal and not contradictory in itself or inconsistent with other evidence, and its adoption was not contrary to reason and logic. In his judgement, the judge lists specific evidence on which he relied, so he mentions the evidence and its meaning (i.e. its content), in order to show the extent to which the evidence supports the fact that he was convinced in, and the extent to which it agrees with the rest of the evidence approved by the judgement, so that the inference is clear. The Court of Cassation shall verify the extent to which such evidence conforms to the law. However, if the judge explained the aspects of his conviction with the evidence that he relied on in his judgement, this would highlight the aspects of that conviction, and remove any ambiguity that might arise in it. In the event of a conviction, the pillars, elements and circumstances of the crime must be stated, and the explanation

of the legal text applicable to it. and the response to the defenses raised by the accused (Al-Marsafawi. 1982). The judge. then. must establish in his judgment the evidence on which he relied in his judgment. according to Article (1/237) of the Jordanian Criminal Procedures Law.

The judgment of the esteemed Court of Cassation has settled on the fact that “and because the trial court has the right to derive from the elements of the case submitted to it on the basis of research. the correct picture of the facts of the case. according to what it is convinced in the legal evidence. and to judge on the basis of what is proven to it. ... that the judiciary must be derived from ancient evidence. and be based on reasonable grounds that are acceptable in reason and logic. and have their origin in the papers. and it is subject in its reasoning to the supervision of the Court of Cassation. as it monitors the validity of the law’s conformity with reality” (Court of Cassation – Criminal. 1072/2000. 2000).

3.2. The authority of the criminal judge to assess the sufficiency of evidence and deduce presumptions

3.2.1 The authority of the criminal judge to assess the sufficiency of evidence

The two main components of the judicial presumption are the well-known fact and the process of deduction. The well-known fact that served as the basis for the judicial presumption may have existed earlier and throughout the criminal trial; They may be present during the investigation. evidence gathering. or trial phases. and that the lesson is to find the accident and assess the extent of its connection to the crime. as its mere presence is not sufficient (Khalifa. 1996. 146).

It was necessary to address the following issues in order to determine the authority of the criminal judge in his assessment of the sufficiency of evidence:

1. That each of the incident. significance. or indication be established with certainty: Besides. it should be exciting for a number of reasons. including the disclosure of the unreported incident being one or even most of them. There must be a link between the evidence and the unknown incident (Khalifa. 1996. 149). If the perpetrator is

known. the necessary link is that there is an association between the proven incident and the perpetrator as he has already committed the crime. This association allows the judge to form the presumption. For example. if a fingerprint is found at a crime scene. it is necessary to identify the owner of the fingerprint and investigate the circumstances surrounding the appearance of the fingerprint there (Khalifa. 1996).

2. The evaluation of the evidence and its sufficiency is related to the judicial police officer:

Furthermore. "it must be taken into account that this assessment is under the supervision of both the investigation authority and the trial court. as the trial court decides whether the evidence is sufficient or insufficient."

3. The evidence differs according to the circumstances of the criminal case:

Some presumptions need scientific and technical experiments in order to confirm their validity. such as the thumb print. Moreover. some presumptions need scientific examination to confirm their validity. Also. in some presumptions the judge's cleverness and perspicacity are sufficient. such as recognizing the honesty or lying of the witness. or the existence of disputes between both the perpetrator and the victim. Here. the judge's role in verifying to reach correct results emerges (Abdul Sattar. 1986).

4. The absence of a legal impediment to deducing the presumption:

There is nothing legally preventing the authorities of inference and investigation from using the same method of deduction as long as the objectives of these two authorities are the same as those of the trial authority. Articles (44_55). (81_89) and (92_100) of The Jordanian Criminal Procedures Law specify the legal procedures that the judicial police officers must follow. They must make an inference from the evidence or indications they encounter while undergoing such procedures as a necessary part of these procedures.

In application of this. the Jordanian Court of Cassation judged by saying: "The escape of the appellee. and the delay in his arrest after a month and a half of investigation. is considered a matter of proof and indications. and does not rise to the rank of legal evidence" (Court of Cassation – Criminal. 459/2002. 2002).

3.2.2 *The authority of the criminal judge to deduce evidence*

The discretionary power of the judge in deducing the presumption is evident in two phases. The first phase is the principle of the judge estimating that a certain fact or several facts are considered established in the criminal case.

The second phase is that the criminal judge proceeds to decide that the occurrence of the incident or facts that he considered established in the criminal case in the first phase leads to inferring the unknown incident that is to be proven, provided that there is a strong association accepted by reason and logic between these two facts, and that it does not bear an explanation other than what the deduction concluded (Mustafa, 2001, 437).

Deduction is referred to as the process practiced by the judge mentally to draw a conclusion in accordance with the established facts that he has regarding the criminal case, with the necessity that this deduction be consistent and committed to the rule of logic (Khalifa, 1996).

The judicial presumption is based on indirect evidence represented by the trial judge deducing this presumption himself, whether it was based on a previous deduction, or he deduced contrary to what the judicial police or investigation authorities are doing. It must be noted that the deduction is attributed only to the trial judge, on the other hand, there is no legal association to the previous deduction with regard to the judicial presumption. The reason for this is due to the principle of applying the law.

The researcher believes that the judge should have sufficient knowledge and experience to evaluate the evidence and analyze it carefully to make the right decisions and reach the truth and justice, and that the criminal judge must adhere to specific standards and procedures for evaluating evidence and not rely on his personal estimation only. He must not only be biased towards the obvious presumptions, but considers all available presumptions and analyze them carefully.

4 THE COURT OF CASSATION'S SUPERVISION OF THE CRIMINAL JUDGE'S EMOTIONAL CONVICTION AND JUDICIAL APPLICATIONS

4.1 The Court of Cassation's supervision of the criminal judge's emotional conviction

The first action that the Court of Cassation undertakes, after reviewing the facts of the case and its various legal procedures, is to monitor the existence of evidence or not, and then move on to monitoring all documents submitted by the origin judge, in the hope that it will notice or find an abuse or exaggeration in his discretionary power of the means of proof (Court of Cassation – Criminal, 1991, 1991).

The judgement issued by the criminal judge must include its reasons and a statement of the evidence of proof, as well as the constituent elements of the crime and those that require punishment. It is known that the Court of Cassation is not a degree in litigation, but rather its mission is to monitor the validity of the application of the law and its performance and the accuracy of the procedures. In many of its decisions, the Jordanian Court of Cassation adopted the principle of emotional conviction of the criminal judge and considered that “the judge has the right to be convinced of any source he sees in the case, and that he has the right to rely on evidence rather than the other, and to divide the evidence and not take from it except what he is comfortable with.” In application of this, it ruled in one of its decisions that the law does not stipulate a specific method for conducting the diagnosis to identify the offender, and therefore not unifying the clothing of those standing in the line of diagnosis does not violate the law, and the issue remains dependent on the extent of the court’s conviction of the victim’s testimony and her honesty in identifying the offender. (Court of Cassation – Criminal, 164/1990, 1990).

It follows from the legislator’s acknowledgment of the criminal judge’s authority to assess the persuasive value of each piece of evidence separately, and the persuasive value of the evidence combined, that he considered this area subject to the full discretionary power of the criminal judge, and this means that it is considered a closed area without the supervision of the Court of Cassation. It is not permissible for it to discuss the conviction of the judge, saying that it was not permissible for him to be convinced of a specific evidence, or that he should have been convinced of a specific evidence, but the authority

of the trial judge is not absolute. If his assessment deviates from logic. i.e. he relies in his thinking on methods that are denied by common sense. the Court of Cassation may disqualify it. If the legislator imposes restrictions on the principle of judicial conviction or provides it with exceptions. then the Court of Cassation monitors the judge's commitment to these restrictions and his application of these exceptions (Hosni. 1998).

The criminal judge. if he is free to form his conviction in the proceeding from any evidence he finds sufficient. as long as the legislator gives him the freedom of conviction. However. this freedom does not mean absolute. unlimited power. as it is restricted by controls. Jurisprudence and judiciary have settled on the right of the Court of Cassation to supervise the adequacy of the factual reasons and the validity of the conviction of the trial court in terms of the sources of conviction or the rationale of the conviction. In application of this. the esteemed Jordanian Court of Cassation No. 636 of 1996 issued by the General Authority ruled:

“The Major Criminal Court based its judgment in amending the description of the charge against the accused from the felony of attempted murder to the misdemeanor of causing injury based on the statements of the victim at the police station. which was taken without oath. and the testimony of the head of the police station even though he did not record the statements of the victim. and the court submitted the testimony of the victim before the public prosecutor and before itself. taken under the legal oath. constitutes a violation that gives the Court of Cassation control over this conviction. and the court's conclusion is unjustified” (Court of Cassation – Criminal. 336/1996. 1996).

The judicial applications of the control of the Court of Cassation on the emotional conviction of the criminal judge. The judiciary of the esteemed Jordanian Court of Cassation has settled in many of its decisions on the trial judge's right and his/her freedom to be convinced in the evidence submitted to him/her. provided that his/her conviction is consistent with the evidence submitted in the case. in terms of the sources of persuasion and logical conviction. In application of this. the esteemed Jordanian Court of Cassation ruled in its decision No. 103/1998: “Since what the High Criminal Court reached in its decision contains a fundamental contradiction. as it concluded in terms of the result that the Claimant's indecent assault was done with his/her consent. While what is proven by the evidence is that the Claimant tried to escape. but one of the defendants grabbed him and threw him to the ground. and this is sufficient to prove the Claimant's refusal of the

Respondent's request for indecent assault. as it is not required to prove the Claimant's refusal to prove that the respondent threatened him/her with a weapon or any other tool. so court's decision and this case is tainted with clear contradiction. which requires its cassation. (Court of Cassation – Criminal. 103/1998. 1998).

In another case. the Jordanian Court of Cassation stipulated in its Decision No. 714/2011. issued on 2/6/2011. "The trial court is considered independent in weighing and evaluating evidence. although this is restricted to the integrity of assessment and inference. If they are not valid. the judgment issued in this regard shall be subject to the oversight of the Court of Cassation. Furthermore. the contradictions in the statements that necessitate their exclusion and not taking them into account occur when the witness mentions a specific incident at some phase. then returns from it at a later phase. and mentions its opposite. This is in an essential matter. or he/she mentions an incident and then denies it at a certain phase. or he/she denies an incident and then proves its occurrence or proves it in another location. even if he/she mentions an incident at a certain phase. Not mentioning it at another stage is not considered a contradiction in the sayings. because he/she may not have been asked about it. or he/she may have forgotten to mention it . (Court of Cassation – Criminal. 366/2011. 2011; 564/2010. 2010).

In the current case. it is clear from reviewing the police and investigative statements of the Claimant. Fawaz Al-Jabali. in the court that they were in harmony with each other. and that the rest of the prosecution's evidence came continuously from the testimony of the Claimant in the fundamental issues. Whereas. the trial court. when weighing the evidence and before excluding it from the Claimant's testimony. due to what it saw in it of inaccuracy leading to a lack of conviction in its validity. had to take into account what the General Body of the Court of Cassation established in this regard. as previously stated. and if it did not do so. its decision would be untimely and subject to cassation (Court of Cassation – Criminal. 714/2011. 2011).

Based on the foregoing. and by extrapolating the judgements of the Court of Cassation previously referred to. the researcher notes that the Court of Cassation has settled on a set of controls through which it simplifies its control over the conviction of the trial court. including that drawing conclusions from the premises is consistent with reason and logic without contradicting the facts that the verdict acknowledged and concluded with it. and that the court mentions in its judgment the evidence on which it relied and a sufficient

statement. as it is not sufficient to merely refer to these evidence. but rather the content of each evidence must be listed in an adequate way through which it can be ascertained of its upholding for the fact as the court was convinced of it and the extent of agreement with the rest of the evidence.

5 RESULTS AND RECOMMENDATIONS

5.1 Results

1. The principle of emotional conviction is characterized by the use of science and knowledge as a means to help reveal the truth and uphold the conviction of the judge.
2. The role of the judge under the principle of emotional conviction is not restricted. but rather he/she seeks by all legitimate means to reach the absolute truth in order to achieve justice. and he/she must investigate the evidence of the proceeding himself/herself in order to reach the truth.
3. The extent of the criminal judge's authority in assessing his conviction has restrictions because the legislator did not leave it absolute. but restricted it with restrictions and controls. and provided some exceptions to it against which the criminal judge does not have any freedom in assessing the values of the evidence.
4. The trial judge has absolute discretion in matters related to the physical proof of facts. and this generalization does not exclude the Court of Cassation's supervision of the criminal judgment with regard to proving the facts of the case. The Court of Cassation monitors the judicial logic related to those facts. through the causation/reasoning of judgments and the necessity of basing judgments on certainty. not on suspicion and speculation.

5.2 Recommendations

1. The need for the Jordanian legislator to intervene to make the necessary and appropriate amendments to the legal texts related to the conviction of the criminal judge. such as determining the value of non-judicial confession.
2. Increasing the number of judges to lighten the burden on them as a result of the huge number of caseloads that they consider. because the criminal proof requires mental work. accuracy. deliberation and implementation of thought by the judge. This requires a lot of time that requires also to reduce burden placed on the judge by reducing the number of cases until the creativity of the judge comes into existence.
3. The need to include a comprehensive course on criminal evidence taught in law faculties in universities similar to the course on civil evidence taught in universities.

ACKNOWLEDGMENT

The authors would like to express their sincere appreciation to the Faculty of Law at Amman Arab University for its academic support. The authors also acknowledge the valuable contributions of the Jordanian judiciary decisions and legal scholarship that supported the analytical framework of this study.

DECLARATION OF CONFLICTING INTERESTS

The authors declare that there is no conflict of interest.

REFERENCES

A. Books, theses, and articles

Abu Amer, M. Z. (1985). *The impurity of error in the criminal judgment*. Alexandria: University Press House.

Adalah Legal Database.

Al-Kilani. F. (1981). *Lectures on the Jordanian and comparative criminal procedure law* (Part 1). Cairo: Al-Nahda Egyptian Library.

Al-Maaytah. M. (2007). *Criminal evidence and criminal investigation*. Amman: Dar Al-Thaqafa for Publishing and Distribution.

Al-Marsafawi. H. (1982). *Fundamentals of criminal procedures*. Alexandria: Munsha'at Al-Ma'aref.

B. Laws and legislation

Ben Khalifa. E. (2014). *The role of fingerprints and other physical effects in criminal evidence*. Jordan: Dar Al-Thaqafa.

C. Judicial decisions (Court of Cassation – Criminal. Jordan)

Court of Cassation (Jordan). Criminal Chamber. (1953). Decision No. 22/1952. p. 86. *Collection of legal principles of the Court of Cassation*.

Court of Cassation (Jordan). Criminal Chamber. (1977). Decision No. 174/1977. p. 1329. *Collection of legal principles of the Court of Cassation*.

Court of Cassation (Jordan). Criminal Chamber. (1990). Decision No. 164/1990. Adalah Center Publications.

Court of Cassation (Jordan). Criminal Chamber. (1991). Penal decision. p. 45.

Court of Cassation (Jordan). Criminal Chamber. (1996). Decision No. 336/1996. Adalah Center Publications.

Court of Cassation (Jordan). Criminal Chamber. (1998). Decision No. 103/1998. Adalah Center Publications.

Court of Cassation (Jordan). Criminal Chamber. (2000). Decision No. 1072/2000. Qustas Program.

Court of Cassation (Jordan). Criminal Chamber. (2000). Decision No. 930/1999.

Court of Cassation (Jordan). Criminal Chamber. (2002). Decision No. 436/2002. Qustas.

Court of Cassation (Jordan). Criminal Chamber. (2002). Decision No. 459/2002. Adalah Center Publications.

Court of Cassation (Jordan). Criminal Chamber. (2004). Decision No. 896/2004. Qustas Program.

Court of Cassation (Jordan). Criminal Chamber. (2010). Decision No. 564/2010.

Court of Cassation (Jordan). Criminal Chamber. (2011). Decision No. 366/2011.

Court of Cassation (Jordan). Criminal Chamber. (2011). Decision No. 714/2011. Adalah Center Publications.

Court of Cassation (Jordan). Criminal Chamber. (2012). Decision No. 1142/2012.

Court of Cassation (Jordan). Criminal Chamber. (2012). Decision No. 1493/2012.

Court of Cassation (Jordan). Criminal Chamber. (2013). Decision No. 1797/2012. Adalah.

Court of Cassation (Jordan). Criminal Chamber. (2013). Decision No. 2298/2012. Adalah.

Court of Cassation (Jordan). Criminal Chamber. (2014). Decision No. 2013/2014. Qustas.

D. Databases / websites

Fadel. Z. (2005). *The authority of the criminal judge in assessing evidence: A comparative study* (1st ed.). Jordan: Dar Al-Thaqafa.

Hosni. M. (1988). *Explanation of the Jordanian criminal procedures law*. Cairo: Dar Al-Nahda Al-Arabiya.

Hosni. M. N. (1982). *Explanation of the criminal procedure code*. Cairo: Dar Al-Nahda Al-Arabiya.

Jordanian Criminal Procedures Law No. 9 of 1961 (as amended).

Jordanian Penal Code No. 16 of 1960 (as amended).

Khalifa. M. A. A. (1996). *The general theory of evidence in criminal law in Egyptian and comparative legislation*. Cairo: Dar Al-Nahda Al-Arabiya.

Law of the Formation of Regular Courts of 2001.

Muhanna. A. (1988). *Proof by presumptions in criminal matters* (Doctoral dissertation. Cairo University).

Mustafa. M. (2001). The role of doctors in detecting crimes and evidence. *Educational Journal for Security Studies*. 2(2).

Nammour. M. (2021). *Principles of criminal procedures* (6th ed.). Dar Al-Thaqafa for Publishing and Distribution.

Qustas Legal Research Platform.

Salama. M. (1988). *Criminal procedures in Egyptian legislation* (Part 2). Dar Al-Fikr Al-Arabi.

Shwish. M. A. (1988). *General provisions in the Iraqi penal code*. Mosul: University of Mosul. Faculty of Law.

Suleiman. A. M. (1997). *The origins of criminal procedures*. Beirut: University Foundation for Studies. Publishing and Distribution.

Zubdah. M. (2001). *Judicial presumptions*. Algeria: National Foundation for Printing Rights.

Authors' Contribution

Dr. Ibtisam Mousa Saleh contributed to the study conception and design, supervision, and final revision of the manuscript. Dr. Rola Nael Salameh contributed to legal analysis, literature review, and drafting significant parts of the manuscript. Fadel Mansour Aljuneidi contributed to data collection, analysis of judicial decisions, formatting, and manuscript preparation. All authors reviewed and approved the final version of the manuscript.

Data availability

All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA)

Saleh, I. M., Salameh, R. N., & Aljuneidi, F. M. THE PRINCIPLE OF EMOTIONAL CONVICTION AND THE AUTHORITY OF THE CRIMINAL JUDGE IN THE JORDANIAN CRIMINAL LEGISLATION. *Veredas Do Direito*, e235233. <https://doi.org/10.18623/rvd.v23.5233>