The Role of the Judicial Presumption in Criminal Proof According to the Jordanian Code of Criminal Procedure

Mohannad W Al Haddad

DOI: https://doi.org/10.37178/ca-c.21.5.108

Mohannad W Al Haddad
Associate Professor of Criminal Law
Faculty of Law / University of Jerash – The Hashemite Kingdom of Jordan
m11haddad@yahoo.com

Abstract:

The judicial presumption is of great importance in criminal proof, because the truth cannot be reached without it. And it has a great value in proof in terms of strengthening other evidence on which the judge relies to form his emotional conviction. Rather, it is often the basis on which the judge balances the different evidence and evaluates the evidence before him in order to reach a fair judgment decision. Since the judicial presumption is not exclusively mentioned in the penal legislation, it is considered indirect evidence, but it is sufficient to establish the judge's conviction about the incident presented to him. Therefore, it was necessary to address this subject and shed light on all its aspects to determine its nature and to clarify its role in the criminal proof.

Keywords*: Judicial presumption, criminal evidence, penalties.*

Introduction:

The judicial presumption is one of the most important means that the legislation has resorted to expand the authority of the criminal judge and grant him a wide discretion in order to be able to clarify the truth by extracting and deducing an unknown fact that is required to be proven from a known fact that has been evidenced by the condition that this conclusion is logical and linked with the known fact. The reason for this is that the judicial presumption is not exclusively stipulated in the legislation, so it is considered indirect evidence, but it is sufficient to form the judge's conviction about the incident presented to him. And for that, it was necessary to address this subject and shed light on all its aspects to determine the nature of the judicial presumption and to clarify its role in the criminal evidence. The importance of this research lies in the manifestation of the legal impact of judicial evidence in criminal cases in Jordanian law, as well as the manifestation of advanced scientific methods and how to benefit from them in obtaining the judicial presumption that helps the judge to reach the truth and a just judgment. Therefore, research on this subject is useful from both a theoretical and a practical point of view.

The aim of this research is to manifest the effectiveness of judicial evidence in Jordanian law in criminal matters and to clarify its concept, characteristics and types, as well as to clarify the position of the Jordanian legislator regarding the proof of the judicial presumption in criminal cases, in addition to addressing the extent of the validity of the criminal judge in adopting the presumption to resolve the case.

This research aims to answer the following questions:

* What are the differences between the judicial presumption and the legal presumption, and what are their types and importance?

* What is the position of the Jordanian legislator in establishing the judicial presumption in criminal matters?

* To what extent is the judge free to use the judicial presumption in the criminal case?

* What is the position of jurisprudence and the judiciary on penal evidence based on the judicial presumption?

Therefore, the scope of this research is limited to addressing the procedural texts and subjecting them to research and analysis in order to know the role they play in penal evidence. Therefore, the scope of this study requires identifying the texts contained in the procedural laws in addition to the decisions of the relevant judicial rulings. The methodology of the study comes in combining the descriptive and analytical approach to the provisions contained in the procedural laws and judicial rulings with the aim of memorizing the explicit and implicit meanings of these texts and decisions of judgments and the results that lead to them and the advantages and disadvantages they enjoy.

Based on the foregoing, we have divided this research into two sections. In the first section, we study the definition of the judicial presumption. While we study in the second section the authority of the judicial presumption in the penal evidence and we concluded this research with a conclusion that includes the most important results and recommendations that we reached.

Topic One: Introducing the judicial presumption

The judicial presumption has a great and important role in criminal proof, due to its effective contribution to reaching the truth. It reinforces other evidence on which the judge relies in forming his conviction, and it is often the criterion by which the judge balances the different evidence and evaluates the evidence before him in order to arrive at the truth[1]. To study the presumption as one of the proofs in criminal matters, this topic has been divided into two demands. We discuss in the first requirement the concept of the judicial presumption, and in the second requirement, the characteristics of the judicial presumption and the similarities and differences between it and the legal presumption.

Section One: Judicial presumption concept

To define the concept of judicial presumption, we must study it from the jurisprudential point of view in the first section, and study it from the legislative and judicial point of view in the second section.

The concept of the judicial presumption as jurisprudence:

Some call judicial evidence multiple terms, some describe it as objective

evidence on the basis that it is extracted from the subject matter of the case, some describe it as mental or persuasive evidence, and some describe it as personal or simple evidence. But all these names do not give the exact and correct meaning of the nature of the judicial presumption in that it is the work of the judge. Hence the name of the judicial presumption, and in that it differs from the legal presumption that the legislator undertakes to stipulate in a legal text and then imposes the incident on the judge and the litigants[2].

Part of the criminal jurisprudence defined the judicial presumption as the presumption that the judge extracts from the circumstances of the case under his authority regarding the assessment of the evidentiary evidence and the evidence for the denial therein. It was also defined as the judge's deduction of an unknown fact from a known matter and it is indirect evidence because the proof in it does not fall on the same fact as the source of the

truth, but rather on another fact, if it is proven, from which it can be concluded that the fact to be proven is a type of transferring proof from one place to another[3].

The view of the Jordanian law and judiciary on the judicial presumption:

First: The Jordanian law's view:

The Jordanian legislator, in the Trial Law No. 9 of 1961, did not mention the presumption, despite its importance in the evidence, except to stipulate it with the parameters of the general principle that governs the authority of the criminal judge in assessing the evidence, in paragraph (2) of Article (148), the legislator is satisfied with mentioning it in general terms (... if there is another presumption that supports the provisions of the case and the criminal means of evidence ... 147). The criminal evidence is based on (... the evidence is established in felonies, misdemeanors, and infractions by all means of proof, and the judge shall rule according to his personal conviction)... since the criminal evidence in the proof is to link the offender with the crime committed, linking the cause to the cause, and it does not accept interpretation and guesswork, but rather it must be based on certainty. The presumption is one of the proofs of proof in penal matters, and the presumption is the deduction of an unknown fact from a known fact.

Therefore, all the evidence and presumptions are dependent on the conviction of the trial court in accordance with the provisions of Article 147/1 of the Code of Criminal Procedure.

Second: The view of the Jordanian judiciary on the definition of the judicial presumption:

The Jordanian Court of Cassation did not provide a specific definition of the judicial presumption, and perhaps the reason for this is that the definitions are left up to it to jurisprudence. However, it ruled in its most recent ruling by saying: "... that the judicial presumption is the one that the judge draws from the circumstances of the case and is convinced that it has a convincing significance as the judge elicits An unknown incident from a well-known and established fact... And since this case was not supported by direct evidence linking the accused Youssef with the crimes attributed to him, however, the court, according to the authority given to it, and by checking the case file and the text of the Public Prosecution and hearing it, and specifically the highlighted n/7 of them, it included the expert report that was applied on the forgery incident whose shop was stolen from the Southern Shouneh Lands Registration Department.

The report, which was conducted on the photostatic photo that was kept before the theft incident with the Public Prosecutor of the Southern Shouneh, concluded that the phrase "breaking the seizure" and the dates attached to it, as well as the number attached to the "To Whom It May Concern" book, and the date mentioned on it, were written in the handwriting of the accused Youssef. This gives the authority and the right for the court to examine the extent to which this is considered a judicial presumption or not, given that presumption is one of the methods of evidence in the criminal case, according to the text of Article 147 of the Code of Criminal Procedure.

1. A legal presumption, which is the necessary link that the law may establish between certain facts, and it is derived from explicit legal texts, including the presumption of knowledge of the law as soon as it is published in the Official Gazette. It is not permissible to plead ignorance of it, as well as the presumption of lack of discrimination in the insane and the undistinguished youth, and therefore their lack of responsibility.

2. Actual or judicial presumption: It is every deduction of an unknown fact from a known fact so that the conclusion is necessary by virtue of mental necessity and the court may take it into account whenever its conclusion is justified and acceptable.

3. Since the judicial presumption is the one that the judge draws from the circumstances of the case and is convinced that it has a convincing indication, the judge deduces an unknown fact from a known and established fact.

And since the judicial presumption, which is the one that the judge extracts from the circumstances of the case and is convinced that it has a convincing significance, as he deduces an unknown fact from a well-known fact, and what was revealed through the technical expertise conducted in the investigative case No. The signatures and dates shown on the record of that newspaper were drawn up in the handwriting of the accused Youssef and belonged to him, and the date and number on the letter addressed to the Jordan Valley Authority were written in the handwriting of the accused Youssef, in light of which the sale of the plot of land took place despite the existence of a seizure order, which is considered Judicial presumption that the accused Youssef stole the original copy of the piece of land newspaper.

This was accompanied by the morning of the day of the investigation, which had been decided by the Public Prosecutor of the Southern Shouneh, which indicated that all the conditions of the judicial presumption were met, and considered the court's deduction of an unknown matter from a known matter. The link was causally and logically related and independent of the criminal act committed by the accused Youssef in this case. Accordingly, he was prosecuted for the felony of criminal forgery in the investigative case No. 254/2013 - the Public Prosecutor of the Southern Shoune [4].

Through the foregoing, it becomes clear to us that the criminal courts have a wide discretion in the field of evaluating evidence. As the methods of proof in criminal matters are persuasive, and the court in them is not restricted by specific evidence unless the law stipulates otherwise. And she may form her belief and conviction regarding the lawsuit brought before her from evidence

such as a crime scene detection or from indirect evidence such as testimonies and presumptions[5], and that the difference in judicial rulings is a natural matter, so not every conclusion or deduction is considered a judicial presumption. And not everything that a judge sees as a presumption is the same for another judge. The Court of Cassation also has many powers, as it is the body authorized by law to scrutinize the judgments issued by the trial courts and the validity of the mental conclusions reached by the latter and their compatibility with the objection to the opinion drawn from them as long as it is justified. If it finds that true, it ratifies the ruling's decision, but if it deems otherwise, it decides to set aside the ruling due to its supreme authority.

Part two: Characteristics of the judicial presumption and the similarities and differences between them and the legal presumption:

We will discuss in this part the characteristics of the judicial presumption in the first section, while in the second section we will discuss the similarities and differences between the judicial and legal presumption.

First section: Characteristics of the judicial presumption

The judicial presumption is characterized by many characteristics that distinguish it from other evidence, and these characteristics are:

First: The judicial presumption is indirect evidence:

Evidence with judicial presumptions is not direct proof because it does not fall directly on the original fact to be proven, but rather focuses on another fact that is close, related and related to it, so that the proof of this last fact is considered proof of the first fact[6].

Second: The judicial presumption is a transitive argument:

What is proven by the judicial presumption is considered a transitive argument, that is, it is considered constant for everyone because its basis is fixed material facts from which the judge personally checks and builds on his deduction, thus negating the suspicion of the personality of the evidence or the fabrication of one of the opponents as evidence for himself[7].

Third: The judicial presumption is an inconclusive argument (evidence that accepts proof of the contrary):

The judicial presumption has a non-conclusive evidence of proof, considering that it is based on the deduction made by the judge on the basis of what is most likely to happen. And this elicitation differs in the eyes and different perceptions about it. Accordingly, what is deduced always allows the litigant to prove what contradicts it with an example or stronger evidence than it, even if the judge remains free to form his opinion about it.

Thus, even if the judicial presumption is a transitive argument, as previously stated, but at the same time it is considered an inconclusive argument, and this gives the aggrieved opponent the right to prove the opposite[8].

Fourth: Judicial evidence is objective:

Judicial presumption is the most accurate evidence, given its objective nature, which corresponds to the personal nature of all other evidence. This nature makes it difficult to introduce distortion and that scientific progress will allow the way to discover all the clues and then subject them to the methods of rigorous scientific examination and extract their indications and use them in proving the crime[9].

Fifth: The Impossibility of Counting Judicial Evidence:

Judicial presumption depends on choosing a known fact with the aim of arriving at an unknown fact, whether that known fact is among the facts of the case under consideration or from outside it. As it is known that these facts are many, varied and endless and differ from one incident to another, and each case has its own circumstances and circumstances that differ from the circumstances of another case[10].

In this section, we will discuss the similarities and differences between the judicial presumption and the legal presumption, as follows:

First: the similarities between the judicial presumption and the legal presumption:

1. The two presumptions depend on the most likely occurrence. When the legislator decides on a legal presumption, he takes into consideration the most likely occurrence among people according to their conditions, natures, and customs in their dealings and what they are acquainted with in general. The same applies to the judge, as he also relies on this idea in deducing the existence or negation of the fact to be proven from the fact that he has established [11].

2. The two presumptions are considered a transitive argument, so what is proven by them applies to all, such as the testimony[12].

3. The two presumptions are similar in terms of adaptation and rooting. In terms of conditioning, each of them includes indirect evidence that the object of proof moves from the disputed incident to another connected or adjacent fact that is easy to prove so that if it is proven, its proof is considered as evidence of the validity of the first fact. This is done according to the notion of proof transformation upon which indirect proof is based. In terms of rooting, most of the legal presumptions were originally judicial presumptions that the law circulated after organizing them, and thus they are binding on the judge and the parties to the litigation[13] .

4. Each of the two presumptions accepts proof of the opposite by all means of proof, including testimonies and presumptions, unless the legal evidence states otherwise [14].

5. The two presumptions are similar from a purely logical point of view, as each of them involves drawing conclusions from the known fact to know the unknown fact [15].

Second: The differences between the judicial presumption and the legal presumption:

1. The judicial presumption is considered at the heart of the judge's work. He is the one who chooses the fixed fact that constitutes the material pillar of the presumption from the documents of the case before him and works with his thought and reason to deduce from it evidence of the unknown fact that is intended to be proven. As for the legal presumption, its source is the law and it does not exist except by a legislative text. It is the work of the legislator, and he is the one who chooses the known and proven fact, and he, in turn, performs the process of deduction, and the judge has no role in it [16].

2. Judicial presumptions cannot be limited, and they differ from one case to another and from one judge to another, while there is no legal presumption without a legal text, that is, it is mentioned in the law exclusively[17].

3. All judicial presumptions are not conclusive, as they can always prove the opposite and in all cases, while the legal presumption may prove the opposite in some cases[17].

4. The judicial presumption is an objective assessment from the court that it derives from the evidence presented by the litigants before it. As for the legal presumption, it is of an abstract general nature in which the legislator determines a specific indication without considering the examination of the subject matter of the pending case [18].

5. In the judicial presumption, the court has a wide authority in estimating, adapting, weighing and giving it the value it deserves in proof. Conclusive legal evidence constitutes a limitation on the freedom of the criminal judge to form his conviction from the evidence presented to him in the case, given the strength that the legislator gave to this type of evidence[19].

6. The mandatory character of the legal presumption constitutes a departure from and an exception to the rule of the subject court's conviction of the evidence presented to it, meaning that the court may not refrain from adopting it. As for the judicial presumption, the court is free to adapt it and bestow upon it whatever strength it deems appropriate, whether it is proven or not.

The second topic:

The criminal evidence argument based on the judicial presumption and the judge's authority to assess it:

This topic requires research in some detail. We have to divide this topic into two sections. In the first section, we will discuss the punitive evidence of the judicial presumption, and in the second section we will address the evidentiary (authoritative) power of the judicial presumption.

First section:

Criminal Evidence by Judicial Presumption:

The importance of the judicial presumption in the criminal case is due to its independent character, in addition to the nature of the role played by the criminal judge and the discretionary power he enjoys greater than the authority of the civil judge in the field of evidence[20]. That is why we have divided this section into two parts. We have devoted the first part to the modern scientific importance of revealing judicial evidence, while we have devoted the second part to the practical importance of the judicial presumption.

First part:

The importance of modern scientific techniques in revealing judicial evidence:

The use of science in the detection of crime is a practical statement of the great services that scientists can provide to maintain security. And the crime witnessed a number of execution methods, which made it represent an assault on the privacy and freedom of the individual, in a way that the investigator is unable to establish evidence of it using traditional methods. Therefore, the importance of using modern scientific methods in penal evidence emerges. The modern scientific development has also made the task of detecting and proving crimes difficult, as it makes the judge's task difficult in performing his mission to reach the truth. Therefore, it has become necessary for the justice agencies to keep pace with the modern scientific method, for the rapid and effective detection of the truth of the committed acts through its appreciation of the evidence[21].

Accordingly, in this section, we will discuss the clues extracted from physical traces, and the evidence extracted from audio recordings.

First: Evidence extracted from the physical traces:

Physical traces mean the materials or objects that are found at the crime scene and can be perceived by one of the senses directly or with the help of scientific equipment. The importance of physical traces lies in their indications to the owner of the trace, such as fingerprints, footprints and DNA. These effects may reveal the habits and characteristics of the owner, for example, the effects of violence indicate the cruelty of the offender, in addition to revealing points of ambiguity and limiting suspicion to a narrow scope and helping to link the crimes issued by one person as a result of his criminal method in committing the crime [22]. We will address these physical effects as follows:

1. Clues from fingerprints:

Fingerprints are fine lines and protrusions interspersed with blanks on the tips of the fingers from the inside and take different shapes and multiple zigzags. Fingerprints do not change unless they are destroyed by deep fire burns. It is unique to a person even in the case of identical twins, which makes fingerprints a unique means of proof. Fingerprints are proven by comparing the fingerprint at the crime scene and suspicious places with the fingerprint carried by its owner.

Therefore, one of the most important benefits of fingerprints is to identify the perpetrators of crimes through what is imprinted on the polished objects in the crime scene and is considered a strong presumption in identifying the perpetrators.

2. Evidence from the footprints:

The footprints are of great importance in the investigation and reaching the knowledge of the people who were at the crime scene at the time of its commission in terms of the sizes and footprints of the feet and knowing the condition of the foot whether it was a shoe or not, as well as knowing the owner of the footprint according to the size of the foot with knowledge of the direction he took.

The authenticity of footprints in penal evidence depends on the type of trace, its clarity and its conformity with the comparative effect. If bare footprints are found and the lines are clear and proven to apply to the accused's feet in a way that leaves no room for doubt, then it is considered a conclusive presumption on its owner and does not differ then from fingerprints.

The court can rely on it in issuing a judgment, but the effect derived from matching the footprints can be considered an inconclusive presumption, and it is not sufficient alone as proof unless it is supported by other evidence, given that the footprints are easy to fabricate, which leads to stripping them of their power to prove [23].

In application of this, the Court of Cassation ruled by saying: "...these facts were supported by the following evidence: … While I was doing my official job … one of the workers on the surveillance camera on Tower 10 informed me of the presence of people loaded with bags as they were coming from the lands. The time was night and rainy, and the number of people was not determined. I gave an order to fire shots, in order to implement the rules of engagement and impede their entry into Jordanian territory, and I headed with a quick response to the place that the tower operator had identified. And because the area is rugged by nature, I combed the area, while walking I saw footprints of people where I followed the footprints because their tracks were clear on the dirt because it was raining.

It turned out that they entered Jordanian territory. After following the footprints about (30) meters, a bag was seized containing personal belongings and bags containing (104) paws of narcotic hashish, (10580) pills of lotions, and (160000) pills believed to be Captagon pills. I left two border guards at the bag and then followed the footprints. After about (100) meters, and when the footprints ended, I saw the two defendants who are before the court now hiding on the ground and disguised as putting mud on their heads, which is a way to hide their body heat, where they were arrested..."[24].

3. Clues from blood spots:

Taking blood samples from the victim or suspect achieves many goals, such as identifying the suspected person and indicating whether or not he has anything to do with the crime, as well as knowing the blood type to which he belongs. The forensic expert bears an important responsibility in how to take advantage of the antiquities found at the scene of the accident and how to use them to establish the identity of the accused and to clarify the relationship between the machine and the effect and the suspect person through inference or deduction. Therefore, seizing traces of blood stains on the suspect's clothes or traces of cuts or bruises on his body contributes to confirming or denying his connection to the accident if the trace is examined (26).

In implementation of this, the Court of Cassation ruled by saying: "...this incident that it reached... which is represented in the report of the examination of the body of the victim, the report of the detection of the crime scene, and the report of the criminal laboratory No. 1210/11/13/21366/21547 dated 10/10/2012 related to The result of the blood and epithelial cell examination and forensic laboratory report No. 186/11/13/8284 dated 24/5/2018 related to the conformity of the genetic characteristics of the convicted Anas' blood with blood samples obtained from the crime scene, as well as the case file No. 1525/2012 with

all its contents. And we clarify here that there is no productivity throughout the life of the traces of blood belonging to the distinguished Anas as long as he was not originally proven or claimed that he was legitimately present at the crime scene. Likewise, the confession of the brother of the victim in the case referred to in the facts of this case does not constitute evidence that the distinguished Anas did not commit the murder of the victim according to what is proven through the evidence whose results appeared after the end of Case No. 1525/2012. With regard to the appeal that the presumption of blood at the crime scene is not sufficient to convict, we find that the jurisprudence of our court has settled that the traces left by the offender at the crime scene, from which it is conclusively inferred by technical evidence of his presence at the crime scene at the time when it was committed.

It is considered sufficient evidence to link the offender to the crime as long as he did not prove otherwise, that is, he did not prove the legality of his presence at the crime scene...".

4. Evidence extracted from the effects of the use of firearms:

One of the important things that the investigative authorities carry out is examining firearms and equipment parts in order to indicate the time of the shooting, as well as matching the empty conditions that were seized at the crime scene with the seized weapon in order to ascertain whether the firing came from the same weapon used in the crime or from a weapon else.

Second: Evidence extracted from the audio recordings:

Audio recordings are those words, phrases or indications that contain certain information, regardless of the language and scope of their circulation. The characteristic of sounds has made it possible to benefit from them in the field of criminal evidence by converting the accused's sound waves into corresponding linear vibrations and recording them on special boards that can be compared with the vibrations of the accused's voice, which he listens to in order to verify his personality and his statements [25].

This presumption should not be taken into account unless it gives reassurance that it is free from the suspicion of tampering and that it is obtained in a legitimate way. Therefore, it is not reliable if it was obtained by coercion or subterfuge. The evidence learned from the audio recording can be relied upon by the court to elicit unknown facts to be proven, provided that the recorded material is obtained by legitimate means by resorting to experts [26].

And the Court of Cassation acknowledged by saying: "… the search of the accused's phone and the existence of phone conversations between him and one of those involved in securing narcotic substances and unloading their contents by the expert are valid as evidence in the proof [27].

Second section:

Practical Importance of Judicial Evidence:

The judicial presumption is of great importance from a practical point of view, as this importance emerges in strengthening other evidentiary evidence on which the judge relies in forming his opinion. In this section, we will address the relationship of the judicial presumption to the rest of the evidence, including confession, testimony, and experience, as follows:

First: The Role of the Judicial Presumption in Supporting Recognition:

The judicial presumption has an important and effective role in clarifying the validity or falseness of the confession, because doubt always surrounds the confession of the accused with evidence proving his guilt. This is what makes the judge always in the position of searching for the reasons for the confession and assessing its validity. Confession is no longer the master of evidence as it used to be, as it is required to match the truth. Like other means of proof, it is left to the free discretion of the competent judge.

The judge may disregard the confession made by the accused if he is convinced that it does not correspond to the truth. This happens for defendants who have certain purposes, such as who confesses to committing a crime to save another person, or who wants to enter prison to escape unemployment or drug addiction [28]. Hence, the importance of judicial evidence in enhancing the sincerity of confession in terms of conforming to reality or refuting it to prove its falsity, according to the logical and rational conception of matters becomes clear. The judge infers evidence to confirm the validity of the confession by recalling the aspects of coercion that surrounded the accused, verifying the truthfulness of his statements, and examining him medically and psychologically, as the accused may claim that his confession before the investigation authorities was the result of torture. If the judge is convinced of this, he must send him to the forensic doctor to verify the validity of this claim.

And the Jordanian Code of Criminal Procedure stipulates in Article (216/2), that it says:

[29] Matani, Ammar Thamer, The Presumption and Its Role in Criminal Evidence, p. 41. Published on the website: www.iraqia.iq/krarat/researsh/alqarena on 9/20/2021.

"...2. Subject to the provisions of Paragraph (4) of this Article, if the accused confesses to the accusation, the president shall order his confession to be recorded in words that are as close as possible to the terms he used in his confession, and the court may suffice with his confession, and then it will sentence him to the penalty that his crime entails, unless it deems otherwise... 4. If the accused denies the accusation, refuses to answer, or the court is not satisfied with his confession, or if the offense is punishable by death, the court shall begin to hear the prosecution witnesses ". It is also matched by Articles 159 and 192 of the same law. And the Court of Cassation ruled by saying: "...So in light of the detail that has been previously explained, and since the penal judgments are not based on doubt and guesswork, but on certainty, since the principle is the innocence of the accused until there is conclusive evidence that indicates certainty and certainty, that is, the judgment of conviction is not based on doubt and possibility, and what Article (147) of the Code of Criminal Procedure stipulates that subject judge in criminal matters has the right to assess the evidence presented and take it or put it if doubt arises without the supervision of the Court of Cassation in this substantive issue.

The court also found that it is not required in the exculpatory evidence to be certain that the crime did not occur or attributing it to the perpetrator. Rather, it is sufficient to raise doubt in the mind of the court, because the suspicion is interpreted in the interest of the accused, and since the court was not convinced by the evidence of the Public Prosecution, and the Public Prosecution did not provide evidence proving that the accused committed the crime against them except His confession, which was determined to be invalid, and any scientific evidence, such as fingerprints or epithelial cells, linking the accused to the crime attributed to him, which entails the necessity of declaring the accused's innocence from what was attributed to him due to the lack of legal evidence.

Second: Judicial Presumption and Testimony:

Article (160/1) of the Code of Criminal Procedure stipulates that "to establish the identity of the accused, suspect, the defendant, or the identity of anyone related to the crime,

fingerprints or any other approved scientific method shall be accepted during trials or investigation procedures if submitted by a witness or witnesses were supported by technical evidence...". The testimony of the witness is considered one of the most important evidence that the subject judge uses in deciding the litigation, as the evidence by testimony depends on material or moral facts that may often be impossible to prove in writing. Based on the principle of the criminal judge's freedom to assess the evidence, the court has an absolute authority in evaluating the testimony. It may take all or some of it, or subtract it, or take into account the statements made by the witness in the minutes of the preliminary investigation that it carried out, or the minutes of the preliminary investigation, or before another court in the case itself, or not to take into account all of the witness's statements. This is what the Jordanian Court of Cassation has settled on [30].

Third: Judicial Presumption and Experience:

Experience has an influential role as a source of many practical clues in the field of criminal evidence, especially in the field of self-verification of the material effects seized at the scene of the accident and their relationship to the crime [20] or knowing whether the offender was responsible during the commission of the crime or not, by subjecting the offender to medical examinations and psychological and mental examinations, while the experts' report remains merely an opinion on a technical matter subject to the discretion of the competent judge [31].

Experience is a source of many judicial evidences that may effectively contribute to resolving the criminal case. Scientific progress has resulted in the emergence of many clues that are credited with revealing the truth of many criminal cases, such as the role played by voice recorders, dogs, tufts of hair, nail parts, genetic analysis, blood types, finger prints and others.

Second section: Authenticity of the Judicial Presumption in Criminal Evidence:

Jurisprudence and the criminal judiciary consider judicial evidence as one of the original proofs.

Jurisprudence and the judiciary also emphasize that judicial presumptions are heterogeneous evidence in criminal matters, since crimes are only material facts that may be proven by presumptions without restrictions similar to those contained in the field of civil proof. In order to know the details of this subject, we have divided this section into two parts. In the first section, we discuss the authority of the criminal judge in deducing the judicial presumption, and in the second section, we discuss the position of the Jordanian judiciary regarding proof by judicial presumptions.

Part one: The power of the criminal judge to elicit the judicial presumption:

The judicial presumption is based on two elements, the first is a material element, which is (the known fact) while the second is a moral element, which is (the induction and conclusion made by the judge). Before the trial, it is not permissible to legally say that there is a judicial presumption that is made by the judge and not by others who are related to the case, especially in its pre-trial stages [32].The material element of the judicial presumption is the known incident that must be present when the crime was committed or during its commission, such as a gunshot or the victim's distress when the assault occurred, or before the crime was committed, such as the previous threat or the presence of the previous hostility, or even after the crime was committed such as the escape of the accused or hiding the body of the victim or hiding the stolen money. The material pillar of the judicial presumption, which is one of the known facts, begins to appear at the first procedure of

investigation and evidence gathering, and does not prevent its appearance at the trial. Thus, it can be said that there is an induction of the presumption that starts from where the investigator begins to take investigative measures, whether by the judicial officer or the public prosecutor. This precedes the inference of the subject judge who is considering the case. But this deduction, which is carried out by the investigator, does not acquire the character of presumption, because the lesson is the deduction process carried out by the subject judge, which is based mainly on verifying what the investigative authorities relied on from the facts that they reached through the procedures that the judge

followed to reach the truth, such as the procedures he followed to find out the owner of the fingerprints at the scene of the accident, or finding blood stains on the accused's clothes belonging to the victim, or finding an empty envelope at the scene of the accident and proving that this empty envelope was fired from the accused's pistol that was found in his possession.The trial judge must reconstruct the incident in his mind through mental visualization. For example, the footprints of a person may indicate that he passed the scene of the accident, this incident alone is not enough to convict, but if the confusion begins in his answers when asked or confronted with things related to the crime and his statements contradict those of witnesses, then sufficient evidence to convict the accused begins to be formed. The evidence on which the judge relies is many and varied according to the circumstances of each case. There are indications that scientific and technical experiments need to be carried out to verify their validity, including what is related to the accused, to the crime or the victim, such as finding a thumbprint, footprint, or an empty envelope in the place where the crime was committed. These evidences must be subjected to scrutiny before the judge can judge their sufficiency for deduction or not. There are also evidences that do not require the judge to subject them to scientific scrutiny through the assignment of experts to ascertain the extent to which they are proven. His words or the judge may conclude from the words of the accused or the victim that there is a relationship or a previous hostility between them, which puts the accused in the circle of suspicion and accusation [33].The criminal judge has a wide discretionary authority in estimating and weighing the rest of the evidence in the criminal proof, based on the "principle of the criminal judge's freedom of conviction", which grants absolute freedom to assess the evidence of the case for the trial judge. He has the right to take it or put it forward based on his evaluation of it, he weighs the evidence presented in the case and gives each evidence the strength it deserves so that it is not bound by pre-defined evidence.Based on this principle, the judge has absolute freedom in assessing the evidence and giving preference to some over others, regardless of their type and source.

This makes the judge absolutely free to deduce and assess the evidence according to his personal conviction in each case. He is the one who has the first and last word in the way of taking the evidence or not, and he is the one who elicits from the case before him and from its circumstances and conditions and the analogy on which he depends in extracting the evidence. That is, the process of deduction is at the core of the judge's work, in which the strength of his conception, good application and responsibility emerge. Therefore, the deduction of the judicial presumption is at the heart of the work of the judge alone, and no one else. If the judge's deduction agrees with the deduction of those who preceded him during the inference or investigation, there is no problem, and this compatibility is a confirmation that the deduction is correct. But if the judge's deduction differs from that of his predecessors, the lesson here is the judge's own discretion, because he is the dominant over the entire case. The judge's conviction must be based on judicial certainty and not personal certainty. Consequently, the judge, when forming his conviction of the presumption, must convince other judges, public opinion, and opponents as well [34].

Second part: The view of the Jordanian judiciary regarding proof of judicial evidence:

In order to be able to derive the view of the Jordanian judiciary from the judicial evidence, we must first clarify its view regarding the case of the reinforcement of the evidence for the rest of the evidence, and secondly, its view on the evidence alone, as it is self-contained evidence.

First: The position of the Jordanian judiciary on the evidence supporting other evidence:

The Jordanian judiciary has settled on relying on evidence if it is reinforced and corroborated by the rest of the other evidence, and it has gone in many of its decisions to confirm this close link between judicial evidence and other evidence. In supporting the statements of one accused over another, it is not sufficient to convict unless it is supported by evidence or presumption. In application of this, the Court of Cassation stated: "… and since the Court of Appeal discussed the case's evidence in a thorough manner and found that the

Public Prosecution did not present any legal evidence linking the accused to what was attributed to them, and that the statements of the accused against each other were not supported by evidence or presumption to support it based on the provisions of Article 148/2 of the Code of Criminal Procedure, which reinforced the suspicion that the accused were the thieves, as it was stated in the statements of the defense witness Abdullah, who watched a video related to the theft on the phone of the complainant's son, who was not presented by the complainant as evidence in the case, in which a person appears with items from the side of the vegetable store The case is in question and that this person is not one of the accused..." [35].

Moreover, with regard to consolidating the evidence for confession, the Court of Cassation issued several decisions, including its saying: "...which is the error of the trial court by excluding the accused's confession before the judicial police and excluding the prosecution's evidence related to the presence of epithelial cells of the accused on a screwdriver that was found and seized in the crime scene. In this, we find that the jurisprudence of our court has settled that the trial court has a wide authority in weighing and evaluating the evidence in accordance with Article 147 of the Criminal Procedures without scrutinizing it in this, so that its findings are sound and that its deduction of facts is justified and acceptable and is based on real evidence. In the case at hand, we find that the trial court has taken note of the facts of the case and discussed the evidence presented in it in a thorough discussion, as it reached the exclusion of the confessions of the accused Ahmed Khaled, the police officer, who was shown N2 for the invalidity of the arrest report of the accused, who was presented, N/4, because it was devoid of the data required by Article (100/1/a) of the Code of Criminal Procedure. Accordingly, the testimony of the accused, Ahmed Miqdad, was invalid, and in that it was true of the law…" (42).

Second: The view of the Jordanian judiciary on the judicial presumption as self-contained evidence:

The view of the Jordanian judiciary differed in adopting the judicial presumption as stand-alone evidence in terms of whether it is sufficient or not sufficient for a guilty verdict.

The position of the Jordanian judiciary also differed in its adoption of premeditation, the intent to kill, and the existence of an attempt or not.

1. Cases of the Jordanian judiciary not taking the judicial presumption: The Jordanian judiciary does not take the judicial presumption; no matter how strong it is, if it alone is stand-alone evidence in two cases. The first is the case of conviction, while the second is the case of premeditated proof, and we will present each case in the light of some decisions:

a. Conviction status

The view of the Jordanian judiciary has been based on not taking into account of the evidence in the conviction if it alone is a proof of proof. The Court of Cassation stated: "… Since the Court of Appeal has thoroughly discussed the evidence of the case and found that the Public Prosecution did not present any legal evidence linking the accused to what was attributed to them, and that the statements of the accused against each other were not supported by evidence or presumption to support it based on the provisions of Article (148) of the Code of Criminal Procedure, and this reinforced the suspicion that the accused were the thieves, what was stated in the statements of the defense witness, Abdullah Mahmoud Falah Al-Malaji, who watched a video related to the theft on the phone of the complainant's son, who was not presented by the complainant as evidence in the case, in which a person holds in his hand objects from the side of the vegetable shop in question and that this person is not one of the accused..." [36].

b. The case of premeditation

The Court of Cassation decided that the judicial presumption was insufficient to prove premeditation in any case, no matter how strong it was. Rather, premeditation must be proven with credible and conclusive evidence. This is evident in many decisions of the Court of Appeal, as it stated that "premeditation must be proven conclusively and it is not permissible to draw a conclusion [37]".

2. Cases of the Jordanian judiciary taking the judicial presumption: The Jordanian judiciary has settled on taking judicial evidence and relying on it and deciding its sufficiency in cases of acquittal and in establishing the intent to kill and in the case of considering an attempt.

a. Case of acquittal

The Jordanian judiciary decides that judicial presumptions have absolute authority, so it takes them and relies on them in the case of an acquittal, even if it is opposed by the confession of the accused himself. The Court of Cassation stated: "... Regarding the forensic doctor Dr. Munther Musa Mikhlif Lutfi's investigative testimony, which the court read out, he stated that the hymen is intact and its opening is less than (2) cm in diameter and does not allow penetration without tearing, and where nothing is mentioned in his testimony, linking the accused to what was attributed to him, which must also be excluded.

As for the defendant's confession before the public prosecutor and the police that he had cohabited with the complainant and had her virginity broken, and since the confession issued by the accused in criminal cases is one of the evidence included in the text of Article 147 of the penal rules. It is one of the evidence on which the judgments are based, but it has conditions. It must be available in order for it to be true, emanating from a free will, conforming to reality and the evidence approved in the case, without ambiguity, not subject to interpretation, not contradicting any other evidence, and representing the truth, and in itself indicative of the confessor's perpetration of the crime ascribed to him. And since the defendant's confession contradicted the evidence of the case, the complainant retracted her testimony and was referred to the public prosecutor for the crime of perjury, and the forensic doctor confirmed that her hymen was intact and that its opening was less than (2) cm in diameter and did not allow penetration without tearing, and that the court did not take this confession and put it forward from the evidence counter. And there was no legal evidence proving that the accused committed the ascribed offense, which required his innocence..."[14].

b. Case of proving intent to kill

The Court of Cassation has settled on relying on evidence to prove intent to kill, and this is evident in many of its decisions. In this context, it stated that: ... We deduce the existence of a premeditated circumstance aggravating the penalty in the act of the accused in the murder of his slain sister from the evidence, and circumstances of this case, and this appears as follows:

1. The accused admitted in his statements to the police and to the public prosecutor that he knew about his sister's behavior from the past and had previously beaten her and had previously caught her riding with a person in a bus and had also beaten her. This is also confirmed by what was said by the defense witness, Nawar Abu Sardaneh, who is the accused's wife, that the accused knew about the behavior of the victim, and that he was very upset with her and that he was intimidating her. Moreover, what was reported on her tongue that her accused husband knew that his slain sister was going out with young men is another proof.

2. About two years before the murder, the accused had tried to kill the victim after he had caught her in one of the Shuna buses, taking her in his bus to the Wadi Al-Arab Dam area, and he destroyed the bus in one of the valleys while she was inside it.

3. It was stated in the testimony of the accused, Issa to the police, that when he fired a pistol at his slain sister, he was the one who drew the oaths, meaning that he was equipped with weapons to kill the victim before he came to her.

4. The accused, according to what he said, lowered the electricity circuit breaker in the victim's house to force her to leave the house, but she did not go out.

5. What the accused said to the police and to the public prosecutor that he listened to the victim for two hours at the window of her house, meaning that he waited for her for two full hours until he could kill her, and also what was stated in his testimony to the police and the public prosecutor that after he, by knocking on the door of the victim's house, he waited for her for about half an hour to open the door for him. Therefore, a premeditated circumstance is present in the accused's act of killing his betrayed sister, as we explained above, and the elements of the felony of premeditated murder against the accused are available according to Article (328/1) of the Penal Code and according to what was stated in the attribution of the Public Prosecution and where it was proven that he committed this felony. This necessitates his criminalization of this felony..." [38].

b. Attempted crime: The Court of Cassation inferred the attempted crime by judicial presumptions. It stated that "…Second: With regard to the felony of attempted premeditated murder, according to Articles (328/1 and 70) of the Penal Code assigned to the accused Issa, we find that the proven acts against the accused Issa from where he took his slain sister to Wadi Al Arab Dam area by bus after he caught her in another bus, and he drove the bus towards the valley after he jumped out of it and the slain woman remained inside it. It is inferred from him that the intention of the accused, Issa, was directed to kill the slain Sabreen and take her soul and get rid of her. This is because the bus crash in the valley poses a danger to the life of those inside it, and those inside it are closer to death than to life, but the result was not achieved for a reason beyond the control of the accused, and accordingly, all the elements of the material element of the felony of murder were present in the act of the accused in terms of action, consequence and a causal relationship..." .

Conclusion

This research dealt with the issue of the importance of the judicial presumption in evidence in criminal matters. The truth without evidence to support it is like nothingness, and the evidence is the one that supports the truth and makes it prevail. Evidence has this importance as one of the means of proof stipulated by the legislator and taken by

jurisprudence and the judiciary. By the end of this study, we can summarize the most important results that have been reached and the recommendations that we have come out of this research, which are as follows:

First: Results:

1. The judicial presumption is of great importance in the field of criminal proof, whether from a scientific point of view as a result of scientific progress or from a practical point of view to enhance other evidentiary evidence.

2. The criminal legislator has taken the principle of the freedom of the criminal judge to be convinced according to certain limits and controls and left the process of deducing the judicial presumption and the extent of its sufficiency in proof to the criminal judge who derives it from the circumstances of each incident separately.

3. The criminal legislator considered the judicial presumption one of the original evidence and did not consider it an incomplete proof. Despite this, the Jordanian judiciary, in many of its rulings, has taken the principle of the inadequacy of the judicial presumption alone as proof[39].

Second: Recommendations:

1. We suggest that the Jordanian legislator define the controls and bases for deriving judicial evidence in the Code of Criminal Procedure.

2. The necessity of adopting the system of specialization of the criminal judge and adopting advanced scientific programs in preparing investigative judges and involving them in continuous courses that help them use modern scientific methods that help them in the rapid detection of criminal acts and benefit from scientific evidence.

References:

1. Muhammad and F. Zaidan, *The Authority of the Criminal Judge in Estimating Evidence (a comparative study), House of Culture for Publishing and Distribution, p. 322*. 2006.
2. Al-Azerjawi and R. Sabbar, *The Presumption and Its Role in Proving in Criminal Matters, Master's Thesis submitted to the Middle East University, p. 12.* 2011.
3. Al-Shawarbi and A. Hamid, *Legal and Judicial Evidence in Civil and Criminal Matters and Personal Status, Alexandria Knowledge Foundation, p. 125.* 2003.
4. Markas and Solaiman, *Origins and Procedures of Evidence in Civil Matters in Egyptian Law (Comparative with the Laws of Other Arab Countries), Volume 2, Fourth Edition, p. 86.* 1986.
5. Riedel, M., *Discrimination in the impostion of the death penalty: A comparison of the characteristics of offenders sentenced pre-furman and post-furman.* Temp. LQ, 1975. **49**: p. 261.
6. Al-Mo'men and Hussein, *Theory of Evidence, Al-Fajr Press, Beirut, Part IV, pg. 59.* 1977.
7. Rott, H., *Change, choice and inference: A study of belief revision and nonmonotonic reasoning*. 2001: Clarendon Press.
8. Yahya, M.A., *Deterring Roper's Juveniles: Using a Law and Economics Approach to Show that the Logic of Roper Implies that Juveniles Require the Death Penalty More than Adults.* Penn St. L. Rev., 2006. **111**: p. 53.
9. Biedermann, A. and J. Vuille, *The decisional nature of probability and plausibility assessments in juridical evidence and proof.* International Commentary on Evidence, 2018. **16**(1).DOI: https://doi.org/10.1515/ice-2019-0003.
10. Demaine, L.J., *In search of an anti-elephant: Confronting the human inability to forget inadmissible evidence.* Geo. Mason L. Rev., 2008. **16**: p. 99.
11. Dewey, J., *The logic of judgments of practise.* The Journal of philosophy, psychology and scientific methods, 1915. **12**(19): p. 505-523.DOI: https://doi.org/10.2307/2012791.
12. Sedgwick, E.K. and A. Frank, *Shame in the cybernetic fold: Reading Silvan Tomkins.* Critical Inquiry, 1995. **21**(2): p. 496-522.DOI: https://doi.org/10.1086/448761.

13. Hathaway, O.A., *Path dependence in the law: The course and pattern of legal change in a common law system.* Iowa L. Rev., 2000. **86**: p. 601.DOI: https://doi.org/10.2139/ssrn.239332.
14. Jeffries Jr, J.C. and P.B. Stephan Iii, *Defenses, presumptions, and burden of proof in the criminal law.* Yale Lj, 1978. **88**: p. 1325.DOI: https://doi.org/10.2307/795725.
15. Lehmann, D., *Another perspective on default reasoning.* Annals of mathematics and artificial intelligence, 1995. **15**(1): p. 61-82.DOI: https://doi.org/10.1007/BF01535841.
16. Ullman-Margalit, E., *On presumption.* The Journal of Philosophy, 1983. **80**(3): p. 143-163.DOI: https://doi.org/10.2307/2026132.
17. Bohlen, F.H., *Effect of Rebuttable Presumptions of Law Upon the Burden of Proof.* U. Pa. L. Rev., 1919. **68**: p. 307.
18. Walker, V.R., *Risk characterization and the weight of evidence: adapting gatekeeping concepts from the courts.* Risk Analysis, 1996. **16**(6): p. 793-799.DOI: https://doi.org/10.1111/j.1539-6924.1996.tb00830.x.
19. Roberts, P., *Drug dealing and the presumption of innocence: The Human Rights Act (almost) bites.* The International Journal of Evidence & Proof, 2002. **6**(1): p. 17-37.DOI: https://doi.org/10.1177/136571270200600102.
20. Lvovsky, A., *The judicial presumption of police expertise.* Harv. L. Rev., 2016. **130**: p. 1995.
21. Edmond, G., *Judicial representations of scientific evidence.* The Modern Law Review, 2000. **63**(2): p. 216-251.DOI: https://doi.org/10.1111/1468-2230.00260.
22. Barghouti, D., *Reviving al-Nabi Musa: Performance, Politics, and Indigenous Sufi Culture in Palestine.* New Theatre Quarterly, 2022. **38**(1): p. 48-59.DOI: https://doi.org/10.1017/S0266464X21000415.
23. Dothan, S., *How international courts enhance their legitimacy.* Theoretical Inquiries in Law, 2013. **14**(2): p. 455-478.DOI: https://doi.org/10.1515/til-2013-023.
24. Khalaf, M.Z. and H.F. Alrubiae, *Impact of date palm borer species in Iraqi agroecosystems.* Emirates Journal of Food and Agriculture, 2016: p. 52-57.DOI: https://doi.org/10.9755/ejfa.2015.05.200.
25. Grigoras, C., *Applications of ENF analysis in forensic authentication of digital audio and video recordings.* Journal of the Audio Engineering Society, 2009. **57**(9): p. 643-661.
26. Huijbregtse, M. and Z. Geradts. *Using the ENF criterion for determining the time of recording of short digital audio recordings*. Springer.DOI: https://doi.org/10.1007/978-3-642-03521-0_11.
27. Brancaccio, A., *The Protection of Human Rights in the Decisions of the Italian Supreme Court of Cassation.* . John's L. Rev., 1996. **70**: p. 101.
28. Kauffeld, F.J., *Presumptions and the distribution of argumentative burdens in acts of proposing and accusing*. Argumentation, 1998. **12**(2): p. 245-266.DOI: https://doi.org/10.1023/A:1007704116379.
29. Alkseilat, A., H. Abu Issa, and A. Al-Refou, *Criminal Protection of the Environment in Jordanian Legislation.* J. Advanced Res. L. & Econ., 2020. **11**: p. 6.DOI: https://doi.org/10.14505//jarle.v11.1(47).01.
30. Daradkeh, L., *Solution By Negotiation and Determination by Arbitration in Arab World Construction Disputes: Comparative Study Between FIDIC Rules of 1987 and FIDIC Rules of 1999.* Arab Law Quarterly, 2016. **30**(4): p. 395-409.DOI: https://doi.org/10.1163/15730255-12341334.
31. Weyland, L., *The blood tie: Raised to the status of a presumption.* The Journal of Social Welfare & Family Law, 1997. **19**(2): p. 173-188.DOI: https://doi.org/10.1080/09649069708416181.
32. Wooldredge, J., *Distinguishing race effects on pre-trial release and sentencing decisions.* Justice Quarterly, 2012. **29**(1): p. 41-75.DOI: https://doi.org/10.1080/07418825.2011.559480.
33. Aras, B. and R. Karakaya Polat, *From conflict to cooperation: Desecuritization of Turkey's relations with Syria and Iran.* Security Dialogue, 2008. **39**(5): p. 495-515.DOI: https://doi.org/10.1177/0967010608096150.
34. Morgan, E.M., *Presumptions.* Wash. L. Rev. & St. BJ, 1937. **12**: p. 255.
35. Feild, H.S., *Rape trials and jurors' decisions: A psycholegal analysis of the effects of victim, defendant, and case characteristics.* Law and Human Behavior, 1979. **3**(4): p. 261.DOI: https://doi.org/10.1007/BF01039806.
36. Jordan, J., *Here we go round the review-go-round: Rape investigation and prosecution—are things getting worse not better?* Journal of Sexual Aggression, 2011. **17**(3): p. 234-249.DOI: https://doi.org/10.1080/13552600.2011.613278.
37. Dawson, M., *Intimate femicide followed by suicide: Examining the role of premeditation.* Suicide and life-threatening behavior, 2005. **35**(1): p. 76-90.DOI: https://doi.org/10.1521/suli.35.1.76.59261.
38. Venter, C.M., *Human Dignity Has No Borders: Respecting the Rights of" People on the Move" and the Rights and Religious Freedom of Those Who Aid Them.* BYU L. Rev., 2020. **46**: p. 1369.

39. Quintard-Morénas, F., *The presumption of innocence in the French and Anglo-American legal traditions.* The American Journal of Comparative Law, 2010. **58**(1): p. 107-149.DOI: https://doi.org/10.5131/ajcl.2009.0005.