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Abstract

There is a global belief that any action taken at the suspicion and evidence collection stage should not touch people's freedoms or their home's sanctity. Police's role should be limited to collecting information or listening to the suspect's statements, answers, and replies. This stage should mainly involve clarifications about the crime. Actions affecting personal freedom, such as arrest and search, can only be carried out by police in the case that an arrest order or a search warrant from the Public Prosecution is issued. Nevertheless, Article 30 of the Penal Procedures Code has defined the job of judicial officers in a very broad and vague sense. It states that judicial officers have to investigate crimes and the perpetrators of these crimes, collect evidence, and carry out the necessary examinations which facilitate the investigation process, and that they must take all necessary procedures to preserve any evidence related to the crime.

Keywords: effective defence, judicial officers, investigation proceedings, supervisory power, misdemeanours.

مرحلة جمع الاستدلالات والأدلة وفق قانون الإجراءات الجزائية العماني ١٩٩٩ (دراسة نقدية)

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الملخص

هناك اعتقاد عالمي بأن أي إجراء يتم اتخاذه في مرحلة جمع الاستدلالات والأدلة يجب أن لا يمس حريات الناس أو حرمة منازلهم. إذ يجب أن يقتصر دور الشرطة على جمع المعلومات أو الاستماع إلى أقوال المشتبه بهم وإجاباتهم وردودهم. كما يجب أن تتضمن هذه المرحلة بشكل أساسي توضيحات حول الجريمة.

إن الإجراءات التي تمس الحرية الشخصية، مثل الاعتقال والتفتيش، لا يمكن أن تقوم بها الشرطة إلا في حالة صدور أمر اعتقال أو أمر تفتيش من قبل الادعاء العام.

ومع ذلك، فإن المادة ٢٠ من قانون الإجراءات الجزائية حددت عمل مأموري الضبط القضائي بمفهوم غامض وواسع. ونصت المادة أن على مأموري الضبط القضائي التحقيق في الجرائم ومركبي هذه الجرائم، وجمع الأدلة، وإجراء التقصيات اللازمة لتسهيل عملية التحقيق، واتخاذ جميع الإجراءات اللازمة للحفاظ على أي أدلة تتعلق بالجريمة.

في الفقرات القادمة من البحث سوف يتم شرح مهام مأموري الضبط القضائي وأدوارهم في التحقيق في الجرائم وكذلك بيان أهمية اتصال المتهم بمحام في مرحلة الاستدلال وجمع الأدلة.

• Introduction

Criminal proceedings refer to the stages that need to be taken by the investigation and prosecution authorities from the moment that a crime takes place until a final decision is made over the case. Criminal proceedings in Oman involve three stages: Firstly, there is the suspicion and evidence collection stage, which is undertaken by the police officers whose task is, as a general rule, limited to collecting evidence in an investigation supervised by the Public Prosecution. Secondly, the preliminary investigation carried out by the Public Prosecution. The purpose of this stage is fundamentally to carry out and complete the police officers' job, and to decide whether a trial is necessary. Thirdly, the trial stage, known as the final investigation stage.

The suspicion and evidence collection stage takes place prior to the official criminal investigation proceedings. Such stage aims to prepare for the following criminal official stages. Certainly, the suspicion and evidence collection stage is mainly carried out by the police due to the intensive and technical nature of the work involved this stage. This stage is initiated by collecting all material evidence and any other elements which prove the crime in question has been committed. In addition to conducting a wider investigation that can help the Public Prosecution in guiding the criminal proceedings towards a successful outcome wherein justice is served. This paper will critically discuss the duties and powers of judicial officers at the suspicion and evidence collection stage. Moreover, it will analyse supervisory power over procedures during such a stage. Also, the significance of the suspicion and evidence collection stage and its impact on following stages will be considered in details. In addition, the right of accused to have his lawyer present with him at that stage is discussed, as it is the most important safeguard for the accused against broad powers that the police have.

• Duties and Powers of Judicial Officers

According to Article 30 of the Penal Procedures Code, judicial officers are in charge of investigating crimes and gathering evidence necessary for the preliminary investigation stage that follows. However, Article 37 clearly states that, as a general principle, judicial officers are not allowed to carry out preliminary investigation procedures. Proceedings of the suspicion and evidence collection stage play a significant role in criminal investigation,

and might have a great effect on the following investigation proceedings. Such procedures should be carried out by a specialised authority comprised of law officials who know and understand the law. In regards to criminal investigation, the police are the judicial officers who carry out the suspicion and evidence collection stage for the vast majority of officers.

The Omani law does not stipulate the ways that police may use in order to achieve their duty at the suspicion and evidence collection stage. According to Article 33, judicial officers shall receive all crime related reports and complaints. This, of course depends on the crime occurred. In other words, the police must obtain all necessary explanations of any crime that has been reported. However, even though the initial investigations play a key role in the overall investigation proceedings, it is hardly seen in that the law recognise the importance of such stage; there are no clear mechanisms on how should the police conduct this initial investigation, and because of the doubts and uncertainties that interfere in such an investigation, efforts are wasted and lost in the mechanics of the judicial process, and in many cases, key evidence and the necessary provisions for a fair trial are also lost in the process.

Article 33 gives judicial officers the power to decide what means to use in order to fulfil their job; the term “obtain clarifications” is ambiguous and does not specify a certain way to do so. This law provision does not specify standard procedures through which judicial officers can obtain clarifications about the crime in question. Consequently, the police during suspicion and evidence collection stage may use their own methods so long as they comply with the general rules of carrying out criminal proceedings. For example, they can ask anyone that they think is connected to the crime to be present at the police station and to question him about the crime, and sometimes take his fingerprints.

The Omani High Court stated that judicial officers should act in accordance with the duties required of them, and should not incite individuals to commit crime in order to arrest them. The court added that the key duties of police officers are to reveal crimes and arrest the individuals responsible for them, and whatever methodologies police officers adopt in order to fulfil these duties are considered to be productive and useful, so long as the officers themselves were not involved in creating or provoking the crime.

Nevertheless, this does not mean that police officers have absolute power in dealing with people's freedoms and rights. The discipline that rule the suspicion and evidence collection stage lie in the legality of criminal proceedings, which require complying with individual freedom. According to Article 37 police officers may use any means for investigative purposes so long as it does not harm any individuals or restrict their freedoms.

In one case the Omani High Court stated that the investigative methodologies adopted by the police officers must not affect peoples' freedoms. However, despite the fact that law provisions to ensure individual rights and freedoms are safeguarded, and a fair trial guaranteed, in practice, police officers do not follow rules and regulations put forth in the legislation. In practice, police officers often fail to record all procedures taken during suspicion and evidence collection stage notwithstanding this requirement being clearly specified by the law.

Listening to what the accused said when he has been arrested is one of the most serious tasks that police officers have to do at the suspicion and evidence collection stage. The police have the power to ask the accused about the crime that he is accused of but not to discuss the details of the crime in question. Though, it is challenging to see how this can be done without going into the details of the crime's facts and circumstances. It is hard to draw a line between an act that could be considered as listening to the accused, and an action that may be interpreted as interrogating the accused. In fact, this difference is arbitrary, and this distinction between listening and interrogation serves to cloak the directed questioning of the accused which is trying to obtain an incriminating statement from him, which may later be used against him for a conviction in court.

Police officers are not permitted to force the accused to go with them to a police station if the accused rejects to come during the suspicion and evidence collection stage. An arrest order must be first issued by the Public Prosecution in order to force the accused to attend at the police station. Thus, all the police are able to do at this stage is to ask the accused to attend the police station, and if he refuses then they must return with an order from the Public Prosecution. However, common people believe that the police have the power to force them to attend the police station in such circumstances, a factor which the police frequently take advantage of.

It is believed by the police that listening to the accused when he has first been arrested could be an important for the evidence collection purpose. When he has first been arrested the accused usually try to defend himself by giving any statements which may be taken by the police to strengthen the suspicion against him. However, listening to what the accused has to say may give him a chance to clear up any suspicion against him, and ending his involvement without any further investigation carried out by the Public Prosecution.

Moreover, the recording of all procedures and evidence that has taken place during the suspicion and evidence collection stage is one of the most important elements at such stage. It is the only practical safeguard that the accused has at this stage in Oman. The police officers are required by the law to record all information and statements made by the accused and detailing any confessions or voluntary statements made, and the statements of witnesses, as well as recording all procedure undertaken by all involved in the case. All records that have been taken during the suspicion and evidence collection stage are important. Such records are taken just after crimes committed. In most cases these records used as evidence to support the prosecution of the crime.

In fact, these records play an important role in influencing the final decision of the court. The Omani High Court stated that records taken by the police at the suspicion and evidence collection stage should not be excluded, and rather the court may take into account the contents of these records in their entirety or in part. It added that the judge in criminal cases has the absolute discretionary power to take such records into consideration when forming a conclusion. Also, in another case the High Court stated that the court has the full authority to consider or exclude any piece of evidence that is presented in trial.

Judges in criminal cases are able to exclude or include any evidence in the criminal proceedings. They have the right to rule if a piece of information or evidence can be deemed accurate or useful, and therefore be included in the case. Consequently, the court may consider any statements by the accused which are contained in the suspicion and evidence collection stage records.

The Omani High Court stated that the court should make use of the pre-trial stages evidence and procedures records for drawing inferences and gaining further information upon which ruling can be made. As the court draws its

decision on the basis of studying all evidence introduced to the court. The court can therefore convict the accused on his statements that are taken in the initial records written by the police, even if these statements are withdrawn or changed at a later point in the investigation. Moreover, the court can take into consideration the content of any witness statements recorded in the suspicion and evidence stage minutes, even if these statements are not mentioned at the court trial.

However, in spite of the fact that the accused can be given the chance to challenge or deny these statements, but it all depends on the court whether to call the witness or not. Moreover, according to Article 4 of the Omani Penal Procedures Code, in misdemeanours and minor crimes cases, the Public Prosecution may send the case to the court without conducting the preliminary investigation, but using only the evidence collected by the police at the suspicion and evidence collection stage.

• **Supervisory Power over procedures during The Suspicion and Evidence Collection Stage:**

The Omani law outlines the power and competence of police officers for both stages: (1) the suspicion and evidence collection, and (1) preliminary investigation. It is stated by the Code of Public Prosecution 1999, and the Penal Procedures Code, police officers should be supervised by the Public Prosecution. Members of the Public Prosecution supervise police officers by giving them general instructions and orders. Such power helps the Public Prosecution members to evaluate the effectiveness of work carried out by police officers at the early investigation stage.

Generally, all the work carried out by police officers will be used by the Public Prosecution to facilitate the preliminary investigation proceedings. Nevertheless, the subordination of the police officers to the Public Prosecution can be seen not as being administrative but rather relates more directly to crime investigation tasks. Accordingly, the Public Prosecution is not permitted to take disciplinary measures against any police officer who makes mistakes while he is investigating crimes. The only thing can Public Prosecution do in this regard is to inform the police officer's superiors about any misconduct. However, in certain circumstances where the misconduct constitutes an offense, a criminal case can be initiated against a police officer.

In cases where police officer commits a crime while carrying out his duties, such as misusing the powers, limiting abusively individuals' freedoms, entering an individual's house without his consent, or abstracting confessions and information, then the officer will be subjected to penal, disciplinary, and civil accountability and be required to reimburse the victim. However, this does not render evidence inadmissible automatically as the judge always has the power to exclude or include them.

In addition, actions that are taken by police officers can be appealed through notification or a complaint, so that administrative procedures can be taken against them. However, the accused cannot ask for a police officer to be changed for any reason; Article 205 of the Penal Procedures Code stipulates that 'members of Public Prosecution and judicial officers may not be recused. Therefore, an individual involved in such a situation can do no more than appeal to the superiors of the police officers or to the Public Prosecution for a change in police officer.

• **The Significance of the Suspicion and Evidence Collection Stage:**

It has become clear that the suspicion and evidence collection stage plays a significant role in the prosecution of crimes in Oman. Procedures taken at this stage are considered as fast paced. This police officers are required to immediately take action when a crime is brought to their attention. And all procedures taken are considered essential for the next stage of the preliminary investigation. Such stage, in some cases alters decision-making processes used by the Public Prosecution with the limited information available to them at this time. The Public Prosecution may, accordingly, file the case to avoid taking unnecessary procedures which may waste effort and time. Furthermore, the Public Prosecution may decide to take the case to the court, without a preliminary investigation depending on the procedures taken at the suspicion and evidence collection stage.

The suspicion and evidence collection stage is a must in all criminal cases, as a preliminary investigation may not be applicable in cases of misdemeanours and minor crimes. This is because of the fact that those cases are raised and based on evidence collected at the suspicion and evidence collection stage as stated by Article 4 of the Penal Procedures Code. Thus cases of misdemeanours and minor crimes may be transferred to the court

immediately by the Public Prosecution because of the initial investigation results without a preliminary investigation being undertaken. these cases are only investigated by the police and then transferred immediately by the Public Prosecution to the court.

Therefore, all evidence collected at the suspicion and evidence collection stage will be viewed by the court. Consequently, this stage potentially has ramifications that could significantly affect the course of the case and the court's final decision. In other words, the judicial final decision is highly dependent upon actions and evidence collected at this stage.

Additionally, according to Article 145 of the Penal Procedures Code, a criminal order might be issued in misdemeanours and contraventions for which the law has specified a penalty of not more than three months in prison or a fine of more than 100 Omani Rials as a minimum limit judged by the Misdemeanours Court's judge in the light of the evidence record according to the circumstances of each crime. Such an order is issued upon the request of the Public Prosecution without conducting preliminary investigation or listening to a pleading. This shows the importance of the suspicion and evidence collection stage and its value in crimes prosecution.

It is important to mention that despite the law, as mentioned above, makes it clear that at the pre-trial investigation, the Public Prosecution officially leads the investigation, and that the police must obey the public prosecutor's orders.

A police officer's task during the suspicion and evidence collection stage includes carrying out a preliminary search that aims to prepare for any subsequent actions that might take place, such as preliminary investigation and trial. This task mainly involves collecting information related to the crime so that a sound prosecution case can be built. Such information involves having reasoned evidence and proof, upon which the Public Prosecution can initiate the filing of the case and take actions to prosecute perpetrator or supply any other information to the court that aids the judgement of a case. Therefore, the accused's rights such as the right of access to a lawyer and the right to remain silent must be guaranteed at this stage. Since the suspicion and evidence collection stage may affect the trial conclusion.

From the discussion above, it becomes clear that the stage of suspicion and evidence collection is a critical stage in the criminal justice system in Oman,

as the police role is focal to the final case outcome. The outcome of this stage establishes the initial link between the investigation and trial authorities due to the fact that actions at this stage take place so closely to the time that the crime took place, and subsequently have a major effect on any subsequent procedures.

- **The Presence of an Attorney on Behalf of the Accused**

The Omani legal scene does not require the presence of an attorney on behalf of the accused, whether the accusation is a felony, a misdemeanour, or a violation, and at any stage in the course of criminal procedures, (this includes during the gathering of evidence, a preliminary investigation, or a trial). Rather, it has been left to the sole discretion of the accused. However, this raises the question of the extent to which the request to have an attorney present must be accepted in that the accused wishes the lawyer be present at any of these stages? We are thus to deliberate through the following two sections regarding the matter;

- **Preliminary Investigation and Trial Stages**

In relation to the preliminary investigation and trial stages, the Omani law has allowed, not required, having an attorney present during both stages. In the preliminary investigation, Article 115 of the Penal Procedures Code states, “the lawyer should be allowed to see the investigation file at least one day before the interrogation or confrontation, and in all cases, it is not permissible to separate the accused and his attorney present with him during the investigation). It is thus clear from the text that the public prosecution is obligated to allow the presence of the accused’s attorney, regardless of the type and nature of the crime.

In the trial stage, several legal articles address the situation related to the accused right to have an attorney. Article 181 of the Penal Procedures Code, presents a decent illustration in which it obliges the court to allow the presence of the attorney, in which it states that the litigants and their agents have the right to attend the trial sessions even if the trial is behind closed doors, and it is not permissible to remove either from the court room unless a conduct was deemed a violation of the court’s standing or court order. This provision explicitly gave the right to the litigants’ agents, who are the attorneys, to

attend the trial sessions. Ultimately, the obligation of an attorney to appear during the preliminary investigation and trial is based on preserving and protecting the right of the defence.

• **Suspicion and Evidence Collection Stage**

As for this stage, no general provision requiring judicial officers to accept the accused's request to have an attorney, nor is there a provision that permits such officers to refuse the request. This means that two possibilities exist; the ability of the officer to either deny or accept the accused's request of having an attorney present during the evidence gathering stage.

In actions taken by judicial officers that pose no threat to the accused's rights, such as summons, interrogation, inspection, and further procedures, the legislative language does not oblige the officer to respond to the accused's request of having the attorney present, nor does it prevent the officer from accepting the request. Accordingly, the officer has the power to decide whether to accept or deny the request.

However, if any of the aforementioned procedures affects the freedoms of the accused, then the officer is required to accept the accused's request to have an attorney present as per Article 49 of the Penal Procedures Code, which provides that the judicial officer in charge of executing the arrest warrant must notify the person to be arrested and state the reasons for the arrest, and the arrested person shall have the right to contact whomever and may seek the assistance of an attorney.

• **Conclusion**

In conclusion, there is no doubt that the suspicion and evidence collection stage is a very significant stage. It is from this stage and through the evidence and procedures that take place that the accused may be sent to the court immediately, without being investigated by the Public Prosecution.

The accused during this stage is in a position where initially there is no convincing evidence that he has committed the crime levelled against him. This situation serves to highlight how important it is that he should be provided with legal safeguards at this stage.

• Results:

- Out of the three stages of criminal proceedings, the “suspicion and evidence collection” stage is the most intensive and technical.
- Despite the initial investigation’s key role in the overall investigation proceedings, the law does not specify the ways judicial officers may use to fulfil their tasks during the suspicion and evidence collection stage.
- As a general rule, the Omani legislator did not require the presence of a lawyer with the accused at various stages of criminal proceedings, regardless of the stage of the public action.
- Omani legislation only provides the accused with the right to know the general reasons of arrest during the suspicion and evidence collection stage. Therefore, the police may inform the accused only about the criminal offence he is accused of as a reason for his arrest without going into the details of this charge and the pertinent circumstances.
- There is no provision in Omani law which gives the accused the right to know his rights including his right of access to a lawyer. Such rights are significant especially in pre-trial stages where human rights are considerably more prone to violation.
- The Omani legislator did not explicitly provide for the officer to accept the accused’s request for the presence of a lawyer with him during the procedure sought to collect evidence.

• Recommendations:

- The law must clarify the ways in which judicial officers use to fulfill their tasks during the suspicion and evidence collection stage.
- The outcome of the suspicion and evidence collection stage establishes a link between the investigation and the trial authorities.
- The Omani Law should introduce a practical mechanism to ensure that Public Prosecution officials adequately supervise investigative tasks carried out by the police during the pre-trial stages.
- The Omani Law should require for the accused to be provided with a document promptly on arrest including a list of all available rights, which he is required to sign, demonstrating that he is well aware of what is written therein.
- The research recommends that the right of access to a lawyer should be

guaranteed during the Suspicion and Evidence Collection Stage.

- The Omani legislature should take into account the minimum requirements for the accused's rights that are provided by international standards during all stages.
- The state should develop effective training requirements and quality assurance mechanisms for defence lawyers, Public Prosecutors and judges.

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