

Legal Protection for Informants and Witnesses in Criminal Cases

Ahmed Ahmed Fakher Mohammed Al-Nouri, Dr. Harith Abdul Rahman
College of Isra, Law Department, Iraq

ABSTRACT

The issue of protecting the security of witnesses and informants is one of the new topics in criminal legislation. This is after countries realized the fact that protecting these people is one of the basic mechanisms in combating serious crimes and corruption crimes in particular. Testimony and experience are considered important means of proof in the Iraqi Procedures Law, which allows proving the occurrence of crimes and attributing them to the perpetrators, leading to their conviction. Since the perpetrators of serious crimes are usually violent and very dangerous, witnesses, experts and victims in these cases may often be subjected to various types of pressure from the perpetrators, whether by threats or intimidation, in order to influence them and make them refrain from giving their statements and assisting justice Or change their statements to deny the charges against the perpetrators of these crimes. Through our research, we reached a set of conclusions and recommendations, the most important of which was that the witness had several obligations, including the obligation to attend, the commitment to the oath and his obligation to perform the testimony, and then a commitment to tell the truth about the reality of the subject of the testimony.

INTRODUCTION

The issue of protecting the security of witnesses and informants is considered one of the new topics in criminal legislation, after countries realized the fact that protecting these witnesses is one of the basic mechanisms in combating serious crimes and corruption crimes in particular. Testimony and experience are considered important means of evidence in the Iraqi Procedures Law that allows proving the occurrence of crimes and attributing them to their perpetrators, leading to their conviction, and since the perpetrators of serious crimes are usually characterized by violence and extreme danger, witnesses, experts and victims in these cases may often be subjected to various types of pressure from the perpetrators, whether by threat or Intimidation in order to influence them and make them refrain from making their statements and assisting justice, or changing their statements to deny the charges against the perpetrators of these crimes. Therefore, it has become very necessary for legislation to provide legal

protection for witnesses, experts and victims so that they can perform their duty while they are reassured and surrounded by all the necessary protection to prevent what they may be exposed to from acts of reprisal carried out by criminals against them or their families. The international community believes in the critical importance of the role of witnesses and experts. Victims and witnesses in the fight against crime were interested in this very important issue, and many conferences and seminars were held to study the mechanisms of this protection and how to embody it in reality. As a result, many international instruments were issued urging Member States to provide legal protection for these people, the most important of which is the United Nations Convention Anti-corruption and the United Nations Convention against Organized Crime. This was reflected positively on the national penal legislation, which in most of them adopted the idea of Iraqi protection for the security of witnesses, experts and witness victims. The witness is also the first assistant witness to justice and the cornerstone in the fight against crime, especially

terrorism crimes, transnational organized crimes, corruption crimes and crimes of trafficking in persons, by providing information and evidence that will make the prosecution successful in forming the pillars of the crime, and this may expose it to many risks that often make it vulnerable to several Crimes that may push him to refrain from giving his testimony, or even to change the facts in order to preserve his life on the one hand, and the security and safety of his family members on the other.

CHAPTER ONE

The foundations of objective protection for the witness The crime means a breach of the security and stability of the group, so individuals must provide assistance to the judiciary to reveal the truth about the crimes and their perpetrators in the service of society, in addition to the fact that giving testimony is a religious and moral duty in general and a service to justice in particular. Objective protection from the texts of the punitive rules takes its place by defining the acts that are crimes, and imposing the penalties prescribed for each crime separately, and thus include the facts that people refrain from achieving, whether by threat or coercion to give false testimony or even by incitement and to study the topic of criminal protection For the witness, we must first address the foundations of objective protection for the witness in the first chapter, which we divided into two sections: The first topic: The theoretical and legal framework for testimony The second topic: Mechanisms of witness protection from factors affecting their testimony.

The topic: the theoretical and legal framework of the testimony.

The testimony of a witness before the judiciary helps the judiciary and plays a fundamental role in achieving justice, as the evidence on the basis of the testimony of witnesses is of great importance in legal articles, but the testimony in order to be of legal value must possess a number of conditions and characteristics with reference to an explanation What it is and give a definition for it, and this is what we will address in the following demands:

The requirement :

Defining the witness. Language: Testimony in the language has several meanings and terms, the meaning of which varies according to the places where it is used. The Almighty said: "And that is the Day of Witnesses." And the Almighty's saying: "Whoever among you witnesses the month, let him fast it." And it is said that he witnessed the accident, meaning he witnessed it, and the man says: I witnessed the assembly of so-and-so, i.e. his presence, and the fact that a man attends the judiciary council to testify is called and his performance is called the testimony of testimony meaning knowledge of something: God Almighty said: "God bears witness that there is no witness for God but Him and the angels and those who possess knowledge standing with justice. There is no god but Him. He is the Mighty, the Wise."³ Abu Ubaidah said: The meaning of God's witness is: God has decreed that there is no god but Him, and its reality is the knowledge of God and between God, because the witness is the scholar who shows what he taught. Except for God, I know that there is no god but God. He said: I testify that Muhammad, may God's prayers and peace be upon him, is the Messenger of God, that is, I know and show that Muhammad is the Messenger of God, for he defined it as: "Proving a specific fact through what a person says about what he saw, heard, or perceived with his senses about this event in a direct manner.

CHAPTER TWO: PROCEDURAL PROTECTION OF THE WITNESS THE PROCEDURAL RULES OF PROCEDURAL PROTECTION ARE THE SUBJECT OF IT.

Criminal cases usually begin with the reporting of certain facts that constitute a crime in the Penal Code or in the Code of Criminal Procedure, and the notification of the crime by the witness is followed by a series of successive procedures beginning with the stage of collecting inferences, which Reporting actually begins and is carried out by the judicial police with jurisdiction, then the follow-up stage by the Public Prosecution, and then comes the last stage, which is the stage of the trial. The witness's passing through these stages requires him to feel safe for him and his family members, whether by others or even by

the parties whose testimony he wants to testify before them, by providing guarantees that make the witness feel the legal protection actually assigned to him.

The requirement: the protection of witnesses in Iraqi legislation Most criminal cases of various kinds and degrees require the use of witness testimony, and testimony may often be the only evidence in a criminal case. The witness acquires a special place in the criminal case, as the witnesses have a very dangerous role in the criminal proof. Protecting the witness before initiating the public case, as the public case is the legal means to fulfill the state's right to punishment. These two agencies work to enforce the law and provide protection to each party in need.

Accordingly, we will address in this requirement to two branches, the first is the role of the judicial police in protecting witnesses, and the second section is the role of the Public Prosecution in ensuring this duty. Section One: The judicial police is the first device to which a witness is contacted. The importance of this important apparatus. In this section, we will discuss its definition and obligations to show how it deals with the witness. The judicial police include judicial police officers, judicial police agents, and some officials entrusted with some of the judicial police tasks. The judiciary police may also perform the task of the judicial police, who are the public prosecutors and agents of the Republic. Their assistants, investigative judges and governors on an exceptional basis in some cases Second: The specific and territorial jurisdiction of the judicial police officers The judiciary or the judicial police is entrusted with the task of searching and investigating crimes stipulated in the Penal Code and the laws complementing it, collecting evidence about them and searching for their perpetrators, and the judicial police exercises all its jurisdiction within its limits. Procedures determined by law Where we conclude from the legal texts in force, that police officers judge The persons specified in Article of the Code of Criminal Procedure are those who are legally entrusted with the task of searching and investigating, and they bear the responsibility for this. Restricted to a specific type of crime without other crimes such as customs agents for customs crimes only is called specific jurisdiction.

Through our research, we reached a set of conclusions and recommendations, the most important of which were:

1- The witness has several obligations, including the obligation to attend, the commitment to the oath and his obligation to perform the testimony, and then an obligation to tell the truth about the reality of the testimony, so the witness may be exposed to legal butchery in the event of his breach of these obligations

2- The witness is distinguished from other persons, such as the expert, the translator, the confessed accused, and the secret informant in the criminal case, by giving his testimony free of charge and voluntarily attending for this purpose, and that is in the service of justice.

3- Not to interrupt the witness when giving his statements to prevent the corruption of the testimony caused by the boycott in most cases, and thus the witness must be left to give his statements automatically and freely

4- The protection of testimony from falsehood is one of the most obvious means of maintaining a certain purity of truth as a basic premise of justice e legislator The Iraqi did not invoke a specific penalty for bribery of witnesses, but referred this to the penalties prescribed for bribery or perjury in accordance with Article 253 of the Penal Code 6- By studying the texts of the law related to the procedures that members of the judicial police should perform when writing records of all evidence in Articles 40- 46 of the Iraqi Code of Criminal Procedure.

5- We call on the Iraqi legislator to intervene by including texts in the criminal legislation that include explicit reference to the criminal protection of witnesses.

6- The Iraqi legislator in the Code of Criminal Procedure has devoted many articles to the subject of hearing witnesses in summary and non-summary cases. .

7_ We call on the legislator to work on collecting the provisions related to the testimony of witnesses at

the trial stage as well as in the preliminary investigation stage.

8-The Iraqi legislator neglected to mention the subject of the hostile witness in the Code of Criminal Procedure and even in the Iraqi Evidence Law with regard to testimony procedures. Opening training and educational courses for investigators, as harsh treatment by the investigator may lead to the witness's denial of useful information due to the influence of the investigator by his rough handling or even his harsh looks and directing questions to the witness

REFERENCES

Ahmed Fathi Sorour, mediator in the Code of Criminal Procedures, Dar Al-Nahda Al-Arabiya, second edition, Cairo, 1970

Ahmed Fathi Sorour, Briefs in the Code of Criminal Procedures, Dar Al-Nahda, year 1983

Ahmad Falah Al-Kharabsheh, the procedural problems of testimony in Criminal Matters, Al-Ahliyya Amman University, Dar Al-Fajr for Analysis and Distribution, first edition

Akram Mokhtari, Criminal Protection of Witnesses and Whistleblowers in Corruption Cases, Journal of Jurisprudence and Law, Issue Thirteen, November 2013 H - Akram Nashat Ibrahim, General Rules in the Penal Code, first edition, Al Qunayan Press, Baghdad

Barsh Suleiman, Explanation of the Algerian Criminal Procedures Law, Al-Shehab House for Printing and Publishing, Batna, 1985. - Bakri Youssef Bakri Muhammad, The Criminal Responsibility of the Witness, First Edition, Dar Al-Fikr Al-Jamii, Alexandria, 2011.

Jalal Tharwat, in the systems of criminal procedures Year edition, 1997, New University House for Publishing. Hussein Fathi Attia Ahmed, The General Theory of Coercion in Algerian Law, Cairo, Arab Renaissance House, first edition, 2008.

Reda Al-Mazani, Provisions of Evidence, Institute of Public Administration, 1981, Kingdom of Saudi Arabia. Dhuhari Hussein, Al-Wajeez in Explanation of the Code of Criminal Procedures, Dr. Muhammadiya Public House, Algeria, Year

1990 Abd al-Hamid al-Shawarbi, Criminal Evidence in the Light of Judiciary and Jurisprudence, Egypt, University Press, 1994. Abdul Hamid Al-Minshawi, Crimes of Defamation, Insult and Disclosure of Secrets, Dar Al-Fikr Al-Jamieh Press, Year 12.

Abd al-Hamid Emara, Guarantees of Litigants during the Phase of Criminal Trial in Positive and Islamic Legislation, Dar al-Khalduniya, Algeria.

2010-13 - Abd al-Qadir Addo, Principles of the Algerian Penal Code, General Section, Algeria, Homa House for Printing, Publishing and Distribution, 2010-Abdullah Ouhaibeya, Explanation of the Code of Criminal Procedures, Dar Houma, Algeria, 2008, Issam Kamel Ayoub, The Crime of Incitement to Suicide, House of Culture for Publishing and Distribution, first edition, Amman, 2012.