

WITNESSES AND WHISTLEBLOWER'S PROTECTION BETWEEN THE PERFORMANCE OF DUTY AND THE PROVISION OF PROTECTION- A COMPARATIVE STUDY BETWEEN THE JORDANIAN LAW, QATARI LAW AND THE INTERNATIONAL AGREEMENTS

Dr. Mus'ab Turki Ibrahim Nassar

Assistant Prof. of Criminal Law, Ministry of Interior /Police Collage, Qatar.

Abstract

Witness testimony is the most common way to form convictions about a particular criminal incident. Forcing witnesses, through acts of intimidation, reprisals and threats, to mislead justice and conceal the truth because they are the eyes and ears of the judiciary. Therefore, they must be protected by criminalizing acts that are against them. This study presents aspects for witnesses and whistleblowers' protection in the Jordanian and Qatari laws and the international agreements as mechanism of witnesses' protection varies from one country to another as it depends on their political, social and economic system. The study found that if a witness has a legal duty to testify about what he has learned about the crime; he is entitled to protection. It is the duty of the State, in addition to that the protection of whistleblowers, witnesses, informants and experts in Jordan, and its application is limited to corruption crimes only, as the subject of witness, informants and experts' protection has a close connection with the policy of anti-corruption and anti-crime.

Keywords: Witnesses, whistleblowers, Jordanian law, Qatari law and International agreements.

Introduction

The ability of a witness to testify without fear, intimidation or revenge is a key factor in the success of the judicial system in upholding the word of law and achieving the desired justice, in addition to the role that testimony plays in combating crime, especially after the spread of organized crime, terrorism crimes, and administrative and financial corruption, which It calls for protecting these witnesses so that they are not subjected to assault, threat or intimidation, because otherwise the witnesses will be exposed to danger and thus will lead to their reluctance to perform the duty of testimony because of the fear that they or members of their families or property will be exposed to acts of threat and retaliation by the perpetrators, which leads to this to the reluctance of individuals to participate in assisting criminal justice and judicial agencies in combating crime and corruption. (1)

The protection of the witness or informant from the rules of the criminal law takes its place, by defining the acts that are crimes and stating the penalties for them. Therefore, the various legislative systems have sought to include texts that establish many forms of protection with their punitive texts as a means to secure witnesses and informants and prevent them from affecting them in order to achieve the desired benefit from The testimony as evidence of criminal evidence for him.

The protection mechanisms for witnesses varied from one country to another, as they differ according to their different political, social and economic systems, but the goal is one and general, which is parallel protection that does not violate justice and the requirements of protection for the witness, and therefore it was necessary to impose objective protection for witnesses by criminalizing acts that affect the will of witnesses. In order to achieve the necessary protection and guarantees to protect witnesses, their families and their families from assault, whether before or after giving their testimony. towards those who commit the crimes stipulated by law (1).

The United Nations Convention against Transnational Organized Crime, in Article 24 of it, stresses on states parties the need to take all appropriate measures to provide effective protection against retaliation or intimidation for witnesses who testify in cases involving transnational organized crime, and much more. Among the international conferences that emphasized this protection, most notably the United Nations Convention against Corruption of 2003 AD, which included a set of texts related to reporting crimes and protecting whistleblowers, victims and witnesses from what may be practiced against them as a result of this notification.

In pursuance of this protection, a set of texts were included in the criminal laws that criminalize and punish those who assault witnesses by coercion, threats, forcing them not to testify or testify falsely, or to disrupt the witness in order to discourage testimony. Through this topic, we will be exposed to these methods that are criminalized by the criminal legislator. In order to protect witnesses, achieve the right and not influence witnesses, the structure of the research will be as follows:

The first topic: What is the protection of witnesses and informants and its development?

The second topic: Aspects of objective protection for witnesses in the Penal Code

The third topic: Aspects of objective protection for witnesses in corruption cases

The first requirement

Definition of witness and informant

The witness plays a major role in the various stages of the investigation, whether in the stage of collecting evidence, the stage of investigation or trial, and the witness has great importance in the criminal field due to the importance of the role played by the witness in providing information related to the criminal facts that he presents before the court or during criminal investigations before the judicial authorities. From here, the researcher will define the witness and the conditions that must be met in it, through the following:

Section one: Defining the witness and its conditions

The testimony of a witness is considered one of the most important and strongest evidence of evidence in the past and the present. It is the most widely used evidence that has a major role in the conviction of the judge and the issuance of the judgment in the incident.

The word witness came in the language and is derived from the verb testify, so he is a witness and a witness, and testified from an origin indicating presence, knowledge and information, and the witness is definitive news, you say from him a man testified to such and such, and testimony means knowledge and statement (1), and the word witness takes on several meanings, the most

important of which are:

Statement or informing: where the witness here comes in the sense of informing, definitive news, or saying that comes from knowledge obtained by witnessing (1), and attendance, inspection, perusal, perception: and seen (2).

As for the legal definition of the witness, we find that most of the legislation and penal laws did not refer to the enactment of the definition of the witness in their man-made laws. The Jordanian legislator, like its Qatari counterpart, did not develop a concept for the term “witness.”(3)

The witness was defined as “a person who is summoned under the law to give his witness before the court to take advantage of his statements in revealing the ambiguity surrounding the occurrence of the crime and that his presence is necessary to reveal the truth, by taking the legal oath, as he has the ability to perceive and distinguish before the court or the Judicial Council of what he witnessed.” Whoever does, hears, or perceives by one of his senses, in order to prove the crime or negate it from the accused.”(4)

And there are those who define the witness as “that person who heard or saw the facts that build up the crime,” and based on this definition, the witness’s indirect testimony, that is, that is based on the narration of statements or facts related to the crime or the incident, by hearing it from others, is rejected.(5)

The witness is “the person who describes an incident that occurred before him or testifies to an act of which he knew or heard and gives information related to a crime before the investigation authorities or the court. the way of one of his senses” (6).

The researcher defines the witness, as a procedural definition of the study, as the person who makes a statement about certain facts that he personally knows, that is, he has realized them with one of his senses and is certain of them, either he has seen them with his own eyes or heard them with his ear.

Accordingly, the testimony of a witness in the incident subject of proof is considered one of the things that may result in it or the denial of a right to someone else over another, so provided that the witness is a foreigner, that is, he is not from the plaintiff (the witness) nor the defendant (the accused) and he has no right or interest in the incident witnesses. What the witness gives cannot be described as legal testimony, unless a set of conditions are met by the witness. These conditions that must be met by the witness who testify before the Judicial Council are summarized as follows (1):

- 1- The witness must be distinguished: what is meant by discrimination is the witness’s ability to understand the nature and nature of the act and anticipate the effects that it will bring about. which is protected by law and what it threatens of aggression against him(2), Therefore, the testimony of the insane is not accepted, because the testimony is a summary of multiple mental operations. Article (32) of the Evidence Law states that “the court hears the testimony of every person unless he is insane or a boy who does not understand the meaning of an oath. means of inference only.” It makes no difference

- whether he lost the distinction at the time of giving testimony or at the time of the commission of the crime.
- 2- The witness must be free to choose: it means the person's ability to determine the direction that his will takes, i.e. his ability to push his will in a destination he determines from the various destinations that he can take, and therefore the witness must express his statements freely and freely, and this is not achieved. If it is issued as a result of pressure, coercion or threat of any kind, material or moral, then the witness is not accepted his testimony if he is under the influence of physical or moral coercion because the witness at the time of his testimony must be free to choose, the testimony of the witness is not considered unless he has awareness and freedom of choice .
 - 3- The origin of the witness is that it is stipulated that he should not lose the sense through which he can see the incident, for the deaf cannot be accredited as a hearing witness, and the blind cannot be accredited as a seeing witness. The blind and the deaf as a witness before the court, Article (230/231) of the Code of Criminal Procedure regulates this exception, and these articles differentiate between two cases. But if he is not proficient in writing, the judge shall appoint someone who can translate between the witness and the court, either by sign or other technical means.(1)
 - 4- That the witness is not prohibited from testifying, i.e. that the witness does not suffer a case of invalidity: the witness must be legally valid, as there are two cases of invalidity that, if the witness is satisfied, loses an important condition in the validity of his testimony, Cases of incompetence for the testimony may either have been established according to legal texts as stated in the Jordanian Evidence Law No. (30) of 1952 AD, which stipulates that no one may testify about information related to state affairs unless it is published by legal means, and it is not permissible to testify about information related to state affairs. Employees and those charged with a public service after leaving work may testify with information they were acquainted with by virtue of their position except by order of the court. It is also not permissible for lawyers, doctors, or agents to testify about information that he may not disclose after the end of his service(2), and there are cases of invalidity of testimony based on general rules. The witness is present, so his testimony is not permissible. The judge, the member of the Public Prosecution and the court clerk testify in the incident that is being considered before the court in which they are members, and the victim, the complainant, or the claimant of personal right may not be a witness (3).
 - 5- 5. That the witness has not been convicted of perjury, and this is a condition dictated by the rules of justice and the principles of Islamic Sharia as a source of law, because a person who was previously convicted of the crime of perjury in accordance with Article (214) of the Jordanian Penal Code, his testimony is doubtful and unreliable. It is due to the fact that it is issued by a person who has previously falsified the truth, and it is not excluded that he will return again to mislead justice (1), and the testimony of those

against whom criminal restrictions (precedents) are not accepted, although it was not stipulated by law, but the Jordanian courts ruled that.

The second section: the definition of the informant

Jurists and explainers of criminal laws differed in defining news according to the side in which they look at it, but they agreed that the news: is informing the competent authorities of a person about the occurrence of a crime, and the informant: is the one who performs the task of collecting information or informing for a specific purpose. It is, therefore, one of the important means of preventing crime before it occurs and combating it after it occurs because of the information available to it as a result of its integration among the public, and in the places in which it is located.(2)

Referring to the definition of the informant contained in Article 2 of the Law on the Protection of Whistleblowers, Witnesses, Informants, Experts in Corruption Cases, and their relatives and those closely related to them, as “the person with whom the Commission deals in order to obtain information related to a corruption incident.”

However, we find that there is a clear contradiction between the text of Article 3 / b of the protection system, which indicates that it is possible that the informant or the informant is secret and of unknown identity, and this is also confirmed by the text of Article 23 / 2 of the Law of the Integrity and Anti-Corruption Commission, which indicated that The authority undertakes not to disclose information related to their identities, with the text of Article 27 of the Code of Criminal Procedure, which indicated that the news is issued by the owner, his agent, or the public prosecutor if requested to do so, and each page of the news, the public prosecutor, the informant or his agent is signed. And if the informant or his agent does not know the writing of his signature, then his signature shall be replaced by his fingerprint.

Likewise, we did not find a specific definition of the informant in Qatari legislation, but the Qatari legislator imposed criminal penalties in the event of refraining from reporting crimes and preventing their occurrence and refraining from providing assistance, through articles (143-146), where we find that Article (144) Qatari penalties stipulated However: “Anyone who has knowledge of the occurrence of a felony or the existence of a plan to commit a felony for which criminal measures may be taken without the victim’s complaint, at a time when he was able to prevent its commission, and refuses without an acceptable excuse to report this to the public authorities or to the persons threatened with it, shall be punished by imprisonment for a period of time. not exceeding one year, or a fine not exceeding one thousand riyals, or with both.

The Jordanian and Qatari legislators did not restrict the informant in a special and specific way to deliver his news to the competent authority. Rather, he left that to the informant and his special circumstances. The informant may attend himself and give his oral or written information to the recipient of the news, or the informant fears the influence of the offender or his relatives to take revenge on him, at the time when duty prompts him. In order to inform, the informant intends to conceal his identity and identity, by telephone, telegram, or published by newspapers or Internet networks under a pseudonym (1).

The second requirement

What is criminal protection for witnesses and informants?

The witness is the first criminal evidence on which the judge builds his belief and personal conviction to build his judgment on certainty and certainty, and given the importance of the role that the witness plays in the case, he has been given great care in all positive legislation to provide all material and moral capabilities to ensure his protection from the dangers that may He faces it when giving his testimony before the judicial authorities(2), As the issue of witness protection has become one of the modern topics that preoccupied the minds of many legislations in order to address all the multiple threats to ensure their lives, physical safety, psychological or dignity.

The feeling of personal security is considered one of the most important human rights, and it was stipulated by the International Covenant on Civil and Political Rights in Article 9-1 by saying, “Everyone has the right to liberty and security of his person. No one may be arbitrarily arrested or detained, and no one may be deprived of his freedom except for reasons of It is provided by law and in accordance with the procedure established therein. Criminal protection under penal laws takes two forms, considering the type of interest to be protected. The first form is the criminal protection of personal centers and is achieved when the criminal legislator undertakes the protection of personal legal centers, that is, when legal rules are applied in the event that the individual character overpowers them, for example In the crime of theft, the criminal legislator punishes the assault on the property of others, as it is an individual legal center that the thief assaults.(1)

With regard to protecting the security of the witness and informant, the studies did not address the statement of its concept directly, so the researcher will define it as a procedural definition of the study, as it is also that the witness or informant feels reassured by the absence of sensory threats to his person and his rights, and his liberation from restrictions that prevent him from fulfilling his spiritual and moral needs.

The issue of witness protection has also gained paramount importance in relation to crime-fighting efforts, as the witness and informant are of great importance in proving crimes and prosecuting the offender. International interest in protecting witnesses has emerged through several agreements, most notably the United Nations Convention against Corruption (UNCAC) in 2004 and the United Nations Convention against Corruption, the issue of witness protection, where Article (32/a) stipulates the following: “Each State Party shall take appropriate measures, in accordance with its domestic legal system, and within the limits of its capabilities, to provide effective protection for witnesses and experts who give testimony in relation to offenses established in accordance with this Convention, as well as to their relatives and other closely related persons, where appropriate, from any possible retaliation or intimidation.”

Article 32 added in its second paragraph, examples of the types of measures that may be

adopted in order to protect witnesses and experts, in addition to their relatives and other people closely related to them: “The measures envisaged in paragraph 1 of this article may include, without prejudice to the rights of the plaintiff. He must, including his right to a fair trial:

- (a) Establishing procedures to provide physical protection to these persons, such as changing their places of residence, for example, to the extent necessary and feasible, and allowing, when necessary, the non-disclosure of information relating to their identity and whereabouts, or opportunities for restrictions on their disclosure.
- (b) To give their statements in a manner that ensures the safety of those persons, such as allowing testimony to be given using communication technology such as video links or other necessary means. The conventions encouraged the conclusion of conventions and arrangements for the protection of witnesses and experts as well as their relatives and other persons closely related to them in the third paragraph of Article 32, where it stipulated the following: States Parties shall consider concluding conventions or arrangements with other States regarding the change of places of residence. The persons referred to in paragraph (1) of this article, and then witness protection legislation has been approved in many countries in line with the international trend to combat organized crime and terrorism, as well as to combat corruption.

The concept of eyewitness protection first emerged in the United States of America in the seventies as a procedure with a legal origin to be used in conjunction with a program on dismantling mafia-style criminal organizations. , where he was heavily guarded by 200 high-ranking police escorts, as he was in a state of great terror as a result of fear of mafia revenge, and he was killed by "Vitoginovise", the leader of one of the powerful mafia families, as at that time the law of silence was The unwritten prevalent among the members of the mafia and known as (Omerta), meaning the secret, has an unchallenged power, threatening death anyone who leaves the line and cooperates with the police (1).

Some Arab countries have followed this trend by stipulating rules to protect the security of witnesses, as is the case with Jordan and Qatar, with some other countries still in the process of preparing legal texts that go along with this matter. This came in order to fulfill their international, regional and Arab obligations, as Most of the Arab countries have acceded to the international and Arab conventions related to combating corruption and organized crime, as well as terrorism, which stipulate the need to take the necessary measures to protect the security of witnesses.

The second topic

Aspects of objective protection for witnesses in the Penal Code

The testimony of all kinds is considered one of the most important evidence of criminal proof, as it is anecdotal evidence that is issued by a natural person who witnessed the facts of the crime and can tell and transmit a picture of the facts as they occurred to the judicial authorities, but this witness may be exposed to pressures, risks and various methods to influence his will and intention to present what he witnessed .

With regard to Jordanian legislation, we find that there is a clear absence of any special provisions that guarantee protection for witnesses, as it was sufficient in this regard to protect an individual and contained in the provisions of the Penal Code and the Code of Criminal Procedure, such as criminalizing coercion against a witness and the crime of influencing a witness by means of publication and other crimes. The provisions of the penal legislature, therefore, will be examined in those texts that constitute guarantees to protect witnesses from all risks and attacks that may be exposed to them, so the aspects of objective protection for witnesses contained in the Jordanian Penal Code will be addressed through the following demands:

The first requirement

Protecting witnesses from coercion

Witnesses may be subjected to coercion and pressure through enticement or intimidation, whether by force or intimidation and the threat of retaliation, in order to discourage them from giving testimony in absolute terms or to conceal what they have of important and sensitive information that contributes to uncovering the crime and revealing the truth, and coercion of witnesses leads to misleading justice and concealing the truth. Because they are the eyes and ears of the judiciary, so they must be protected by criminalizing the acts that are compulsive to them, and before clarifying the role of the criminalization of coercion as a means of protecting witnesses, we must first review the definition of coercion and its types, as follows:

Section one: Defining coercion

Moral (moral) responsibility based on freedom of choice is the basis of criminal responsibility, and that the two elements of responsibility according to this basis are awareness and will, which the Jordanian legislator referred to through Article (74) of the Jordanian Penal Code in its first paragraph, which states: "A person shall be punished unless he committed the act consciously and voluntarily." Also, Article (55/1) of the Qatari Penal Code indicated that: "No one shall be criminally responsible for: 1- At the time of committing the act he lost his freedom of choice for a reason His will has nothing to do with him."

However, there are defects that may affect the responsibility of the offender, and they may be executed or diminished, according to the circumstances, and these defects include what affects freedom of choice, such as coercion and the state of necessity, and this is what Article (88, 89) of the Penal Code indicated (1), so it is necessary to define coercion.

For legal jurists, coercion is defined as: "a force that paralyzes a person's will or restricts it to a degree that prevents it from acting according to what he sees" (2), or as: "every violence directed at the body or soul aimed at disrupting the body's resistance"(3).

While others define it as: "physical or moral pressure exerted by the compulsory on the compulsory according to what the coarsest wants," or that it is "a force that erases or restricts the will of the perpetrator to a great degree and he cannot resist it, so he acts according to what the source of force imposes" (4).

Section two: Types of coercion

There is no disagreement among the jurists of criminal law that the perceived free will is the

basis of criminal responsibility in all types of crime and that this will may be lacking in accidental circumstances and sometimes narrow the scope of its choice to the minimum.).

But there are defects that may affect the responsibility of the offender, so they are executed or diminished according to the circumstances, and these defects include what affects freedom of choice, such as coercion and the state of necessity, and this is what Article (88, 89) of the Penal Code indicated (1), so it is necessary to define coercion To act according to what he sees” (1), or that: “Every violence directed against the body or the soul aims to disrupt the body’s resistance” (2).

While others define it as: “physical or moral pressure exerted by the compulsory on the compulsory according to what the coarsest wants,” or that it is “a force that erases or restricts the will of the perpetrator to a great degree and he cannot resist it, so he acts according to what the source of force imposes” (3).

Section two: Types of coercion

There is no disagreement among the jurists of criminal law that the perceived free will is the basis of criminal responsibility in all types of crime and that this will may be lacking in accidental circumstances and sometimes narrow the scope of its choice to the minimum.(4).

Thus, coercion is of two types, namely (physical coercion and moral coercion), and material coercion means: “erasing the will of the doer in a way that only an organic movement or a negative attitude is attributed to him, stripped of the voluntary character. The will of man is in such a way that he loses the freedom of choice and often takes the form of a threat.(1)

The Jordanian legislator has identified coercion and the state of necessity the texts of independent articles that were referred to in Chapter Four, namely Articles (88-90) of the Penal Code and under the heading (force majeure), and the legislator wanted with this expression to accommodate both physical and moral coercion and the state of necessity as well, force majeure or The dominant one, according to what has settled its significance in jurisprudence, is another expression of material coercion (2). While we find that the Qatari legislator contented himself with mentioning this under the heading “Impairments of Responsibility” and in Articles (53-56) of the Qatari Penal Code.

Section Three: Coercion of the Witness

Coercion of witnesses is considered a crime punishable by law, and it is considered a crime that has elements that must be met in order for the penalty to be imposed or the punishment to be reduced on the witness in the event that he did not testify or was forced to do it contrary to the truth. The elements of the crime of coercion of witnesses are presented as follows:

- 1- The material pillar: the material pillar is the occurrence of coercion on the witness, and the coercion may take the form of material coercion through the use of force, violence, or moral coercion through threat, and the pillar may be achieved through acts of pressure on witnesses through coercion or intimidation, whether by coercion or Intimidation or intimidation and threats of retaliation, in order to prevent witnesses from giving

testimony absolutely or concealing what they have of information useful in revealing the truth (3).

- 2- The moral element: the moral element of the crime is achieved by the presence of the criminal intent with its two elements of knowledge and will, and this means that the perpetrator of the coercion knows that the person who is being coerced is a witness in a case raised and considered by the investigation authorities or before the courts, and his will must be directed to the intent of preventing the witness from giving testimony or in compelling him to perform perjury (1).

However, when searching in the Jordanian Penal Code, we find that the Jordanian legislator did not criminalize coercion of a witness to speak falsely, but rather referred to exempting a witness from punishment if he was coerced to give false testimony, and this is what Article (216/1/paragraph A) referred to Exempted from punishment is a witness who is likely to be exposed - if he tells the truth - to a gross harm affecting his freedom or honor, or his wife, even if divorced, or one of his ascendants, descendants, brothers, brothers or in-laws of the same degree.

Through the previous text, we conclude that the Jordanian legislator has granted objective protection to the witness by exempting him from punishment in the event that he was forced to perform perjury or refrain from performing it, in the event that he was threatened with obscene harm or threat to him personally or one of his relatives or related persons This includes some other criminal legislation that explicitly criminalizes coercion of a witness. In application of this, the physical coercion that falls on the witness must be impossible to resist, because coercion destroys the will. It means that the will is not lacking in him, so the crime is committed against him and he is asked about it due to the lack of physical coercion. On the contrary, this impossibility is not available if the difficulty of transportation prevented him from going to court to give his testimony, so he is asked about his refusal because he could have overcome the difficulty of transportation and avoided the occurrence of the crime (2).

As for moral coercion of a witness, it usually falls on the witness by threatening him with grave evil if he does not commit the crime of lying in testimony, for example, and thus the coercion is achieved and the freedom of will necessary for moral attribution is lacking. Rather, it narrows the scope of its work so that if its effect reaches the extent that compels the ordinary person to take the path of the crime, this denies responsibility, because it affects the will, and accordingly, the moral element of the crime is lacking due to the lack of choice, because the morally forced witness finds himself in front of two things, Either he is subject to threats and commits the crime that he is required to commit, or he accepts the danger to him or to one of his relatives or someone closely related to him, and in this there is no freedom of choice, because what he is exposed to in this case is not freedom of balance and then choice, but rather he is forced to choose one The one who is forced to marry has no choice, and he loses the freedom of choice, and criminal responsibility loses one of its conditions, which negates that responsibility (1).

The second requirement

Protecting witnesses from being influenced by the means of publication

The Jordanian legislator dealt with the provision of the crime of influencing witnesses in the Penal Code, and made this crime an act that obstructs the course of justice, because such matters would influence witnesses who may be asked to give testimony in the interest of or against a party to the lawsuit or investigation, and whether that effect was In the preliminary investigation or the final investigation (trial). This was explicitly indicated by Article (224) of the Penal Code, which states: "Anyone who publishes news, information or criticism that would affect any judge or witness or prevent any person from releasing his information to the guardian shall be punished with imprisonment for a period of time." not exceeding three months or a fine not exceeding fifty dinars.

As for the Qatari legislator, he referred to this protection through what was stated in Articles (201-203) of the Penal Code, which he designated to protect the judiciary from influencing them and harming their reputation, as it was stated in Article (203) that witnesses may fall under this protection as follows: A penalty of imprisonment for a period not exceeding one year and a fine of not more than five thousand riyals, or one of these two penalties, shall be imposed on anyone who publicly publishes: Broadcasting something from it 2- News related to the names or pictures of people involved in investigations or procedures in cases in the marital lawsuit, lineage, divorce, separation, alimony, custody, adultery, slander, or disclosing secrets 3- Names or pictures of the juvenile accused... .."

The criminalization of such acts that obstruct the course of justice, because their occurrence usually causes great harm and great harm, because such crimes are not a crime by an individual against an individual, but are in fact against justice at the hands of an individual or a group of individuals directed against the public interest, so the legislator made The Jordanian influence on witnesses through the means of publication is one of the crimes that obstruct the course of justice and imposes a penalty for it to ensure the protection of the judiciary to which all the oppressed and the weak are sheltered, seeking justice and equity (1).

The previous article (224) of the Penal Code stipulates the criminalization of publishing matters that may affect the judges who are entrusted with adjudicating a case before any judicial body or influencing witnesses who may be required to testify in that case or that investigation or other matters. It prevents a person from disclosing information to guardians or influencing public opinion for the benefit of or against a party to the lawsuit or investigation.

It can be concluded that the motives that prompted the Jordanian and Qatari legislators to criminalize such acts are that it is necessary to criminalize such acts, because this publication, which is intended to influence witnesses and judges, would influence public opinion, which is perplexed if the court issues a ruling that is inconsistent with What the media trial ended up with, a result that harms justice because it undermines public confidence in it. Influencing the fight against crime, arresting the perpetrators and

obstructing justice, in addition to the fact that the criminalization of such acts protects witnesses because such actions may endanger witnesses because of their knowledge and knowledge of their statements by the perpetrators.

It can be concluded that the motives that prompted the Jordanian and Qatari legislators to criminalize such acts are that it is necessary to criminalize such acts, because this publication, which is intended to influence witnesses and judges, would influence public opinion, which is perplexed if the court issues a ruling that is inconsistent with What the media trial ended up with, a result that harms justice because it undermines public confidence in it. Influencing the fight against crime, arresting the perpetrators and obstructing justice, in addition to the fact that criminalizing such acts protects witnesses because such acts may endanger witnesses because of their knowledge and knowledge of their statements by the perpetrators. Accordingly, the Jordanian and Qatari legislators considered publishing news, information or Criticisms that affect witnesses or prevent any person from divulging his information to the guardian is a crime punishable by law.(1)

The material element in this crime is achieved by publishing matters that may influence witnesses, and this is by multiple means, such as leaflets, publications, newspaper articles, magazine drawings or other modern means of publication, and this publication by various means will affect witnesses who may They are asked to testify in a specific case that is before the judiciary, or in an investigation that is being conducted on a certain issue. Publication takes multiple forms. It may be the publication of facts about the confession of the accused or his precedents, the publication of press investigations, or the publication of a picture of the accused before being presented to witnesses. These are all matters of Its effect on the witnesses, and the assessment of what would influence the witnesses or not is a matter subject to the discretion of the trial court, as it is the most capable of ruling whether the published matters for which the case was filed would affect the witnesses or not have any effect (2).

The crimes of influencing witnesses through publication are intentional crimes, in which criminal intent is required, which is a general intent and is not required for its commission against the perpetrator of a special intent, and the two elements of criminal intent are knowledge and will, so until the moral element of this crime is available, the will must be directed In broadcasting and publishing these matters in public and knowing that what he publishes would influence witnesses (3).

The third topic

Aspects of objective protection for witnesses in corruption cases

Through this topic, the objective protection of witnesses and informants in corruption cases will be addressed, as stated in international conventions and national legislation, according to the following division:

The first requirement

International protection for witnesses and whistleblowers in corruption cases

International attention to this cornerstone has been reflected in the pillars of the crime-

fighting system by providing for the protection of witnesses and whistleblowers in several agreements, most notably the United Nations Convention against Organized Crime in 2000 and the United Nations Convention against Corruption in 2004.

The provisions of the United Nations Convention against Transnational Organized Crime in 2000 came to establish substantive protection for witnesses and informants, and to urge states to enact legislation to ensure the realization of this protection, as these issues were addressed in Articles (8), (9), (24) and (25).) of which, where the Convention dedicates Article (8) the fourth paragraph to address the issue of the protection of the whistleblower if he is a public official, and requires each State Party to “consider the establishment of measures and systems that facilitate the reporting by the relevant authorities of acts of corruption by public officials, when they become aware of such acts during perform their jobs.”

As stated in Article (9) of the United Nations Convention against Transnational Organized Crime: “States parties to it are obligated to take legislative and administrative measures to enhance the integrity of public officials and to prevent, detect and punish their corruption.”

Article (24) of the Convention also obligates Member States to take appropriate measures within their capabilities to provide effective protection against any possible retaliation or intimidation for witnesses in criminal proceedings who give testimony in relation to the offenses covered by this Convention, as well as to their relatives and other closely related persons, as appropriate, and may include Measures include:

- 1- Establishing procedural rules to provide physical protection to these persons, such as changing their places of residence, for example, to the extent necessary and feasible, and allowing, when necessary, not to disclose information related to the identity and whereabouts of those persons or to impose restrictions on their disclosure.
- 2- Providing evidence-specific rules that allow testimony to be given in a way that ensures the safety of the witness, such as allowing, for example, testimony to be given using communication technology, including, for example, video links or other adequate means.

It is clear to us from the previous text that the agreement focuses on taking a number of preventive measures, including allowing them to move to a new place and change their identity, providing material protection for them or members of their families, obtaining temporary housing, paying the costs of moving home furniture and other personal property to a new place of residence, and providing Sums for their sustenance, assistance in obtaining a job, and other services necessary to help them lead a normal life.(1)

With regard to the protection of victims of corruption crimes, Article (25) of the same convention obligates member states to take appropriate measures within their capabilities to provide assistance and protection to victims of the crimes covered by this agreement, especially in cases where they are threatened with reprisals or intimidation.

Article 33 of the Convention establishes the necessary protection for whistleblowers, as the text of the article states the following: “Each State Party shall consider incorporating into the core of its domestic legal system appropriate measures to provide protection against any unjustified

treatment of any person who acts in good faith and for reasons of It is appropriate to inform the competent authorities of any facts relating to offenses established in accordance with this Convention.

The United Nations Convention against Corruption also enshrined the issue of the protection of witnesses, whistleblowers, experts, their relatives and other persons closely related to them, as the first paragraph of Article 32 stipulates the following: “Each State Party shall take appropriate measures in accordance with its domestic legal system, and within the limits of its capabilities, to provide effective protection Witnesses and experts who give testimony in relation to offenses established in accordance with this Convention, as well as their relatives and, where appropriate, other closely related persons, shall be protected from any possible retaliation or intimidation.”

Article 32 added in its second paragraph, examples of the types of measures that may be adopted in order to protect witnesses and experts, as well as their relatives and other people closely related to them: “The measures envisaged in paragraph (1) of this article may include, without prejudice to the rights of the plaintiff He, including his right to a fair and due process:

- a- Establishing procedures to provide physical protection to these persons, such as changing their places of residence, for example, to the extent necessary and feasible, and allowing, when necessary, not to disclose information about their identity and whereabouts, or to restrict opportunities to disclose it.
- b- b- To give their statements in a manner that ensures the safety of those persons, such as allowing for example to give testimony using communication technology such as video links or other necessary means.

While the fifth paragraph of the same article is devoted to the protection of victims when it asks the states parties to “present the views and concerns of the victims and take them into consideration in the appropriate stages of the criminal proceedings against the perpetrators, in a manner that does not prejudice the rights of the defiance.”

The Convention was not satisfied with this degree of protection, but also addressed the issue of Article (25) related to the crime of obstructing the course of justice, criminalizing certain types of influence on witnesses, which stated: “Each State Party shall adopt such legislative and other measures as may be necessary to criminalize the following acts when intentionally committed, including: the use of physical force, threats or intimidation, the promise, offering or giving of an undue advantage to induce false testimony or to interfere with the giving of testimony or the presentation of evidence in proceedings relating to the commission of offenses established in accordance with this Convention.

- 1- Providing them with protection in their places of residence
- 2- Not to disclose information related to their identity and whereabouts.
- 3- 3- That the whistleblowers, witnesses, experts and victims make their statements in a manner that ensures their safety, such as:
 - a- Giving testimony using communication technology.

- b- Take punitive measures against anyone who discloses information related to the identity or whereabouts of whistleblowers, witnesses, experts or victims.

By reviewing previous agreements, we find that they constitute compelling evidence of the existence of an international consensus that corruption is an important problem that requires internationally agreed solutions to address delicate issues that lie outside the scope of national borders. of local systems and practices that support efforts to combat corruption at the national level.

The second requirement

Protection of witnesses and whistleblowers in corruption cases in national legislation

Corruption as a criminal behavior and practice is almost close to organized crime in its description, employment and gravity. This is why the Jordanian and Qatari legislators have been largely concerned with following advanced methods in combating the crime of corruption and rescuing the law, including providing the necessary protection for whistleblowers, witnesses, informants, experts in corruption cases, their relatives and people closely related to them from any assault. or potential retaliation or intimidation.

We find that the Integrity and Anti-Corruption Law in Jordan for the year 2016 AD has decided various methods to protect this category by concealing their identity and using modern communication technologies to ensure their safety and non-disclosure of information related to their identity and whereabouts and providing protection for them in their place of residence, including providing places to shelter them when Necessity, we find that Article (24) of the Law and the Protection of Whistleblowers, Witnesses and Experts has established a penalty for anyone who discloses information related to the identity or whereabouts of whistleblowers, witnesses, informants or experts, with imprisonment for a period of no less than six months and not more than a year and a fine not exceeding ten thousand dinars.

As for Articles 26 and 27 of the same law, it punishes anyone who assaults a whistleblower, witnesses, informants, or experts, because of what they have done to uncover corruption, or mistreats them, or discriminates in their dealings, or prevents them from giving their testimony or from reporting corruption, with imprisonment for a period of time. not less than one year, and in the event of the use of force or the threat of displaying a weapon or any other physical means of coercion, the penalty shall be imprisonment for a period of no less than two years and a fine of not more than ten thousand dinars.

It is worth noting that the Qatari legislator did not establish any anti-corruption law, but Qatar took the initiative to ratify and accede to the international and Arab anti-corruption conventions, which include many provisions and legal articles that were decided in those conventions to protect witnesses and whistleblowers. We find that Qatar in 2007 ratified the United Nations Convention To combat corruption (1), and in 2012 it ratified the Arab Convention against Corruption (2), and in 2013 AD, the Rule of Law and Anti-Corruption Center Foundation was established, which aimed to support, promote, develop and disseminate the principles of the rule of law and anti-corruption as indicated in its founding document and its basic system (3). All of these conventions are binding on the states party to them to achieve the necessary protection for witnesses and informants.

The protection established in the Integrity and Anti-Corruption Law in Jordan makes everyone who wants to report or testify in corruption cases realize that he is protected by law and order and not from anyone, and if reporting is a national responsibility based on the ethics of citizenship, concealing identity and deciding protection is a legal duty on the authorities. In order to achieve this protection, the Jordanian legislator approved a system to protect whistleblowers, whistleblowers and experts in corruption cases and their relatives and people closely related to them. The Whistleblower and Witness Protection Unit was also formed in the Anti-Corruption Commission to receive requests for protection from threats and the proposed protection plan in a manner that ensures its protection. Rather, the law permitted the Council of Ministers to recommend the Council of Ministers to report to help the person and his family members if he was attacked as a result of his testimony in one of the corruption cases (4).

As the system for the protection of whistleblowers, whistleblowers and witnesses in corruption cases by providing a legal and institutional reference that guarantees the encouragement of persons to report corruption acts and the provision of practical means and procedures that help in the detection and reporting of acts of corruption, in addition to providing legal, functional and personal protection for whistleblowers, witnesses, informants, experts and their relatives and those closely related to them. Or for any person who contributes information about an incident of corruption in accordance with the provisions of this system, from any assault, threat, or material or moral harm, whenever the evidence indicates that they have been exposed to that.(1)

Article (5) of the new system stipulates receiving protection requests submitted by the persons covered by it in accordance with the provisions of this system, receiving requests from whistleblowers and informants who wish not to reveal their identities, and submitting them to the president for decision, and concealing all data of formal and objective protection requests that may lead to the disclosure of the identity of the whistleblower. Or the witness, informant or expert, and replace them with special symbols, study protection requests, conduct an assessment of the threat and related risks, re-evaluate requests for granting protection to persons whose protection decision has been issued periodically, and conduct studies and research necessary to develop protection means and procedures.

As for Article (6) of the system, it is stipulated that the Anti-Corruption Commission shall provide the necessary security protection for the persons covered by the protection application in cooperation with the Public Security Directorate and the relevant authorities, and inform the President and the Public Prosecution immediately in the event of any assault or threat to any of the persons covered by protection to take measures necessary to ensure their security and safety from any possible attack or threat, follow up on the affairs of the protected persons to ensure their safety and protect them from any discrimination or mistreatment, and ensure attendance at court hearings and investigations for the protected persons in cooperation with the Public Security Directorate, as any other work helps to achieve the objectives of the Create this unit.

Article (7) and Article (8) of the system also indicate that the protection request is submitted to the president, who in turn refers the request to the unit for study and recommendation, provided

that the request is treated with complete confidentiality, and a decision is made on the request and the proposed protection plan by a decision of the council based on the president's recommendation. The document is based on the unit's evaluation and recommendation.

As for Article (9), it indicated that the Unit submits the application for protection supported by the following documents; The protection request documents decided by the Council in accordance with the relevant instructions, information and evidence that determine the extent of the request's seriousness and its connection to proving the perpetration of an act of corruption and a recommendation to accept or reject the request with a statement of the reasons, the proposed protection plan and the costs necessary for its implementation.

Article (10) indicated that the start of the protection procedures and the proposed plan takes place immediately after the Council's decision to approve them, or from the date decided by the Council, as stated in Article (11) of the system that protection requests are recorded in minutes signed by the record clerk and the applicant, and these minutes have The nature of confidentiality is not disclosed to anyone other than the president or the competent judge, and without any damages to the applicant, as Article (12) indicated that the authority keeps secret records containing the original data of each person whose identity or protection it decides to conceal, which are kept in a special iron safe for this purpose. Fixing them with cement in a safe place inside the unit, and these records are not disclosed except by a decision of the president or the competent judge.

Article (13) stipulates that if any of the protected persons is attacked, the state treasury bears the cost of his treatment and compensation for bodily harm, and if he dies as a result, the state bears the support of his minor heirs to ensure a decent life for them. Or lift it or return it after cancellation, and the council issues a decision based on the recommendation of the president based on the unit's recommendation, informing the applicant and the concerned authorities of this, according to Article (14) of the draft system.

Article (15) of the system has been devoted to specifying the types of protection, whereby legal protection is provided against any arbitrary action against the persons covered by the protection decision and any administrative decision that changes the legal or administrative status of the persons covered by protection or detracts from their rights, or deprives them of them, or any A procedure that leads to mistreatment of them or distorts their standing or reputation and any other negative measures or procedures, whatever they are, as long as they are due to their role in reporting acts of corruption. Persons covered by protection, replacing that with inexpressive symbols or nicknames, changing or monitoring private phone numbers, at the request of their owner, in addition to changing the place of residence or workplace or both, temporarily or permanently, and providing suitable alternatives, according to the circumstances and reasons, and providing an emergency phone number, And it works around the clock, to receive a request for relief from those covered by protection, provided that the person covered by protection is provided with a confidential and restricted phone number and to take measures to ensure the safety of movement, including providing the necessary protection and protecting housing and property From any aggression and any necessary measures or procedures authorized by the

Council.

Finally, the system indicated that a request for protection is not granted unless all methods that prevent harm to whistleblowers, witnesses, informants and experts have been exhausted, in accordance with what is stated in Article (17) of the system.

In addition to the above, we find that witness protection measures are a national requirement that the state must implement, and is based on constitutional foundations and international obligations. This protection aims to combat crimes in general, and in particular to combat organized crime, terrorist crimes, and administrative and financial corruption, in addition to the integrity of the judicial system, which His work is based on honest and correct evidence provided by witnesses. However, despite the many advantages provided by this protection, it constitutes an exceptional situation due to the resultant departure from some principles of a fair trial, such as deviating from the principle of oral argument and the principle of confrontation, in addition to what The state bears large expenses for the success of the process of protection for witnesses, and for these reasons and repercussions, the relevant Jordanian and Qatari legislations regulating witness protection programs have been keen to define their personal scope (the subject of protection), in addition to informing them of specific conditions for their acceptance, and the consequences of violating these conditions or deviating from their scope Termination of this protection.

Conclusion, results and recommendations

In the conclusion of this research, we find that the criminal policy set by the legislator differs from one state to another, and this difference may be due to many reasons, including the political ideology in the state, the traditions, social customs and religion prevalent in it, as well as economic reasons. Serious crimes, foremost of which are organized crimes, terrorist crimes, drug crimes, money laundering and financial and administrative corruption, all countries have sought to reduce this phenomenon. And testify against the perpetrators to receive their just punishment. Some countries have enacted laws, including Jordan and Qatar, that provide the necessary protection for informants and witnesses of crimes by changing their identities and providing them with housing and new job opportunities. Special and other measures to ensure protection for that category.

And because the witness or informant may sometimes be harmed by the reason for his duty to testify, his life, money, honor or the life of those he cares about may be at risk, and for this reason some legislations have set out to ensure procedural and objective protection for witnesses and others cooperating with justice to ensure that testimony is performed in the fullest manner without feeling danger or threat. From this standpoint, the Jordanian and Qatari legislators had serious pauses and effective flashes in the context of their treatment of the issue of protection for the witness in the criminal case, given that ensuring that protection is one of the main objectives of contemporary criminal policy.

First: the results

- 1- If the legal duty requires the witness to testify about what he has learned about the crime, then he has the right to obtain the necessary protection to prevent him from being

attacked or endangering his security or his life or the lives of his relatives, and this is the duty of the state.

- 2- The Jordanian legislator is considered one of the first when a special law stipulates the protection of whistleblowers, witnesses, whistleblowers and experts in corruption cases if we look at the Arab legislations and especially those of foreigners. By doing so, he has filled the legislative deficiency in this aspect and amended its legislation to be in line with the United Nations Convention against Corruption ratified by the Kingdom on 1/8/2004.
- 3- The system of protection for whistleblowers, witnesses, whistleblowers and experts in Jordan is limited to corruption crimes only.
- 4- Failure to indicate the sources and amount of funding for the witness protection program or department, which will cast a shadow on the training, resources and capabilities available because the law does not include the minimum required to provide an integrated program for witness protection characterized by the comprehensiveness of the law and the quality of its activation at the same time.

Second: Recommendations

- 1- The necessity of expanding the scope of penal protection and the necessity of including other persons who are not covered by the protection system such as the investigator, the public prosecutor or the judge.
- 2- The necessity of stipulating the duration of protection It is not expected that the protected person will enjoy long protection because of the psychological impact on his isolation on the one hand and the high costs of protection on the one hand. this is similar to what is applicable in foreign laws, for example, the French legislator specified the period of protection for a protected witness that does not exceed the year following his last testimony.
- 3- The need to create sufficient objective and material conditions for the Witness and Whistleblower Protection Unit to carry out its duty efficiently and effectively, and this is a basic requirement to advance the work of the Integrity and Anti-Corruption Commission and develop its performance, given that witnesses and informants are the basis for moving corruption crimes and proving their legal pillars.

List of references and sources

- Ibn Manzoor, Muhammad bin Makram bin Ali Al-Ansari, Lisan Al-Arab, material Shahd, investigated by Abdullah Ali Al-Kabeer and others, Dar Sader, Beirut, 1956.
- The Arab Anti-Corruption Agreement for the year 2012, published on page 2637 of the Official Gazette No. 5162 dated 06/17/2012.
- Asmaa, Jouri, Witness Protection Guarantees in Algerian Law, Master's Thesis, Mohamed Khider University of Biskra, Algeria, 2017.
- Al-Badri, Ahmed, a brief explanation of some crimes of the special section of the Penal Code, Cairo, Dar Al-Nahda Al-Arabiya, (D.T).
- Behnam, Ramses, Penal Code: Special Section, Alexandria, Dar Al Maaref, 1982.
- Gilani, Maino, Legal Protection of Witness Security in Maghreb Legislation, Journal of Policy

and Law Books, Issue Fourteen, 2016.

- Hassan, Adel and others, Legal and Security Protection for Witnesses, Beirut, Dar Al-Fikr Jami, 1998.
- Hosni, Mahmoud Naguib, Explanation of the Penal Code: General Section, Egypt, Dar Al-Nahda Al-Arabiya, 1997.
- Al-Zayni, Mahmoud Mohamed Aziz, Discussing and Interrogating Witnesses in Sharia and Positive Law, New University for Publishing, Alexandria, 2004.
- Al-Saeed, Kamel, Explanation of the Code of Criminal Procedure: A Comparative Analytical Study in the Jordanian, Egyptian and Syrian Laws, House of Culture for Publishing and Distribution, Amman, 2005.
- Al-Sulayya, Ahmed Youssef, Criminal and Security Protection for a Witness, A Comparative Study, Dar Al-Fikr Al-Jamiah, Alexandria, 2006.
- Al-Shami, Abdullah, Organized Crime, PhD thesis, Faculty of Law, Cairo University, 2003.
- Shaksi, Saad Saleh and Suha Hamid Selim, The Role of the Witness in Resolving the Criminal Case, Journal of the College of Law for Legal and Political Sciences, 2014.
- Al-Shawani, Nawzad Ahmed Yassin, Witness Protection in National and International Criminal Law: A Comparative Analytical Study, Cairo, National Center for Legal Publications, 2014.
- Abdullah, Saeed Hassaballah, Procedures and Rules for Hearing Witnesses in the Criminal Case, Al-Rafidain Journal of Rights, No. 4, 1998.
- Abdel Muttalib, Ihab, Evidence of Evidence and its Falsehoods, 1st Edition, The National Center for Legal Publications, Cairo, 2009.
- Azmy, Mamdouh, A Scientific Study of the Reasons for Permissibility and Impediments to Punishment, Alexandria, Dar Al Fikr Al Jamia, 2004.
- Jordanian Evidence Law No. (30) of 1952 AD.
- Emiri Resolution No. 94 of 2013 approving the establishment of the Rule of Law and Anti-Corruption Center Foundation.

Al-Majali, Tawfiq System, Explanation of the Penal Code: General Section, Analytical Study in the General Theory of Crime and Criminal Responsibility, Amman, House of Culture for Distribution and Publishing, 2012.

- Mohamed, Amin Mustafa, Witness Protection in the Criminal Procedure Code: A Comparative Study, University Press, Alexandria, 2015.
- Decree No. (17) of 2007 ratifying the United Nations Convention against Corruption.
- Decree No. 37 of 2012 ratifying the Arab Convention against Corruption.
- Al-Marsafawi, Hassan Sadiq, Rules of Responsibility in Arab Legislation, Cairo, Institute of National Research and Studies, 1972.
- Najm, Sobhi, Explanation of the Penal Code: General Section, Amman, House of Culture for Distribution and Publishing, 2005.

The system for the protection of whistleblowers, witnesses, informants, experts in corruption cases and their relatives and people closely related to them issued in accordance with paragraph (c) of Article 23 and Article (30) of the Anti-Corruption Authority Law No. 62 of 2006 and

published on page 3100 of the Official Gazette No. 5286 dated 15/5/2014.

Harga, Mustafa Magdy, The Testimony of Witnesses in the Criminal and Civil Fields, Beirut, Dar al-Kutub al-Qanuniyyah, 1996.

- Al-Hinai, Ali Bin Al-Hassan, Al-Munajjid in Language and Media, 3rd Edition, Dar Al-Mashreq, Beirut, 1991.

- Regional Workshop on Protection of Witnesses and Whistleblowers, Rabat, Morocco, April 2-3, 2009.