



Witness Protection in the Algerian Legal System

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Abstract:

Testimony is among the most important evidence in criminal cases, as it helps to reach the truth and achieve justice in the acquittal and conviction of the accused . The national legislative system has been influenced by the international movement related to witness protection by adapting new legal texts to provide effective protection for witnesses, especially in serious crimes. This is what our study aims to show by pre-defining what a witness is, and showing the national legislative mechanisms with their deterrent substantive rules and formal rules, including procedural and non-procedural measures in order to enhance the protection of witnesses.

Keywords: Witnesses, legal protection, procedural measures, non-procedural measures, Algerian legislation.

Introduction :

Judicial authorities use the testimony of witnesses to reach the truth and achieve justice in acquitting and convicting the accused, but in many cases witnesses are reluctant to testify, given the temptations or threats they may be exposed to. Therefore, the authorities need to intervene to ensure their security and protect them from any aggression they may be subjected to as a result of testifying and providing assistance to the judiciary.

In order to prevent the withholding of testimony and to protect witnesses, the international community has come together to conclude several international conventions aimed at protecting witnesses, most notably the United Nations Convention against Organized Crime and other international and Arab conventions, including the United Nations Convention against Transnational Organized Crime.

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Algeria did not remain confined to the penal text for every assault or threat against a witness, but was influenced by the international movement related to witness protection, by adapting new legal texts to provide effective protection for witnesses.

Based on the above-mentioned, the question of the study is centered on the following: How has the Algerian legislative system been modernized in order to enhance witness protection?

The significance of the study topic is evident in the importance of testimony in proving criminal cases, as the witness plays a role in revealing the truth by providing information that has an impact on refuting or proving a criminal incident under investigation. Therefore, our study aims to clarify the concept of the witness and the obstacles that prevent him from harming his duty to testify, highlighting international efforts aimed at protecting witnesses as well as national legislative mechanisms that enhance witness protection .

We adopted the descriptive and analytical approaches when describing the concept of witnesses and analyzing the relevant legal texts.

The research was divided into two topics, the first entitled "What are witnesses?" and the second topic was dedicated to the national legislative mechanisms for witness protection.

THE FIRST TOPIC: THE DEFINITION OF WITNESSES

Witness testimony is one of the most important and indispensable resources in the field of penal evidence. Accordingly, we will define the concept of a witness {first requirement} and the protection that the latter has received in international conventions and charters {second requirement}, indicating the extent of the Algerian legislator's response by ratifying the contents of these texts.

FIRST REQUIREMENT: THE CONCEPT OF THE WITNESS

In this requirement, we examine the definition of witnesses and the importance of testifying {firstly}, while identifying the most prominent reasons that prevent witnesses from testifying before the competent judicial authorities {secondly}.

Firstly: The definition of a witness and the importance of testimony

If testimony is information provided by a witness, mainly related to the crime under investigation, it is intended to allow third parties who are not parties to the public prosecution to testify about the information they have related to the facts under investigation¹

Among the jurisprudential definitions given to the witness, it is a person who possesses information that has an impact on the denial or proof of a criminal fact. A witness is also defined as a person against whom there are no reasons to suspect him of contributing to the crime, or there is no solid evidence against him that he is accused of committing or participating in the crime, provided that he has witnessed the incident in question or has information about it²

Witnesses are the first link of the research and investigation, so it is necessary to pay attention to hearing their testimony and asking them about the circumstances of the crime, as they are the most capable of describing and depicting how the crime occurred.

¹ - Abdallah Ouhabia, Commentary on the Algerian Code of Penal Procedure, Part I, second edition, Dar Houma, 2018, p576

² - Abdallah Ouhabia, Commentary on the Algerian Code of Penal Procedure, Part I, second edition, Dar Houma, 2018, p. 577 □



The testimony of witnesses represents an important aspect of criminal evidence, given its great importance in the investigation procedures, whether preliminary or final, as witness statements are among the most important evidence used by the judge in penal litigation, where the evidence focuses on material or moral facts that cannot be proven in writing. The testimony focuses on the fact under investigation, and does not address the witness's beliefs, opinions, or assessment of the severity of the incident or the responsibility of the perpetrator ...³

This is because crime is an illegal activity that the perpetrator seeks to conceal, and follow every way to obliterate and remove its effects.

The presence of a witness to the crime is considered a great asset to justice, as testimony during the various procedural stages often has a great impact on the verdict of guilt or innocence, as the testimony is one of the most prominent evidence of the commission of the crime and those involved in committing it, and there are even some crimes in which there is no evidence other than the testimony of witnesses.⁴

According to our view, testimony is a detailed report provided by a person who witnessed the incident under investigation, which makes it an important part of criminal evidence.

Secondly: Reasons for reluctance to testify

The compliance of witnesses before the competent judicial authorities to give their testimony, whether to prove or deny, is of great importance, given the role that testimony plays in directing the course of the case and determining the fate of the accused. However, the reality revealed the existence of many cases or reasons that stand behind the reluctance of witnesses to come before the competent authorities to give their statements and testimony, and in order to strengthen testimony as an important mechanism of proof in criminal matters, we decided to stand on the statement of the most important reasons for the reluctance and reluctance of witnesses, which may be due to:⁵

- Fear of the criminal and his revenge, and even fear of the victim of the crime and his family, which is evident in some environments where traditions prohibit testimony.
- The witness's fear of the troubles that occur after his testimony, and his fear of appearing before the courts later.
- The reason for the reluctance may even be due to fear of involvement, if the witnesses have committed minor crimes and believe that they will inevitably be exposed with their first meeting with the security forces.
- Some of the reasons for the reluctance to testify may be due to the witness's hatred of the security forces and resentment of their methods of treating witnesses, and the police's treatment of witnesses by burdening them with attendance, wasting their time, ignoring their interests, and not treating them with dignity.

³ - Tayeb Semati, *Protecting the Rights of Crime Victims during the Judicial Investigation Phase in Algerian Legislation*, Dar Al-Huda, Algeria, 2021, pp. 69,70.

⁴ - Ahmed Mohamed Abdellatif Alfaqi, *Penal Code provisions safeguarding the Rights of Crime Victims*, Arab Renaissance House, Cairo, 2001, p. 86.

⁵ - Ahmed Mohamed Abdellatif Alfaqi, *op:cit* , pp. 87-90



- The reason for not complying with the testimony may also be due to the witness's fatigue by repeated attendance, belittling him or minimizing the importance of his testimony, all of which will reflect on his psyche, so he will deny the testimony or give it in a truncated form to get rid of the trouble he is in.

We also believe that one of the reasons for the reluctance to give testimony is the narrow scope of the crimes in which the identity of the witness is concealed. Often the testimony is preceded by a statement of the name and surname of the witness and his place of residence, which may pose a danger to him and his family.

SECOND REQUIREMENT: INTERNATIONAL TEXTS THAT PROMOTE WITNESS PROTECTION

Investigating the international efforts established to protect witnesses necessarily requires a prior exploration of the origins and development of the legislative protection system for witness security, which we will highlight in this requirement as outlined below.

Firstly : Evolution of Witness Protection⁶

The origins of witness protection date back to the United States of America, specifically in the 1970s, where the first witness, Joseph Flacci, was assigned special protection until he testified before a congressional committee, where he was surrounded by a heavy guard by 200 escorts from senior security men, given the terror he lived in fear of mafia retaliation and being killed by one of the powerful mafia bosses.

This action resulted in the US authorities' idea of the need to establish a federal system to protect witnesses and solve their reluctance to testify, especially in organized crime. The Organized Crime Control Act of 1970 included in Article 505 of the Act, allowing the Attorney General to make arrangements that would provide security protection for vulnerable witnesses, such as the power to take measures to relocate them to a new place of residence or give them a pseudonym.

In 1984, the Witness Security Reform Act was enacted in order to avoid the shortcomings of the 1970 law, which included, among other things, an assessment of the risks to which a witness may be exposed.

The Witness Security Reform Act expanded the scope of protected witnesses, regardless of the offense, when the public prosecutor finds that the witness is at risk, in addition to expanding the services provided to witnesses, as they have the right to protection from bodily injury and to ensure the preservation of their health and safety. In addition, the new law introduced new criteria that the case is serious, the testimony is the decisive factor in proving the accusation, and the protection program is the only way to ensure the safety of the witness.

This system has spread from the United States of America to many Western and Arab countries.

⁶ - Djilali Maino, Legal Protection of Witness Security in Maghreb Legislation: A Study in Algerian, Moroccan and Tunisian Legislation, Politics and Law Notebooks, issued by Kassidi Merbah University Ouargla, Issue 14, January 2016. p. 264.

Dalila Maghni, Measures to Protect the Security of Witnesses, Experts and Victims Act, a comparative study, Journal of Truth, published by Ahmed Daraya University, Issue 41, p. 321.



Secondly : International efforts to protect witnesses

- **The United Nations Convention against Transnational Organized Crime of 2000**, which devoted Article 24 under the title of witness protection, where it included a set of measures that states parties can provide to ensure effective protection of witnesses, such as changing their place of residence, allowing non-disclosure of information regarding their identity and whereabouts, allowing testimony using communications technology such as video links.... The provisions of this article also apply to victims of crimes when they are witnesses.

Algeria ratified this convention with a reservation in 2002 by Presidential Decree No. 02-55.

- **United Nations Convention against Corruption (UNCAC) in 2003**: Algeria ratified it with a reservation in 2004 by Presidential Decree No. 04-128. This convention singled out witnesses for protection under Article 32, which was entitled Protection of Witnesses, Experts and Victims. The measures and provisions it contains are fully applicable to the content of Article 24 of the Organized Crime Convention above. Article 25 criminalized any use of physical force, threats, intimidation or promise of advantage ... Incitement to give false testimony or to interfere in order to provide testimony or evidence related to the commission of offences established in accordance with this Convention.

- **The Rome Statute of the International Criminal Court of 1998**: Article 68 of the Rome Statute provides for the protection of witnesses. The Court may take appropriate measures to protect the safety, physical and psychological integrity, dignity and privacy of witnesses. As an exception to the principle of publicity and witness protection, any part of the trial may be conducted in secret sessions and evidence may be presented by electronic or other means of a special nature with the possibility of withholding evidence or information the disclosure of which would expose the witness or his family to serious danger... and other measures approved by this law to ensure the protection of witnesses.

- **Arab Anti-Corruption Convention 2010**: Article 14 of the Convention also stipulates the legal protection of witnesses, most notably the adoption of punitive measures against anyone who discloses information related to the identity or whereabouts of witnesses.

- **The Arab Convention on Combating Money Laundering and Terrorism 2010**, ratified by Algeria in 2014 by Presidential Decree No. 14-250, in view of the seriousness of these crimes, the Convention singles out witnesses for immunity in Articles 38 to 40.

- **Arab Convention against Transnational Organized Crime 2010**: The immunity and protection of witnesses is recognized in the provisions of this convention in Articles 33 to 36.

In conclusion, witnesses have received great attention from the international community, which is reflected in the contents of the aforementioned international conventions, given the seriousness of the testimony for those who give it, as it may relate to very serious crimes, on the one hand, and on the other hand, the importance of immunization is evident in enhancing testimony in the system of detecting and suppressing crimes.

SECOND TOPIC: LEGISLATIVE MECHANISMS TO STRENGTHEN WITNESS PROTECTION

The American experience in witness protection, and the international community's call in several international conventions for the need for member states to activate measures to guarantee witnesses, has had an impact on positive legislation. In France, for example, the



legislation introduced special provisions for witness protection under a law called the Witness Protection Law issued on November 15, 2011.⁷

Algeria, too, in order to fulfill its international and Arab commitments, has dedicated special provisions in the Code of Criminal Procedure to protect the category of witnesses. This is the focus of our study and analysis in this article, through two requirements, the first of which is concerned with the description of witness protection mechanisms in substantive rules, followed by the study of formal rules.

FIRST REQUIREMENT: WITNESS PROTECTION MECHANISMS IN SUBSTANTIVE RULES

Article 236 of the Algerian Penal Code provides for the protection of witnesses from the influences to which they may be exposed, by penalizing any person who makes promises to a witness, gifts or gifts, or uses pressure, threats, abuse, maneuvering or fraud to induce witnesses to make false statements or testimony, in any article or procedural stage or for the purpose of claim or defense before the judiciary, regardless of whether these acts have produced their effect or not, where the penalty ranges between one and three years and a fine from 500 to 2000 D. C., or one of these two penalties, unless the act is an accomplice to one of the crimes listed in Articles 222/233/235, which are mainly related to false testimony in felonies. Unless the act is considered a participation in one of the crimes listed in Articles 232/233/235, which are mainly related to false testimony in felonies, misdemeanors and infractions".

The Algerian legislature has done well to protect witnesses, especially since the law allows witnesses to be compelled to appear and testify before the investigating judge or the judiciary, except at the preliminary investigation stage.

However, we note an exception if the judicial police officer performs his duties within the framework of the judicial proxy, where the judicial police officer swears in the witness and gives his testimony, but if he does not appear, the judicial police officer, after notifying the prosecuting judge, can force the witness to appear by public force.

In addition, the investigating judge may sentence the witness to the penalties stipulated in the second paragraph of Article 97 of the Code of Criminal Procedure, consisting of a fine of 200 to 2000 D.J. The same penalty applies to a witness who fails to appear and refuses to take an oath or make a statement, and this penalty is not subject to any appeal.

The fine is waived in whole or in part by the witness's submission of serious excuses supported by evidence, so the investigating judge may waive the penalty after hearing the public prosecutor's requests.

In the event that a witness declares or states that he is in possession of information about the criminal incident under investigation that would reveal the circumstances of the crime, and

⁷ - Djilali Maino, *Legal Protection of Witness Security in Maghreb Legislation: A Study in Algerian, Moroccan and Tunisian Legislation, Politics and Law Notebooks*, issued by Kassidi Merbah University Ouargla, Issue 14, January 2016. p. 264, 265.



then later refuses to do so, the law increases the penalty and characterizes this conduct as a misdemeanor, punishable by a fine of from one month to one year and/or a fine of from 20,000 to 100,000. This is in accordance with the provisions of article 98 of the Code of Criminal Procedure, which reads as follows: "Any person who, after publicly stating that he knows the perpetrators of a felony or misdemeanor, refuses to answer the questions put to him in this regard by the investigating judge may be referred to the competent court and sentenced".

It is important to note that while it is permissible to hear the testimony of any person who possesses information relevant to the crime under investigation, there are persons specified by law whose testimony the investigating judge is prohibited from hearing. This mainly concerns the person against whom a complaint accompanied by a civil claim is filed {Article 89 Q.A.G.}, as well as the civil plaintiff, whether he files his claim before the investigating judge pursuant to Article 72 or through direct prosecution before the court pursuant to Article 337 bis of the Q.A.G.

It is not permissible to hear any person as a witness when there is strong evidence against him to ensure his right to defend himself as an accused, as hearing him as a witness would violate his right to defense, and this right is guaranteed by law under Article 89 of the Code of Criminal Procedure, and therefore he must be surrounded by all the legally prescribed guarantees for the accused.⁸

SECOND REQUIREMENT: WITNESS PROTECTION MECHANISMS IN THE FORMAL RULES

Article 65 bis 20 of the Code of Penal Procedure defines the group of persons who can be covered by the protection measures, which were approved by Law 15-02 amending and supplementing the Code of Penal Procedure, as witnesses are among those who are protected when it comes to testimony in organized crime, terrorist crimes and corruption offenses.

Provided that their testimony would expose them to the dangers stipulated in Article 65 bis 19 of the Code of Criminal Procedure, if the life or physical integrity of the witness or the life or integrity of his family members or relatives or his essential interests are seriously threatened, due to the information that he can provide to the judiciary, which is important for revealing the truth in the three crimes referred to above .

In order to protect witnesses, the legislator introduced texts containing procedural and non-procedural measures to immunize witnesses from any attack or threat to which they may be exposed, which we will explain as follows:

Firstly : Procedural measures

Article 65 bis 23 of the Algerian legislature stipulates a number of procedural measures that can be taken to protect witnesses when it is clear that they are at risk due to the information they will provide:

- Failure to disclose the witness's identity or replace it with a pseudonym in the proceedings
- Failure to mention the correct address of the witness in the investigation papers.

⁸ - Abdallah Ouhaibia, Commentary on the Algerian Code of Penal Procedure, Part I, second edition, Dar Houma, 2018, pp. 584, 585.



- Instead of referring to the actual address of the witness, replace it with the headquarters of the judicial police where the witness was heard, or the judicial authority to which the case will be assigned. The real identity and address of the witness must be kept in a special file kept by the public prosecutor, and whenever there is a need to summon the concerned person, the latter will receive a summons to appear through the public prosecution.

During the judicial investigation phase, if the investigating judge realizes that a witness is subject to the notification mentioned in Article 65 bis 19 of the Code of Criminal Procedure, and decides not to reveal his identity and the data mentioned in Article 93 of the Code of Criminal Procedure, such as his status, profession, place of residence, relationship with the opponents ... he must, in accordance with the requirements of Article 65 bis 24 of the Code of Criminal Procedure, indicate the reasons that justify this in the hearing record, and keep confidential information regarding witnesses in a special file maintained by the investigating judge. If a hidden witness is to be heard by the investigating judge, the public prosecution, the accused, the civil party and their defense must submit questions to the investigating judge before or during the hearing, provided that the judge takes such measures as he deems necessary to preserve the anonymity of the witness, and may, if necessary, prevent him from answering questions that may result in the disclosure of his identity.

If the case is referred to the adjudicating authorities, the latter must decide whether knowing the identity of the witness is necessary to exercise the rights of the defense, based on the facts of the case. The adjudicating authority is also allowed, either automatically or at the request of the parties, to hear an anonymous witness by adopting technical means that prevent the disclosure of his identity, such as video teleconferencing and the use of techniques that do not allow the recognition of the person's image and voice.

If the statements of the anonymous witness are the only evidence, the court may, in accordance with Article 65 bis, paragraph 2, of the Code of Criminal Procedure, authorize the disclosure of the identity of the witness - if the witness agrees to do so - while ensuring that measures are taken to protect him. If the identity of the witness is not disclosed during the trial, according to the last paragraph of Article 65 bis 27 of the Code of Criminal Procedure, the information provided by the witness is considered mere hearsay, which alone does not amount to evidence on which to base a conviction.

Secondly: Non-Procedural Measures

Law 15-02 defines the non-procedural measures that witnesses and victims can benefit from if they are witnesses, where they can benefit from the following non-procedural measures:

- Covering up information related to the identity of the witness.
- Putting a special phone number at his/her disposal
- Providing the witness with a point of contact with the security services.
- Ensuring close physical protection for the witness, with the possibility of extending it to family members and relatives.
- Placing protective technical devices in his home.
- Recording phone calls made or received by the witness, with his explicit consent.
- Changing the place of residence
- Providing social or financial assistance to the witness.



- The possibility of taking measures to place the witness, if he is imprisoned, in a ward with special protection.

It is noteworthy that the legislator indicated that the manner of applying the non-procedural measures included in this text will be regulated by regulation.

As for the time period for taking this type of measures or the competent authority to approve them, Article 65 bis 21 of the Code of Criminal Procedure authorizes the introduction of non-procedural measures of protection before the initiation of criminal proceedings, at any stage of the judicial proceedings, either automatically by the competent authority represented by the public prosecutor during the preliminary investigation stage, the investigating judge during the judicial investigation stage, and the judiciary during the final investigation stage. A judicial police officer or even a witness can also apply to benefit from one of the legally prescribed measures.

Article 65 bis 22 of the Code of Procedure empowers the public prosecutor to decide to take appropriate measures that would ensure the effective protection of the endangered witness in consultation with the competent authorities, provided that this authority is transferred to the investigating judge who is notified once a judicial investigation is opened, to add the same article to keep the measures taken in force as long as the reasons that justified them exist, with the possibility of amending them given the seriousness of the threat, while the public prosecutor is assigned the task of working to implement and follow up on the protection measures.

Conclusion:

At the conclusion of our study on the subject of witness protection in the Algerian legal system, we conclude that the Algerian legislature has granted special protection to witnesses, considering that on the one hand, testimony is important evidence to prove in criminal matters, and on the other hand, this protection is one of the results of Algeria's ratification of several international and Arab conventions, which obligate states parties to take measures that would immunize witnesses, especially in serious crimes. The research concluded with a set of conclusions and recommendations, which are summarized below:

- Witness testimony is a report submitted by a person who witnessed the incident under investigation, which makes it effective in denying or proving a criminal offense.
- Witness testimony is among the most important evidence in criminal matters, given its role in clarifying the truth of the crime, especially if the witnesses are heard after the commission of the crime and before its features are lost.
- There is an international interest in the category of witnesses, which is reflected in the contents of numerous international conventions, which stipulate procedures and measures that recognize the need to protect witnesses, especially in very serious crimes.
- The measures adopted by the Algerian legislature to protect witnesses will have the effect of reducing the reluctance of witnesses to testify, making them willing to do so without fear.
- The enshrinement of criminal protection for witnesses and the measures, both procedural and non-procedural, inevitably reflects on the proper functioning of



justice in general, as well as enhancing the victim's right to redress the moral or material harm suffered.

Recommendations:

- In order to enhance the protection of witnesses and ensure that they are not influenced or attacked, we suggest that their testimony should be expedited and documented .
- Although the Algerian legislature has done a remarkable job by recognizing special protection for witnesses in serious crimes where the witness may fear their oppression and refrain from testifying against them, we believe that the scope of the crimes in which witnesses are protected should be expanded.

Bibliography:

1: Legal texts

- United Nations Convention against Transnational Organized Crime of 2000.
- The United Nations Convention against Corruption of 2003.
- Rome Statute of the International Criminal Court of 1998
- The Arab Convention on Combating Money Laundering and Financing of Terrorism 2010.
- Arab Convention on Combating Corruption 2010.
- Arab Convention on Combating Transnational Organized Crime 2010.
- Algerian Penal Code, amended and supplemented by Decree No. 66-156 of June 8, 1966.
- Order No. 15-02 of July 23, 2015, containing the Code of Criminal Procedure, Official Journal No. 40, July 23, 2015.

2: Books

- Abdallah Ouhaibia, Commentary on the Algerian Code of Criminal Procedure, Part I, second edition, Dar Houma, 2018.
- Tayeb Semati, Protecting the Rights of Crime Victims during the Judicial Investigation Phase in Algerian Legislation, Dar Al-Huda, Algeria, 2021.
- Ahmed Mohamed Abdellatif Alfaqi, Penal Code provisions safeguarding the Rights of Crime Victims, Arab Renaissance House, Cairo, 2001

3: Articles

- Djilali Maino, Legal Protection of Witness Security in Maghreb Legislation: A Study in Algerian, Moroccan and Tunisian Legislation, Politics and Law Notebooks, issued by Kassidi Merbah University Ouargla, Issue 14, January 2016.
- Dalila Maghni, Measures to Protect the Security of Witnesses, Experts and Victims Act, a comparative study, Journal of Truth, published by Ahmed Daraya University, Issue 41