

## Procedural Risks in the Witness Protection System in the Bahraini Code of Criminal Procedure

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### Abstract

*The research aims to identify the position of Bahraini legislation and comparative legislation on procedural protection for witnesses in criminal cases to extract evidence not tainted by confusion or defect and enable the judiciary to reach the truth by guaranteeing sufficient testimony. As well as identifying the methods of protection used for the security of witnesses before, during, or after the trial to fill the local legislative shortfall in the protection prescribed for witnesses and to establish controls, foundations, and mechanisms for their protection. This study relies mainly on the analytical and comparative approach through objective reading and in-depth analysis of legislation, which contributes to the development of the legal reality. The problem of the study is the extent to which the Bahraini legislator fulfils all the requirements for determining measures for witness protection. In addition to the small size of the Kingdom of Bahrain, the protection of witnesses may encounter some difficulties, the most important of which is the possibility and feasibility of concealing the identity of witnesses and changing their place of residence in that small area of the Kingdom of Bahrain. Has the legislator developed alternatives to such protection in light of this difficulty? Thus, this study recommends setting an appropriate penalty for everything that would prejudice the protection prescribed for witnesses, similar to the position of the French legislator in the Code of Criminal Procedure. Because of the small area of the Kingdom of Bahrain, we find it necessary for the competent authorities to conclude agreements with other countries whose purpose is to transfer those who require protection from witnesses to it and to secure their lives there.*

**Keywords:** Witness Protection System, Bahraini legislation, testimony.

### Introduction

While testimony as criminal evidence is an obligation of every individual who comes to know and perceive certain information or data related to a certain crime by any of his senses, this obligation may encounter difficulties or obstacles that prevent the witness from testifying. A witness may fear for his life, money, honour, or the lives of those close to him.

Testimony may be the only evidence in a criminal action, granting the witness particular importance within the scope of criminal proof for conveying what he has known by one of his senses to the court or the investigation officers. Therefore, many countries have secured protection for witnesses in criminal actions by effecting specific measures that ultimately serve criminal justice and the peaceful living of the witness by protecting him

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from all threats and pressures. This sort of protection has become one of the main objectives of contemporary criminal policy because it is of utmost importance for the essence of justice, which requires granting the witnesses the protection they deserve against the dangers they may face.

As a result, several legislations, including the Bahraini Code of Criminal Procedure, have articulated legal texts that aim to effect specific procedures to protect witnesses from any risks. Protection measures stated by the Law include concealing the witness' identity, personal information, place of residence... etc. For instance, the Bahraini Code of Criminal Procedure prohibits the disclosure of information related to identity and permits the witnesses to deliver their testimony remotely through technological audio-visual means.

### **Importance of the Research:**

The importance of this topic lies in identifying the position of the Bahraini legislator and comparative legislations on the principle of the procedural protection of witnesses in criminal actions, as well as examining how to put legal texts into practice by drawing appropriate measures for witness protection.

Research Problem:

The research addresses several problems:

1. Has the Bahraini legislator's Code of Criminal Procedure met all the requirements that define the measures relevant to the protection of witnesses that need to be protected? Or has it not explicitly stated the procedures for protecting such witnesses?
2. Has the Bahraini legislator imposed an appropriate penalty on anyone who would compromise, in an unlawful manner, the protection granted to the witnesses, which includes concealing their identity and place of residence?
3. Given the small area of the Kingdom of Bahrain, witness protection may need some help regarding the possibility and feasibility of concealing the witnesses' identities and changing their residences. Has the legislator provided any protective alternatives to overcome this difficulty?

Research Plan:

The research is divided into two parts, as follows:

Part One: What is Testimony?

Part Two: Witness Protection Measures

1. What is Testimony?

Testimony is essential to any criminal procedure conducted to reveal the truth. Therefore, a witness undertakes a great responsibility, to be honest and tell the **whole** truth to help achieve justice, the ultimate aim of the entire legislative system.

The objective of testimony is to enable one of the litigants to prove their claim or defence through resorting to persons to whom the facts of the litigation are not related but who have information related to the facts of the proceeding litigation. As such, testimony is a means of criminal evidence and vital proof sought by the judge to build a conviction on the proceeding criminal action.

This part will be divided into two sections; the first will address the concept of testimony, while the second will discuss the definition of a witness.

## 1.1 Concept of Testimony

### 1.1.1 Definition of Testimony

Testimony is, and has always been, one of the essential means of evidence in criminal actions; it is considered a common way of criminal evidence, as it is usually based on sudden incidents that are not planned or agreed upon in advance. The legal jurisprudence provides several definitions of testimony; "A statement made by someone regarding an incident that he has witnessed and perceived with one of his senses" (Hosni, 2011). Another definition is "A statement made by someone of what he has perceived with one of his senses relevant to a certain incident" (Al-Hadithi, 2011). A third definition is "Everything perceived by someone with any of his five senses: vision, hearing, taste, touch, or smell" (Al-Degheidi, 2004). Nijm (1991) defines it as "A regular means of proof in criminal proceedings to prove a certain incident based on what the witness concluded as a result of what he had directly perceived with his sight, hearing, smell, taste or touch regarding the incident."

Based on the aforementioned, testimony is not physical evidence, even though it proves a material incident. It is verbal evidence, as the witness delivers his testimony verbally before the judicial authority entitled to hear it (Hassan, 2005). It has the same sense as proof of evidence, both during preliminary investigation and trial. It is a standard proof of evidence in criminal matters, based on a material fact or group of facts with legal significance. A testimony is not acknowledged unless the witness had perceived it with one of his senses. Therefore, the subject of the testimony cannot be an opinion or a judgment made by the witness (Al-Hadithi, 2015).

### 1.1.2 Importance of Testimony:

Testimony plays a vital role in criminal evidence. It is usually based on a random, sudden incident not preceded by agreement or consent because the crime is not a lawful act that the criminal seeks to document in writing. Instead, it is illegal, so its committer does his best to hide it and erase any leads that would implicate him (Khalil - Hassab Allah, 2011). Therefore, testimony maintains its full legal value in the criminal field because it can help unravel the facts of crimes that cannot be proved with physical evidence, which may be absent or erased by the committer (Al-Ghammaz, 1980). Crimes are acts committed in defiance of the law and cannot be proved in advance, contrary to civil matters that usually occur based on a written agreement between the litigants. Therefore, in civil affairs, writing is the primary manner of proof (Al-Marsafawi, 1973).

As such, evidence by witness testimony is essential in criminal matters because actions and events that eventually form the basis for claims cannot be entirely or partly proved without referring to the memories of the people who witnessed their occurrence (Al-Nimr, 1991).

### 1.1.3 Characteristics of Testimony

#### a. Ultimate Probative Power in Criminal Actions

Though testimony no longer has the top rank as evidence in civil affairs due to technological development and the prevalence of writing, it is still the primary means of evidence in criminal matters. The Legislator has not imposed any conditions on evidence by testimony except those related to sanity and adulthood. Therefore, testimony has the ultimate probative power in the criminal field (Saleh, 2012). Yet, it is subject to the judge's discretionary power. Leading probative force indicates that evidence can be based on witness testimony in all crimes except those explicitly excluded by the law, unlike civil affairs, witness testimony can only have ultimate probative force in some instances stated by the law, such as material facts. In other words, witness testimony is not restricted in criminal matters but greatly restricted in civil affairs.

b. A Testimony is Personal:

A witness should deliver the testimony by himself and provide it in the courtroom. He cannot assign anyone else to do it. The Bahraini legislator even obliges the Public Prosecution member to go to the witness if the latter cannot show up for sickness, for example. This is stated in Article (125) of the Bahraini Code of Criminal Procedure, Article (87) of the Lebanese Code of Criminal Procedure, Article (281) of the Egypt Criminal Procedure Code, and Article (52/A) of the Iraqi Criminal Procedure Code.

c. Testimony is an Obligation

Testimony is the duty of every individual who knows information or data relevant to a specific crime such that he has perceived such knowledge with one of his senses. A witness supports the judicial social mission and achieves social good before the judiciary and the investigation authorities because his testimony facilitates that people who have rights are granted these rights. Therefore, the Criminal Code penalises the witness who refrains from testifying without an accepted excuse (Rabee', 2011).

d. Testimony is not Binding to the Judge

Testimony is a valid argument that is subject to the judge's discretion. Despite permitting the judge to hear the witnesses, procedural law does not bind the judge to build on their testimony. The judge has the right to evaluate the witnesses' testimonies and then accept all or part of them, regardless of the number of witnesses. The Egyptian Court of Cassation has ruled that "the Court has the full capacity to weigh the witness' testimony and evaluate the circumstances in which the witness delivers such testimony. Therefore, the Court may take or reject such testimony or overweigh the testimony of another witness or the statement of the same witness in an investigation of his statement or any other investigation". The Court of Cassation of Bahrain also adopts the same principle in its decisions. One of its decisions stated that "The trial court has the right to extract from the witness' statement and other elements presented before it... as per the court's conviction, provided that such extraction be conformed with reason. The final judgment of witnesses' statements and estimation of the circumstances in which such statements are delivered and the degree of reliance on such statements in reaching a decision, regardless of any contestations or doubts about it, shall be the responsibility of the trial court, which has the right to evaluate and weigh such statements as it deems appropriate."

## 1.2 The Concept of Witness in Criminal Actions

A witness is sought by the judiciary authority for criminal evidence because testimony plays a vital role in building the judge's conviction, upon which he bases his judgment. A witness is usually not related to the criminal action, nor is he one of its parties. However, his presence is essential to achieve justice and reach the truth. Therefore, it is crucial to define the concept of a witness and explain his role in criminal procedures.

### 1.2.1 Definition of Witness in Criminal Actions

Definitions of a witness in criminal proceedings have varied in criminal jurisprudence. It was defined as "a person who has perceived with one of his senses information about the incident." (Al-Marsafawi, no date). Others define it as "a person who witnessed the criminal act with his sight, hearing, touch, taste, or smell, as per the circumstances and the nature of the incident, and is responsible before the law to disclose what he had perceived regarding the incident," (Al-Akeeli, 1981). A third definition is that, "a witness is he who verbally delivers a testimony of everything he knows about a certain experience or incident that he has perceived with one of his senses," (Al-Bahr, 1998, page number).

A witness can be defined as "a person who is not part of the criminal action but has perceived with one of his senses information about a certain incident related to the criminal action either in affirmation or negation."

### 1.2.2 The Role of the Witness in Criminal Action:

Testimony is of great importance that is not only attributed to the fact that it is the primary evidence on which the judgment is based in criminal actions, but also because the witness is subject to countless factors that affect his physical being, senses, psychological status, and social relationship; and consequently affect the correctness of the testimony intentionally or unintentionally. Psychology indicates that a person's perception, attention, memory, emotions, and estimation of time and space are all affected by various and differing voluntary and involuntary physical, social and psychological factors that, in turn, affect the correctness of the testimony (Hassab Allah, 1998).

Therefore, witness testimony has a special status among other means of evidence in criminal actions. It is even said that witnesses are the eyes and ears of the court (Suroor, 1993).

Evidence by witness testimony is indispensable in criminal matters because the crime has occurred in the past, and the court cannot examine it to know the truth about it and make a judgment accordingly. Therefore, it seeks means that repeat and narrate the details of the crime (Abu Al-Ola, 1993).

Additionally, acts and events that eventually become the basis for trials cannot be partly or entirely proved without referring to the memories of the people who witnessed their occurrence, except in limited cases where civil rules can be referred to for making a judgment. An example of such a case is the infidelity crime, which requires a "fidelity contract" between the plaintiff and the defendant before the act of speculation, waste, or use upon which the crime is based. The evidence of this crime is subject to civil rules (Hosni, 1992).

## 2. Witness Protection Measures

The Bahraini legislator has stated specific witness protection measures for considerations related to their safety and those who have direct contact with them. Such measures include concealing information on the place of residence of the witnesses. The Bahraini Code of Criminal Procedure prohibits the disclosure of information related to the identity or places of presence of witnesses who need to be protected and may impose restrictions on the circulation of such information.

The law also allows the court and the investigation bodies to hear the witnesses using modern technology of audiovisual means to conceal the witness's identity and protect him from any social or psychological harm or other factors that require protecting the witness.

We have chosen to address these witness protection measures and procedures in the following part, which will be divided into three sections. The first section discusses concealing the witness's residence. While the second addresses the measure of concealing his residence, and the third explains the use of new technological methods for delivering a testimony.

### 2.1 Measures for Concealing the Witness Identity

Article (117) of the Bahraini Code of Criminal Procedure states that "A Public Prosecution member shall request every witness to give his name, surname, age, occupation, nationality, residence address and his relationship to the accused, the victim and the plaintiff who claims civil rights and shall ascertain his identity. Such details and the witnesses' testimonies shall be recorded without amendment, erasure, striking off, insertion or addition. None of the above shall be formalised unless endorsed by a member of the Public Prosecution, clerk, and witness."

Therefore, before hearing the witness's testimony, one of the basic legal rules is to ascertain his identity, which is usually done by examining the witness' credentials such as

the ID card, the passport, the work card, or any other card that identifies its holder. The standard procedure is that the witness's identity be known not only to the investigation bodies or the court but also to all litigating parties and sometimes even to other witnesses on the same trial. A Public Prosecution member shall hear every witness individually and shall nevertheless be empowered to confront the witnesses with each other and with the accused to avoid copying information from other witnesses. After hearing the members individually, the investigating official may turn to a confrontation if he notices any contradictions and wants to find out the reasons for such contradictions.

Nevertheless, in many cases, the competent court or the investigation officials may tend to conceal the identity of all or some witnesses to protect them from influence, pressure, or harm; because of the importance of the testimony or the harm that would inflict the witness.

Therefore, the policy of the Bahraini legislator in the Code of Criminal Procedure has significantly improved in protecting the witnesses from the dangers that threaten them for testifying. The measures stated by the Code include concealing or even changing the witness' identity. Article (127 bis) states: "The public prosecution, at the request of the victims, the witnesses or those who report any information related to the legal action and due to acceptable considerations related to their safety and the safety of those who have direct contact with them, may take the necessary actions to protect them from the risks arising from, or due to, delivering a testimony or reporting information about the legal action. Also, it may take the following procedures or some of them at the consent of the victims, the witnesses, or the persons to be protected till risks are over:

1. Changing place of residence
2. Changing ID
3. Prohibiting disclosure of any information related to their IDs, address, and places to go or imposing restrictions on circulating some information.

In case any of the above measures are adopted, a brief on the content of the testimony or the information shall be attached to the investigations without revealing its real source until the conditions requiring the above measures are over or referring the legal action to the competent court and receiving its instructions to unveil the identity of the source."

In the same vein, Article (21) of the Iraqi Criminal Procedure Code no. (10) of 2005 states that: "The Criminal Court shall secure protection for victims or their families and witnesses under the rules of procedures and evidence appended to this Code, including the secrecy of the identities of the victims and their families and the witnesses."

#### \* Requirements for Concealing Witness Identity

According to Article (127 bis) of the Bahraini Code of Criminal Procedure, certain conditions and requirements must be met in order for the witness protection measures to be taken. These requirements are:

##### 2.1.1 Potential danger threatening the witnesses, their family members, or relatives:

The Bahraini legislator requires this condition for concealing the identity of a witness in a criminal action. The Law does not require that the witness, a family member, or a relative be subject to actual harm or danger. It is sufficient that specific considerations that imply a potential risk against their lives or safety be present.

Therefore, it is the responsibility of the Public Prosecution to investigate the availability of acceptable considerations that a potential risk of aggression or danger is present to secure protection for the witness and prohibit the disclosure of his identity. In order to make such a conclusion, the Public Prosecution builds on the circumstances and indications of the criminal action that would imply the presence of potential danger or aggression.

These considerations are not exclusive to the witnesses themselves, meaning that protecting the witnesses through shielding their identity does not only require risk to the witnesses themselves. Instead, the potential risk may be facing one of their family members, close relatives, or anyone in direct contact with them. Suppose the safety or security of any one of those is at risk. In that case, the witness may refrain from testifying, or his credibility may be affected due to the pressure he is under. As such, the witness must be protected against physical or emotional pressure or coercion. The witness must be comforted that no people close to him will be at risk." (Mohammed, 2011)

Note that the legislator has mentioned "the people in direct contact with them" without defining the nature of such contact. It is sufficient that there is a connection between this person and the witness, regardless of the degree of such connection. The standard, then, is that the person at risk is in direct contact with the witness, provided that the risk of harm they are subject to directly affects, threatens, or pressures the witness. This condition is subject to the evaluation of the Public Prosecution or the court, which can evaluate the degree of relevance of these persons to the witness and may seek whatever means to make such an evaluation.

As for the nature of the threat that faces the witnesses or their relatives, Article (127 bis) only states "the risks" without specifying the type or nature of these risks. It seems that the legislator indicates the risks that threaten their lives and physical safety, including murder, beating, or any other form of harm; the risks that **threaten** their honour, such as rape or molestation; and the risks that **threaten** property and lives, such as arson.

Moreover, it does not matter whether the harm threatening the witnesses or the people in contact with them arises from the defendant, anyone relevant to the legal action, or anyone with direct or indirect interest relevant to the legal action. If, however, the threat arises from other reasons irrelevant to the witness' testimony, such threat shall not be deemed a basis for protecting the witness. The **base** shall be that the testimony itself has caused threatening harm.

### 2.1.2 Request from the Witnesses to Shield their Identity

Nondisclosure or change of the witness' identity requires a request filed by the witness explaining the motives, reasons, and considerations for such request to the Public Prosecution, who then decides whether or not such explanations are acceptable for providing this protection. According to Article (127 bis), "The Public Prosecution may not, on its own, order the measures of protecting witnesses or others in direct contact with them."

In addition, "the request must be backed with reasonable causes and justifications related to the safety of the witness or the people in direct contact with him. In general, these causes and justifications should be within the requirements of the aforementioned first condition" (Mohammed, 2011).

Article 57 – 706 of France's Code of Criminal Procedure states the condition that "the request and its justification shall be submitted by the Public Prosecutor or the Investigation Judge to the Judge of Liberties and Detention". The Code does not require the witnesses themselves to submit the request. Should the Public Prosecutor or the Investigation Judge estimate, according to the stage in which the proceedings are, that the witness who meets the conditions stated in the abovementioned article needs special protection that requires prohibiting the disclosure of his identity, either of them may submit a justified request to the Judge of Liberties and Detention to include the said witness or his relatives in such protection. Consequently, upon examining the request, the Judge of Liberties and Detention may justify prohibiting the disclosure of the **witness's** identity." (Mohammed, 2011)

\* Changing the Witness's Identity

Not only had Article (127 bis) stipulated the prohibition of disclosure of the witness's identity, but it also stated another measure; identity change. Identity change implies changing everything related to a person's identity, including the first and last names, the ID number, the credentials, the driving license, the marriage certificates... etc. This is accompanied by clearing all records and documents. Some describe this as ((Social Death)) (As-Soliya, 2006) because it indicates the ending the witnesses' private life and giving them a new one with new names and a different history. This means that the witnesses find themselves bound to delete their history and unable to share anything about it with others.

The witnesses go through **the** undeniable hardship of using their new names, as witnesses given new identities have to live different lives in new communities under new names, in constant fear of being recognised (Montanino, 1987). Due to such life, witnesses go through social and psychological distress for being entirely detached from their previous lives. (Ockner- Rosch, undated)

It is noted that Article (127 bis) of the Bahraini Code of Criminal Procedure states that the measure of concealing or changing the witness's identity is temporary and only taken as necessary for the investigation or trial proceedings. The source's identity is unveiled if the justifications for such measures are over. "In case any of the above measures **are** adopted, a brief on the content of the testimony or the information shall be attached to the investigations without revealing its real source until the conditions requiring the above measures are over or referring the legal action to the competent court and receiving its instructions to unveil the identity of the source".

This shows that the Bahraini Legislator defines the measures to be taken to protect the witnesses in danger. However, it does not specify or explain the special procedures adopted to grant these witnesses such protection. The Code has clarified the entity responsible for granting the protection as well as the conditions required to justify such protection. Still, it has not addressed the form of such protection and its executive procedures.

While the Bahraini legislator should be appreciated for enlisting witnesses' procedural and security protection in criminal legal actions, still it should have completed this effort by clarifying this protection's executive procedures. As mentioned above, witnesses who get their identities changed may have miserable social lives detached from their past and surroundings.

Therefore, this is a call for the Bahraini legislator to reconsider Article (127 bis) and remedy the legislative deficiency of its provisions.

The French legislator has been in the same situation as the Bahraini legislator, as the executive measures of witness protection are not explicitly stipulated. However, the Belgian legislator has overcome this deficiency by making amendments to the Criminal Procedure Code through an Act issued on 7 July 2002 on the regular measures to protect threatened witnesses. These measures include:

1. Protecting all information relevant to the witness in threat recorded at public entities of population and civil affairs and concealing the witness's identity and residence.
2. Assigning a security team to protect the witness.
3. Assigning a contact person between the witness under protection and the protection committee to facilitate contact at critical times.
4. Making the necessary measures to grant the witness in threat a weapon, training him to use it, and getting the necessary licensing.
5. Assigning police patrols to protect him.
6. Assigning a reachable secret phone number to the witness to facilitate contacting him.

7. Opening a secure bank account for the witness with a single-time remittance **enables** him to start an independent activity to provide for his life.

8. Providing electronic protection through providing difficult-to-hack electronic devices.

9. Providing a safe residence for the witness, his family, and relatives" (Mohammed, 2011).

## 2.2. Measures to Conceal Witness' Place of Residence

In addition to concealing the identity of the witnesses, Article (127 bis) of the Bahraini Code of Criminal Procedure stipulates another measure, i.e., concealing the witness' place of residence. The Article states, "The public prosecution, upon a request ...may take all or some of the following measures till risks are over:

- 1- Changing the witness' place of residence,
- 2- .....
- 3- Prohibiting disclosure of any information related to IDs, whereabouts of the persons to be protected and their places of residence, or imposing restrictions on circulating some information".

The French Code of Criminal Procedure addressed witness protection **by** prohibiting the disclosure of the **witness's** place of residence. Article (706-97) stipulates that people whom the police **have** no reason to suspect for committing or attempting **an** offence and have substantial evidence shall have the address of the police department or chief as their address after receiving the consent of the public prosecutor or examining magistrate. The witness's address is recorded in a numbered register signed with initials and specially made to serve such a purpose.

Therefore, the French legislator requires the fulfilment of three conditions to conceal the address of the witness without extending that to the non-disclosure of his ID. The conditions are:

- 1- Eliminating any suspicion that the witness has committed or attempted an offence.
- 2- The witness' ability to provide helpful evidence for procedures.
- 3- Obtaining the public prosecutor or examining **magistrate's** consent not to **disclose** the witness' address (Mohammed, 2011).

### 2.2.1. Requirements for Non-Disclosing the Witness' Place of Residence in the Bahraini Code of Criminal Procedure:

According to Article (127 bis) of the Bahraini Code of Criminal Procedure, the requirements and conditions for non-disclosure of the witness's place of residence are the same conditions aforementioned in the previous measure on the non-disclosure of the **witness's** identity; and which were listed in detail in the first section of this part. The conditions are:

- 1- The witness, a family member, or a relative's potential exposure to risks.
- 2- The witness' request for non-disclosure of place of residence.

We have already addressed these conditions earlier. The Bahraini legislator in the Code of Criminal Procedure included the requirements for granting protection to witnesses: whether concealing their identities or place of residence.

### 2.2.2. Amendment of Protection Granted to Witnesses According to Article (127bis):

Article (127bis) included similar provisions and procedures for the amendment of protection granted to the witnesses, including non-disclosure of their identities, places of residence, and addresses. Being granted protection is not an absolute right that the witness benefits from indefinitely. For protection to be granted, the legislator made it conditional that the circumstances that led to the decision to take such measures remain

the same. If the circumstances requiring such measures are over, the witness's information is unveiled. The final clause of the Article stipulates, "In case any of the above measures **are** adopted, a brief on the content of the testimony or the information shall be attached to the investigations without revealing its real source until the conditions requiring the above measures are over, or referring the legal action to the concerned court and receiving its instructions to unveil the identity of the source".

The Bahraini legislator was right to include the section on modifying or ending the protection granted to the witness. Such protection was decided to serve specific purposes, such as keeping the witnesses and those closely related to them safe from the risks of delivering a testimony. This reflects the Bahraini legislator's early recognition of the possibility of modifying or ending the granted protection. Once the risk is over for the witnesses and those closely related to them, there is no need to continue concealing their identities and places of residence. They can return to their everyday lives and move past the hardships they had faced due to the changes in their lives, which we already referred to.

The Belgium legislator's position on the matter was close to that of the Bahraini legislator. Article 108 of the Belgium Code of Criminal Procedure stipulates that the witness protection committee may review the proceedings of protection already granted to the witness at risk every six months. It may make amendments or stop such protection upon the request of the police, public prosecution, examining magistrate, director of penal institutions, or the witness under protection himself if necessary.

On the other hand, the French legislator neither explicitly nor implicitly addressed modifying or ending the witness' protection proceedings after being granted. Therefore, the French legislator did not consider the possible amendment or ending of protection by the same entity that granted it. Instead, the French legislator only addressed the accused's right to unveil the witness's identity should it conflict with his right to defend himself (Mohammed, 2011).

### 2.2.3. Penalty for Violating the Protection Granted to Witnesses Regarding the Concealing of their Identities and Places of Residence

Based on those above, the protection granted to witnesses aims at keeping them and those closely related to them safe from any risks or assaults. The question is, what is the penalty for those who violate this? Meaning if the witness's identity or place of residence is unlawfully unveiled, what are the penalties for doing so?

It seems that the Bahraini legislator did not address this matter, in contrast to the French legislator, who understood how the granted protection requires protection to guarantee the non-disclosure of the witness' identity or residence. Any person with the information is prohibited from unlawfully unveiling the witness' identity or place of residence. In Article 706-59 of the Code of Criminal Procedure, any person who unveils the witness' identity or place of residence is sentenced to five years in prison and fined 75,000 Euros (Mohammed, 2011).

Therefore, we plead with the Bahraini legislator to follow the French legislator's work by amending Article (127bis) and dictating an appropriate penalty to whosoever violates the protection measures of witnesses on the non-disclosure of their identities and places of residence without abiding by the stipulated laws in this regard.

### 2.3. Use of Modern Technology in Testimony

The main regulations stipulated by the Bahraini Code of Criminal Procedure on hearing a witness' testimony (Khalil – Hassab Allah, 2011):

- 1- Verifying the identity of the witness
- 2- Testifying verbally
- 3- Discussing the matter with the witnesses

These rules – among other technical ones unspecified by the law, such as observing the witness, not interrupting him, and others – indicate that the testimony has to be face-to-face as the witness appears before the court or concerned authorities. However, the witness may testify secretly or **use** modern technologies in specific incidents.

Sometimes, a witness feels afraid of vengeance, especially in serious crimes, so he hesitates and decides not to testify. The legislator was aware of such risk, so it accepted the technological advancements and allowed the use of technology in testimonies. In doing so, the legislator broke the general regulations on unveiling the witness' identity while testifying in order to protect the witnesses further.

The Bahraini Code of Criminal Procedure is one of the legislations that had a favourable position on the use of technology. It allowed the use of audiovisual means in the delivery of the testimony. The Bahraini legislator made **the** right decision to include such means in the Code of Criminal Procedure since it would guarantee neutrality in the investigation process and trial in cases of risks and dangers to which the witness may be exposed and can lead to disorienting or intimidating him into non-proper testifying.

Article 82 of the Code of Criminal Procedure states, "The public prosecution may keep an audio-visual record of all investigations, including the process of questioning the accused and the testimony of the witnesses. Also, it may use modern technology to listen and record the testimony of a witness that cannot attend the investigations for certain considerations related to **their** safety."

Article (223bis) stipulates, "Without prejudice to the provisions of Articles 220, 221, 222 and 223 of this law, the court may use modern technology of audiovisual means while listening to the live or recorded testimony of the witnesses, according to the following considerations:

- 1- .....
- 2- .....
- 3- The witness may be exposed to abuse or have concerns over this or certain circumstances requiring **their** protection".

Based on the abovementioned, the legislator imposed tough measures on the protection of witnesses exposed to abuse or threats due to the delivery of their testimonies. It also allowed the testimony to be via certain technologies instead of face-to-face or publicly before the parties to the proceedings, whether during investigation or trial. The direct delivery of testimonies is no longer necessary, what the legislator described as "ethereal transmission" during the trial hearing. A recording of the testimony may be displayed during the investigation or the trial. Witnesses may testify using CCTV, videotapes, or other audio recording devices. Following is the discussion on all allowed technologies along with the position of comparative legislations on them:

### 2.3.1. Testifying Using CCTV:

This means allowing the witness to testify from outside the courtroom. The place can either be a nearby room or any other place outside the court. The legislator's aim is to remove the witness from the court atmosphere and abuse he would have otherwise been exposed to if he had attended and testified inside the courtroom before the accused. The witness would then be safe and free from any emotions or threat that could happen inside the courtroom. Using this method allows the court to receive a credible testimony free from any emotions of enticement or intimidation by the accused, whose looks can influence the witness in specific incidents, causing him to lose the ability to deliver the testimony required for uncovering the truth (Al-Shawani, 2014). Article (223 bis), the Bahraini legislator states that the court may listen to the witnesses via different means, including ethereal transmission during the hearing.

Some comparative legislations approved this means. Examples are the English and American legislations **that agreed on CCTV's use** in delivering testimony. However, they made it available for children under 14 years to testify before criminal courts and in sexual violence cases (Al-Shawani, 2014).

According to Article 32 of the English Criminal Justice Act 1988, the court can in certain incidents listen to the testimony of a child through a live television link; "A person other than the accused may give evidence through a live television link in proceedings where the witness is:

- a. Outside the United Kingdom
- b. A child"

A child, along with an escort approved by the judge, may testify outside the courtroom through a live television link. The child is seated at a table with a TV and a camera on, and the image is transmitted through the CCTV to three CCTVs placed in the courtroom; one is directed at the judge, the other at the public prosecution and defence, and the third a big screen that transmits the image of the child to the jury, accused and attendants. This system guarantees **to keep** the child from seeing the accused at the court and protecting him from the fear of being **in** a courtroom (As-Soliya, 2006).

The American legislator also approved the use of CCTV. Thirty-one states enforced laws that provide CCTVs for children to use in delivering their testimony to avoid being **in** the courtroom. This takes place after the judge and jury question the child to ensure their incapacity to face the accused face to face during the hearing (Al-Shawani, 2014). Paragraph four of Regulation, 59 of the High Iraqi Criminal Tribunal Rules of Procedure and Evidence Collection, permitted the court to approve testimonies using visual or audiovisual means.

### 2.3.2. Recorded Testimony

Most procedural laws require the actual presence of witnesses when testifying before the court. They deny using audiovisual evidence and written testimonies since they violate the accused's right to defend himself and ask the witness standing before him (Al-Shawani, 2014). Nevertheless, as a result of the advancements in technology and work for justice, and to protect the witness from any harm or abuse, some legislations permitted the court to listen to the witnesses through modern audiovisual means. The Bahraini Code of Criminal Procedure is one of these legislations as it stipulates in Article (223bis); "The court may use modern technology of audiovisual means while listening to the live or recorded testimony of the witnesses, according to the following considerations:

- 1- .....
- 2- .....
- 3- The witness may be exposed to abuse or have concerns over this or certain circumstances requiring **their** protection."

Therefore, the court may permit a videotaped or audiovisual testimony, but because this method can be risky due to being recorded, the following conditions must apply (La Rosa-King, 1994):

- 1- The witness' testimony must be so crucial that dismissing it may violate a fair trial.
- 2- The witness' inability to attend the courtroom for one of the reasons stipulated in Article (223bis) of the Code of Criminal Procedure: " The witness may be exposed to abuse or have concerns over this or certain circumstances requiring his/her protection."

The comparative legislations, including the English and American ones, permitted using videotaped testimonies in courts. They do not see it as an exception but as a method to protect child **witnesses** from possible psychological trauma. They also explicitly stipulated the use of this means for obtaining testimonies.

According to Articles (137-140) of the Criminal Justice Act 2003, the English legislation permitted providing evidence through videotaping the interview with the child witness in sexual cases, violent crimes, or others. Article 32/2-A of the Criminal Justice Act 1991 stipulates that videotaped evidence is permitted when related to the proceedings and trials before the Criminal Court and the Juvenile Court.

Juvenile Justice and Criminal Evidence of 1999 states that the child witness may not be questioned until after the recording is made unless a new evidence not discovered during the first questioning appears. The defendant is not permitted to question the child witness when the child is the complainant or witness in kidnapping crimes. Adult complainants receive the same protection.

As for the USA, several states acknowledged that recorded testimonies on videotapes in trials are not an exception in court but a method to protect child **witnesses** from possible psychological trauma. They stated that using such a method is to obtain a testimony as an alternative for the direct one. They also mentioned the considerations a judge should follow when **deciding on** approving the recorded video and proceedings that must be followed. The purpose is to reduce emotional and physical stress for the witnesses, events, and plaintiffs; and ensure the accuracy of the videotaped testimony to be admissible in court. The aforementioned states maintained in their legislations the right to summon the child witness during the trial if the videotape was found insufficient. However, this contradicts the benefits inherent in the testimony through video in reducing the child's appearance in court. ... (As-Soliya, 2006).

Technological developments and discoveries, especially in **criminal law, have helped see** people through HD flat screens, the internet, and audiovisual technologies. Such developments do not affect the constitutional fundamental rights nor the defendant's ability to defend his case. Instead, they are used as proof and to serve justice through avoiding and preventing witness intimidation and enabling him to testify in the best way possible. Nevertheless, the concerned court must take the right measures and **precautions** when permitting such methods and must not accept **them** unless there are convincing and pressing reasons based upon fundamental considerations.

### 2.3.3. Procedures to Be Followed when Using Modern Technologies in Delivering Testimonies

Article (223-A, bis) of the Bahraini Code of Criminal Procedure states the procedures to be followed when modern technologies are used in delivering testimonies. In case of live or recorded testimony, the following procedures must be followed:

- 1- The testimony shall be delivered in the presence of the concerned judges **of** the members of the public prosecution in a place which is appropriate for investigations. The report shall mention the circumstances surrounding the testimony, the place of delivering the testimony, and a brief on its content.
- 2- The concerned judges or the members of the public prosecution shall prepare a report on the procedures, which they take, as per the court's order.
- 3- The report shall be ratified upon the signature of the witness. The report and the record of the testimony shall be attached to the file of the legal action.
- 4- If the testimony is delivered from another country, coordination shall be made with the jurisdiction of the country where the witness is available. Also, the court may assign any of its members to supervise the delivery of the testimony during a particular hearing in the presence of the concerned judges **of** the members of the public prosecution, as the court deems necessary."

## **Conclusion**

Testimony is a major means of evidence in general and criminal evidence in particular. No matter what is said about it and its value or how solid the physical evidence is, the judge or concerned authorities find it indispensable. In the field of criminal evidence, testimony plays a significant role. Crimes are usually committed with discretion, so there is no way to prove them and their committers through physical evidence. Consequently, testimony is essential to prove them.

A witness, or his family and relatives, may be exposed to threats or pressure, so he might hesitate for fear for his life and those close to him. Therefore, some legislations enforced protection regulations and legislations that aim to protect the witnesses who could be exposed to threats.

## **Recommendations:**

1- The Bahraini legislator in the Code of Criminal Procedure identified the witness protection procedures required for their protection. It also identified the authority that should grant protection and dictate its conditions. However, it did not address the method and executive procedures of protection. Therefore, we plead **with** the Bahraini legislator to bridge the gap and reconsider Article (127bis) to amend the legislative shortfall in the provisions.

2- We plead with the Bahraini legislator to amend Article (127bis) by stipulating the appropriate penalty for anything that would prejudice the protection granted to the witnesses about concealing their identities and place of residence in other than the legitimate way stipulated by the law, and in a similar manner as the position of the French legislator.

3- We recommend that the executive authorities in the Kingdom allocate enough budget for the witness protection program, which provides the witness with daily allowances and covers his living costs.

4- We recommend that the concerned authorities in Bahrain conclude agreements with other countries to transfer protected witnesses there due to the small area of the Kingdom of Bahrain.

5- We plead that media outlets are prohibited from circulating any information that discloses and threatens the identity of witnesses in the protection program.

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