



Crime Witnessed In Iraqi Law

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Abstract

The witnessed crime is a material fact that occurs in different and varied circumstances and that the crime witnessed or flagrante delicto is two expressions of one meaning that achieves the crime witnessed by either of them, where there is a temporal convergence between the achievement of the materiality of the crime, the act and the result or the act only, and the realization of these materials with one of the senses, the law has allowed to take a number of necessary measures, which in fact are judicial acts originally belonging to investigators and investigating judges granted to members of the judicial control, which is a non-judicial body to practice them as an exception In cases of a flagrant crime because it constitutes a violation of the usual rules, its treatment requires a set of procedural rules that differ from those in force in the case of an unwitnessed crime.

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Introduction

The witnessed crime is a material fact that occurs in different and varied circumstances and that the crime witnessed or flagrante delicto is two expressions of one meaning that achieves the crime witnessed by either of them, where there is a temporal convergence between the achievement of the materiality of the crime, the act and the result or the act only, and the realization of these materials with one of the senses, the law has allowed to take a number of necessary measures, which in fact are judicial acts originally belonging to investigators and investigating judges granted to members of the judicial control, which is a non-judicial body to practice them as an exception In cases of a flagrant crime because it constitutes a violation of the usual rules, its treatment requires a set of procedural rules that differ from those in force in the case of an unwitnessed crime.

Hence the idea of research, which seeks to study the subject of witnessed crime as will come later.

First: The importance of the study

This issue is important and its importance is due to the increase and growth in the rates of committing crime witnessed in Iraq and many countries, especially in the recent period, and in the presence of policemen and in front of their ears or their presence at their site immediately after the fact while performing their duties entrusted to them, which aims to achieve security and safety for society and its components. It is one of the reasons that motivate this security study in order to clarify the witnessed crime and what distinguishes it from other crimes that are not cases of flagrante delicto.

Second: Objectives of the study

The study aims to achieve a set of objectives represented in the following:

1. Identify cases of witnessed crime.
2. Definition of flagrante delicto.
3. Presenting the conditions of validity of the witnessed crime.
4. Indicate the powers granted by the legislator to the police in the event of a flagrant crime.

Third: The problem of the study

This study mainly attempts to answer several important questions, including:

1. Has a concept of the crime witnessed be developed by the legislator?
2. What are the cases of crime witnessed?
3. What are the conditions of the witnessed crime? When is the crime flagrante delicto as a flagrante delicto?

Fourth: Study Methodology

To answer the problem raised, the inductive approach is followed, as it is an inductive study written within the scope of the rules of criminal procedure in force No. 23 of 197.

Fifth: Study Plan

In order to answer the problem posed, this research must be divided into two sections, where we will deal in the first section with what crime is witnessed, and in the second section the provisions of the crime witnessed.

The first topic

The nature of the witnessed crime

The crime is considered a material incident and occurs in different and varied circumstances, and most likely what succeeds the criminal in committing the crime out of sight on the one hand without leaving a simple evidence to capture it on the other hand.

The witnessed crime is a material condition that interconnects the criminal act and not the perpetrator, so it is witnessed if it is seen when its physical element is implemented by the perpetrator ⁽¹⁾

In order to indicate the nature of a flagrant crime, some Arab legislation has used the term flagrante delicto, as stipulated in article 1/AFP of the Code of Criminal Procedure No. 23 of 1971 that: A crime shall be witnessed if it is seen at the time of its commission or shortly after its commission, or if the victim follows the effect of its occurrence or the public with shouting, or if the perpetrator is found shortly after the fact carrying luggage, weapons, machinery, papers or other things. It indicates that he is a perpetrator or an accomplice thereto or if there are signs or traces indicating this in him at that time. It may happen and the criminal is not lucky.

The crime may be discovered as soon as it occurs, or soon thereafter, and it is in flagrante delicto, and flagrante delicto is the contemporary between the moment of committing the crime and the moment it is discovered.⁽²⁾

¹Raouf Obaid, Principles of Criminal Procedure in Egyptian Law, 15th edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1983, p. 350.

²Awad Muhammad, Al-Wajeez fi Law of Criminal Procedure, vol. 1, University Press House, Alexandria, Egypt, 1970, p. 212.

The crime witnessed has received the attention and attention of legislators because of its profound impact on the hearts of the people.

Accordingly, we will divide this section into two requirements, we will deal in the first requirement, the definition of witnessed crime, and in the second requirement to distinguish between witnessed crime and unwitnessed crime.

First Requirement

Definition of flagrante delicto

The offence in flagrante delicto not only leads to a departure from the rules of criminal procedure with regard to infringement of the investigating authority by granting it exceptional powers, but also to a breach of these rules with regard to the principle of separation of functions of prosecution, investigation and trial, where sentencing judges rule on the incident in hearing crimes.⁽³⁾

For the purpose of determining the definition of the flagrant crime, we must indicate its definition in judicial legislation and jurisprudence.

Subchapter I: Definition of flagrante delicto in legislation

The scope of the flagrant crime has not been defined by the Iraqi legislator, and therefore the limits of this scope must be indicated from other texts, article 49/FA of the Iraqi Code of Criminal Procedure has included (... If the notification is based on a felony or flagrant misdemeanor.

The definition of a crime legally is an illegal act stemming from a criminal will for which the law establishes a penalty or a precautionary act..⁽⁴⁾

Accordingly, it can be said that the scope of the flagrant crime is limited to felonies and misdemeanours only, regardless of their name or address in the law, and regardless of their legal status as crimes of persons, crimes of honour and dignity or crimes against personal freedom.

The crime witnessed is determined in the light of two criteria, the first is the contemporaneity between the moment of committing the crime and the moment of its discovery (which is flagrante delicto in the sense of the word or real flagrante delicto), and the second is the convergence between the two moments, which is the legal, legal or judgmental meaning of flagrante delicto.⁽⁵⁾

Thus, it is defined as a situation in which a crime is seen as soon as it is committed or shortly after its commission, as the temporal proximity between the occurrence of the crime and its detection is what is meant by the existence of the crime in flagrante delicto.

The laws of some Arab countries include the term flagrante delicto or flagrante delicto, such as Iraqi, Lebanese and Syrian law, while the Egyptian legislator uses the term flagrante delicto, and we note, that

3Hassan Joud Khadar, Explanation of the Jordanian Code of Criminal Procedure, a comparative study, 1st edition, Dar Al-Ilm and Al-Thaqafah for Publishing and Distribution, Jordan, 1993, p. 31.

3Hassan Joud Khadar, Explanation of the Jordanian Code of Criminal Procedure, a comparative study, 1st edition, Dar Al-Ilm and Culture for Publishing and Distribution, Jordan, 1993, p. 31.

4Asmaa Abdullah, Economic and Social Characteristics of Proceedings to Crime, 1st edition, Riyadh, Saudi Arabia, Al-Adl Magazine, 2011, p. 35.

5Hussein Al-Jundi, Explanation of the Yemeni Criminal Procedure Law, Dawn Publishing House, Yemen, 1990, p. 399.

the word witnessed crimes is more accurate than the word flagrante delicto because it expresses the true meaning of these crimes, because they are witnessed depends on the actual witness of the crime.⁽⁶⁾

As for the other statement that the expression of the crime witnessed does not seem accurate because it reflects one hypothesis, which is to perceive the crime with the sense of sight, but there are other hypotheses in which the perception of the crime is perceived by the sense of hearing, and it can also be perceived in other cases, so the term flagrante delicto is in this regard more accurate and comprehensive.⁽⁷⁾

On the basis of this, both beliefs lead to a single result that encompasses all the conditions provided for, namely the attic witness of the crime, the moment of the commission of the crime and the moment of its discovery.

Subchapter II: Definition of Flagrante Delicto in the Judiciary

The crime witnessed in the Iraqi Code of Criminal Procedure No. 23 of 1971 is defined in article 1/AFP because: A crime shall be witnessed if it is seen at the time of its commission or shortly after its commission, or if the victim follows the perpetrator after the occurrence or is followed by the public with shouting, or if the perpetrator is found soon after the fact carrying weapons, papers, luggage or machinery. Or other things from which it is inferred that he is a perpetrator or an accomplice thereto, or if there are traces or signs thereof indicating this.

The Egyptian Court of Cassation defined it as a condition that accompanies the crime itself to the person who committed it⁽⁸⁾

The witnessed crime is related to witnessing the crime committed by the perpetrator or discovering the crime without considering the vision of the offender committing the crime, as it is a condition that accompanies the crime to the person of the perpetrator.

Subchapter III: Definition of Flagrante Delicto in Criminal Jurisprudence

The jurists did not agree on the use of a single term that expresses this crime, as some jurisprudence has defined it as a specific condition that accompanies the criminal act, not the perpetrator.⁽⁹⁾

It was also defined that in order to consider a crime witnessed, it must fall under the hearing, sight or awareness of the judicial officer or his discovery of it shortly after it was committed by the perpetrator.⁽¹⁰⁾ This crime has also been defined as a case related to its discovery and not its legal elements, and depends on witnessing it at the time of its commission or shortly after it.⁽¹¹⁾

6Farouk Al-Kilani, Lectures on Modern and Comparative Criminal Procedure Law, Dar Al-Muruj, Beirut, Lebanon, 1995, p. 688.

7Abdel Moneim Suleiman, Principles of Criminal Procedure, A Comparative Study, Al-Halabi Legal Publications, Beirut, Lebanon, 2005, p. 681.

8Mona Jassim Al-Kuwari: Conditions for inspection and cases of its invalidation, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2008, p. 89; Collection of Deficiency Rulings, Part 30, No. 109, dated 4/30/1979, p. 514.

9Muhammad Ali Salem, Explanation of the Penal Code - General Section, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2008, p. 60.

10Fawzia Abdel Sattar, Explanation of the Lebanese Code of Criminal Procedure, Dar Al-Nahda Al-Arabi, Beirut, Lebanon, 1975, p. 380.

11Ahmed Fathi Sorour, The Mediator in the Code of Criminal Procedure, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1980, p. 30.

From the above definitions of jurisprudence for a witnessed crime, we can conclude that a witnessed crime is the crime that is linked to witnessing the committed crime and not witnessing the accused committing the crime, that is, discovering the committed crime without regard to seeing the accused perpetrator committing his criminal act.

Accordingly, and from here the idea of social solidarity among members of society appears to us within the scope of this crime, as the law requires individuals, when they hear or witness a crime, to take the necessary legal measures to prevent its commission or to prevent it from occurring. This procedure is not limited to a member of the judicial police or others who are authorized by the law. Taking exceptional measures to prevent the loss of crime traces or evidence includes all individuals in society.

The second requirement

The difference between witnessed crimes and unwitnessed crimes

Crimes are divided according to the publicity of the accused's behavior into crimes committed in the act and crimes not committed in the act:

The first section: real confusion

First: If the felony or misdemeanor was committed on the spot, the accused is surprised by the victim or a member of the judicial police while he is committing the crime, or the neighbors watch him at the time. The lesson is what is seen or realized without continuing the criminal activity. Anyone who conceals narcotic substances or a firearm in his clothes without a license commits the crime throughout the period of investigation, but the crime is not in flagrante delicto.

Witnessing is not limited to seeing with the eyes, but rather includes perception with any sense, such as smelling the smell of drugs or alcohol emanating from the accused's mouth or hearing the sound of gunshots from the direction from which the accused came after they were fired.⁽¹²⁾ It is also not necessary that the sighting be focused on the physical element of the crime, but rather it is sufficient for a state of flagrante delicto to exist - as in the examples mentioned - the presence of external manifestations that one perceives and which in themselves indicate the occurrence of the crime. The assessment of the adequacy of these appearances is left to the judicial police officer, who initiates the procedures he has in the event of flagrante delicto, and the investigating authority and the subject court monitor the integrity of this assessment.

However, for a case of flagrante delicto to exist, the investigation does not require the crime to be proven before its perpetrator, or for the crime to be complete, such as if it becomes clear that the seized material is not prohibited from being possessed. Rather, it is sufficient for the witness to believe so, based on reasonable reasons estimated by the trial court or the first instance investigating authority.

Second: The crime is also considered to be in flagrante delicto if it was just committed. This case differs from the previous one in that witnessing or realizing the crime occurred after the accused carried out his criminal activity "following its commission," that is, the felony or misdemeanor. Examples of this include seeing the bloodied body of a dead person or a victim who is still affected by the coercion imposed on him in his extravagance by coercion. However, this case of flagrante delicto does not require physical traces or the presence of witnesses at the place where the crime occurred. Rather, it is sufficient for the awareness of the crime to be close to the time of its commission.⁽¹³⁾ The question is raised about this convergence that must be met in order to say that the crime is in flagrante delicto. Does this mean that the crime was discovered immediately after it occurred, or can it extend to the day following its commission?

12Raouf Obaid, Real Penalties, Dar Al-Jeel Printing, Egypt, 1973, p. 303.

13Abdul Wahab Houmd, Kuwaiti Mediator in Criminal Procedures, Kuwait University, Kuwait, 1997, p. 38.

In fact, this case of flagrante delicto is limited to the brief period following the occurrence of the crime, as we will see that when the legislator spoke about flagrante delicto, he indicated that the person was found very close to the time of the occurrence of the crime, and the public followed him by shouting⁽¹⁴⁾

The second section: Ordinary confusion

This means that the crime was not witnessed when it was committed or after it was committed, and cases of legal flagrante delicto differ from cases of real flagrante delicto in that it requires, in addition to, the temporal proximity between the occurrence of the crime and its witnessing.

The legislator expressed the element of temporal proximity by saying that awareness of a case of flagrante delicto had occurred (very close to the time of the crime occurring...)

Section Three: The crime characterized by flagrante delicto

It is a crime that the law considers to be the same as crimes in a real or legal situation, even if it is not so in reality. This crime is required to be committed in a home, and for the homeowner to summon a judicial police officer upon discovering that it has occurred, even if that was a long time after the crime occurred. The owner of the house means the one who resides in it and the person responsible for the resident. Even if he is not the original holder, the judicial police officer must be summoned to file a complaint requesting that investigations be conducted into the crime that occurred against him⁽¹⁵⁾

The importance of dividing crimes into flagrante delicto and nonviolent offenses is as follows:

1. In terms of the permissibility of arresting the accused: The Code of Criminal Procedure allows every individual, investigator, or police officer to arrest the person he finds red-handed in a felony or misdemeanor under Article 102/F 1-A.
2. In terms of enjoying parliamentary immunity: The legislator has granted parliamentary immunity to members of legislative councils during the session of the Council. It is not permissible for a Council member to be arrested or tried at this time except after obtaining the approval of the Council itself. An exception to this case is if a Council member is caught red-handed, as he is stripped of that immunity in accordance with Article (49) of the Interim Constitution.
3. In terms of flagrante delicto: The Iraqi Penal Code has made flagrante delicto a legal excuse, stipulating that the penalty for anyone who kills his wife or one of his female relatives in the act of adultery be reduced to imprisonment for a period not exceeding three years in accordance with Article (409) of the Iraqi Penal Code.

The third requirement

Characteristics of the witnessed crime

A flagrante delicto is a case related to its discovery, not to its legal elements, and depends either on witnessing it at the time of its commission or shortly after it⁽¹⁶⁾.

Flagrante delicto is a special and unusual case that may occur in a crime and characterize it. It is called a witnessed or witnessed crime or a red-handed crime. It results from this that the witnessed crime has certain characteristics that are unique from other legal systems, and among these characteristics is that it

14Uday Abdel Fattah Al-Shahawi, Controls of Legislative Authority in Egyptian Procedural and Comparative Legislation, Mansha'at Al-Ma'arif, Alexandria, Egypt, 1999, p. 248.

15Muhammad Ali Salem Ayyad, **The Mediator in Explanation of the Code of Criminal Procedure**, Dar Al-Thaqafa Publishing and Distribution Library, Amman, Jordan, 1996, p. 339.

16Abdul Raouf Mahdi, General Rules of Criminal Procedure, Dar Al Nahda Al Arabiya, Egypt, 1995, p. 170.

is of a concrete nature and not of a personal nature, then it is a tangible situation, then it is a relative situation and not absolute, and with this we will divide it into three branches.

Section One: A flagrante delicto is a concrete case

A flagrante delicto is characterized as a circumstance of a concrete nature that accompanies the crime itself and is not related to the person who committed it.⁽¹⁷⁾

On the other hand, it is sufficient for someone who witnesses it and realizes its occurrence through any of his senses, as long as this awareness is in a way that is certain and does not tolerate doubt.⁽¹⁸⁾

In order to be present in flagrante delicto, it is not necessary to witness the perpetrator committing the crime, and what is meant by witnessing is witnessing the act, not the perpetrator, and witnessing the perpetrator is not mentioned in the text of Article 1/FB of the Iraqi Code of Criminal Procedure, as it stipulates in its introduction that: The crime is witnessed if it is witnessed immediately. committed or shortly after its commission. Therefore, the sighting relates to the act, not to the perpetrator of the crime⁽¹⁹⁾

Accordingly, the crime is considered a crime if one is caught red-handed when hearing gunfire, followed by the screaming of the victim, or when the drug is detected or its smell is smelled coming from the accused's residence. In these cases, the crime is considered red-handed, even if the perpetrator is not known⁽²⁰⁾. The crime is committed flagrante delicto even if the judicial investigation member did not see the accused committing the crime, but rather witnessed the crime itself as it occurred, which empowers the judicial investigation member to take the measures that the law authorizes him against all persons for whom there is sufficient evidence that they are its perpetrators or accomplices, even if the None of them were seen committing the crime.

The second section: The witnessed crime is a tangible state

The status of a witnessed crime is achieved based on the observation of tangible external manifestations that are observed and perceived by the person who caught the crime.⁽²¹⁾

The flagrante delicto is limited to the material element only because the witness either witnesses the material element of the crime at the time it is committed or narrates what reveals its occurrence a short while ago, because anecdotal evidence is insufficient to prove the case of flagrante delicto because they are not external manifestations of the judicial officer who must witness it himself.⁽²²⁾ In application of this, the Court of Cassation has ruled that if a member of the judicial police receives news of a bribery crime from others, it is not sufficient for a case of flagrante delicto to be the crime of bribery for the judicial police member to have received news of the crime from a third party, as long as he did not witness any of its effects that would personally indicate its occurrence.

17Raouf Obaid, Explanation of the Code of Criminal Procedure, op. cit., p. 353.

18Raouf Obaid, Egyptian Principles of Criminal Procedure, op. cit., p. 353.

19Hassan Jokhdar, Explanation of the Jordanian Code of Criminal Procedure, previous reference, p. 30.

20Ahmed Fathi Sorour, Mediator in the Code of Criminal Procedure, op. cit., p. 488.

21Hassan Joe Khadar, Explanation of the Jordanian Code of Criminal Procedure, op. cit., p. 30.

22Ahmed Fathi Sorour, Mediator in the Code of Criminal Procedure, op. cit., p. 30.

However, if the officer informs the officer of the news of a crime that will occur in some place and moves to the scene of the crime immediately and sees for himself the effects of its occurrence a short time ago, then the case of red handed crime is present.⁽²³⁾

Likewise, merely reporting or being confused about a crime is not considered sufficient evidence to justify an arrest. Rather, the judicial officer must conduct investigations into what was included in reporting the crime, and the credibility of the report must be confirmed by the presence of sufficient evidence. However, if this evidence is absent, the arrest is considered invalid, and if it is followed by Arrest and search are also invalid.⁽²⁴⁾

Section Three: Red-handed crime is a relative condition, not an absolute one

A witnessed crime is considered an immediate crime that is witnessed immediately after its commission or a short period afterward, as this crime is based on the temporal contemporaneity between the occurrence of the crime and its detection. The importance of determining the time of flagrante delicto is considered an important element in estimating the extent of flagrante delicto in the crime and the occurrence of one of its cases, and it also plays an important role in determining the absence of flagrante delicto.

Here two questions arise: When did the crime occur? Second: When was the crime discovered?

If the period of time or the time that elapses between the commission of the crime and its discovery is long, the state of flagrante delicto disappears, and the defense of the absence of flagrante delicto becomes an effective and effective legal defense, and flagrante delicto presupposes, and even requires, the contemporaneity or closeness of the time of the commission of the crime to the time of its discovery, then they have the same close temporal space, but if the crime occurred and there was a long period of time between its discovery, so the case of flagrante delicto disappears⁽²⁵⁾, Immediacy is an essential characteristic of a witnessed crime ⁽²⁶⁾. It is characterized by relativity, meaning that the crime is not considered witnessed except by the judicial officer who witnessed it himself in one of his cases.

The second topic

Provisions of flagrante delicto

The crime, whether witnessed or unwitnessed, is not affected in terms of its subjection to the provisions of the Penal Code. Every crime has its elements and the penalty prescribed for it in accordance with the provisions of this law.

Accordingly, we must identify the general provisions to which a witnessed crime is subject, in three requirements. In the first requirement, we will discuss the circumstances of the witnessed crime, in the second requirement the conditions of the witnessed crime, and in the third requirement we will show the effects of the witnessed crime.

The first requirement

23Hassan Joe Khadar, Explanation of the Jordanian Code of Criminal Procedure, op. cit., p. 30.

Farouk Al-Kilani, Lectures on the Jordanian Code of Criminal Procedure, previous (24)
.reference, p. 53

Ahmed Fathi Sorour, Explanation of the Code of Criminal Procedure, previous (25)
.reference, p. 492

Farouk Al-Kilani, Lectures on the Jordanian Code of Criminal Procedure, previous (26)
.reference, p. 53

Witnessed crime cases

By referring to the text of Article 1/FB of the Iraqi Code of Criminal Procedure No. 23 of 1971, it becomes clear to us that the crime is witnessed or committed in the act in four branches.

The first section: witnessing the crime as it is committed

This case is an image of real or mental confusion in its precise technical sense, leaving no room for doubt or doubt. This case is achieved by witnessing the crime as it is committed or after beginning to carry out the physical act that composes it, and watching the perpetrator begin his criminal behavior. This case means that the material element of the crime has occurred under the watchful eye. Member of the Judicial Enforcement ⁽²⁷⁾. Witnessing in this case does not extend to visual vision only, but also to any of the other senses through which the witness realizes that the crime has occurred.⁽²⁸⁾

Therefore, this question has arisen: Is it necessary for visual vision to be the only means of detection in order to detect a witnessed crime?

Jurisprudence has agreed that the word "sighting" should not be interpreted narrowly, that is, restricting it to the sense of sight. Rather, the state of detecting the witnessed crime should be considered to exist when it is perceived with one of the senses.⁽²⁹⁾ There are many examples, such as hearing gunshots during a murder or attempted murder, or smelling the smell of drugs emanating from a cigarette smoked by the perpetrator. Likewise, it is possible to perceive the witnessed crime by touch, when the crime occurs in a dark place and he extends his hand and feels the hot blood that oozes from the body of the victim, and he can perform the perception by taste, as if he tastes with his tongue the taste of the poison that has been administered to him. It is required that perception be with certainty, free from doubt, suspicion and ambiguity⁽³⁰⁾.

If a member of the judicial police or an individual in society is not certain that a crime has been committed, then the state of witnessing the crime is nullified.

If the accused is arrested by the police and is in possession of a gun, if it is proven to the court that he possesses the weapon, then he has committed an act that applies to the provisions of Article 27/F3 of the Weapons Law.⁽³¹⁾

The second section: witnessing the crime some time after it was committed

The Iraqi legislator clearly intended in this case that the crime had actually occurred a short period of time before it was witnessed, that is, that the effects of the crime were seen shortly after the perpetrator had finished carrying it out. Such as if a member of the judicial police saw the thief leaving with the stolen items from the stolen house, or the victim's body bleeding from it, or the fire after it was lit ⁽³²⁾.

27Ahmed Fathi Sorour, Explanation of the Code of Criminal Procedure, previous reference, p. 489.

28Fawzia Abdel Sattar, Explanation of the Code of Criminal Procedure, previous reference, p. 297.

29Salim Abdo, The Witnessed Crime, previous reference, p. 335.

30Omar Al-Saeed Ramadan, Principles of Criminal Trials in Lebanese Legislation, Egyptian House for Printing and Publishing, 1971, p. 274.

31Iraqi Judicial Journal, Bar Association, Issue 1, 2, 3, 4, Fifty-Fourth Year, Al-Nawaris Press, 2000, p. 59.

32Abdul Amir Al-Ukaili, Criminal Procedure Code in the Code of Criminal Procedure, Al-Ma'arif Press, Baghdad, Iraq, 1975, p. 70.

The essence of this case is that the realization of the crime did not occur during its commission as in the previous case, but rather it was committed within a short period.

The condition for the crime to be fulfilled in this case is that the crime be realized shortly after its commission, and this period must not be long and its estimation is left to the discretion of the trial court. The Iraqi legislator has used the term (aftermath) in Article 1/FB, and this term does not indicate a period of time. This term was adopted, so it would have been better to specify a specific period of time. It would have been better for him to specify a period of time during which the crime would be witnessed, as the Lebanese and Syrian legislators did when he specified it to (24) hours.

Therefore, it is proposed to amend Article 1/FB of the amended Iraqi Code of Criminal Procedure No. 23 of 1971 by specifying a specific period between the commission of the crime and its discovery, which is a period of (24) hours. It is proposed to amend the text as follows: B - The crime is witnessed if it is seen at the time of its commission or after its commission. Within twenty-four hours, the reason for this limitation is due to the seriousness of exceptional measures in a witnessed crime on the rights and freedoms of individuals and the fear of losing the features and effects of the crime in order to achieve the principle of social solidarity between individuals.

Section Three: Tracking the perpetrator after the crime occurred

The Iraqi legislator considered this case to be one of the cases of a witnessed crime in Article 1/FB by saying: If the victim chases the perpetrator immediately after it occurs, or the crowd follows him with shouting, the follower is not obligated to chase the offender and run after him, but rather the pursuit by shouting and pointing with hands is sufficient.

A distinction must be made between the crowd's shouting at the perpetrator following the commission of a witnessed crime and the mere "rumour" circulating on the tongues of the public to the effect that so-and-so is the perpetrator of the crime, because it is not sufficient to establish a case of witnessed crime even if the matter is taken in the form of shouting.⁽³³⁾

The time period must be short for prosecution, tracking, and the occurrence of the crime. However, if the period is long, then the crime is not considered a flagrante delicto. Iraqi law does not address specifying this period of time and giving discretionary authority to the judicial officer in determining it in assessing the circumstances surrounding the crime and what he faces in assessing the facts and the adequacy of these circumstances. To establish a viewing situation in which it is subject to the supervision of the trial court.

Accordingly, this situation is considered a case of ordinary, not real, flagrante delicto as long as it is achieved and the perpetrator is traced after he commits the act constituting the crime.

Section Four: Viewing evidence of the crime shortly after it occurred

The Iraqi legislator has dealt with this situation in accordance with the text of Article 1/FB by saying: The crime shall be witnessed...or if its perpetrator is found shortly after its occurrence carrying machines, weapons, papers, luggage, or other things from which it can be inferred that he is the perpetrator or accomplice in it, or if At that time, traces or signs indicating this were found on it. This case is a form of ordinary, not real, flagrante delicto, and in order for a witnessed crime to be achieved, the following conditions must be met:

The first condition: seeing the perpetrator himself carrying the objects and machines from which the perpetrators of the crime can be inferred, and his relationship with them, such as machines intended for harm or resulting from them. As for the ties and traces that indicate the commission of the crime, they

33Afif Shams al-Din, Principles of Criminal Trials, without a place of publication, Beirut, Lebanon, 2001, p. 174.

may be found on the accused's body or clothing, such as wounds and blood contaminated with clothing that may arise from the victim's resistance, or the victim's blood may stick to his clothes.

The second condition: The arrest of the perpetrator must have taken place soon after the crime occurred. Iraqi law did not address specifying the time period and referred to it as a short time in the manner of some Arab legislation such as Egypt and Yemen, while Lebanon and Syria both set the time period at (24) hours.

Which indicates that the judicial officer is given discretionary authority to determine, but if a period of time has passed, then there is no witnessed crime⁽³⁴⁾

The third condition: There must be a material connection between the presence of objects with the offender or the traces attached to him and the occurrence of the crime. With regard to the traces found on the victim that are seized at the crime scene, they cannot be relied upon to establish a witnessing situation, as indicated by the words of the text (pregnant, created with it).

Accordingly, the sighting must occur on physical objects, and wounds and scratches that may befall the perpetrator are not included in this case. The most important thing that distinguishes this case is the arrest of the perpetrator and the material of the crime, because seizing the material without the perpetrator of the crime is not useful for this situation.⁽³⁵⁾

The second requirement

Conditions for a witnessed crime

The Iraqi Code of Criminal Procedure aims to ensure that the rights and freedoms of individuals are not violated except to the extent permitted. Accordingly, no person may be arrested, searched, or detained except in cases of a witnessed crime, which will be mentioned later in the third requirement. In order for flagrante delicto to be legal and have consequences, conditions must be present for its validity in accordance with the legal concept. Jurisprudence and the judiciary have named these conditions as conditions for the validity of the penalty witnessed or committed. If one of these conditions is not met, the flagrante delicto does not result in the procedural effects that the legislator has granted to the judicial police officer, and the flagrante delicto is renewed based on its value. Legal has become non-existent. All procedures undertaken by the judicial police, such as arrest, seizure of crime materials, and searches, were invalidated, and this procedure was considered invalid.⁽³⁶⁾

The conditions for the validity of flagrante delicto are represented in three branches:

The flagrante delicto must have preceded the procedure, must have been observed in a legal and legitimate manner, and must have been witnessed by a member of the judicial police.

Because these conditions are of great importance, it is necessary to state and explain them.

The first section: personal observation or perception achieved by any of the judicial officer's senses

One of the most fundamental conditions for the validity of a flagrante delicto is "the judicial officer's awareness of one of his cases with his personal senses. This condition entails that the crime occurs and is witnessed, and then the law enforcement officer exercises the exceptional powers granted by the law."

⁽³⁷⁾That is, he must first be certain of the crime being committed, and then after that he has the right to

34Ahmed Fathi Sorour, Explanation of Criminal Procedure, previous reference, p. 325.

35Mustafa Al-Awji, Lessons in the Principles of Criminal Trials, Al-Halabi Legal Publications, Beirut, Lebanon, 2002, p. 56 .

36Raouf Obaid, Principles of Criminal Procedure in Egyptian Law, op. cit., p. 357.

37Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code - Special Section, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2009, p. 199; Mamoun Salama, Criminal

take the procedures specified for him in accordance with the law, such as arrest and search without permission from the authority authorized to investigate, or in cases other than those legally permissible.⁽³⁸⁾

Arab legislation explicitly stipulated this meaning when it gave the character of a witnessed crime to the crime and not to its perpetrator, and Article 1/FB of the Iraqi Code of Criminal Procedure stipulated that the crime witnessed or witnessed should be for a short period of time when it was committed⁽³⁹⁾

Accordingly, a judicial police officer may not carry out exceptional procedures except after a case of flagrante delicto occurs. If he does so before that time, it will be unjustified. The condition that the flagrante delicto must precede the procedure is considered null, which means a violation of one of the conditions for the validity of flagrante delicto, and it results in the invalidity of flagrante delicto and does not have a legal effect.⁽⁴⁰⁾

Section Two: The witnessing of the crime must have been carried out legally and legitimately

In order for this condition to be fulfilled, the judicial investigation officer must witness the crime in one of the stipulated cases of flagrante delicto, and his witnessing must have taken place in a lawful manner, as it is not enough for him to have learned about it from individuals who witnessed the crime, as it is not necessary for the judicial investigation officer to have witnessed it. While the perpetrator commits the crime, it is sufficient that he came to the scene of the accident shortly after committing the crime and saw for himself the effects that resulted from it, even if the case of flagrante delicto is still present.⁽⁴¹⁾ The criterion of legality or illegality is the behavior of the judicial officer that resulted in the emergence of a case of flagrante delicto. If the accused abandons possession of the thing whose possession is considered a crime upon seeing the officer, it does not negate the occurrence of the case of flagrante delicto as long as the judicial police officer did not exercise physical or moral coercion that led the accused to show the state of confusion.

In application of this, it was ruled that if the accused had abandoned the item in his possession when the judicial officer searched it and the search was illegal, then flagrante delicto would be invalid because had it not been for this invalid procedure, the case of flagrante delicto would not have arisen.⁽⁴²⁾ Likewise, it is not valid for the discovery of flagrante delicto to be due to observations in a way that contradicts public morals or violates the sanctity of homes, such as looking through door holes, intentional eavesdropping, or espionage, because this constitutes an attack on the sanctity of homes and the right of their owners to secrecy.⁽⁴³⁾

As for discovering the witnessed crime through deception, it is considered valid as long as it is his duty to uncover the crimes and he did not interfere in their creation through incitement, deception, or cheating, because it is considered an illegal means of discovering crimes. The officer used to act as a buyer to a person who he knows is trafficking in narcotic substances.

Procedure in Egyptian Legislation, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2008, p. 579.

38Salim Ali Eida, The Witnessed Crime, Zeina Legal Publications, Beirut, Lebanon, 2005, p. 23.

39Khalil Adi, Flagrante delicto, Dar Al Nahda Al Arabiya, Egypt, 1989, p. 23.

40Raouf Obaid, Principles of Criminal Procedure, op. cit., p. 358.

41Salim Ali Eida, The Witnessed Crime, previous reference, p. 80.

42Collection of Rulings, Nuqat 206, Section 9, dated 11/14/1958, p. 23.

43Mustafa Mahmoud, Explanation of the Code of Criminal Procedure, Publishing and Culture House, Egypt, 1953, p. 230.

Based on this, the judicial officer must use legitimate methods to uncover the case of a flagrante delicto, and any illegal and illegitimate action taken by him is considered invalid, and this leads to the invalidity of the exceptional measures he took, so that the witnessing of the crime is not achieved, and thus you are faced with an unwitnessed crime.

Section Three: The viewing must be conducted by a judicial officer

In order for the flagrante delicto to be valid and to result in arousal, the witnessing of the flagrante delicto must have occurred with the knowledge of the judicial investigation member and he perceives it with one of his senses, such as seeing the criminal stealing or firing a bullet at another person, killing him. Thus, legal arousal cannot occur in flagrante delicto as long as the judicial investigation member did not witness the crime red-handed. In one of the forms of flagrante delicto, such as receiving news of the red-handed crime through narration, it is not enough for the flagrante delicto to have its effects, rather it is necessary for the investigating officer to witness it.(44) .

Accordingly, the judicial officer must not be satisfied with merely reporting the crime to people, but must go personally to the place where it occurred to inspect it.(45) .The report may be from a person of known or unknown identity. Therefore, once the report reaches him, the investigator must carefully examine every word included in the report and the extent of the distortion or lies it contains. Make sure that the contents of the report are disbursed by traveling to the scene of the incident and conducting an inspection before taking action, especially since the report may be a false report intended to disturb the authorities or a desire to take revenge on someone, so they falsely report the commission of a crime against him. Because of this false report, this person is subject to investigation.

Based on this, personal witnessing is a necessary condition for a case of flagrante delicto to exist, without which the case of flagrante delicto is nullified even if the arrest and search result in the existence of the crime, because the arrest and search in this case are invalid. The general rule is that whatever is based on falsehood is invalid.(46)

In order for the judicial officer to carry out the exceptional procedures stipulated by the law, he must discover the case of the flagrante delicto himself or must perceive it with one of his senses, and this violates the principle of social solidarity.

The third requirement

Effects of the witnessed crime

The Iraqi Code of Criminal Procedure has clarified in some of its articles the procedures that determine the mission of the members of the judicial investigation in a flagrante delicto, and granted them the authority to take some measures to collect evidence (inference) and investigate in the event of a flagrante delicto. The reason for this authorization is the legislator's desire to facilitate procedures for prosecuting the accused. At a time when the evidence is still present and for fear that the accused will escape punishment if the evidence is lost or obscured.(47) .

44Mamoun Salama, Criminal Procedure, previous reference, p. 579.

45Muhammad Saeed Nammour, Explanation of the Code of Criminal Procedure, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2011, p. 105.

46Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code - Special Section, previous reference, p. 199.

47Muhammad Saeed Namur, Principles of Criminal Procedure, Explanation of the Code of Criminal Procedure, 1st edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2005, p. 113.

The effective Iraqi Code of Criminal Procedure, Article 39, deals with criminal procedures and outlines the powers of judicial officers, including:

- Police officer, station warden, and commissioners.
- The mayor of the village and locality in reporting crimes, arresting the accused, and preserving people who must be protected.
- The railway station manager, his assistant, the train conductor, the person responsible for managing the air and sea port, the captain of the plane and ship, and his assistant in the crimes that occur there.
- The head of the department, governmental authority, or official or semi-official institution in the crimes that occur there.
- Persons charged with public service who are granted the authority to investigate crimes and take action thereon within the limits of what they are authorized to do under special laws.

The Iraqi legislator has stated the duties of the judicial investigation member in the case of a witnessed crime in Article (43) of the Iraqi Code of Criminal Procedure, which stipulates that: The judicial investigation member must, within the limits of his jurisdiction set forth in Article (39), if he informs about a witnessed crime or becomes aware of it. The investigating judge and the public prosecutor must consider that it has occurred and move immediately to the scene of the incident, record the victim's statement, question the accused about the charge attributed to him verbally, seize weapons and everything that appears to have been used in committing the crime, inspect and preserve its physical effects, record the condition of people and places, and record statements of everything that is useful in discovering the crime. Whoever was present or anyone from whom clarifications can be obtained regarding the incident and its perpetrator, and a report shall be prepared for this purpose.(48)

These are the effects that the legislator assigns to arranging the crimes committed in general by granting exceptional powers to members of the judicial police, and these powers include those related to reasoning and some related to conducting some investigative procedures.

The most important powers in crime are arrest and search, which we will explain as follows:

Section One: Arrest in the flagrante delicto

The intent is to deprive him of freedom of movement for a period of time, whether long or short, and to force him to remain in a specific place or to move there, in order to take some measures to confront him and search for items related to the crime (49). It is an investigative procedure in nature, and must be issued by a competent authority to investigate(50)

Article (15) of the Iraqi Constitution of 2005 stipulates that every person has the right to security, life, and freedom. These restrictions may not be deprived or changed except in accordance with the law and based on a decision issued by a competent judicial authority. Accordingly, personal freedom is a natural right and is protected and cannot be infringed or restricted except in accordance with the law.

Arrest is one of the cases of restricting this personal freedom. Therefore, the law guarantees the protection and constitutionality of its terms, conditions and conditions without prejudice to it. It is considered one of the serious procedures derived directly from the law. It is authorized to carry out, as an exception in a witnessed crime, a member of the judicial police without the need for permission from the investigating judge. Therefore, this procedure is considered one of the most important effects of the witnessed crime because it affects one of the rights and freedom of the accused. The law has surrounded a

48Abdul Amir Al-Ukaili, Principles of Criminal Trials, previous reference, p. 98.

49Abdul Amir Al-Ukaili, Principles of Criminal Trials, previous reference, p. .85

50Mahmoud Naguib Hosni, Explanation of the Code of Criminal Procedure, Dar Al-Nahda Al-Arabiya, Egypt, 1982, p. 547.

number of guarantees. When initiating this procedure in accordance with Article (102) of the Iraqi Code of Criminal Procedure, which stipulates:

First: The accused to be arrested must be in one of the cases of *flagrante delicto* stipulated in Article one of the law.

Second: The crime committed red-handed by the accused who is to be arrested must be of the type of felony or misdemeanor. As for violations, even if he was caught red-handed, it is not permissible for a member of the judicial police to seize the accused and arrest him because of them, even if it is permissible to arrest them as an incident. This is why arrests are prohibited in violations witnessed, but it is permissible for an exception is to arrest anyone found in a place intentionally in a state of apparent drunkenness, disorder, or loss of his mind, according to what is stated in the article mentioned in Paragraph (B). However, what is done by members of the public or the police in detaining the accused is not considered an arrest in the legal sense, but rather an arrest in the legal sense. It is merely a precautionary measure required by necessity due to the absence of a person at the scene of the crime with the authority to arrest, which prevents these individuals from searching the accused upon arresting him.⁽⁵¹⁾

Accordingly, the law has given this authority to the judicial officer so that the criminal cannot obscure the traces of the crime and prevent him from escaping, which necessitates the necessity of arrest and inspection that do not exceed these justifications. However, if they exceed their purpose, the procedure will be contrary to personal rights and freedoms and constitute an assault on them, which necessitates the invalidation of the procedure and so that it cannot. The accused can escape punishment due to non-observance of the procedures, so the court can base its ruling on other valid evidence that was not extended due to the invalidity of the connection to the invalid procedures taken by the judicial officer, and in view of the danger that arrest poses to others and their reputation, legislation surrounds it with a set of guarantees, the most important of which is : Hearing his statements immediately, and his right to seek the assistance of a lawyer, and the arresting person must explain his proceedings in a report and deposit it as quickly as possible with the court of investigation or public prosecution, and the existence of a renewal of the hour of arrest, the arresting person and the period it took to carry it out, and the obligation to inform the detainee of his rights immediately after his arrest.

Accordingly, we find it necessary to establish a relationship between members of the judicial police and the investigation authorities, and the importance of the powers of the judicial police member is that the person be granted this status only after undergoing a training course in the principles of investigations and for a reasonable period.

Section Two: Inspection of the witnessed crime

Searching homes is an important way to search for evidence and then reach the truth. It is considered one of the most dangerous investigation procedures. In the case of a *flagrante delicto*, members of the judicial police are authorized to enter homes and search them when it is not possible to obtain permission to conduct a search. The reason for this is to prevent the escape of the accused and prevent the loss of traces of the crime and escape. The accused is exempt from punishment, and since this procedure is necessary, the legislator tried to balance the sanctity of homes and enabling the investigating authority to reach the desired truth. Therefore, in the case of a witnessed crime, the judicial officer has the authority to inspect. It is considered one of the exceptional investigative powers. This power has been restricted to ensure that the movement of homes is not violated⁽⁵²⁾

51Sami Al-Nasrawi, A Study in the Principles of Criminal Trials, Dar Al-Salam Press, Baghdad, Iraq, 1979, p. 295.

52Nawar Daham, Principles of Criminal Investigation, Dar Al-Kutub Press, Mosul, Iraq, 1991, p. 36.

The inviolability of homes is considered one of the most important constitutional rights, and this is confirmed by Article (17) of the Iraqi Constitution of 2005, which stipulates that the inviolability of homes is safeguarded and it is not permissible to enter, search, or interfere with them except by a judicial decision in accordance with the law, because the essence of inspection is searching a person's belongings for his secrets and things that are useful. Inspection. The legislator has permitted this in some cases for inspection by the investigating authority. However, the law may grant this authority to members of the judicial police in some cases, and this is what is stipulated in Article (79) of the Code of Criminal Procedure, which says: The investigator or member of the judicial police may the arrested person shall be searched in circumstances in which he may be legally arrested. In the event of a felony or intentional misdemeanor committed, he may search the home of the accused or any place under his possession and seize there persons, things, or papers that are useful in revealing the truth if strong evidence becomes clear to him. It exists in it(53)

In conclusion, for members of the judicial police to enter and search the accused's home, the following conditions must be met:

First: The accused must have committed a crime punishable by law as a felony or misdemeanor.

Second: The crime must be one of the cases of a witnessed crime stipulated in Article 1 of the Iraqi Code of Criminal Procedure, with all its conditions, including its discovery prior to the inspection being conducted so that it comes as a result of its occurrence. Therefore, it is not permissible to enter and search outside the boundaries of the witnessed crime except with the consent of the person concerned. Frankly, without coercion or abuse.

Third: The search shall only be a search for things for which it is permissible to search. This is what Article (78) of the Code of Criminal Procedure stipulates, which says: The search is only permissible for the search for the things for which the search was conducted. It should be noted that if the person to be searched is a female, it is not permissible to search her except by a female who is assigned to the person conducting the search after recording her identity in the report, and this is what Article (80) of the Iraqi Code of Criminal Procedure indicates.

Fourth: There must be strong evidence that there are people, objects, or papers in the house that are useful in revealing the truth.

Based on this, we conclude that the applicable Code of Criminal Procedure has authorized, in cases of witnessed crime, entering and searching homes for misdemeanor and felony crimes, but has not specified the legal times for inspection. This leads to a violation of the rights of individuals and the sanctity of homes, which necessitates the necessity of stipulating the possibility of invalidating the procedures when they are violated. According to the rules of personal rights and freedoms, it would be better if the Iraqi legislator decided that it is not permissible to enter and search homes, even in the case of a witnessed crime, except by a reasoned judicial order.

Conclusion

After reviewing the topic of our research, which is titled (the flagrant crime in Iraqi law), the Code of Criminal Procedure has designated this crime with special and exceptional procedures, and expanded the powers of judicial officers regarding it. The reason for this is to prevent the accused from escaping and realizing the crime and its features. Achieving justice is the goal of the law in the state of law at all times and places, and achieving equality in light of this justice sought by the law, which is one of the basic human rights.

Through the research, we reached the following results and proposals:

First: results

53Akram Nashaat, Criminal Inspection Authority, Al-Mutanabbi, Iraq, 1962, p. 47.

1. The procedural legislation did not agree on the use of a unified legal term to express the crime in question. Some used the term witnessed crime and others used the term red-handed crime, while criminal jurisprudence has defined it multiple definitions, and we have put a definition for it and said that it is: the crime that occurs in circumstances Certain conditions that the legislator has exclusively specified in which the judicial officer is granted the authority to take certain investigative measures to ensure speed and preserve evidence of the crime.
2. The legislator did not clarify what is meant by the phrase (shortly after its commission) contained in Article 1/FB of the Code of Criminal Procedure as one of the cases of a witnessed crime, and did not specify a period of time between the completion of the commission of the crime and its witnessing to indicate the absence of a case of flagrante delicto.
3. The study has shown us that most penal legislation has stated the duties of judicial officers in the event of reporting a witnessed crime and granted them some investigative powers such as arrest and search.
4. Article (43) of the Criminal Procedure Code requires the judicial officer to move immediately to the scene when the crime occurs, and the Iraqi legislator did well to recognize the crime, its features, and its evidence in order to protect it from being tampered with.
5. The Iraqi legislator did not stipulate that the witnessing of the crime be witnessed directly by a member of the judicial police, but rather it could happen from others and then he would move to the scene of the accident and verify it himself. Accordingly, he exercises the powers resulting from the committed crime conferred by law.
6. Studies have shown us that most procedural legislation stipulates the duties of judicial officers in the event of reporting a witnessed crime and grants them some investigative powers such as arrest and search.

Second: Proposals

1. We did not support the position of the Iraqi legislator regarding narrowing the scope of the witnessed crime and limiting it to felony and misdemeanor in Article 49/FA, which outlines the duties of the official in the police station when news reaches him about a witnessed felony or misdemeanor and excludes violations.
2. The Iraqi legislator had to specify a specific period of time in which it would be considered a flagrante delicto, as evidenced by the phrases (in a short time) or (in a short time).
3. The Iraqi legislator should have mentioned the term (personal perception) instead of witnessing, because awareness of the witnessed crime is not only through witnessing, but through the rest of the human senses.
4. The necessity of taking judicial measures in the case of a witnessed crime, so as not to lose evidence, and to arrest and extradite the perpetrators.

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