

Supporting Measures for Witnesses, the Informed, Victims in Organized Crimes

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Abstract

The protection of witnesses, both from the perspective of individual rights and from the perspective of public good and social expediency, has always been the focus of legal schools because witnesses and the informed either in terms of the type of crime, such as testifying in security crimes, or in terms of the status of the criminal, such as testifying against special criminals or the status of the witness, such as infancy, gender, or recent financial need can play an important role in the case of organized crime due to. Therefore, this article aims to support measures for witnesses, the informed, and victims of organized crimes. From this point of view, after expanding the conceptual space of the subject and expressing its problematic aspect, it will investigate the importance of organized crimes and the protection of witnesses and informed. According to the subject documents, presented in this research, the research method is descriptive-analytical and the method of collecting data in this research is the library. The findings of this study indicate that one of the most effective and efficient approaches to support witness and the informed is to predict the protective measures in criminal law (substantive and formal) in the form of non-criminal protection and criminal protection measures.

Keywords: Witness and the Informed, Organized Crimes, Criminal and Non-criminal Measures.

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Introduction

The role of witness and the informed in the trial process and their importance in the realization of criminal justice has caused, countries and international documents establish approved appropriate solutions to support them in various dimensions, because during the last few decades, other traditional methods of witness protection, has not ensure the security of mind and confidence of witnesses in testifying with no fear of threats, intimidation, and revenge. Therefore, the idea of witness protection ways underwent a fundamental transformation, so that today protecting witnesses includes a wide range of measures in accordance with the state of the witness, the stage of potential danger for the witness and his relatives to his fearless return to society. This issue has double importance and necessity in organized crimes since, in this type of crime, witness and the informed are always threatened and harassed, both physically and psychologically by criminals or their accomplices. Repeated threats in creating physical and mental dangers that directly target the witness are often due to the unwillingness of the witnesses to cooperate with the judicial system and as a result of not discovering the crimes, committed by human society to protect individual rights, freedoms and public order. So there is an urgent need to discover and prove them. What is more,, it is necessary to support witnesses by adopting different support methods during the proceedings and even after.

A. Research Background

In general, a review of the conducted research and studies , related to the topic of the current research shows that the researchers in this field have discussed the supporting measures for witness and the informed from different aspects.

Ghodratullah Karimi (2016) Addressing the issue about which in most legal systems, one of the most important and common proofs in criminal matters, is the testimony and statement of information from the informed, concludes that as the witnesses testify and help in the implementation of criminal justice did not hesitate or even feel threatened, there is no doubt that the legislator should move towards protective methods for them to give value to the testimony of witnesses and the statements of the informed, and effective protection should be provided to them.

Aghapour (2014) in a thesis entitled "the comparative comparison of witness protection in jurisprudence, criminal law of Iran and France", investigates that the testimony of witnesses in all legal systems is one of the most important pieces of evidence to prove a crime. The witness who bears the burden of bearing and testifying, especially in major or organized crimes, is always threatened and harassed, physically and psychologically by the criminals or their accomplices. Therefore, it is necessary to adopt supported various methods in order to support the witnesses during the proceedings and even after that.

Moazenzadegan and Raufian (2010) investigated the security of the witnesses.

In this study, it is stated the witness's testimony is considered one of the most important proofs of crimes in all legal systems. Concerning the aforementioned aspects, the protection of the witnesses in various aspects such as finance, security, and psychology has been considered to an optimal extent in the international conventions and the judicial procedure of international criminal courts. The matter of which Iran's legislator has neglected until now. In the current Iran laws, only minor effects can be observed in the direction of protecting intuition. At the same time, the drafters of the Criminal Procedure Bill regarding the approval have tried to improve it, and with the final approval, a step has been taken forward, in terms of the implementation of the executive measures. Raofian and Mohammadi (2009) investigated, the protection of witnesses in the challenge of the accuser's, defense rights. In this study, it is stated, witness protection is a set of financial, security, educational and psychological measures, which the criminal justice system provides for the greater

participation of witnesses in the trial process. The implementation of such programs, which is a common practice in organized crimes, terrorist crimes, and crimes against humanity in the world countries and international courts, takes place in three forms: support-security programs and programs, aimed at the keeping of the secret witness's identity

Bagherinejad (2008) has investigated the approach of supporting witnesses in Iran criminal law and France. In this study, supporting the witness in the light of different supporting approaches, is impossible; One of the most effective and efficient approaches, is the prediction of protective measures in criminal laws (substantive and formal) so, the judicial authority can order their implementation according to the law and the necessity of applying that for these programs in each specific case.

Investigating the history of the research shows that, witness and informed protection has been investigated in most research, though the issue of the witness and the informed protection by crime, meaning organized crime is a subject of which has been neglected.

B. Organized Crimes and Their Characteristics

An organized crime is an engineered or structured type of crime runs by a criminal syndicate. More specifically, it means, the illegal and coordinated activities of a coherent group of people who act in collusion with each other to obtain material benefits (or power), commit serious criminal acts continuously to achieve the goal of any type of criminal means. Therefore, in Interpol's definition of this type of crime, "Organized crime is related to a group that has an integrated and united structure, and its main purpose is to obtain money through illegal activities, often by creating fear and corruption that continues to exist". In this sense, organized crime is the illegally coordinated activities of a coherent group of people who act in collusion with each other to obtain material benefits and power, commit serious criminal acts continuously and use any type of criminal means to achieve their goals.

I. The Non-Ideological Nature of the Organization

This feature means that an organized crime group commits crimes only with economic goals to obtaining material benefits and does not commit crimes with religious and political affiliations. The goal of this group is only to gain money, power, and material benefit. Although these groups may sometimes resort to political campaigns, their main goal from these campaigns is not to gain political power, but the goal of strengthening economic power, canceling laws, in contrast to their criminal and economic goals, approving laws that facilitate certain activities, and finally attaining the executive powers and so on, is for the protection and immunity of the organization and its members against the administration of justice.¹

II. The Existence of Hierarchy

Since the discussed crimes are committed in an organized manner, it is necessary to have an active organization, capable of planning, colluding, directing, and committing the crime. Due to the existence of formations and the rule of organizational hierarchy, this organization needs managers and executives, each of whom performs duties with a special position in it, based on the opinion of their superiors. Even in some criminal organizations, the hierarchy is very wide likely to the existing formations in the military forces, about what a certain and an extraordinary order prevails in these organizations.

¹. Shams Natari, M. I. (2008). The Investigation of Iran's criminal policy against organized crimes with an approach to international criminal law, Tarbiat Modares University, pp. 13-25.

III. The Continuity of Crime over Time

In many cases, some people may gather together to commit a specific crime and commit a criminal act collectively for one time; Although such crimes are organized and thought together, they are not organized crimes in the intended sense. What is necessary is that, the criminal group is formed for a long period or not bound to a specific time, but continuously; for this reason, some criminologists do not consider gangster crimes, which are committed for a limited time and in certain areas, as organized crime.¹

IV. Committing Administrative Corruption

One of the most important and dangerous features of organized crime organizations is the use of administrative corruption. Since, these organizations want to commit many crimes to achieve their goals, they try to achieve their goals by corrupting government officials such as judges, parliamentarians, customs officials, etc. For example, by corrupting parliamentarians, they try to change the laws that contradict their activities, or by corrupting judges, they are freed from being prosecuted or in the case of trial, the trials are ended in their favor.²

V. The Use of Intimidation and Violence

If a criminal group is faced with another criminal group whose interests conflict with each other, or if they faced people who refuse to cooperate with them (for example, by accepting bribes), they will try to intimidate or eliminate them in order to achieve their desired goals.

VI. Purifying Money or Money Laundering

The property that the criminal groups get through their criminal activities must be in the form of clean and legitimate money in a way that, they are freed from being prosecuted. Therefore, criminal groups enter such money into legitimate and legal transactions and act in this way. They make such money for purification. Among other cases and characteristics of criminal organizations, one can mention the secrecy of the activities and the demand for absolute loyalty from the members, and the application of strict and harsh regulations and discipline.³

C. Non-Criminal Protections for Witnesses and the Informed

Witnesses act as the eyes and ears of the criminal justice system and tell the courts what they committed and under what circumstances. The importance of witnesses should not be underestimated since they provide the police, who are often seen as gatekeepers in the criminal justice system, with important evidence that is judged for accuracy by a jury then. Considered a good practice for criminal justice systems, witness protection essentially refers to appropriate responses to threats, using methods that protect at-risk witnesses to ensure their cooperation and testimony before, during, and after the trial be obtained. The intimidation of witnesses by those, testifying against them in trials, especially in organized crimes, requires a state response in the form of protection which represents a practical obligation and commitment to the citizens themselves. The intimidation of witnesses is a long-standing obstacle in trials, and the techniques, used to threaten or coerce witnesses have also evolved

¹ . Najafi Abrandabadi, A. H. and Hashem Beigi, H. (1998). Encyclopedia of Criminology, Shahid Beheshti University Publications, p. 71.

² . Hajiani, E. (1388). Organized Crimes. Tehran: Jihad University Publications, pp. 33-34.

³ . Hashemi, H. and Babapour, M. A. (2011). Organized Crime, Tehran: Modbaran Publishing House, pp. 18-21.

in recent years¹. Witness protection was first approved in the 1970s in the United States as a legal method to be used in connection with a program to dismantle mafia criminal organizations. Until then, the unwritten "code of silence" among Mafia members—known as *omertà*—had an undeniable effect, threatening death to anyone stepped out of the ranks and cooperated with the police. Important witnesses could not be persuaded to testify for the government, and key witnesses were lost due to the concerted efforts of the crime bosses who were being prosecuted. That early experience convinced the US Department of Justice that, a witness protection program should be created.

In the discussion of witness and informed protection in organized crimes, two types of protective measures can be mentioned: non-criminal and criminal protective measures, which will be discussed in the following.

I. Non-Criminal Protections

1. Financial Supports

In today's societies, people are forced to work to earn a living, and their efforts are also to achieve more economic benefits. Therefore, they often try to avoid doing anything that hinders their daily income, and always use various measures to maintain their property. In this regard, if the witness is forced to close his work to testify and be threatens to by the accused to the destruction of his property, the possibility of the witness, refusing to testify, is very high. Although some people are willing to testify regardless of their wealth and simply in response to the call of their conscience to help the implementation of justice, encouraging witnesses to testify, requires effective financial support for them, if necessary also take place.

In this regard, in paragraph "T" of Article 1 of the "Executive Regulations for the Protection of Witnesses and the Informed" it is written that the protection of witnesses and the informed include the following: Firstly, the threat of danger: any possibility of danger in the case of witnesses or the Informed, so that, if it is implemented, it will cause injury or damage to at least one of the items mentioned in clauses (b) to (t) of this article to the witness or the Informed or their family members, in such a way that the possibility of danger according to the cases such as the type of risk, the subject of the risk, the character of the witness, informer and the creator of the risk should be conventionally strong. Paragraph B discusses life risk: "any risk of injury to physical integrity" and, in paragraph "T" financial loss: "any injury to property or financial rights". Therefore, in the interpretation of this article and its paragraph "t", it can be stated that the payment of damages to the witness, if he has suffered damages and requested compensation from the judiciary, among the non-criminal methods of support, that can be considered. In this regard, we can refer to Article 215 of the Criminal Procedure Law approved in 2012, which reads: "If a witness or the Informed is required to attend, and requests travel expenses or claims losses due to leaving his job, the investigator will pay the travel expenses according to the tariff announced by the judiciary and the losses due to leaving the job, if necessary, using The expert's opinion is determined and obliges the plaintiff to deposit it in the justice fund. When the complainant is not able to pay the fee according to the investigator or is summoned by the investigator, the mentioned expenses will be paid from the appropriations, approved by the judiciary. Whenever the plaintiff refuses to pay the costs, mentioned in this article in the case of forgivable crimes, the testimony or certificate of the Informed introduced on his behalf will not be heard. However, in the case of non-pardonable crimes, the said costs are paid by the order of the investigator from the appropriations, approved by the judiciary. Whenever the defendant is an applicant

¹ . Monterosso, S. (2022). Shortcomings in the Operation and Coordination of Witness Protection in Australia. Where to from here? In Criminal Law Forum Springer Netherlands, pp. 2-3.

for the summons of a witness or the informed, the said costs will be paid from the appropriations, approved by the judiciary.

Paying attention to the provisions of this article shows that the legislator tried to compensate the damages, caused to the witness in any case, but the very important point is in paragraph (c) of article 17 of the law on improving the health of the administrative system and combating corruption. Although this article does not directly refer to the witness and the informed, in its interpretation, it can be inferred that "compensation for physical or financial injuries and damages in cases where it is not possible to immediately compensate them from the area, causing the injury or damage", the prediction has been "In this case, the government is considered the victim's successor and can demand the paid damages." Even to prevent any material damage to the witness due to testifying, it is stated in paragraph (d) of the aforementioned article that "any discriminatory behavior including dismissal, redemption, early retirement, change of status, transfer to anywhere, unfair evaluation, cancellation of contract, termination or reduction of rights and benefits to the informed, reporter, and source that have reflected correct information to the competent legal authorities are prohibited. In addition, in Article 8 of the Law on the Protection of Sources and Witnesses, it is stated that, "sources' fees are paid according to the type and extent of their mission, efficiency, and performance, by the authorities." "Zhil Salah will be determined and paid." The informed and influencers inform the authorities about crimes as a job and get paid. For this reason, in the draft bill on the protection of sources and witnesses, a difference has been made between the payment of damages and fees, and Article 3 has been assigned to the topic of payment of damages and Article 8 to the topic of payment of fees. In line with the physical protection and payment of damages to the witnesses in Article 25 of the Palermo Convention, in the form of 3 different clauses, it has recommended, the protection of the victims in 3 areas: 1- Protection of the victims, especially in cases where there is a risk of retaliation or intimidation (Paragraph 1), 2- Compensation for the damage caused by the crime and restoration of their former status (Paragraph 2) and 3- Criminal prosecution and punishment of the criminals and examination of the opinions and concerns of the victims in the appropriate stages of the criminal proceedings against the perpetrators (Paragraph 3).

2. Physical Supports

A person's body and soul (as opposed to property) are his only real property and a part of a person's existence. For this reason, in the past, in different legal systems, heavy punishment was foreseen for the perpetrators of crimes against physical integrity. Preserving life and guarding the body and soul is one of the things that, every human being unconsciously tries to do. "Murder deprives a person of his dearest possession, which is life, and it is the only crime for which the damage caused is irreparable". "Executive Regulation on the Protection of Witnesses and the Informed" comes under Article 17, which requires the necessary measures to be taken in cooperation with the Protection-Information Center of the Judiciary and judicial officers to prevent the occurrence of life, dignity, and financial risk against the witness or the informed or his family and to ensure his security. These measures include one or more of the following: Firstly, regular police patrols in a visible or hidden manner from the place of work or residence and the traffic route of witnesses or the Informed or their families. Secondly; monitoring the content of non-public communications, being transmitted in computer or telecommunication systems and installing electronic protective equipment such as closed-circuit cameras in their workplaces or residences or installing safety doors, with their written consent. Thirdly; providing equipment for quick contact with relevant authorities. Fourthly; teaching self-defense measures and protection of physical, and mental health to witnesses, the informed and their families and Finally the change of location has

been discussed. So, it can be said that, one of the best support methods, in this case, is life support, which means supporting the body and life of the witness.

2-1. In the Hearing

In this supporting method, the witness is supported by using protection. For example, police bodyguards protect the witness during the hearing when the witness and the accused are standing next to each other to prevent the accused from harming the witness and ensure his safety during the testimony. In the statutes of the International Criminal Courts of former Yugoslavia and Rwanda, taking protection measures for witnesses threatened with their lives, is considered one of the duties of the witness and victim protection department. Supporting the witness by the police bodyguard can be considered one of these measures. Covering the witness with a bulletproof vest or testifying in a glass chamber both of which are other methods, used in this field. It seems that the adoption of this measure alone does not fulfill the purpose of witness protection, because it is limited to protect during the trial session and the accused may harm the witness outside the trial session when he is no longer protected by the police. Therefore, along with the adoption of this method, other support methods should also be used.

2-2. Outside the Hearing

The adoption of this supporting method is also based on preventive methods. One of the methods, used in this method is to hire police guards to bring witnesses to the court so that, if the accused and the witness meet each other outside the hearing, the accused cannot harm the witness. Also, the use of bulletproof clothing outside of the hearing and during the criminal proceedings. Approved in 2012, prompted them to foresee an article in this field. In Note 1 of Article 214 of this law, it is stipulated that - in case of identification of a witness or the informed by the accused or the accused or the plaintiff, or if there is evidence or evidence, indicating the possibility of identification and the existence of danger for them, the investigator will take necessary measures upon the request of the witness or the informed. Such as; training to protect their physical and mental health or changing their location...". In Article 17 of the Executive Regulations for the Protection of Witnesses and the informed, it is stated that, the unit prescribed in Article 2 of the Regulations [Unit for the Protection of the Security of Witnesses and the informed] shall take the necessary measures in cooperation with the Information Protection Center of the Authority of the judiciary and judicial officers to prevent the occurrence of life, dignity and financial risk against the witness , the informed or his family and to ensure his safety. The aforementioned measures include one or more cases which are as follows: In Article 10 of the draft bill on the protection of sources and witnesses, it is also stated that, "in case sources and witnesses are exposed to danger and threats, the competent authorities are obliged to protect to maintain the physical safety of the witnesses, the statutes of the International Criminal Courts of the former Yugoslavia and Rwanda, mandated the witness and victim protection department to safely transport the witnesses from their residence to the court headquarters.¹ Regarding the non-criminal protection of witnesses and the informed in organized crimes, the "Organized Crime Control Law", approved in 1970 can be cited, which gave the US Attorney General, the authority to provide security for witnesses agreed to testify in cases, involving organized crime and other types of serious crime. Under the authority of the Attorney General, the US Witness Security

¹ . Bagherinejad, Z. (2015). Protection of witnesses, in the laws of Iran, France, and international documents in the light of the new criminal procedure law. Khorsandi Publications, pp. 97-102.

Program ensured the physical safety of at-risk witnesses primarily by relocating them to a new, unspecified residence under a changed name and new identity profile.¹

In 1984, after more than a decade of operation, some deficiencies, experienced by the program were addressed by the Witness Security Reform Act. The issues, addressed under this Act remain at the heart of all witness protection programs, namely strict admissibility criteria, including an assessment of the risks that transferred ex-offenders, may pose to the public; establishing a fund to compensate victims of crimes ,committed by participants after their acceptance into the program; signing a memorandum of understanding explaining the obligations of the witness after being accepted into the program; Development of procedures to be followed in case of violation of the memorandum by the participant. To establish procedures for the disclosure of information about program participants and penalties for unauthorized disclosure of such information; to protect the rights of third parties, especially dealing with witness debts and any custody or visitation rights of the non-relocating parent. For a witness to be eligible for the program, the case in question must be very important, the witness's testimony must be critical to the success of the prosecution, and there must be no other way to secure it. Witness physical safety and there also other conditions, such as the witness psychological characteristics and the ability to adhere to the rules and restrictions, imposed by the program. Over the years, eligibility for coverage under the WITSEC program has expanded from witnesses to mafia crimes to include witnesses to other types of organized crime, such as those, committed by drug cartels, motorcycle gangs, prison gangs, and violent street gangs.²

3. Psychological Support

Among the measures that should be taken to prepare the witness mentally to appear in court, psychological support is given to him in order to minimize the suffering, caused by appearing in the judicial authority, and the anxiety, caused by participating in a trial, especially if in the past, the person or the device police-judicial matters are not related, and the crime is one of the important crimes, it causes him concern and leaves adverse effects on the quality of his testimony.³ There are two ways to mentally prepare the witness to appear in court. First, it is envisaged that, the judicial authorities or the representatives of the prosecutor's office hold regular meetings with the witness before his appearance in the court. This is for reducing the mental pressure of the witness in the court. Another way is to appoint an assistant lawyer for the witness, to familiarize him with the rights more and it is one's duty when appearing in the judicial authority. This is an issue about what, has not been paid much attention in Iran law.⁴

Article 2 of the executive regulations for the protection of witnesses and the informed states in this regard that, in each jurisdiction, a unit will be created as a "unit for the protection of the security of witnesses and the informed" under the supervision of the head of that jurisdiction to carry out the matters, mentioned in this regulation. In case of need and at the discretion of the Chief Justice of the province, an office named "Witness and the Informed Security Office" will be established in the Witness and the Informed Security Protection Unit to coordinate with related agencies to perform witness protection duties. The coordination of the relevant institutions to perform the task of supporting the witnesses in the

¹ . Kiprono, W. (2016). Challenges facing the implementation of witness protection program in Kenya (Doctoral dissertation, Egerton University), pp. 3-4.

² . Ibid

³ . Raufian Naini, H. (2009). Witness in Iranian Criminal Law, Rushd Bachelor's Thesis, Faculty of Law, Faculty of Judicial Sciences, p. 96.

⁴ . Ashuri, M. (1997). Criminal Justice. Tehran: Ganj Danesh Publications, p. 120.

procedural law has also been considered in China and a way special importance has been given to this position. Based on this, it is stated in Article 59 of the Criminal Procedure Law that, the testimony of witnesses must be the title of the decision basis in the case of a verdict, should be considered only after questioning the witness and interrogation in the courtroom by the parties, namely the public prosecutor and the victim, as well as the accused and the defense attorney. Based on this, in clause "P" under Article 1 of the Executive Regulations on the Protection of Witnesses and the informed, approved in 2014, reputational risk is considered to be any risk of damage to spiritual integrity, including reputation and credibility.

D. Supporting Witnesses in the Light of Criminal Measures

In terms of criminal protections in law, the following cases can be listed.

I. Criminalization

The most important aspect of witness protection in substantive laws can be seen in the form of criminalization of acts that harm the physical or spiritual integrity of witnesses. Although the criminalization of some actions in the criminal policy of countries is aimed at restoring social order and punishing those who violate the norms and values, accepted by the society, this fact cannot be ignored that, the criminalization of action means accepting that action and introducing, it is accepted as a value and norm in the society, what is more, criminalizing the violation of an act, is the concept of value in validating an act.¹ In this regard, supporting the witness as an accepted value in the judicial process requires any action to violate this value through: a) threats or b) insulting or c) revealing the identity or residence of the witness to be punished.²

Threatening to commit a crime against another is one of the actions that the legislators of different countries have criminalized in their domestic laws. In Article 669 of the Islamic Penal Code, approved in 1996, the legislature of Iran has provided that, "whenever someone threatens another person with murder or personal harm or honor, or with revealing a secret about himself or his relatives, regardless of whether if the intermediary has demanded money or property or demanded to do something or to omit an activity or not, he will be punished with whipping up to 74 strokes or imprisonment from two months to two years".

In Article 18-222 of the French Penal Code, it is also stipulated that, "threat by any means to commit a crime or a misdemeanor against another, when accompanied by an order to fulfill a condition, is subject to three years of simple imprisonment and a fine of 4500 Euros. When the subject is a death threat, the punishment increases to 5 years of simple imprisonment and 75000 Euros and a fine."³

Regarding the crime of insult, it can be said that, it is considered as one of the crimes against the moral dignity of persons. In the definition of insult, it can be said that "insult is an intentional behavior against the law that is offensive to the party by custom."⁴ What is important in the definition of insult is that, the behavior of the perpetrator is supposed to reduce and humiliate the victim. The Legal Department of the Judiciary has stated in the theory of Shamayeh 3472/7-16/8/1377, in confirmation of the customary nature of the insult,

¹ . Abdul Fanah, E. (2002). What is a crime and what are the criteria for criminalization, translated by Esmail Raheminejad, Legal Journal of Justice, No. 41, p. 97.

² . Bagherinejad, Z, op. cit. p. 133.

³ . Mir Mohammad Sadeghi, H. (2007). Crimes against persons, Tehran: Mizan publications, p. 483.

⁴ . Aghaei Nia, H. (2006). Crimes against persons (spiritual personality). Tehran: Mizan publication, p. 20.

"Insult is a customary matter and its determination is up to the judge handling the case".¹ In addition, the behavior of the perpetrator must be offensive. The Supreme Court of the country has also stated in its decision number 2268-13/7/1319, that, mere violence in speech cannot be considered a criminal offense, the legislator in Article 608 of the Islamic Penal Code approved, in 1996, as a crime as if insulted. This article stipulates: "Insulting people such as obscenity and the use of obscene words if it does not lead to the crime called ghazf, will be punishable by up to (74) blows or a fine of fifty thousand to one million Rials". In this article, the legislator has used the word "individuals"; therefore, insulting any person can be included in this article. Also, the examples mentioned in the article are allegorical and if other acts are also considered offensive in terms of custom, the perpetrator will be punished based on this article. The French legislator has also stipulated in Article 5-433 that, "speech, behavior or threat, writing or image or sending objects in any way towards a government official or employee, is considered an attack on his dignity or sanctity of his job, whenever during the duty or on the occasion of duty, it is considered an insult and will be fined up to 75,000 Euros.

II. Criminalization of Revealing the Identity or Residence of a Witness

One of the guarantees of witness protection is the criminalization of revealing the identity of unnamed witnesses, which endangers the defendant's attempt to identify their identity to better exercise his defense rights, especially in mediation and in-person proceedings, since as we will see sometimes, in some countries laws, strict regulations have been adopted to protect anonymous or anonymous witnesses, so it can be said that, one of the necessary measures to hide the identity of witnesses to ensure their physical safety is, to try to keep the witness's identity information safe from access to others during the proceedings. For this purpose, measures such as using pseudonyms, changing identity or not including identity information in the file, or preventing people from accessing the file can be used. This issue is also mentioned in the Palermo Convention. According to the fact that, in court proceedings, the identity of the secret agent should be kept secret from the parties of the case and all citizens (different protective measures such as changing the voice, separating the witnesses, etc.; are included in Article 23). But as stated, the court should be informed about his true identity, the litigants are allowed to question the (unknown) witness. In addition, in this context, it is possible to refer to the Russian Criminal Procedure Law approved, in 2002, which did not make significant changes in pre-trial proceedings, but changed the trial stage by adopting the arbitration system. One of the important areas in which the new criminal procedure law responds to the debates about organized crimes, is the protection and protection of witnesses and victims of crime against the threats and pressures of criminal groups, involved in the trial. Article 11 (3) of this law provides a set of preventive measures both in the pre-trial and in-trial stages, where sufficient facts indicate the existence of danger not only to the aforementioned persons, but also to their relatives and other people close to them. During the pre-trial phase, personal data about witnesses or victims of crime participated in an investigation can be removed from the investigation phase.

The Criminal Procedure Law approved, in 1999, not only did not prohibit the disclosure of the witness's identity or residence, but also allowed the accused to obtain the necessary information from the contents of the case ,after completing the investigation, without predicting any conditions. Although this was in line with the defense rights of the accused, in important and organized crimes, it puts the safety of witnesses at risk, especially when the main reason for the case for convicting the accused was the testimony of witnesses, this issue

¹ . Rahimi Esfahani, A. A., et al., (2010). Collection of Islamic Penal Code. Tehran: Publications of Vice-President of Research, Compilation, and Revision of Laws and Regulations, Panjak Printing, p. 388.

was more apparent. Despite the difference of opinion among contemporary jurists ,regarding the validity of the testimony of people whose identity remains hidden, fortunately, the compilers of the Criminal Procedure Law approved, in 2013 paid attention to this issue and stipulated in Article 214 of this law, "Whenever there is a threat of death or if there is a reputational or financial loss to the witness, the informed or their family, but it is necessary to listen to their statements, the investigator takes the following measures to protect the witness or the informed and by mentioning the reason in the case; b) Non-disclosure of information related to the identity, family details and residence or activity of the witness or the informed". On one hand, to protect the witness, this article foresees the non-disclosure of the identity or residence of the witness. On the other hand, to respect the defense rights of the accused, it obliges the investigator to state the reason for taking such a measure in the case and resorted to these measures only when it is necessary to listen to witness statements. Based on this, Article 9 of the Executive Regulations for the Protection of Witnesses and the Informed considers the non-disclosure of information to apply to all cases that "lead to the identification of the witness or the informed or his family, including identity, family details, residence, employment, or The type of activity or any other matter. In Article 40 of the said law, it is also stated that "the disclosure of information related to the identity and residence of the victim, witnesses and the informed and other persons, related to the case by judicial officers is prohibited, except in the cases specified by the law". Because this disclosure of information may lead to disruption of the judicial process through threats to victims, witnesses, and the informed.¹ In this regard, we can refer to the fourth section of the new Swiss Criminal Procedure Law, approved in 2007, amended in 2012, entitled protective measures (Articles 153-149) and special measures to support secret agents, and witnesses of crime victims. Sexual, child victims and victims with mental disabilities are considered to be cited.

Article 12 of the Executive Regulations for the Protection of Witnesses and the Informed approved in 2014 stipulates that after determining and making a decision not to disclose the information, the real details of the witness or the informed must be announced to the unit specified in Article 2 of this regulation without being recorded in the file, and a sheet with the code. It is especially noted that, these details will be mentioned in all the interrogation papers and the minutes of the meetings. The summoning of such a witness and the informed with the order of the judicial authority is done only by the said unit and through officers who will be assigned for this matter. Identity is all citizens' right, including the accused, convicted, victim, witness, etc. This method of support is welcomed by the judicial authorities, both the court and the prosecutor's office, since on one hand it does not incur costs for the witness and the government and on the other hand, the witness does not have to bother to testify.²

The European Court of Human Rights has accepted the use of anonymous witnesses under three conditions: firstly; Witnesses should justify, not testifying in normal ways with sufficient and appropriate evidence. Secondly; in line with the implementation of his defense rights, the accused should have a sufficient and appropriate opportunity to testify anonymously. Thirdly; Anonymous testimony should not be the only reason for conviction.

In some countries, such as France, anonymous testimony has been recognized under specific conditions for instance organized crimes, though if "at the same time, according to the conditions and circumstances in which the crime was committed or according to the character of the witness, it is necessary to know his identity for the implementation of defense rights. In case of objection by the accused, the head of the investigation branch can reveal his

¹ . Bagherinejad, Z, 2015, op. cit.

² . Koshki and Amini. (2016). A comparative study of witness protection in Iran's Criminal Procedure Law and England's Witness Charter, Criminal Law Research, 6th year, 21st issue, p. 131.

identity with the consent of the witness.¹ Guaranteeing the defense rights of the accused has forced the legislator to firstly foresee the possibility of objecting to the anonymous testimony for the accused, and secondly, the accused can request to face the anonymous witness through a technical device that allows hearing and provides the witness from a distance or questioning him by a lawyer, "Therefore, no conviction can be issued only based on learned statements" under the provisions of anonymous testimony, it seems that, the rules and regulations which protect the rights of defense, threaten the accused and they should be interpreted minimally. Also, to balance the rights of the accused and the witnesses, the Yugoslav court has presented five conditions for accepting the non-disclosure of the name and identity of the witness: Firstly, there must be a real threat to the security of the witness or his family. Secondly, the reasons that are supposed to be presented through the testimony of the witness have sufficient relevance and importance to strengthen the prosecutor's claim. Thirdly, the appearance of the case should not be such as to make the witness unreliable. Fourthly, there is no possibility that the witness will disclose his identity and instead, a special plan for his protection should be prepared, and fifthly, any measures, taken must be necessary. In this regard, in paragraph (2) of article (64) of the Statute of the International Criminal Court, it is stated that, the primary branch must ensure, the trial is conducted favorably and speedily with full respect for the rights of the accused and sufficient attention to protect the witness and the defense." Therefore, it seems that it is possible to establish a balance between the rights of the accused and the protection of witnesses. Article 84-706 of the French Criminal Procedure Code states, the prohibition of disclosing the identity of infiltrators: The real identity of officers or judicial police officers who took part in covert operations of infiltrating criminal gangs under pseudonyms should not be revealed in any of the proceedings. In this regard, the Palermo Convention also refers to the issue of the protection of witnesses and their relatives in organized crimes, as Article 24 provides for the protection of witnesses and their relatives. Each state member, within the limits of its capabilities, shall take measures to effectively protect witnesses who testify during criminal proceedings regarding the crimes, covered by this Convention, and, as appropriate, their relatives and other persons close to them, against possible retaliation or intimidation will be adopted appropriately. In March 2004, a bill titled Protection of Witnesses and Justice Collaborators was approved (Law No. 9205, dated March 15, 2004). In this new law, methods have been considered to protect witnesses and cooperators with justice, that is, people from organized crime groups, decided to provide information about their accomplices to prosecutors and courts. Also, this law establishes two institutions: the "General Directorate of Witness Protection and Justice Cooperators", which is responsible for these tasks, defining their competence, and organizing them. Also, the law dated March 2004 provides various measures, such as changing the identity and residence, guaranteeing the safety of witnesses, and at the same time, it sets mandatory regulations that witnesses must comply with if they want to be protected by the program. Government witnesses are supposed to be protected. In addition to this law, a bill providing adequate compensation to victims is currently under consideration in the Albanian parliament.

E. Support in Formal Rules

In addition to the substantive criminal laws, the criminal procedure code has also indirectly provided some criminal measures in the role of witness protection. The law of criminal procedure is the crystallization of the rights and freedoms of the citizens of the society to the extent that some authors believe that to know the extent of the rights and

¹ . Yousefzadeh, A. and Ramek, M. (2016). Witness support in criminal law in the light of human dignity, world conference on modern researches of Iran and the world in psychology and educational sciences, law and social sciences, p. 5.

freedoms of individuals in a society, one should go to the criminal procedure of that country.¹ There is no doubt that the protection of society and the protection of citizens' rights are not guaranteed only by punishing for actions which are considered crimes. In addition to punishment, the legislator should seek to establish regulations that enable the detection of crime, the prosecution of the accused, and the acceleration of the execution of the punishment in the case of the criminal, and at the same time guarantee the rights of the society citizens, especially the accused, along with protecting the interests of the society. It requires a balance between the rights of individuals and society, so that one does not prevail over the other without reason. For this reason, it is not possible to ignore these rights in criminal proceedings except in legal cases. Sometimes, in order to protect the witnesses against the possible assaults of the accused, the legislator allows the temporary arrest of the accused (the first speech) or obtaining bail from him (the second speech), while the order for other security measures cannot be aimed at because they are mild to satisfy the support of intuition.²

F. Temporary Detention of the Accused

Temporary detention is "a severe and heavy security order that is issued against the freedom of the accused until the verdict is issued by the judge". The order of temporary detention is in contrary to the principle of innocence and individuals, and "its harmful results are irreparable"; Therefore, freedom of movement legislators have tried to bring the cases of issuing temporary arrest orders under a special order and rule and not leave it at the disposal of judges. In accordance with this issue, to ensure justice and guarantee the rights of other citizens, the Iranian legislator has enumerated the cases of issuing temporary detention orders in the law and has foreseen two types of temporary detention, which are: first, voluntary temporary detention order; Second, the order of compulsory temporary arrest".³

The legal basis for issuing an arbitrary temporary arrest order is Article 132 of the Criminal Procedure Law. In this article, it is stipulated: "In the following cases, whenever the available evidence and Emirates indicate that the accused is charged, the issuance of a temporary arrest order is permissible...

D- In cases in which the freedom of the accused leads to the destruction of the traces and reasons of the crime, causes collusion with other accused or witnesses, and the informed of the incident or causes the witnesses to refuse to testify. Also, when there is a fear of the accused fleeing or hiding and it cannot be prevented in any other way. In Article 35 of the said law, it is stipulated about the mandatory temporary arrest order: "In the following cases, under the limitations of Article 32 of this law and its notes, whenever the evidence and the available Emirates indicate that, the accused is being charged, issuing a temporary arrest order is mandatory. In explaining these two articles, the Legal Department of the Judiciary has stated in the advisory opinion No. 7/9060 dated 2000/07/06: "In Article 32 of the Law of Procedure of General Courts and the Revolution in Criminal Matters, the cases of permission to issue orders Temporary detention has been counted, but in Article 35 of the same law, the mandatory cases of issuing a temporary detention order have been determined. Therefore, where paragraph "d" of article 32 can be fulfilled and the crimes are among the crimes mentioned in article 35, the seizure is mandatory, but if paragraph "d" cannot be fulfilled, issuing a temporary arrest order will not be mandatory. In other words, whenever there are crimes listed in Article 35 and with the restrictions of Article 32, the issuance of a temporary

¹ . Ashuri, M, op. cit., p. 1.

² . Bagherinejad, Z. (2015), op. cit., pp. 147-149.

³ . Khalilpour Chalkiasri, S. A. (2018). Criminal policy of witness protection in criminal cases with a legislative approach of criminal law, Qanun Yar International Quarterly, Volume 3, Number 11, pp. 116-118.

arrest order is mandatory, otherwise, it is permissible. Clause "d" of Article 32 of the said law is very important and the judge should consider the limitations of Article 32 when issuing a temporary arrest order. One of the stipulations mentioned by the legislator in clause "d" of article 2, which is related to the issue of witness protection, is to mention that if the freedom of the accused causes the witnesses to refuse to testify, the judge can and in the cases, mentioned in article 35. The Criminal Procedure Law requires the temporary arrest of the accused. Mentioning this stipulation means that, the accused threatens the witnesses who if they testify, harm will be done to them or their families. This issue is foreseen in Article 58 of the Statute of the International Criminal Court. In this article, one of the conditions for issuing this order is preventing the accused from conducting investigations or court proceedings or endangering them in case of release.¹ Threatening witnesses and the informed of the incident is one of the things that endanger a proper investigation. Therefore, it is possible to resort to this protective measure in the trials of the International Criminal Court. In the judicial procedure of the court trials, orders for the temporary arrest of the accused have been issued many times. For example, the prosecutor of the International Criminal Court ordered the temporary arrest of the perpetrators of the crimes, committed in Sudan, and the Libyan leader ordered his arrest for crimes against humanity. In the Transnational Organized Crime Convention, although there is no explicit mention of this method of protection, on the one hand, paying attention to the content of some articles of this convention and on the other hand, the validity of witness protection strategies in this international document, detention Temporary custody of the accused can be considered as a support solution.

The risk of influencing witnesses and the informed can be raised when illegal actions (threats, bribery, etc.) become common or there is a possibility of it, even though in this article, the legislator explicitly has not been stated that, the witnesses do not agree to testify due to the threat of the accused and the fear of harming him, but the intention of the legislator in the provision of this article brings to mind the same possibility. While there is still no law and even a specific article about the protection of witnesses in Iranian law, it is one of the most important articles which consider the protection of witnesses. Article 144 of the French Criminal Procedure Code also stipulates: "Temporary detention An order can be given or extended only when it is the only way and method for the following: keeping evidence or physical evidence, or preventing pressure on witnesses or victims, or preventing collusion between the persons under investigation and deputies...". In this article, the legislator has considered pressure on witnesses as one of the cases in which it is permissible to issue a temporary arrest warrant. Pressure on witnesses and the informed, on the one hand, may cause them to refrain from testifying and on the other hand, it may cause witnesses to resort to lies in testifying. Paying attention to this matter has forced the French legislator to provide for the temporary detention of the accused to prevent the influence on the witnesses. Therefore, if it is possible to prevent the pressure on the witness in another way, it is not permissible to issue a temporary arrest order. Because the principle is based on the freedom of people's movement and personal security. He had a personal ego. No one should be arrested or detained arbitrarily. No one can be deprived of his freedom except for legal reasons and the procedure prescribed by law".

¹ . Mir Mohammad Sadeghi, H. (2004). International Criminal Court, Tehran, Dadgstar Publishing House, first edition, p. 256.

G. Obtaining Collateral from the Accused

One of the measures, provided by the legislator in the criminal procedure law, which can implicitly fulfill the witness protection purpose, is obtaining bail from the accused. In Article 132 of the aforementioned law, the legislator has stipulated: "To access the accused and his timely attendance, in necessary cases and to prevent him from escaping or hiding or colluding with another, the judge is obliged to order one of the criminal security orders after explaining the charges to him to issue the following: a) Obtaining collateral either in cash or bank guarantee or movable and immovable property...". Paying attention to the provisions of the mentioned article shows that, the Iranian legislator pursues two goals by predicting such an order: firstly, access to the accused until the end of the proceedings and guaranteeing the execution of the sentence that, may be issued against the accused in the future. Secondly, "Preventing disruption in the criminal proceedings". Collusion between the accused and another is one of the things which can disrupt the proceedings.

Obtaining collateral from the accused is also considered in the recommendations of the United Nations Committee for the Prevention of Crime, according to which, to accept collateral or bail, prosecutors must specify the condition that the accused does not threaten the witness or the victim. Also, according to the rules of procedure and the evidence of the International Criminal Court, one of the conditions for the release of the accused during the investigation of the crime, along with other conditions such as not having direct or indirect contact with witnesses and handing over all the identity documents of the accused to the court, obtaining bail from him. It has been placed. "A person must provide a guarantee or prepare a personal or real guarantee, the amount, schedule, and type of payment will be determined by the preliminary proceedings branch". The study of other international documents shows that, the compilers of these documents did not pay attention to this type of protective measure and the reason for that can be seen in the seriousness of the crimes, committed internationally and that obtaining bail from the accused in these crimes cannot be used to preserve The security of witnesses against the threat of such criminals should be useful and effective. In the discussion of organized crimes and witness protection, it is possible to refer to paragraph 1 of Article 24 of the Palermo Convention, which reads: "Each member state, within its capabilities, shall take appropriate measures for effective protection." From the witnesses who testify during the criminal proceedings regarding the crimes which are the subject of this convention, and as necessary from their relatives and people close to them, against possible retaliation or intimidation.

Conclusion

Today, along with the spread of globalization, the Internet, and virtual space, crimes including organized crimes have become more extensive and complex than can be described. This issue requires paying attention to all kinds of evidence to declare a crime against this type of crime. It has been widely recognized that witnesses and the informed are among this evidence. By studying this paper, it was found that, the protection of witnesses and the informed in organized crimes is more important and necessary than other crimes, because according to the structure of this type of crime, witnesses and the informed are not faced with a defendant, but may always be subjected to threats, physical and psychological harassment from the criminals or their accomplices, and if this happens, there is a kind of unwillingness and reluctance on the part of the witness and the informed. It leads to cooperation with the judicial system and as a result, the crimes are not discovered. Under this situation, the legislator has considered two types of criminal and non-criminal protective measures. The criminal field can include criminalization (threats, insults, revealing the identity or residence

of the king) and support in formal laws, including (temporary arrest of the accused, and taking bail from the accused), the comparison, made in the text of the article shows that, the laws enacted in Iran are almost appropriate and compatible with international criminal laws. The difference is that Iran's laws lack a guarantee of strong implementation, lack of updating due to the rapid developments of organized crimes, lack of attention to legal assistance, lack of attention to psychological support in non-criminal actions, lack of criminalization of many actions and lack of laws and domestic regulations for the implementation of international conventions, including legal gaps in Iran's criminal policy, are aimed at protecting witnesses and the informed, so in this regard, it is suggested to take into account the type of organized crimes and the complexity of their nature with the participation of the public. And non-governmental organizations on the one hand and the necessity of criminal and non-criminal measures with police, control, protection, and support missions, more effective measures on the other hand should be taken to support and protect witnesses and the informed.

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