

CRIMINAL LIABILITY FOR VIOLATING INVESTIGATION & EVIDENCE COLLECTION PROCEDURES: A COMPARATIVE STUDY

RASOOL HASSAN RASAN
DR. MOHAMMAD JABBAR ATUWAIH

COLLEGE OF LAW, UNIVERSITY OF MISAN, IRAQ.
EMAIL: lawgm20242@uomisan.edu.iq Moh2013@uomisan.edu.iq

Abstract: The criminal procedural rule regulating investigation and evidence collection procedures is an important and indispensable tool in achieving criminal justice. This requires its maintenance by imposing the objective criminal penalty represented by criminal penalties on the person who violates the obligation contained in these criminal procedural rules as a process that ensures the maintenance of their application and the protection of public and private rights and freedoms.

Keywords: Liability, Criminal, Procedural, Substantive, Investigative, Evidence gathering.

INTRODUCTION.

The criminal procedural rules regulating investigation and evidence collection procedures represent an important basis for achieving criminal justice; as they represent the cornerstone for arriving at the truth of the criminal incident in question, which requires the necessity of maintaining the provisions of the criminal procedural rule regulating investigation and evidence collection procedures in a way that ensures their fair application; by imposing the objective penalty represented by the criminal penalty on the person who violates the provisions of these criminal procedural rules Without limiting itself to imposing a procedural penalty that focuses on the defective procedure itself without addressing the person who violated the provisions of this criminal procedural rule.

1. Study Importance.

The study of the topic "Criminal Liability for Violation of Investigation and Evidence Collection Procedures" is of great importance, represented by two basic aspects: the theoretical aspect and the practical aspect. This topic has theoretical importance, which is evident in understanding and knowing the mechanism for maintaining the criminal procedural rule regulating investigation and evidence collection procedures. In practice, the importance of this topic is clearly evident in achieving objective criminal protection for the purpose of maintaining the criminal procedural rule regulating investigation and evidence collection procedures this achieves the application of its provisions in a way that simplifies criminal justice on the ground as a result of this objective criminal maintenance and protection.

2. Study Problem.

When examining the issue of criminal liability, the matter is not subject to dispute regarding its occurrence as a result of violating the provisions of the substantive criminal rule. However, what raises the dispute is the occurrence of criminal liability as a result of violating the criminal procedural rules regulating investigation and evidence collection procedures, which raises the following questions:

1. Does criminal liability arise as a result of violating the criminal procedural rules regulating investigation and evidence collection?
2. What is the practical necessity for criminal liability to arise as a result of violating the criminal procedural rules regulating investigation and evidence collection?
3. What is the objective nature of the violation of investigation and evidence collection procedures?
4. Is objective punishment necessary to maintain the provisions of the rules regulating investigation procedures and evidence collection?

3. Study's Methodology.

In this study, we followed both analytical and comparative approaches to analyze the criminal procedural rules in both Egyptian and Iraqi criminal legislation, examine their provisions, and the consequences of violating the mandate contained in the criminal procedural rules regulating investigation and evidence collection procedures, including the objective penalty imposed on the violating person.

4. Study's Scope.

The scope of this study is determined within the limits of the criminal procedural rules regulating investigation and evidence collection procedures; This is in both the Egyptian penal legislation in the Egyptian Code of Criminal Procedure No. (150) of 1950 as amended; the objective penalty resulting from violating the provisions of these rules is contained in the punitive penal rules in the Egyptian Penal Code No. (58) of 1937 as amended In addition to the Iraqi national penal legislation, within the limits of the penal procedural rules regulating investigation and evidence collection procedures; and the objective penalty resulting from violating them, which is included in the punitive penal rules in the Iraqi Penal Code No. 111 of 1969, as amended, and special laws of a penal nature.

5. Significance & Basis of Investigation & Evidence Collection Procedures.

Investigation and evidence-gathering procedures have an important significance within the scope of a criminal case, as they have a very important impact in determining its course. This must be due to the legal basis inferred from criminal legitimacy, which requires stating the significance of investigation and evidence-gathering and the legal basis for investigation and evidence-gathering procedures, as follows.

5.1. Significance of Investigation & Evidence Collection.

Investigation and evidence collection procedures are of great importance in determining the course of the criminal case and the decision or ruling that will be issued based on it. From this, the basic purpose of these procedures emerges, which lies in two important matters: the first is to verify the accuracy of the report regarding the crime, and the second is to decide the order of its occurrence Which results in searching for the truth of the evidence, removing ambiguity from its circumstances, knowing its perpetrators and the reasons that led to its commission, and preserving the criminal effects obtained that benefit the investigating authorities in the criminal case. All of this reflects the actual importance of criminal procedures related to investigation and collecting evidence and proves them as a basic and indispensable pillar in this field (Ahmad Zagheer, Unknown Al-Issawi, 2013, pp. 168-190).

As for the legal nature of investigation procedures and evidence collection, criminal jurisprudence has differed in adapting them, as one side of it believes that the evidence of proof is either of a general nature related to the details of the criminal incident, which leads to contributing to proving its formative elements, or it may be of a special nature that tends towards explaining who contributed to committing the crime (Muhammad Nasr Muhammad, 2012, pp. 131 -155). Therefore, the evidence of a general nature is extracted by the judge directly from the material incident through his perception and sense While private evidence is that which is extracted from elements of a personal nature and not through the judge's direct awareness and knowledge, but rather through another party, as is the case in witness testimony. Regarding investigation procedures, criminal jurisprudence is divided into two aspects. Some believe that they are the first stage of the criminal dispute and therefore part of the criminal case, while the other side believes that investigation procedures do not fall within the dispute stage or the investigation procedures (Ashour, A.J. 2019, pp. 25-42).

5.2. Legal Basis for Investigation & Evidence Collection Procedures.

Members of the judicial police, within the limits of their jurisdiction, investigate crimes and accept all news and complaints related to them, ensuring the provision of assistance to investigators, investigating judges, police officers and commissioners, within the limits of the information they receive about crimes, which helps in arresting their perpetrators. All criminal procedures they carry out must be recorded in reports signed by them and by those present, as well as indicating the time and place of taking these procedures Papers, reports and everything related to the crime are sent to the investigating judge (Mamoun Muhammad Salama, 1992, pp. 190-249).

A member of the judicial police, in the event that he is informed of a witnessed crime or learns of it, he shall inform the investigating judge and the public prosecution and immediately go to the scene of the incident and take the necessary measures, including recording the victim's statement and asking the accused about the charge against him orally (Ameel Jabbar Ashour, 2020, pp. 324-357). He shall seize the weapons related to the crime and all related material traces and work to preserve them and stabilize the condition of the places and people and everything that is useful in uncovering the crime In this context, the Egyptian Court of Cassation ruled that "the judicial police officer may seek assistance, when carrying out the investigation mission, from secret guides or his assistants from the public authority and anyone who informs him of the occurrence of a crime, and this shall be due to his personal conviction in the information conveyed to him." There is a basic condition in this regard, as the crimes reported or complained of, for which investigation measures will be taken for the purpose of collecting information and criminal evidence related to them, must not be crimes for which the case can only be initiated by a complaint from the victim or his legal representative, in accordance with what is specified by law (Saad Muhammad Abd al-Karim al-Ibrahimi, 2000, pp. 86-157).

6. Objective Penalty for Violating Investigation & Evidence Collection Procedures.

Article (42) of the Code of Criminal Procedure No. (23) Of 1971, as amended, stipulates that it is within the jurisdiction of members of the judicial police to take all necessary means to ensure the "preservation of evidence of the crime." This is, of course, a procedural rule that obliges not to violate criminal evidence. From this standpoint, we will work to clarify the objective nature of violating investigation and evidence collection procedures and the objective penalty that results from violating this criminal procedural rule.

6.1. Objective Nature of the Violation of Investigation & Evidence Collection Procedures.

When a member of the judicial police initiates investigation and evidence collection procedures, he may change the truth in them, such as concealing or highlighting criminal traces, depending on what he seeks to achieve the crime or conceal its evidence, i.e. the act through which he wants to change the truth in criminal traces, which some call "legal traces." Such as hand and foot fingerprints, bites, lips, saliva, blood and hair fingerprints, odor fingerprints, DNA fingerprints, writing fingerprints, and other evidence and traces related to the crime that are useful in proving it (Saad Muhammad Abd al-Karim al-Ibrahimi, 2019, pp. 84-106). However, this may be due to the obedience of the judicial officer to his administrative superior. Is this a justification for determining criminal liability against a judicial control member?

For the purpose of the absence of the responsibility of a member of the judicial police as a result of his failure to preserve criminal evidence due to presidential obedience, to prove the legitimacy of his belief and that this is due to reasonable reasons, and also that he has taken the duty of appropriate caution and accordingly there is no punishment for him if the law does not allow him to discuss the orders issued to him, and the Egyptian and Iraqi judiciary confirmed that the employee's obedience to his superiors must not extend in any case to committing crimes the Iraqi legislator confirmed in the State Employees Discipline Law that in this case, the employee must, for the purpose of exemption from the consequences of the illegal act included in the order of the administrative head, explain to his head the writing of the violation committed in this act, as well as his failure to implement such orders unless their head confirms them in his writing, in which case the head will be responsible for them (Amal Abd al-Rahim Othman, 1991, pp. 400-460).

6.2. Position of Legislation & the Criminal Judiciary on Violating Investigation & Evidence Collection Procedures.

The Egyptian legislator addressed two forms of tampering with criminal evidence, namely "hiding criminal evidence" related to the crime and "providing incorrect information" related to it, and made this crime a misdemeanor crime, for which it was punished as follows: If the crime committed is punishable by death, the penalty for this act "hiding evidence or providing incorrect information" is imprisonment for a period not exceeding two years If the crime committed is punishable by hard labor or imprisonment, the penalty shall be a period not exceeding one year. Otherwise, the penalty shall be imprisonment for a period not exceeding six months (Muhammad Hasan Kazim al-Husaynawi, 2018, pp. 71-98).

As for the position of the Egyptian Court of Cassation's judiciary, "the phrase 'concealing evidence of the crime' contained in Article (145) of the Egyptian Penal Code No. (58) of 1937, as amended, has become a form of the crime of 'assisting the perpetrator to flee'. Therefore, when this act of 'concealing evidence of the crime' is committed, the crime stipulated in this article, 'assisting the perpetrator to flee', is simultaneously committed." From this we conclude that the Egyptian legislator in the Penal Code, as well as the judiciary of the Court of Cassation, made each of them, tampering with criminal evidence, a criminal case linked to "helping the perpetrator escape from the face of the judiciary" (Mustafa Magdi Harjah, 1998, pp. 1095-1099). Therefore, the case of concealment or providing incorrect information to the relevant investigative authorities is something that achieves the "crime of aiding escape." The Egyptian legislator did not increase the penalty if the crime was committed by an employee of the "judicial police officer" specifically rather; he generally left it subject to the general provisions contained in the Egyptian Penal Code (Ashour, A.J. 2021, pp. 1318-1326).

Regarding the position of the Iraqi legislator on maintaining the procedural criminal rules related to investigation procedures and collecting evidence, the Iraqi legislator punished with imprisonment and a fine any person who changed the condition of persons, objects or places or provided incorrect information regarding a crime that had occurred or concealed its evidence with the intention of misleading the judiciary; the Iraqi legislator was not satisfied with that, as he made the penalty of imprisonment and a fine, or one of these two penalties, for anyone who conceals, embezzles, destroys, or changes a document or criminal material submitted to the investigating authority or the court, with the intention of misleading the judiciary or the investigating authority He increased the penalty and made it imprisonment for a period not exceeding seven years if the perpetrator was an employee or assigned to a public service who was entrusted with those things or entrusted with them by virtue of his work (Ashour, A.J. 2019, pp. 285-299).

Regarding the position of the Federal Court of Cassation's judiciary, there are principles that can be extracted from its decisions, including: "The invalidity of the ruling paragraph containing the report convicting the accused employee to simple imprisonment in accordance with the provisions of the second part of Article (250) of the Penal Code; and in light of the articles of association (47, 48, 49), it is fundamental, as the expanded penal body in the Federal Court of Cassation required tightening the penalty and informing it of the appropriate limit and not citing Article (144) of the Penal Code as evidence" (Amal Abd al-Rahim Othman, 1991, pp. 400-460). The decision to suspend the sentence was overturned and considered unjustified in this regard. Accordingly, what the Federal Court of Cassation has done is to confirm what the legislator wanted in this article in its second part, which requires that the penalty be increased if the perpetrator is an employee or assigned to a public service (Saad Muhammad Abd al-Karim al-Ibrahimi, 2000, pp. 86-157).

This matter naturally applies to a member of the judicial police in the event of his breach of the investigation procedures and collection of criminal evidence. In another decision of the Federal Court of Cassation, the expanded criminal body decided that "the accused changing his statement by recording statements different from what he submitted before the investigating court with the intention of misleading the judiciary is not considered false testimony, but rather the provisions of Article (248) related to misleading the judiciary apply to such an act". This means that the Federal Court of Cassation has distinguished between providing information and testimony, and therefore providing false information falls under the penalty of misleading the judiciary, and the provisions of Article (248) apply to it accordingly. This, of course, has a direct connection related to the investigation and collection of criminal evidence in terms of its validity and its becoming a sound criminal ruling (Muhammad Hasan Kazim al-Husaynawi, 2018, pp. 71-98).

CONCLUSION

First: Results:

1. Criminal jurisprudence differs regarding the nature of investigation procedures and the collection of criminal evidence. Some believe that this nature is general and related to the details of the criminal incident, such that the criminal judge can extract from it the truth of the incident and prove its formative elements. Another side believes that it is of a special nature related to the person who committed the crime, and therefore the judge arrives at the truth by stating the nature of the perpetrator's person and not by his direct personal perception.
2. The criminal procedural rules contained in the text of Articles (42) and (43) of the Code of Criminal Procedure No. (23) of 1971, as amended, represent the binding legal basis for preserving criminal evidence and carrying out the necessary investigative procedures to reach the truth of the criminal incident.
3. Criminal liability is established as a result of violating the criminal procedural rules regulating investigation and evidence collection procedures, by applying the objective penalty contained in the penal rules contained in the penal texts; and included in the case of "misleading the judiciary" adopted by the Iraqi legislator in Chapter Two of Chapter Four of Book Two of the Penal Code No. (111) of 1969 as amended.
4. The inadequacy of the prison sentence stipulated in the penal treatment adopted by the Iraqi legislator in Articles (248) and (249); and that what was stated about tightening the penalty to "imprisonment for a period not exceeding seven years" in Article (250) was limited to the case of the perpetrator being "an employee or assigned to a public service."

Second: Recommendations:

1. We call upon jurists and commentators of criminal law to hold scientific legal seminars and lectures, highlighting the importance of maintaining the criminal procedural rule regulating investigation and evidence collection procedures; and what the imposition of objective punishment represents on a person who violates the provisions of this rule, through the establishment of criminal liability on him, which in turn achieves the preservation and protection of public and private rights and freedoms.
2. We believe that it is advisable for the Iraqi legislator to amend the text of Article (248) of the Iraqi Penal Code No. (111) of 1969, as amended, by adding the following paragraph to it: (The penalty shall be imprisonment and a fine if this occurs in a criminal incident that is considered a felony in terms of its seriousness).
3. We vote for the Iraqi legislator to amend the text of Article (249) of the Iraqi Penal Code No. (111) of 1969, as amended; by adding the following paragraph (The penalty shall be imprisonment for a period not exceeding ten years if the purpose of that is to change the truth in a criminal incident that is

considered a felony in terms of its seriousness; and the perpetrator shall be punished with the same penalty as the felony if the criminal result is achieved).

4. We call upon the Iraqi legislator to take into account the procedural penalty represented by non-existence, invalidity, inadmissibility and lapse, which affects the defective procedural work itself, in addition to the objective penalty that a person who violates the criminal procedural rule regulating investigation procedures and collecting criminal evidence receives; This is to maintain the application of this criminal procedural rule.

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