

Self-proof drug crimes

ذاتية إثبات جرائم المخدرات

Assistant Professor Dr

Kadhim Abdullah Nazzal Al-Mayahi

Al-Hikmah University College

almahkadhun@gmail.com

DOI: <https://doi.org/10.70411/MJLS.4.1.2026263>

تاريخ القبول: 2025-07-13

تاريخ المراجعة: 2025-07-11

تاريخ الاستلام: 2025-06-07

Abstract:

Criminal evidence rules in various legislative systems reflect many levels of civilisation and intellectuality in societies. The criminal system should contribute to a balance between accusations of crime and human rights, especially since criminal evidence rules are a key pillar of all rules of criminal procedure.

A subjective study of the evidence in drug-related crimes holds significant legal importance, particularly because such cases pose a grave threat to individuals and communities. As a result, most legislation seeks to establish the perpetrators of drug offences in preparation for their submission to the competent authorities.

The legal nature of the offence lies in its classification as a crime, particularly when it involves psychedelic substances. A substantive legal framework must be provided for this offence, especially since the evidence of drug-related crimes, regardless of form or pattern, is subject to the absolute discretion of the trial judge. The same evidence governs the principle that the judge is free to form their conviction based on any evidence as long as this evidence is legitimate and leads to the truth.

The Iraqi legislature has addressed the issue of proving drug offences in the Iraqi Criminal Procedure Code No. 23 of 1971, the Penal Code No. 11 of 1969 (in force), and the review of the Narcotic Drugs and Psychotropic Substances Act No. 50 of 2017.

The legislator also determined that drug offences are proven through the criminal judge's direct means of establishing the offence, namely confession, witness testimony, experience and inspection, as well as indirect means of evidence.

The study concluded with a series of recommendations, the most important of which was the emphasis on the preventive role in combating drug-related crime. It also recommended the introduction of special legislative provisions stating that such evidence should be considered criminal evidence, given its scientific and practical relevance.

Keywords: drugs, proving the crime, psychotropic substances, discretionary authority, direct means, indirect means.

الملخص

قواعد الإثبات الجنائي في مختلف الأنظمة التشريعية تعكس العديد من المستويات الحضارية والفكرية في المجتمعات، ويتعين أن يساهم النظام الجنائي في تحقيق التوازن ما بين الاتهام بارتكاب الجريمة وما بين حقوق الإنسان، وبخاصة أن قواعد الإثبات الجنائي تمثل ركيزة رئيسية تقوم عليها جميع قواعد أصول المحاكمات الجنائية

تحتل دراسة موضوع ذاتية إثبات جريمة المخدرات أهمية قانونية كبيرة، ولا سيما أن قضايا المخدرات تمثل تهديد جسيم على الأفراد والمجتمعات، دفع غالبية التشريعات نحو السعي إلى إثبات مرتكبي جرائم المخدرات تمهيداً لتقديمهم للسلطات المختصة.

وتتمثل الطبيعة القانونية المتعلقة بذاتية إثبات هذه الجريمة في وجوب توافر صفة الجريمة (بأن تكون مخدر)، كما يتعين توافر الإطار الموضوعي لهذه الجريمة، وبخاصة أن إثبات جريمة المخدرات في جميع صورها وأنماطها مسألة تدخل في السلطة التقديرية المطلقة لدى قاضي الموضوع، حيث يحكم ذات الإثبات مبدأ حرية القاضي في تكوين عقيدته من أي دليل طالما كان هذا الدليل مشروعاً ومؤدياً الوصول إلى الحقيقة

والمشرع العراقي عالج مسألة إثبات جرائم المخدرات في قانون اصول المحاكمات الجزائية العراقي رقم (23) لسنة 1971 المعدل، وكذلك قانون العقوبات رقم 11 لسنة 1969 النافذ، وما استعرضه قانون المخدرات والمؤثرات العقلية رقم (٥٠) لسنة ٢٠١٧.

كما قرر المشرع أن إثبات جرائم المخدرات تتم بواسطة استعانة القاضي الجنائي قد بالوسائل المباشرة لإثبات تلك الجريمة التي تتمثل في الاعتراف، وشهادة الشهود، والخبرة، والمعاينة، إلى جانب الوسائل غير المباشرة التي تتمثل في القرائن.

وخلصت الدراسة إلى مجموعة من التوصيات من أهمها التأكيد على الدور الوقائي تجاه مكافحة جرائم المخدرات، وكذلك استحداث نصوص تشريعية خاصة تنص على اعتبار القرائن كدليل من أدلة الإثبات الجزائية، نظراً للأهمية التي تكتسبها على الصعيدين العلمي والعملية.

الكلمات المفتاحية: المخدرات، اثبات الجريمة، المؤثرات العقلية، السلطة التقديرية، الوسائل المباشرة، الوسائل غير المباشرة.

Introduction

It is well established that the rules of criminal evidence are generally found in all legal systems, particularly within the penal system. These rules have evolved in light of the cultural and intellectual developments in societies, based on the legislator's role in preserving the values of society and balancing the rights of individuals with the public interest.

Drug offences are prohibited at the legislative level because of their serious impact on national security and are one of the most prominent security issues facing all communities in both developing and developed societies.

Several official statistics issued by the United Nations Office on Drugs and Crime (UNODC) indicate a sharp increase in the smuggling of various narcotic substances. For example, Captagon increased by 3,380% between 2019 and 2023, while seizures of amphetamine-type stimulants doubled, reaching approximately 86 tonnes in 2021¹.

The rules of proof for drug crimes are distinguished by their specificity, as such crimes depend on many material and moral elements, including the need to prove that the seized substance is a legal narcotic substance.

In light of these challenges, the Iraqi legislature has established a number of criminal evidence rules that offer special advantages to other branches of law, considering the different legal trends relating to criminal evidence systems.

First: The importance of the study:

The importance of the study is as follows:

The study is of great legal importance, particularly as drug issues pose a grave threat to the national community, especially given their expansion and increasing prevalence. This situation prompts the majority of states to pursue legislation aimed at confronting these issues, addressing their gravity, and deterring perpetrators.

To examine its importance, it is essential to understand that drug offences have a serious impact on individuals and communities. Therefore, the majority of legislation has sought to identify the perpetrators of drug offences in preparation for their referral to the competent authorities.

Given the seriousness of drug crimes to individuals and societies, most legislation has sought to confront drug offenders in preparation for bringing them to criminal justice.

¹ . (United Nations Office on Drugs and Crime (UNODC) , Drug Trafficking Dynamics Through Iraq and the Middle East (2019–2023), July 2024, Regional Office for the Middle East and North Africa, p. 6).

The subject of proving drug crimes is an independent topic. There are various types of evidence that can directly lead to convictions in such crimes, and this evidence must be sufficient to prove the charge "beyond reasonable doubt", whether the offence involves drug possession, trafficking, cultivation, or manufacturing.

The specific importance of proving these crimes increases, despite the fact that the subject of proving drug crimes is regulated under the general criminal laws enacted by the Iraqi legislature. These laws address such crimes through both procedural and substantive aspects, including the Iraqi Code of Criminal Procedure No. (23) of 1971 (as amended), the Penal Code No. 11 of 1969, and other special laws such as the Narcotics and Psychotropic Substances Law No. (50) of 2017, among others.

Second: Objectives of the study:

The study seeks to achieve the following objectives:

1. To describe the concept of criminal proof in Iraqi legislation, reviewing the legislator's approach to evidentiary systems.
2. To examine substantive requirements for the establishment of drug offences under Iraqi legislation.
3. To address the legal controls of evidence in drug-related offences.
4. To identify the means of establishing drug offences and their independence within Iraqi legislation.

Third: The problems of the study:

The study raises many problems:

Drug offences are increasingly problematic, both in practice and in practice, given their increase at national and international levels. On the legal (theoretical) side, the provisions and rules on the evidence of a drug offence were particularly subjective, as the criminal evidentiary system sought to balance the human rights of the accused perpetrator with the State's right to impose punishment.

The study highlights several challenges, in particular the fact that Iraqi legislation has the advantage of being traditional and addressing the provisions on countering and proving drug crime. However, the extent to which such traditional legislation is appropriate in order to accommodate all forms of drug offences, given their role in criminal evidence, raises questions in light of recent global technical and technological developments.

The study raises a number of questions:

1. Is the concept of criminal evidence for drug crimes in Iraqi law specific?
2. What are the legal requirements for proving a drug crime?

3. Is the mere availability of evidence of drug crimes sufficient to prove a charge?
4. Does the Iraqi criminal judge have discretion over evidence of direct and indirect drug crimes?

Fourth: Methodology of the study:

We have relied on the analytical-descriptive approach, which aims to describe the topic of the study in its various substantive aspects and to review its details in light of Iraqi legislation, as well as describing the approach adopted by the Iraqi legislature towards establishing drug offences.

Fifth: Study Plan:

This study and research review the subject of self-evidentiary criminal offences in drug-related cases. We have divided the discussion into four sections. In the first section, we addressed the concept of criminal evidence. In the second, we examined the legal nature of evidence in drug offences. The third section focused on the admissibility of such evidence under Iraqi legislation. Finally, in the fourth section, we analysed the evidence of drug offences specifically within Iraqi legislation.

First Part

What is criminal proof?

The rules of criminal evidence in legal systems reflect many intellectual and civilisational levels of society as a whole. The criminal system must contribute to balancing the accusation of a crime with the human rights of the accused and society's right to impose punishment. This reflects the correlation between law and society ¹.

The Rules of Criminal Evidence are of paramount importance, as one of the main pillars of all rules of criminal procedure, from the moment the offence occurs and is established until a judicial judgement is rendered. Therefore, the Rules of Criminal Evidence have a significant role to play in all stages of the criminal proceedings ².

We will review the concept of criminal evidence by dividing our study as follows:

First requirement: The concept of criminal proof in Iraqi legislation.

Second requirement: The Iraqi legislator's criminal approach to evidentiary systems.

¹ .(Taya, Hani Mohammed. (2011). Modern Methods of Forensic Proof: "DNA-Brain Imprint" (Doctoral thesis, Cairo University), p. 5).

² .(Agueda, Mohammed Abu Al-Ala (2010-2011), Commentary on the Code of Criminal Procedure, Book II, Trial Stage and Methods of Appeals against Sentences, Second Edition, Cairo, p. 579).

First requirement

The concept of criminal proof in Iraqi legislation

The orientation of criminal law jurisprudence in reflecting the concept of criminal proof varies due to differing perspectives among scholars and the lens through which the concept is examined ¹.

Evidence is generally defined as the use of various means and methods to uncover the truth about a case or fact ².

Some jurisprudence also indicates that criminal evidence is intended to be established by the criminal procedure authorities based on a fact of legal significance, using the methods and facts established by law ³.

The meaning of criminal proof is also "the result achieved through the use of these means, i.e., the production of evidence ⁴".

There is a tendency in criminal jurisprudence to seek the truth by using all legal means, whether of a traditional or scientific nature, in order to uncover the facts as recognized by the legislature. Criminal evidence is governed by special rules and provisions that are independent of other legislation⁵.

For our part, criminal proof can be defined as the presentation of evidence before a criminal court, based on the provisions of the law and the judge's conviction, with the aim of uncovering the truth.

Second requirement

Iraqi legislator's criminal approach to evidentiary systems

Criminal systems differ according to the evidentiary systems they adopt, with each system having its own features. Some positive criminal legislation adheres to the "legal evidence system", which can be traced back to the late reign of the Roman Empire. This system is

¹ .(Abed, Abdel Hafiz Abdel Hadi, (1991), criminal evidence by "comparative study", Arab Renaissance House, Cairo, p. 64).

² .(HILIE (F.),1866, Traite D'instruction criminelle,1V,2edit., paris,N 1763, p.330).

³ .(Hosni, Mahmoud Najib (2018), explanation of the Code of Criminal Procedure in accordance with the most recent legislative amendments, University Publications House, Alexandria, sixth edition, p. 838).

⁴ .(Matuli, Taha Ahmad Taha (2007),(scientific evidence and its impact on criminal proof) (doctoral thesis, University of Tanta), p. 259).

⁵ . (Bilal, Ahmed Awad, 2013), the rule excluding evidence obtained illegally in comparative criminal proceedings, the Arab House of Ennahda, Cairo, p. 7).

designed to benefit the accused, as no one may be convicted unless the evidence meets the standards set by the legislature, providing sufficient reassurance of its reliability ¹.

On the other hand, other legislation adopted a "free and self-convincing system of proof" in criminal court. Under this approach, all types of evidence are admissible, without the judge's adherence to the provisions of the law ².

Finally, under the system of scientific evidence, the criminal judge uses modern scientific evidence to uncover the truth. The scientific means of establishing the crime raise two main problems: the legality of the evidence and its probative value ³.

With regard to the approach adopted by the Iraqi legislator in criminal evidence, it follows the free system of proof, whereby the criminal judge has discretion in forming their conviction and belief within the framework of the law. Further, the Iraqi legislator also embraces the system of scientific evidence in criminal matters, as stated: "The court shall rule on the basis of its conviction that it has evidence submitted in any role of investigation or trial, namely, confirmation, witness testimony, investigation records, records, other official statements, expert and technical reports, evidence and other evidence prescribed by law" ⁴.

Second part

The legal nature of proof of drug offences

The criminal legislator alone formulates several provisions and rules that play a significant role in identifying illegal behaviours that constitute an attack on the interests and values that the legislator seeks to protect. Consequently, any crime, including drug offences, is established in accordance with the provisions of the Act.

We will address the legal nature of this crime's evidence as follows :

First requirement: Statutory criminality.

Second requirement: Substantive framework for establishing a drug offence.

¹ .(Mustafa, Mahmoud Mahmoud (1977), Proof in Criminal Articles, Part I, First Edition, Arab Renaissance House, Cairo, p. 8).

² .(Al Bahr, Mamdouh Khalil (2004), Scope of the criminal judge's freedom to form his conscientious conviction, Sharia and Law Journal, United Arab Emirates University - Faculty of Law, No. 21, p. 329).

³ .(Sharif, Mr. Mohamed Hassan, 2002), the general theory of criminal evidence, a comparative study (doctoral thesis, University of Menoufia, p. 67).

⁴ .(article 213 (a) of the Iraqi Code of Criminal Procedure).

First requirement

Legislative availability of offence

Under Act No. 50 of 2017 on Narcotic Drugs and Psychotropic Substances, the Iraqi legislature defines drugs or narcotic substances as : any natural or synthetic substance listed in Tables (I), (II), (III) and (IV) annexed to this Act ¹.

The Iraqi legislature has not defined narcotics solely by identifying their types, factions, derivatives and vehicles, but rather in accordance with lists attached to legislation dealing with drug offences.

In doing so, the Iraqi legislator followed the course of most criminal legislation by refraining from explaining the concept of narcotic drugs. This is due to the difficulty of providing an all-encompassing definition, which may even be impossible. Therefore, the legislation formulated specific schedules to identify the crime of narcotic drugs, indicate their types, and clarify the meaning of the drug offence ².

The Iraqi legislature has indicated that drug offences involve narcotic substances, psychotropic effects, or precursor chemicals, In other words, the act or behaviour is directed toward substances that fall under the definition of narcotic drugs or psychotropic substances, including their precursors, in accordance with the provisions of the law ³.

Drugs are known as a group of substances that poison the nervous system and are prohibited from being circulated, cultivated, sold or manufactured except for purposes specified by law. They may only be used by those authorised to do so ⁴.

It is worth mentioning that the Iraqi Narcotics Law provides a clear and specific classification of narcotic substances in the annexed tables, This clarity serves as an important safeguard for the accused, as it prevents ambiguity and reduces the chance of escaping punishment.

When recounting his judgement, the criminal judge is obligated to indicate the seized substance and whether it constitutes a narcotic drug, which requires the use of expert analysis

¹ .(the lists of narcotic substances adopted by the Sole Convention on Narcotic Drugs of 1961 and its amendments) (article 1/I of Act No. 50 of 2017 on Narcotic Drugs and Psychotropic Substances of Iraq ances).

² .(Abdal Husseini, Qader aham, 2010).

³ .(article 1/I-II-III of Act No. 50 of 2017 on narcotic drugs and psychotropic substances).

⁴ .(Hussein, Ebsam Imran (2024), Penal Liability for Drug Cultivation in Iraq, Journal of Babylon University of Humanities, vol. 32, No. 2, p. 17).

¹,The tribunal, therefore, relies on laboratory analysis to ascertain the narcotic nature of the seized substances before deciding on the case ².

Second requirement

Substantive framework for establishing a drug offence

In order to establish the crime of narcotic drug offences, the act must fall within an objective and regulatory framework. This crime is established under many conditions, namely: A drug offence must be present, not merely potential; accordingly, no action may be taken against future offences, even if there is a possibility that such an offence may occur in the future ³.

The use of crime refers to criminal activity and conduct involving abuse or illicit trafficking, such as "the cultivation of drugs, trade in narcotic drugs, psychotropic substances or precursor chemicals contrary to the provisions of the law" ⁴.

The concept of drug use refers to the repeated use of a substance to the extent that its effects cause harm to the user or lead to social and economic consequences resulting from the abuse ⁵.

Drug trafficking entails engaging in numerous commercial operations and adopting it as a habitual profession, using the same criminal activity as a means of subsistence ⁶.

The legal avenues of drug trafficking are expanded where they include production, manufacture, extraction, preparation, possession, submission and offer for sale, distribution, purchase, sale, delivery of any qualities, brokering, dispatch, transit, transport, import, export and intermediation between the producer and the buyer ⁷, One example is the decision of the Iraqi Federal Court to criminalise the accused in accordance with Article 28/I of the Narcotic Drugs and Psychotropic Substances Act No. 50 of 2017 for the offence of possession of substances ⁸.

¹ .(Mohamed, Mr. Khalaf, (1987), Drug Enforcement, Seizure, Search and Sentencing Rules, 2nd Edition, Cairo, p. 10).

² .(Saab, Mohamed Mari (2007), Drug Offences, Zain Al-Haqiyah Publications, Beirut, Lebanon, p. 265).

³ .(Abu Amer, Mohamed Zaki (1986), Criminal Procedure, University Publications House, p. 684).

⁴ .(article 1, paragraph 4, of Act No. 50 of the 2017 on Narcotic Drugs and Psychotropic Substances of Iraq).

⁵ .(Hussein, Ebsam Amran (2024), op. cit., p. 18).

⁶ .(Mohammed, Mr. Khalaf, 1987), op. cit., p. 18).

⁷ .(casual, Faraq Abboud, (2011), narcotics and their role in human crime, Law Letter Journal, third year, Issue II, p. 167).

⁸ .(Iraqi Court of Cassation, Decision No. 16166, Penal Authority/2019, 22/9/2019).

The promotion or possession of narcotic drugs is also considered a criminal activity. While criminal activities of the same offence vary in their material and moral components, they converge on the subject of the punishable offence of narcotic drugs ¹.

Drug offences occur once the substance is seized. In particular, the seizure of the substance is a material element of the crime, as is the case with offences related to abuse or trafficking.

A school of jurisprudence suggests that the seizure of the narcotic substance is not important to the validity of the conviction of the accused. However, the judge must prove that the criminal conduct was directed toward a narcotic substance. In this view, the criminal judge may be convinced of any evidence raised in the proceedings, whether or not the narcotic substance was actually seized ².

In contrast, another school requires that the seizure of the narcotic substance is necessary for a valid conviction, based on established judicial decisions ³.

Establishing the crime of narcotic drugs in all its forms and patterns is a matter of absolute discretion of the trial judge, based on the conclusive evidence presented in the case. Such evidence may include the accused's confession, witness testimony, expert reports, documentary evidence, findings from judicial control authorities, photographs, audio recordings, and the use of police dogs. However, it is inappropriate to rely on recordings, photographs and police dogs as primary evidence that conclusively confirms the charge ⁴.

Third Part

Proof of drug crimes in Iraqi legislation

Criminal proof in Iraqi legislation - like in other legislation - is governed by the principle of the judge's freedom to form their belief based on any evidence, as long as the evidence is legitimate and logically supports the conclusion reached. Accordingly, the criminal judge is not restricted - as a general principle - by certain evidence or methods of evidence ⁵. Thus, while freedom of proof in the criminal system is a well-established principle, it must be addressed by the legislator by regulation.

¹.(Saab, Mohamed Mari (2007), op. cit., p. 265).

².(Aldhi, Edward Ghali (1978), Drug Offences in Egyptian Legislation, Ennahda Arab House, Cairo, p. 34).

³.(Eid, Mohammed Fathi (1408H), Offence of Drug Abuse in Comparative Law, J2, Publisher Arab Center for Security Studies and Training, Riyadh, Saudi Arabia, p. 34).

⁴.(Eid, Mohammed Fathi, 1408 AH, op. cit., p. 63).

⁵.(Kabeesh, Mahmoud (2011), summarized in the commentary on the Code of Criminal Procedure "Part II", Ennahda Arab House, Cairo, p. 117-118).

Until the legality of evidence in narcotic drug crimes is established in Iraqi legislation, it is necessary to address this through two demands:

First requirement: The concept of evidence in proving a crime and its importance.

Second requirement: The legality of evidence of a drug offence.

First requirement

Evidence's concept of proof of crime and its relevance

The Criminal Manual is for a tool that helps a judge attain the judicial certainty upon which their judgement is based when confirming the charge before them ¹.

The evidence is also reflected in the process of criminal proof, that it is the case from which the judge draws evidence in order to demonstrate his conviction and belief in the judgement reached ².

According to some scholars, evidence includes anything that leads to the manifestation of the truth in order to establish a public or private right. It also encompasses any evidence that would lead to the authenticity of the parties' claims in criminal proceedings, thereby aiding in the disclosure and manifestation of the truth ³.

The definition of criminal evidence, as inferred from the foregoing jurisprudence, is that it is a means by which a criminal judge obtains the truth in accordance with the provisions of the law.

The significance of evidence in the Criminal Code appears to be the means by which a judge uncovers the truth about a committed crime, identifies the perpetrator, and establishes responsibility. The criminal judge analyses and balances the evidence with the aim of applying the law to the facts, thereby protecting society and achieving justice ⁴.

At the legislative level, the Guide is important as it represents an objective that the legislator seeks to establish. It serves as a means of bringing the Guide to the judge's attention,⁵ allowing the judge to draw on it as a source of evidence in the search for truth ⁶.

¹ . (Mahdi, Abdel Rajouf (2007), Explanation of the General Rules of Criminal Procedure, vol. II, Publisher of the Lawyer's Library Project, Cairo, p. 1404).

² .(Salama, Maamoun (2000), Criminal Procedure in Egyptian Legislation, Part II, Arab Renaissance House, Cairo, p. 207).

³ .(Ferman, Abbas Hikmat (2011), evidence and its role in the criminal evidence, Koufa Journal of Legal and Political Sciences, vol. 9, p. 177).

⁴ .(Taia, Hani Mohammed, 2011), op. cit., p. 7).

⁵ .(Gamier,T(1992), la défense des droits de la personne dans la recherche moderne des preuves en procédure pénale français,p1.)

⁶ .(Murray v. United States Carter v. 487 U.S. 533, 108 S. Ct. 2529 (1988

Second requirement

Lawfulness of evidence of drug crime

The rules for establishing drug offences are based on many legitimate means and procedures that respect individual rights and freedoms. The location of the offence must have a substance classified as a drug, and the criminal enterprise must be involved in illicit abuse and trafficking. The seizure of the substance requires the court to ascertain the legality and integrity of both the evidence and the crime scene. Additionally, the legal proceedings related to the same offence must remain uncontested.

Legal safeguards concerning the rights and dignity of the accused must be ensured, along with the rights of the defence and the impartiality of the judiciary guaranteed. Consequently, human rights and fundamental freedoms must not be sacrificed in order to confirm the effectiveness of criminal proceedings ¹.

The search for and collection of evidence must also take into account the rights of the accused to defence, as well as all measures that would safeguard their human dignity ².

Accordingly, in the *Murray V. United States* case, the facts of which relate to the follow-up and search of the accused's car by the Federal Investigation and Counter-Narcotics, marijuana was found inside. The search was conducted without judicial authorisation. Subsequently, the officers applied for a search warrant for the same warehouse without informing the competent judge that they had already broken into the building. The authorisation was issued on the basis of what was stated, as officers returned to the warehouse, seized the drugs, and presented them in court as evidence of conviction ³.

The Federal Supreme Court found the evidence obtained under the search procedure to be unlawful, as it could be accepted by the court as long as the judicial police authorities issued independent judicial authorisation to conduct the search.⁴

¹ .(Taia, Hani Mohammed, 2011), op. cit., p. 4).

² .(Gamier,T(1992), la défense des droits de la personne dans la recherche moderne des preuves en procédure pénale français, p1).

³ .(Murray v. United States Carter v. 487 U.S. 533, 108 S. Ct. 2529 (1988).

⁴ .(Borrego,J.(2010), the impact of acceptance of electronic evidence before and after 2006 federal rules of evidence on criminal cases, thesis of doctor at of philosophy, Walden university, P.15.)

Fourth Part

Proof of drug offences under Iraqi legislation

The court shall rule based on its conviction, supported by evidence presented during either the investigation or trial stages. This includes confirmation, witness testimonies, investigation records, other official statements, expert and technical reports, and other evidence prescribed by law ¹.

Thus, the proof of drug offences in accordance with the provisions of Iraqi legislation relies on many forms of legally prescribed evidence, as stipulated by the Iraqi legislature. This will be explained under two demands:

First requirement: Direct legal means of establishing a crime.

Second requirement: Indirect legal means of establishing a crime.

First requirement

Direct legal means of establishing a crime

Direct legal evidence refers to evidence that is directly related to the case or incident, such as the testimony of a witness who saw, heard or touched the object of the crime ².

The means of direct criminal proof are as follows:

First - Recognition (Approval)

Confession refers to a self-incriminating statement made by the accuse. Thus, a ³, confession issued by a third party is considered a testimony⁴.

Under the Iraqi Code of Criminal Procedure, the Iraqi legislator granted judges absolute discretion in evaluating confessions. However, this discretion is contingent upon the court being assured that the confession in question is not proven to be false⁵.

Further, the Iraqi legislator has given the trial court sole discretion when it is sufficiently assured that the confession is corroborated by other evidence. The Iraqi Court of Cassation ruled that "recognition alone is not sufficient to govern unless it is supported by a presumption".⁶

¹.(art. 213, para. (a), of the Iraqi Code of Criminal Procedure).

².(Borrego,J.(2010), the impact of acceptance of electronic evidence before and after 2006 federal rules of evidence on criminal cases, thesis of doctor at of philosophy, Walden university, P.15.)

³.(Hosni, Mahmoud Najib, 2018), op. cit., p. 904).

⁴.(Salman, Ahmed Hassan (2020), Role of Confession in Criminal Proceedings, Journal of the Faculty of Law for Legal and Political Sciences, Iraq, vol. 9, No. 35, part 2, p. 258). n)

⁵.(article 213, paragraph (c), of the Iraqi Code of Procedure).

⁶.(Iraqi Discrimination No. 2154/Crimes/1981 on 5/12/1981, Judicial Provisions, p. 4, year 12, p. 123).

At the same time, the Iraqi legislator has given the Court of Cassation very broad authority to monitor the court's assessments and legal applications in all formal and substantive aspects. The Committee may decide to overturn the acquittal of the accused and to return the case papers to the trial court for conviction or retrial if it is satisfied that the statements contained in the case are valid. Likewise, it may overturn the conviction of the accused, determine the accused's innocence ¹, or release or return the papers to the court for further trial if there is doubt about the validity of the confession ².

Accordingly, he stated that "a statement reversed by the accused and not corroborated by evidence and falsely by the report of the Technical Investigation Police, and if the facts and testimony belie him ³".

It also requires that the accused's confession be related to legitimate and valid proceedings. So, the accused's confession is null and void if it pertains to a procedure that is itself null and void and affects the accused ⁴.

However, a recognition that is independent of the null and void procedure does not lead to the nullity of subsequent recognition, as long as it stands on its own ⁵.

With regard to confession obtained through material or moral coercion, a fundamental question arises. Material coercion may be done by means of material means used for the purpose of coercion and forcing the accused to confess, namely torture or cruel treatment⁶, Moral coercion, on the other hand, refers to moral means that exert pressure on the will.

It is well established in jurisprudence that any evidence obtained through physical or moral coercion is invalid, particularly since moral coercion can cause the victim to experience anxiety and fear, leading to a lack of resistance ⁷.

Thus, according to Article 127 of the Code of Criminal Procedure, the Iraqi legislator stated that "no unlawful means shall be used to influence the accused to obtain his confirmation. Illicit means of abuse, threat of abuse, lure, promise, promise, psychological impact and use of drugs, intoxicants and drugs are considered ".

¹.(Frerman, Abbas, Abbas, 2008).

².Recognition in Penal Evidence, Journal of the Centre for Kufa Studies, vol. 1, No. 7, p. 169.

³.(Iraqi Discrimination No. 3482/Crimes/1974, 10/11/1975, Judgement Code, 4, year 6, 1975, p. 133).

⁴.(Ghanam, Mohammed Ghanam (2008-2009), lectures in criminal proceedings, Mansoura University, p. 498).

⁵.(Salman, Ahmed Hassan (2020m), op. cit., p. 296).

⁶.(Al-Maamouri, Mohammed Ashour Khalaf, (2023) Validity of confession resulting from coercion, Law Letter Journal, vol. 15, No. 5, p. 426).

⁷.(Fallett,(D.)et précis(J.), (2010), de droit pénal et procédure pénale ,Presses universités de France ,P.590.)

Article 218 of the aforementioned Act further stipulates that: "A confession is required not to have been issued as a result of coercion".

For our part, we maintain that any claim to the contrary constitutes a threat to rights and freedoms and an explicit violation of the principle of legality, as reliance on physical and moral coercion constitutes a blatant encroachment on legal guarantees.

Second - Witness testimony

Witness testimony is an important piece of evidence before the Tribunal in practice. In terms of its influence on the Tribunal's doctrine and its development, it may come next to other major forms of evidence ¹, Some jurisprudence defines testimony as evidence based on what the witness has personally seen or heard, since the witness must have direct sensory knowledge of what they are attesting to², It is also known as a report issued by a person regarding a case they directly observe through their senses ³

Many conditions must be met for a witness's testimony to be accepted as criminal evidence. The testimony must focus on facts related to the prosecution of the truth, the establishment of the offence, and whether it can be attributed to the defendant or not.⁴

The witness must not be involved in the composition of the court or assist it in any capacity. Additionally, the witness must be a competent person and must have perceived the fact through one of their senses.⁵

The criminal judge has great conviction to prove the testimony of one witness. However, Iraqi court rulings have held that individual testimony cannot be relied upon unless it is supported by other evidence. It was ruled that "a single testimony is insufficient if it does not support its spouse or evidence ⁶".

The Court of Cassation has also settled its decision not to rely on testimony recorded by the police station, while giving clear evidence of the testimony written by the investigator or the investigating judge—even when that testimony contradicts statements made in court. This is referred to as "taking the testimony written before the investigating judge and reversing it before the court ⁷".

¹ .(Salama, Maamoun (2000), op. cit., p. 222)

² .(Al-Shud, Haider Mekdad Al-Saqr, Khaleqi, Abdul Fatah, (2023), Certificate as a Means of Establishing Iraqi Penal Law as Compared to French Law and Islamic Law, Tikrit University Journal of Law, vol. 8, No. 1/2, p. 20).

³ .(Hosni, Mahmoud Najib, (2018), op. cit., p. 881).

⁴ .Gokhdar, Hassan). n), op. cit., p. 176).

⁵ . (art. 168, para. a-b) and art. 169 of the applicable Code of Criminal Procedure).

⁶ .(Iraqi Discrimination No. 1002 of 25/11/1975, Set of Judicial Provisions, p. 4, p. 6, p. 247).

⁷ .(Iraqi Discrimination No. 1576, 20/3/1976, Set of Judicial Provisions, 1, 8, p. 222).

Third - experience

Expertise is intended as a technical opinion from a technical expert on a fact that is important in criminal proceedings ¹, It is a means of proof entrusted by the judge to qualified individuals with technical or scientific competence and knowledge to carry out research and investigations that the judge cannot carry out independently. The expert subsequently reports their findings to the court ², Experience in criminal matters holds great legal value, as technical issues may arise during the proceedings on which the adjudication of the case depends. The judge cannot rule on it, as doing so requires technical competence that the judge may lack ³.

As for the authenticity of the expert's report, the Iraqi legislator considers prepared the experts' reports as evidence ⁴.

Fourth - Preview

Inspection and its findings or evidence are considered positive actions aimed at seeking useful evidence and elements to reveal the truth and can be relied upon by the court as proof ⁵. Surveillance is important in establishing drug offences, especially as it contributes to forming the court's conviction on criminal evidence.

Inspection is defined as the Tribunal's own information on all material consequences resulting from the commission of the offence in order to ascertain how the offence occurred and to determine the nature and consequences of the acts ⁶.

Second requirement

Indirect legal means of establishing a crime

Indirect means do not focus directly on the fact to be established but rather on another incident of close logical relevance, as the criminal judge must rely on reasoning to extract evidence where no evidence was directly received.⁷

1. Concept and patterns of evidence:

¹.(Hosni, Mahmoud Najib (2018), op. cit., p. 992)

².(Taia, Hani Mohammed (2011), op. cit., p. 20)

³.(Kabesh, Mahmoud (2011), op. cit., p. 122).

⁴.(article 213 (a) of the applicable Code of Criminal Procedure).

⁵.(Sorour, Ahmed Fathi (2016), Mediator in the Code of Criminal Procedure, Book I, Arab Renaissance House, Cairo, tenth edition, p. 943).

⁶.(Kabesh, Mahmood (2011), op. cit., p. 118).

⁷.(Hosni, Mahmoud Najib, (2018), op. cit., p. 880).

The Iraqi legislature did not define the notion of presumption but rather left the matter to criminal jurisprudence.

The concept of presumption refers to "the conclusion of a judgement on one specific fact from other facts under reason and logic", meaning that the event to be established is drawn from other established facts on which the Guide is based ¹.

The presumption may be in favour of or against the accused ².

Evidence patterns

Evidence may be lawful if it is derived from legal texts. It can be either conclusive, meaning it cannot be refuted, or simple, meaning that the stakeholder can prove it to be reversed. N ³.

It follows from this distinction that legal evidence must have been received exclusively and that judicial evidence is not specified ⁴

The Court's position on the evidence:

The Iraqi legislature stipulates in Article 213 of the Code of Criminal Procedure that:

a. The court shall rule based on its conviction that the evidence was submitted during any stage of the investigation or trial. This includes confirmation, witness testimony, investigation records, other official records and disclosures, expert and technical reports, and other legally established evidence.

b. A single testimony shall be sufficient as a basis for sentencing, unless the law requires it to be corroborated by a presumption, or other compelling evidence, or by the defendant's own confirmation—unless the law establishes a particular method of proof that must be observed.

The Court may rely solely on the statement if it reassures the Court and the Court's lie is not proven by further evidence.

Article 213 states that such evidence, like all forms of evidence, is subject to the court's discretion, whether legal or judicial ⁵.

The criminal judge can also rely on evidence to reinforce or weigh the value of other evidence. Accordingly, it has been held that: "the presumption is considered by the Iraqi legislator that it was one of the evidentiary evidence, but it is not sufficient for the conviction,

¹.(Safety, Ma 'amun (2000), op. cit., p. 258).

².(Gokhdar, Hassan (d. n), op. cit., p. 189).

³.(criminal evidence rules and evidence "Study against Islamic law", p. 167-168).

⁴.(Safety, Security (2000), op. cit., p. 258).

⁵.(Court of Cassation, Decision No. 2010/Felonies/1972, 28 March 1973, Judicial Bulletin, Second Year, No. 3, p. 161).

but must be evidence to be based on as evidence. Moreover, the Iraqi legislator has made the evidence additional evidence to support and corroborate other evidence, such as testimony, confession, etc.¹.

The legislator requires the criminal judge to base the imposed sentence on evidence. This obligation does not restrict the judge's discretion to form their conviction and belief, but rather serves as an important mechanism to strike a balance between judicial freedom and proper oversight. At the same time, it ensures that the criminal judge does not act arbitrarily or tyrannically. It provides a strong safeguard and form of control over a judge's discretion in forming a conviction, with the ultimate goal of uncovering the truth².

¹.(Court of Cassation, Resolution 1170/Crimes 1966, 21/11/1966, published in the Court of Cassation, Part IV, p. 269-270.).

². (Qandil, Ashraf Jamal (2012), Judge's freedom to form his conviction, Arab Renaissance House, Cairo, p. 507.)

Conclusion

Our study addressed the issue of self-evidentiary criminality in drug offences and was divided into four sections. The first section reviewed the concept of forensic proof. The second discussed the legal nature of proof of drug offences. The third examined the legality of the evidence of drugs under Iraqi legislation, while the fourth reviewed how drug-related evidence is handled within Iraqi legislation. The study concluded with a series of findings and recommendations.

I. Results:

1. The rules of criminal evidence in various legislative systems reflect many levels of civilisation and intellectuality in a society. The criminal system must strive to balance the pursuit of justice in criminal accusations with the protection of human rights, especially since the rules of criminal evidence are a fundamental pillar of all rules of criminal procedure.
2. Criminal proof is established through the evidence presented in the case before the Criminal Court, based on the provisions of the law and the judge's conviction, with the aim of uncovering the truth.
3. The theory of criminal proof is based on the principle of innocence of the accused, as well as the judge's freedom to form his conviction and belief. Despite the different systems of criminal proof, the Iraqi legislator adopts the Free Proof System while also embracing the system of scientific evidence.
4. The legal nature of evidence in a drug offence requires that the act be classified as a "drug-related" crime. The substantive framework for such an offence includes the immediate occurrence of the crime, leaving no room for speculation. It is regarded as a manifestation of criminal activity and behaviour. Moreover, the offence is established through the seizure of the substance. Determining the presence of narcotic drugs in all their forms and patterns falls entirely within the discretion of the trial judge. Criminal evidence upholds the principle of the judge's freedom to form a belief based on any evidence, as long as this evidence is legitimate and reasonable to the conclusion.
5. The Criminal Manual on the Subjectivity of Drug Offences serves as a means for a criminal judge to obtain the truth in accordance with the provisions of the law. However, it requires that the evidence be sound and legitimate and that legal proceedings relating to the same offence should not be challenged.
6. Proof of drug offences, in accordance with the provisions of Iraqi legislation, may include the judge's direct means of establishing guilt, such as confession, witness

testimony, experience and inspection, while indirect means of establishing the same offence consist of other types of evidence.

II. Recommendations

1. We recommend a preventive role in combating drug crime and reducing its severity by involving clergy, psychologists, sociologists and the media, with a focus on holding conferences and symposiums to reduce the phenomenon of drug use.
2. The Iraqi legislature should grant the criminal judge broad discretion in forming their belief and conviction once the drug offences have been established, especially since the development of rigid legislative texts to counter drug offences may prevent the crime from being properly established in light of recent developments.
3. Special legislative texts should be introduced to recognise certain evidence as criminal evidence, given its scientific and practical significance.
4. We recommend that the Iraqi legislator address the role of electronic evidence in proving drug crimes and emphasise their seriousness in light of the expanding use of modern technologies in these crimes.
5. We recommend focusing on the importance of operationalising international cooperation with a view to combating drug crimes, particularly those committed across national borders.

Conflict of Interest Statement

All authors declare that they have no conflict of interest

Reference List

I. Arab References:

1- Scientific books:

1. Abu Amer, Mohammed Zaki (1986), Criminal Procedure, University Publications House.
2. Bilal, Ahmed Awad (2013), rule excluding evidence obtained illegally in comparative criminal proceedings, Arab Renaissance House, Cairo.
3. Hallawah, Rafat Abdel Fattah, d. n), Criminal Evidence Rules and Evidence "Study Compared to Islamic Law", Cairo.
4. Hosni, Mahmoud Najib (2018), Explanation of the Code of Criminal Procedure in accordance with the latest legislative amendments, University Publications House, Alexandria, sixth edition.
5. Golden, Edward Ghali (1978), Drug Offences in Egyptian Legislation, Arab Renaissance House, Cairo.
6. Joukhdar, Hassan (D. N), Due Process, Part II, Publications of Aleppo University, Damascus, Directorate of University Books and Publications, without year of publication.
7. Sorour, Ahmed Fathi (2016), Mediator in Criminal Procedure Law, Book I, Arab Renaissance House, Cairo, tenth edition.
8. Salama, Maamoun (2000), Criminal Procedure in Egyptian Legislation, Part II, Arab Renaissance House, Cairo.
9. Sheikh, Abdelkader (d. n) Explanation of Drug Act No. 2 of 1993.
10. Saab, Mohamed Mari (2007), Drug Crimes, Zain Al-Haqiyah Publications, Beirut, Lebanon.
11. Abed, Abdul Hafiz Abdel Hadi (1991), Criminal Evidence by Evidence "Comparative Study", Arab Renaissance House, Cairo.
12. Aqeda, Mohammed Abu Al-Ala (2010-2011), Commentary on the Code of Criminal Procedure, Book II, Trial Stage and Methods of Appeals against Sentences, second edition, Cairo.
13. Eid, Mohammed Fathi (1408H), offence of drug abuse in comparative law, J2, publisher, Arab Center for Security Studies and Training, Riyadh, Saudi Arabia.
14. Ghanam, Mohammed Ghanam (2008-2009), Lectures in Criminal Procedure, Mansoura University.
- Qandil, Ashraf Jamal (2012), Judge's freedom to form his conviction, Arab Renaissance House, Cairo
15. Kabesh, Mahmoud (2011), Brief in the commentary on the Code of Criminal Procedure "Part II", Arab Renaissance House, Cairo.
16. Mohammed, Mr. Khalaf (1987), Drug Enforcement, Seizure and Inspection Rules, Second Edition, Cairo.
17. Mustafa, Mahmoud Mahmoud (1977), Proof in Criminal Materials, Part I, First Edition, Arab Renaissance House, Cairo.
18. Mehdi, Abdel Rajouf (2007), General Rules of Criminal Procedure, vol. II, Publisher, Lawyer's Library Project, Cairo.

2. Academic Dissertations:

- 1.Sharif, Mr. Mohammed Hassan (2002), General Theory of Criminal Evidence, Comparative Study, PhD thesis, University of Menoufia.
- 2.Taya, Hani Mohammed (2011), Modern Methods of Forensic Proof "Brain Footprint-DNA Fingerprint" (doctoral thesis, Cairo University).
- 3.Matwali, Taha Ahmad Taha (2007), Scientific Evidence and its Impact on Criminal Evidence ", (doctoral thesis, University of Tanta

3. Magazines and periodicals:

1. Al Bahr, Mamdouh Khalil (2004), Scope of the Criminal Judge's Freedom to Form His Own Conscientious Conviction, Shari 'a and Law Journal, University of the United Arab Emirates, Faculty of Law, No. 21.
- 2.Hussein, Ibtisam Amran (2024), Criminal Responsibility for Drug Cultivation in Iraq, Journal of Babylon University of Humanities, vol. 32, No.
- 3.Salman, Ahmed Hassan (2020), Role of Recognition in Criminal Proceedings, Journal of the Faculty of Law for Legal and Political Sciences, Iraq, vol. 9, No. 35, part 2.
- 4.Al-Shud, Haider Mekdad al-Saqr, Khaleqi, Abdul Fatah, (2023), Certificate of the Means of Establishing Iraqi Penal Law in Comparison with French Law and Islamic Law, Tikrit University Journal of Law, vol. 8, No. 1/2.
- 5.Al-Aradhi, Faraq Aboud (2011), Drugs and Their Role in Human Crime, Law Letter Magazine, Third Year, Issue 2.
- 6.Abdul Hussein, Kadir Ahmed (2010), Drug Problem and Ways of Addressing It in International Criminal Law: A Comparative Study in Accordance with Iraqi Legislation and the Legislation of Other Countries, Ma 'amun University College Journal, No. 16.
- 7.Ferman, Abbas Hikmat (2008), Recognition in Criminal Evidence, Journal of the Centre for Kufa Studies, vol. 1, No. 7.
- 8.Ferman, Abbas Hikmat (2011), Evidence and its Role in Criminal Evidence, Kufa Journal of Legal and Political Sciences, vol. 1, edition 9.
9. Maamouri, Mohammed Ashour Khalaf (2023), Validity of Confession Resulting from Coercion, Law Letter Journal, vol. 15, No. 5.

4. Studies and statistics

- 1.Drug Trafficking Dynamics Through Iraq and the Middle East (2019-2023),(July 2024), a report issued by the United Nations Office on Drugs and Crime (UNODC), Regional Office for the Middle East and North Africa, United Nations

Foreign references:**1.English**

1.Borrego,J.(2010), the impact of acceptance of electronic evidence before and after 2006 federal rules of evidence on criminal cases, thesis of doctor at of philosophy, Walden university

2.French:

1.Fallett,(D.)et précis(J.),(2010), de droit pénal et procédure pénale ,Presses universités de France .

2.Gamier,(T.)(1992), la défense des droits de la personne dans la recherche moderne des preuves en procédure pénale français.

3.HILIE (F.), (1866), Traite D instruction criminelle, 1V, 2edit., paris, N 1763



This work is licensed under a

[Creative Commons Attribution NonCommercial 4.0](https://creativecommons.org/licenses/by-nc/4.0/)

[International license.](https://creativecommons.org/licenses/by-nc/4.0/)