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The effect of obliging the defendant to show evidence against himself

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Abstract

The study aims to investigate the effect of obliging the defendant to show evidence against himself via comparative qualitative research methods. As a result, the Iraqi legislator, in this article, dealt with the case of the court conviction that the book or the bond is in the possession of the opponent who is required to provide it. In conclusion, obliging the opponent to provide evidence against himself is an exception from the general origin which stipulates that it is not permissible for the opponent to provide evidence against himself.

Keywords: Evidence, Opponents, Oblige, Proof law.

El efecto de obligar al acusado a mostrar evidencia contra sí mismo

Resumen

El estudio tiene como objetivo investigar el efecto de obligar al acusado a mostrar evidencia contra sí mismo a través de métodos comparativos de investigación cualitativa. Como resultado, el legislador iraquí, en este artículo, trató el caso de la convicción judicial de que el libro o la fianza están en posesión del oponente que debe proporcionarlo. En conclusión, obligar al oponente a presentar pruebas contra sí mismo es una excepción al origen general que estipula que no está permitido que el oponente presente pruebas contra sí mismo.

Palabras clave: Evidencia, Opositores, Obligar, Ley de prueba.

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1. INTRODUCTION

Article of the Amended Iraqi Proof Law No. of 1979 stipulates that the judge may order any of the opponents to provide evidence in his possession, and if he refused, his refusal may be considered an argument against him. This affair opposes the principle that it is not possible to oblige a person to present evidence against himself. The plaintiff is the one who has the burden of providing the legal evidence to prove his claim or pay it, but most of the legislations have left this principle for many reasons to achieve the factual fact, but this exception in origin is specified by certain conditions that the court must abide by, and the judge has the power in this commitment, also there are effects regarding it (ESMAT, 2019).

The problem of the study is that the Iraqi legislator in the law of proof has dealt with this subject and has adopted a general standard for this commitment and thus expanding it, and this leads to the violation of the principle of the neutrality of the judge and a violation for the general rule that it is not permissible to oblige a person to present evidence against himself except in special exceptional cases. Because the origin plaintiff is the one who is in charge of providing evidence that proves his claim or dismisses it, so we try in this study to deal with this subject and come up with recommendations that address this expansion in the versions of the Proof Law the in light of our findings that we reached at (ADLY, 2012).

To find out the content of the study, we divided the study into two requests. We addressed in the first request what meant by obliging the opponent to provide evidence against himself. In section two, we

discussed the cases of obliging the opponent to provide evidence against himself. In the second request, we showed the effects caused by this obligation. In section two, we dealt with the situation of the opponent concerning this obligation and we concluded the study with a conclusion having many results and recommendations (ADAM & WAHIB, 1990).

2. METHODOLOGY

One of the general rules in the field of the civil proof is that the plaintiff is responsible for proving his claim or dismissing it, and it is not permissible to oblige his opponent to provide evidence against himself because every person has the right to keep his papers and bonds and his opponent cannot force him to submit them. The reasons why the person is not obliged to provide evidence against himself are many. It may be the desire of a person to keep his or her private papers and not to inform others about them to maintain their confidentiality whether they relate to the secrets of his profession or private family secrets (AL-ABBOUDI, 2003).

However, the prevailing trend in the modern legislation is that it is permissible to make the opponent provide evidence against himself for getting the factual reality and true justice, since all the rules of religions and morality impose the person to be well-intentioned in dealing as well as telling the truth, noting that one of the objectives of the Iraqi Proof Law is to expand the judge's power to bring the case

and its related evidence to ensure the proper application of the provisions of the law to reach at the just judgment in the case (SHAWKY, 2010).

However, this exception of the general rule is limited by conditions that must be found when presenting the application and in specific cases, therefore, we will divide this request into two sections:

Section One: Conditions of obliging the opponent to provide evidence against himself.

Section Two: Cases of the obligation of the opponent to provide evidence against himself

Section one

Conditions of obliging opponent to provide evidence against himself

3. RESULTS

Article (53-first) of the Iraqi Proof Law indicated that the conditions to be met in the application, which includes the obliging the opponent to provide the books and bonds he has and as follows:

A- The description of the book or the bond that he adheres to.

B- The content of the book or the bond that he adheres to.

C- The fact that he inferred.

D- The evidence and circumstances that support that the book or the bond is in the opponent's possession or at his disposal.

E- The faces of obliging the opponent to provide it (ESMAT, 2010).

It is clear from the above that the Iraqi legislator in the Law of Proof submitted the conditions mentioned above to indicate the descriptions of the bond or the book. Whether it was written in a paper or a bond, and whether it is an official or ordinary bond, or a letter or a telegram so that the person who is required to bring these bonds can identify their descriptions, as well as the law, conditioned the statement of the content of the book or the bond with some details and the source of these rights and obligations, and the directness of his association with the case and his usefulness in a settlement regarding it, or the service of the applicant in obliging the opponent to provide these books or bonds. If this request did not contain these conditions stipulated by the law, the court will dismiss the request for being the applicant not serious.

Section two

Cases of obliging opponent to provide evidence against himself

The Egyptian legislator in the law of Proof directed to identify cases as an inventory in which the opponent may oblige the other opponent to provide the bond or book in his possession and as follow:

A- If the law allows his request to provide it or deliver it: The law meant here is the substantive law, whether civil or commercial law or any other law that requires the opponent to submit the book or the bond in his possession.

B- If it is shared between him and his opponents:

The written thing is considered shared, in particular, if it was written for the benefit of the two opponents, or if it is proving their commitments and mutual rights. For example, the rent, company or deposit bond, and the reason behind why the opponent is obliged to provide these bonds is because these bonds are shared between him and his opponent, and were written for their advantage, both. So, it is of justice for the two opponents to get benefit from them.

C- If his opponent leaned on him at any stage of the case:

The leaning of the opponent on a bond or book, at one stage of the case, without providing it, will make his opponent have the right to lean on it, and finally requiring his opponent to provide it obligatorily. Therefore, we agree with the opinion which believes that the stance of the Egyptian legislator in the proof law is more accurate than the stance of the Iraqi legislator which adopted the general standard in

obliging the opponent to provide evidence against himself. Since this affair is an exception from the general rule, we are not allowed to expand in it, but we must limit it in certain cases. We will suggest adding an article to the Iraqi Proof Law at the end of the study.

If one of the cases stipulated in the previous article is achieved, and the conditions required by the law in the application submitted to compel the opponent to provide the evidence in his possession exist, the role of the judge highlights in answering this request or not, and if the judge is satisfied with the request, he issued a decision obliging the opponent to provide the evidence in his possession. Here the stance of the opponent regarding this decision highlights, whether in denying the existence of the bond or the book in his possession or by refraining from delivering it if he has, so we will divide this request into the following sections:

Section One: The authority of the judge of this obligation.

Section Two: The opponent 's stance towards this obligation.

Section one

The authority of the judge in this obligation

After submitting the request to oblige the opponent to provide the evidence in his possession, the court examines this request to ensure that it meets the required legal requirements, which are to indicate the descriptions of the bond, its content and the fact that is

inferred by, and the evidence and circumstances indicating that the book or the bond is in the opponent's possession. If the applicant meets the conditions above, and the opponent provided evidence that the bond or the book is in his opponent's possession, the question arises about the authority of the court to answer the application or not, and is the court obliged to issue a decision to oblige the opponent to prove the evidence in his possession? The answer to this is that the court has an evaluative authority in this matter. So, it can refuse the application if it is found that it was unserious, or if the provision of the bond or book causes damages to the others, such as the bond being a letter containing, in addition to common rights and commitments, family affairs or special matters.

It should be noted that one of the cases that allows the opponent to compel his other opponent to provide the evidence in his possession must be existed, that the law authorizes his claim to submit it, or that it is shared with his opponent, or if his opponent leaned on it at any stage of the proof ways, otherwise the court will dismiss the request. It should be noted that the court has the right to refuse the application if it is not produced in the dispute.

Second section

Opponent's Stance regarding this commitment

The opponent's stance does not depart from one of the following cases:

The First Case: The opponent acknowledges that the book or the bond is in his possession.

The Second Case: The opponent's silence, so he did not deny the existence of the bond or the book, and did not acknowledge its existence in these two cases if the opponent proved his request or the second opponent acknowledged that the book or the bond is in his possession, or silenced, the court ordered the submission of the book or the bond immediately or at a specified date it determines with noting that the silence is considered as implied ratification.

The Third Case: If the opponent denied the existence of the book or the bond in his possession or at his disposal, and the applicant of the book did not provide sufficient proof that it exists with that opponent, the court should order the opponent to take an oath when denied that the book or the bond which is required to be provided does not exist or he had no knowledge about its existence, or he did not hide it or he did not neglect to seek for it to deprive his opponent of the inference through it.

The Fourth Case: Article 56 of the Iraqi Proof Law referred to this case, that if the court is satisfied that the book or the bond is at the opponent’s disposal who is required to submit it and does not submit it on the date set by the court in the article of the law or he refrained from taking the oath mentioned in the article of the law, his opponent has the right to prove the content of the book or the bond in any way of the proof ways, and the court can bear the opponent the costs of that

proof regardless of the consequences of the settlement in the case (YAHYA, 1994).

Here we would like to show what comes:

1. The Iraqi legislator, in this article, dealt with the case of the court conviction that the book or the bond is in the possession of the opponent who is required to provide it, and no reference was made to the case of disposal or the applicant of the book or the bond did not provide sufficient proof of its existence with that opponent in the article. So, we see that it is better to refer to this case in the article, which is the denial of the opponent's denial above. It was better to refer to that since the law dealt with the case of the opponent's approval or his silence in the article. Then, it returned and dealt with the case of the opponent's denial regarding the existence of the book or the bond in his possession or at his of the opponent with sufficient proof concerning the existence of the book or the bond in his possession.

2. The legislator indicated in the article above that it is permissible to bear the withholding opponent the expenses of that evidence, regardless of the outcome of the adjudication in the case.

We believe that the legislator in the article above violates the general rule set out in the article of the Iraqi Civil Pleadings Law,

which stipulates that the court when issuing the verdict that the dispute ends in it, must issue its verdict from its own regarding the expenses of the case against the convicted opponent. So, we believe that it is preferred to cancel the paragraph referred to in above, which includes the possibility of bearing the withholding opponent the expenses of the proof, whatever the outcome of the adjudication of the case because it is not fair to bear the convicted opponent the expenses of the proof. It is also against the provision of an article of the Civil Pleadings Law, so we will suggest amending the article above in the conclusion.

The Fifth Case: If the opponent denied the existence of the book or the bond in his possession or at his disposal, and the applicant of the book or the bond did not provide sufficient evidence concerning its existence with that opponent, then the court must order the opponent to take an oath when he denies that the book or the bond that must be provided does not exist, or that he does not know of its existence and that he did not hide it and did not neglect the search to deprive his opponent of inference through it.

If the opponent takes an oath above, the case is dismissed, but if he refrained from taking an oath that is mentioned above, the law authorizes his opponent to prove the content of the book or the bond in any way of proof ways. Finally, we would like to point out that the Iraqi legislator in the Law of Proof dealt with a special case, which is that the court can order or authorize the others to enter to oblige him to submit a book or bond at his disposal. The law did not refer to the stance of the opponent who is required to provide the book or the bond

in terms of ratification, denial or silence. Also, the legislator did not refer to the provisions of an article of the Pleadings Law concerned with the above because the rules of the dispute of non-parties are supposed to meet the conditions stipulated in the article above, while the version of the article was absolute and did not refer to the observance of the provisions of the article referred to. so we will suggest amending the article above in the conclusion.

4. CONCLUSIONS

1. Obliging the opponent to provide evidence against himself is an exception from the general origin which stipulates that it is not permissible for the opponent to provide evidence against himself

2. Some conditions must be met in the application which includes the obligation of the opponent to provide books and bonds, they are a statement of the descriptions and content of the bond and the evidence indicating that it is in the possession of the opponent.

3. Since the principle above is an exception to the general origin, most of the legislations have tended to limit this request in specific cases.

4. The judge has an evaluative authority in answering the opponent's request if he is satisfied with its seriousness, and that its submission does not cause damage to the others, otherwise the request will be dismissed.

5- The opponent's stance towards this obligation is either by ratification, silence or denial, and each has important effects.

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