



The Suspect's Right to Remain Silent as A Guarantee of Human Rights Between Criminal Justice and Procedural Legitimacy

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Abstract

Criminal procedure is governed by the constitutional rule that innocence is the fundamental principle of human beings and therefore judicial police authorities must deal with the person under suspicion in a fair and just manner. Assuming his innocence requires that he not be required to provide any evidence of his innocence, which allows him to exercise his right to silence, which represents one of the manifestations of his self-defense, without his silence being interpreted as evidence of conviction, which requires the necessity of providing the necessary legal protection to exercise this right.

Keywords: suspect, right to silence, judicial police authorities, preliminary investigation stage.

Introduction:

The theory of the criminal case did not come all at once, but rather went through several developments until it reached what it is today in terms of the case to preserve human rights and protect individual freedom. One of the most important results of these developments is that they divided the criminal case into several stages, each of which takes into account special procedures so that the next stage complements the previous one. This situation was a result of the procedural systems that prevailed at different stages of human life, and the rights of defense became the basis of the criminal case (Al-Kurdi, 2016, p. 153).

Since the investigation and inquiry stage is one of the most important stages in a criminal case, as it represents the period in which evidence is collected and the criminal is searched for, it is therefore the stage in which the suspect reaches the knowledge of the competent authorities of the possibility of committing the crime. This stage takes several names, such as investigation and preliminary inquiry. As for the Algerian legislator, he called this preliminary stage, according to the new Code of Criminal Procedure, the preliminary investigation stage, distinguishing it from the judicial investigation conducted by the investigating judge. The importance of protecting the rights of the suspect at this stage seems



very important, as he needs to know it, because if the protection were only at the trial stage, it would be late (Al-Kurdi, 2016, p. 154).

With the development of the human rights system, it has become necessary to talk about many guarantees that preserve the rights of the suspect as the weak party in the face of the powers and privileges of the state (the judicial police), as the latter has many means that enable it to perform its function to the fullest extent. In return, the greatest amount of guarantees must be provided, perhaps the most important of which is his right to practice silence regarding the questions directed to him without being pressured in The way to extract what harms him. This is considered an application of the principle of equality before the law, which requires creating a kind of balance between accusation and defense according to the principle of equality in weapons, according to which the actual exercise of the right to defense must be enabled.

From this standpoint, the scientific importance of studying this topic emerges in the fact that the right to silence is considered among the rights violated by persons to whom the law has granted the authority to research and investigate Based on the principle of equality before the judiciary as an important element that cannot be ignored, the importance lies in trying to alert the Algerian legislator to re-evaluate the criminal procedures system by establishing some lacking guarantees such as the right of the suspect to remain silent during his appearance before the judicial police authorities due to his sensitive position in the criminal procedures arena due to its association with the presumption of innocence on the one hand and considering it as one of the true measures of respect for defense rights and individual freedoms, The practical importance appears in assessing the extent of respect for the rights of the defense from the first moment the accusation is brought against the person, as well as the principle of equality of positions between the opponents in the criminal case through the suspect's right to silence, since the initial investigation stage is the most dangerous stage of the criminal case. If we return to the judicial statistics in any country, we find that the vast majority of cases are brought before the courts, especially simple ones Her papers only include the evidence collection report to bring the accused to trial.

The main problem from which we will start to address this issue revolves around the following: **To what extent is the legal protection of the suspect's right to silence effective during the initial investigation stage in Algerian penal legislation?**

To answer the problem raised above, we decided to follow a bilateral plan in which we will address the concept of the right to silence (the first topic) and then guarantees for protecting the right to silence (the second topic).

Section One: The concept of the right to silence

The right to silence constitutes a negative attitude towards every one or more actions taken by state authorities with the aim of gathering evidence. It is a natural right inherent in the human right to speak, and therefore there is no need to determine its origin or existence by law as is the case with the right in general In order to elaborate on the concept of this right, we will discuss the definition of the right to silence and its types (the first requirement), then the position of jurisprudence on the right to silence (the second requirement).



The first requirement: defining the right to silence and its types

In order to understand the right to silence, we must detail its definition (**first**) and then determine its types (**second**).

First: Definition of the right to silence

The right to silence means linguistically that: ((he did not speak)) meaning not speaking, and a non-speaker is said (silent) and not said (silent) (al, 1972, p. 522), and based on that, some researchers went on to say that the term right of the accused to remain silent should be used instead of Silence because silence is applied to someone who has no speech at all, such as stones and other inanimate objects Likewise, a person who is not able to speak at all While silence refers to someone who has the power to speak in the first place but abandons its use (Hamid, 2003, p. 311), while an opinion holds that silence is silence absolutely, whether he is able to speak or not, as silence is only long silence (Al-Khamis, 2005, p. 31).

The right to silence technically: Most comparative procedural legislations differed in naming this right. Some called it the right of the accused to refrain from making a statement, and others called it the right to remain silent, or the right to refrain from speaking, and the right not to make statements. However, those legislations did not define this right, leaving that to jurisprudence. In general, this right can be defined by its different names as: *"This negative position that a person takes as a means of defense is resorted to when he is confronted with an accusation based on the basis of his innocence, whether he is a suspect or accused, whether he is a beginner or a recidivist, whether he is male or female, a patriot or a foreigner, a juvenile or an adult, against the arbitrariness of the state authorities when they want to obtain the statements of that person using illegal means at all stages of the criminal case and whatever the charge against him "* (Mushayrah, 2009, p. 49). Some jurists defined it as: *"A person's freedom to speak or refrain from speaking. The general rule is that there is nothing that obligates or compels a person to speak before any party or authority. It is a human right, and therefore it is not permissible to force a person to answer the investigator's questions"* (Al-Harki, 2013, p. 14).

There is also another definition of the right to silence, which is: *"The freedom of the accused to speak and answer questions directed to him or to refrain from doing so. His refusal is not considered evidence against him, provided that he alerts the accused before conducting an investigation with him that he has the right to refrain from answering questions directed to him"* (Al-Moussawi, 2005, p. 30). There is also another opinion that touched on the definition of this right, with which we agree that: *"A natural right that coincides with the human right to speak. The accused has the right to take a negative stance towards any matter aimed at collecting evidence to accuse him and prove his guilt "*.

We, in turn, can define it as: a human right that includes answering questions directed to it by the party represented before it or refraining from speaking as a means of defence.

Second: Types of the right to silence

The right to silence is divided into several types, including: natural and unnatural silence, and is divided in terms of its duration into permanent silence and temporary silence.



A- Natural silence

It is the silence that makes the suspect unable to speak due to a natural reason beyond his control, such as being deaf or mute or due to a health impediment. Therefore, if it becomes clear to the judicial police officer that the person in question is unable to speak for a natural reason, he can write down the questions directed to him, and the suspect in turn answers them in writing (in writing) It is also permissible to appoint a translator for him to translate his sign in the event that he is also unable to write (Al-Harki, 2013, pp. 18-17).

b- Abnormal silence (intentional or deliberate)

It is silence in which the suspect is able to speak but voluntarily refuses to speak or answer questions directed to him. This type of silence is the focus of our study (Al-Harki, 2013, pp. 19-18).

In addition to the above division, we can also divide silence in terms of its duration into two types:

C- Temporary silence

It is silence in which the suspect temporarily refrains from speaking when his lawyer or defense attorney is present, after which the accused begins to speak and defend himself (Al-Harki, 2013, p. 18).

D- Permanent or continuous silence

This is the silence that the suspect maintains constantly and continuously from the moment of his interrogation until the final judgment is issued (Al-Harki, 2013, p. 18).

The second requirement: Jurisprudence's position on the right to silence

The opinions of criminal law scholars regarding a suspect's right to remain silent were not uniform. Rather, legal scholars were divided into two groups, one opposing this right (**first**) and the other supporting it (**second**). We will present each of them in detail as follows:

First: the opposing trend

Supporters of this trend believe that the person under investigation does not have the right to remain silent because society has the right to reach the truth, because society's right is a public right that may not be exceeded to establish a private right related to a person. It is also not one of the matters that agree with the nature of things that he does not respond to the questions directed to him, as the instinct of the love of survival requires him to exercise the right of reply in defense of a punishment that may affect his personal freedom (Al-Enein, 2017, p. 76).

However, this trend was responded to by saying that there is no conflict between the right of society to reveal the truth and the right of the suspect to remain silent, since exercising this right is one of the manifestations of his freedom to defend himself. A society that guarantees the suspect freedom of defense cannot deprive him on the left of what it gave him on the right (Mustafa, 2004, p. 114).

- If the suspect is innocent, he will not demand his right to remain silent at all, and he will not remain silent because he wants to defend himself by speaking, unlike the guilty person who will try to adhere to this right whenever he finds himself without a means or trick to defend himself However, this argument is criticized because when a suspect remains silent,



the reason for that may be due to his desire to protect others who are dear to his heart, or for any other reason. His adherence to the right of silence is not necessarily evidence of his innocence (Al-Harki, 2013, p. 23).

Another aspect of jurisprudence believes that this right should not be recognized for the person under investigation except to the extent that it is recognized for all parties to the criminal case. On the other hand, we find that the legislator has not recognized the right of silence for the witness except in some exceptional cases. Therefore, it is also necessary for these rules to apply to the suspect as well, considering that the desired benefit of the interrogation is to reach the truth (Al-Nabrawi, 1986, pp. 158-157).

In this context, silence is not considered a right or even a license, and the matter is more than just the lack of possibility on the part of the authorities through which they can oblige the accused to speak. Accordingly, the suspect must be treated in a manner similar to the legal status of a witness, allowing him the freedom to choose between testifying or abstaining from it. If he desires it, the rules that regulate it will apply to him, the most important of which is taking an oath and subjecting him to punishment in the event of committing a false crime (Al-Enein, 2017, p. 77).

Second: The supportive trend

The proponents of this trend believe that this right is established in the interest of the person under suspicion in confronting the judicial police authorities, as it is considered one of the guarantees guaranteed to him by law, and that it is necessary to acknowledge this right, as the suspect is not legally obligated to seek to reveal the truth or to answer the investigator's questions, in application of the principle of presumption of innocence to which all criminal cases are subject (Al-Harki, 2013, p. 20).

The proponents of this trend also believe that it is not permissible to infer evidence or proof against a suspect from his failure to speak, as the latter's silence cannot be interpreted as a perpetrator. This right is restricted because most of them do not have the legal culture that enables them to defend themselves if they respond in the absence of their defense (Al-Harki, 2013, p. 21).

The proponents of this trend, which supports the right to silence, also went so far as to say that this right is derived from the noble Islamic Sharia, and that there are many noble prophetic hadiths and judicial events in which the Messenger, may God bless him and grant him peace, and his companions ruled in a way that indicates Islam's recognition of this right. They base this on the fact that establishing this right is an application of a basic rule imposed by the innate human instinct, which requires ((preserving oneself and not exposing oneself to destruction by the perpetrator himself)). This rule applies to both the suspect and the law equally (Al-Harki, 2013, p. 21).

Finally, there is an aspect of jurisprudence that emphasizes the necessity of establishing a kind of balance between two rights: the right of the public authority to reveal the truth and the right of the suspect to remain silent. Therefore, it is not permissible to favor one over the other, considering that both are linked to higher interests that concern society as a whole (Al-Harki, 2013, p. 22).



Section Two: Guarantees for the protection of the right to silence

If the judicial police authorities are charged with seeking the truth by all legitimate means with the aim of achieving the interest of society in discovering the crime and arresting its perpetrators, and one of the most important sources that help them achieve this is the suspect's statements, there is no doubt that these judicial police authorities have an obligation, which is to respect the suspect's right to silence, and therefore his silence should not be interpreted as evidence of his conviction. Since he can benefit from it according to what his interest requires, neither right can be preferred over the other, and it is not difficult for the state authorities to reach the elimination of any conflict between them if it is possible to understand the reality of the function assigned to each right (Al-Enein, 2017, pp. 81-80).

In order to understand how to guarantee the protection of the right to silence, this requires highlighting the relationship between the right to silence and the authenticity of the seizure records and the case of the crime committed (**the first requirement**), and then the relationship between the right to silence and the guarantees of a fair trial (**the second requirement**).

The first requirement: The relationship between the right to silence and the authenticity of the arrest report and the status of the crime committed

In this section, we will discuss how the authenticity of the arrest warrant affects the right to silence (**first**) and then the extent to which the case of flagrante delicto affects the suspect's right to silence (**second**).

First: The authenticity of the seizure reports and their impact on the right to silence

Among the most important search and investigation procedures carried out by a judicial police officer is hearing the suspect's statements about the crime attributed to him and recording them in an official report. In return, the police officer is prohibited from using illegal means such as material or moral coercion with the aim of extracting the suspect's statements. Therefore, the new Code of Criminal Procedure stipulated the provision of effective guarantees that would protect the rights and individual freedoms of the suspect (Al-Kurdi, 2016, pp. 163-162), and imposed on the police officer and some employees assigned to some judicial control tasks to issue reports on their work in accordance with the established legal forms, because failure to respect formality makes the report lose its legal value. It was stated in the text of Article 27 of Law No. 25-14 stating that: *"Judicial police officers must write reports of their work and take the initiative without delay to notify the regionally competent Public Prosecutor of the felonies and misdemeanors that come to their knowledge"*.

The records include the full identity of the parties, their place of residence, their statements, and whenever possible their electronic addresses and telephone numbers.

The judicial police must also inform the parties of the possibility of summoning or notifying them at their electronic addresses or telephone numbers and obtain their express consent, and alert them to the necessity of notifying the competent judge of any change to these addresses or numbers and including this in the report of their hearing, under penalty of these reports being invalid.



Once they have completed their work, they must provide him directly with the originals of the reports they write, accompanied by a copy of them indicating that they are identical to the originals of those reports they wrote, and with all the documents and papers related to them, as well as the seized items, and they must bring the suspected persons before him if he asks them to do so.

Reports of violations and the papers attached thereto shall be sent to the Public Prosecutor at the competent court.

The records must indicate the judicial control status of their editors "

However, by examining the text of Article 27 of the Penal Code, we do not find that the legislator obligated the police officer to alert the suspect to his freedom to answer questions directed to him or not to respond. Rather, he limited himself to the form that the report takes in recording the actions and tasks that he performs towards the suspect or the crime scene. This is considered a legislative deficiency that must be reconsidered, since the initial investigation stage is the preliminary stage To decide the fate of the accused.

Failure to oblige the judicial police officer to issue a warning to the suspect to use his right to remain silent may lead to the suspect being forced to speak, which casts doubt on the credibility of the statements contained in these records Although these records have an inferential nature according to the original, which the judge finds familiar with and are subject to his discretionary authority, they may affect his conviction, so he tends to be convicted according to them, despite the lack of judicial authority at this stage, knowing that there is a type of records that plays a role in restricting the judge's authority to persuade, and they are the records that It is authentic until its opposite is proven, and the records are authentic until they are challenged by forgery (Al-Kurdi, 2016, p. 164).

Second: The case of flagrante delicto and its impact on the suspect's right to silence

The Algerian legislator has granted the judicial police officer exceptional powers and competencies that rise to the level of investigation procedures and affect personal freedoms, exclusively in the case of a flagrante delicto crime, or as some call it, a flagrante delicto, as it enjoys a specificity that differs from other crimes because it is witnessed when it occurs or the perpetrator is arrested while committing it, and this is in its best cases, and thus flagrante delicto is a real case and not a personal one because it is linked to the criminal behavior committed and not to its perpetrator It also detects the crime without the need to see the perpetrator committing the crime (Khalfi, 2025, p. 101).

However, in all cases, if a judicial police officer is faced with a case of flagrante delicto specified by the Algerian legislator, he must take into account procedural legitimacy in every procedure he takes, and not be arbitrary in searching for evidence and force the suspect to speak using illegal methods, especially with the development of scientific techniques such as blood tests, gastric lavage, and fingerprint examinations, which enable him to reach the truth without relying on the suspect's statements He must also be precise in his behavior and respect all the rights of the suspect, especially his right to speak or not. Although this is not stipulated at this stage, it is linked in existence and nonexistence to the presumption of innocence enshrined in the constitution (Khalfi, 2025, pp. 172-171).



In contrast, the work of a police officer should not be interpreted as an assault on the rights of the suspect by virtue of the powers and privileges granted to him by law, since his work focuses on confronting criminals of all kinds, whether during prosecution or during the execution of punishment in a closed environment. We must also appreciate the concept of legitimate defense with some flexibility and realism (Al-Kurdi, 2016, p. 172).

The second requirement: the right to silence and guarantees of a fair trial

Defining the concept of the relationship between the right to silence and the guarantees of a fair trial requires addressing the understanding of the relationship of that right to the principle of innocence of the accused (**first**) and then its relationship to the right to defense (**second**).

First: The relationship between the principle of origin in the accused being innocent and the right to silence

The principle of presumption of innocence requires an obligation on the judicial police authorities to treat the suspect as an innocent person whose personal freedom and humanity are respected, regardless of the type or method of the crime committed, whether he is a novice or a returning criminal. He must enjoy the same treatment as an ordinary citizen who has not been suspected of being the perpetrator of the crime. The effects of this principle are evident in the guarantees imposed by law when taking any legal action that infringes on the suspect's personal freedom, which arise from the principle of presumption of human innocence. Otherwise, this action is considered a waste of a fundamental pillar of procedural legitimacy (Al-Desouki, 2009, p. 137).

In the same context, the principle that every person is originally innocent entails that a person is not obligated to provide evidence of his innocence. This principle also has an important consequence, which is that doubt is interpreted in favor of the accused. This is because the criminal case begins in its first (preliminary) stage in the form of doubt about attributing an incident to the suspect, and then it takes the initiative to take legal measures with the aim of transforming that doubt into certainty. If this is not achieved, then the doubt remains, and it is insufficient justice to convict the person. Conviction is built on certainty and certainty, while innocence may be built on doubt. Therefore, the principle that is fundamental to human innocence is a rule that must be applied in all stages of the case, starting from the preliminary investigation stage or the reasoning stage until the final judgment is issued (Al-Desouki, 2009, pp. 140-139).

According to the above, if the suspect exercises his right to silence, it is not permissible to infer evidence of guilt from the suspect's silence for several reasons required by personal considerations related to him, which we will present as follows:

- The suspect's refusal to answer the questions directed to him during his appearance before the judicial police authorities may be due to many reasons other than committing the crime attributed to him. This silence may be due to an emotional situation he was exposed to by the search and investigation authorities, or motivated by covering up for a person dear to him who is the real perpetrator of the crime, such as the son covering up for a crime committed by his mother. Or hiding secret matters that, if he allowed them, would lead to a



major scandal. His silence may be explained by his failure to understand the question directed to him. He may also prefer silence for fear of getting involved in statements whose meaning he does not understand in the absence of his lawyer, among other hidden reasons (Ahjila Abdullah Muhammad, p. 807).

- Moreover, allowing the judicial police authorities to infer the evidence of guilt from the suspect's silence when he appears before them would morally compel him to answer questions so that his silence would not be interpreted in a way that is not in his favor, and this matter cannot be accepted in any democratic system that respects the freedom of the individual and his basic rights (Ahjila Abdullah Muhammad, pp. 808-807).

Second: The right to defense and its relationship to the right to silence

The right to silence is one of the means of exercising the right to defense. If the essence of the right to defense is based on rejecting or refuting the accusation, then the essence of the right to silence is also that the person exercising it should not participate in presenting evidence of his guilt. If it appears that there is a conflict between the right to defense and the right to silence, but this conflict is only theoretical, This is because the guarantees for exercising the right to defense, including the right to silence from a practical point of view, leave it to the holder of the right to exercise the appropriateness of practicing it in the manner or in the way that achieves his interest. Therefore, enshrining this right gives the suspect complete freedom not to make a statement, and it is not right in all cases for his silence to be interpreted in a way that harms his interest or to be exploited in any way against him in proof This is because the accused's refusal to answer the questions directed to him is nothing more than a direct exercise of his right to the recognized freedom of defense, according to which he can choose the method most appropriate to his particular circumstances, even if that is by refusing to speak (Al-Enein, 2017, p. 68).

There is no doubt that exercising the right to silence is consistent with the latest legislative trends towards the humanity of the criminal procedure in an era in which we are most in need of actual humanity, as recognizing the right to silence for the accused represents a sophisticated stage in development towards recognizing many rights for the accused that he does not lose simply because he is accused of committing a crime (Al-Enein, 2017, pp. 64-63).

Conclusion:

Most constitutions of different countries have been keen to stipulate that the accused is innocent until proven guilty in a fair trial in which he is guaranteed guarantees of self-defense. As a result, and on the basis of the accused's complete freedom to manage his self-defense in the manner he deems appropriate to achieve his defense, between the authorities of the state protecting its right to impose punishment and respect for the principle of the origin of the human being, innocence, the rights of defense in general and the right of the suspect to remain silent in particular stand out As a procedural officer, he must be taken into consideration starting from the initial investigation stage to ensure a fair trial.



Based on the above, we have reached, through this study, a set of results and proposed some recommendations that may contribute to filling some of the shortcomings that must be reviewed by the Algerian legislator, which we will summarize as follows:

First: Results

- The Algerian legislator's neglect of some guarantees that protect the rights of the suspect, the most important of which is notifying him of his right to remain silent, which is supported by the principle that he may not be forced to speak by any means, which is considered a weapon for him in the face of the privileges of the judicial police authorities and a guarantee for him from all arbitrariness.

- Lack of substantive and procedural legal protection necessary to exercise the right to silence.

-The suspect's right to remain silent is a natural right that coincides with the human right to speak, and therefore he can take a negative stance towards any matter aimed at collecting evidence to accuse him and prove his guilt.

-The right to silence is one of the basic guarantees for all the rights of the person subject to criminal prosecution. Therefore, jurisprudence has elevated it to the level of the basic principles on which criminal procedures are based within the legal system that respects human rights. This right is enshrined by allowing the suspect to speak or not. It thus constitutes a means of defense that he uses when he sees that silence is in his best interest without concluding that it is evidence that he committed the crime attributed to him.

Second: Recommendations

- Given the scarcity of legal texts that recognize the suspect's right to silence, we recommend that the Algerian legislator stipulate this as a constitutional principle and establish mechanisms to protect it during all stages of the case, starting from the initial investigation (inference) stage, during which the rights of the defense in general may be exceeded by the judicial police authorities and at least equal to what is stipulated in the judicial investigation stage, in order to ensure good and accurate observance of it from the beginning until the trial.

- Given the specificity and importance of the accused's right to silence, whether in terms of observing the rights of the defense or in terms of its impact on criminal proof, it must be stipulated in binding legal rules and avoid generalization and ambiguity in the text in order to avoid wrong interpretation and explanation.

- The necessity of establishing a legal text requiring judicial police bodies to inform the suspect of the facts he is accused of committing and the evidence presented against him, because informing him of the charge is one of the most important elements of the right to defense that must be guaranteed to the suspect, in addition to the suspect being aware of the type of investigation being conducted with him and deciding whether to speak or remain silent.



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