



## CATEGORIES PROHIBITED FROM CERTIFICATION FOR FUNCTIONAL CONSIDERATIONS

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### ABSTRACT

This research has dealt with the prohibited categories of testimony. It may be particularly important to examine this subject, given the importance of testimony as one of the most important means of proof on which judges rely in their judgments. The importance of this subject is increased in view of the fact that some categories are prevented from testifying before the courts. We concluded by looking at a set of findings and recommendations as follows. Performance of the certificate is a duty, but this performance may not be possible to prevent the performance of the certificate. and the obligation to confine public office secrets after the custody of the secretariat upon which a staff member is entrusted ex officio, It is therefore a moral obligation imposed by public office ethics before it is a legal obligation We hope that the Jordanian legislature will determine the meaning of the career secret in the field of public employment, whether it relates to the public interest or the interests of individuals, An explicit provision in the civil service system prohibits a public official from disclosing public office secrets.

Keywords: performance of certificate, job secrets, prohibition of performance of certificate, functional considerations

### Introduction

Testimony is one of the most important means of proof before the courts because of its importance. Judges rely on it to base their judgement on it. It is one of the means of direct proof.

The subject matter of the testimony must be contested and this fact must relate to the case and be productive in the evidence, and may be accepted, i.e. the certificate must have public commentaries at the place of evidence.

The witness is also required not to be prohibited from performing the testimony, as the testimony is a right of all persons, but the

legislator has prohibited the testimony of certain categories for certain reasons.

Old legislation took the principle of restitution and criminalization of witnesses and the failure to hear their testimonies either as a result of kinship, hostility or certain relationships, including Islamic law. However, recent legislation allowed opponents to begin making observations and objections to witnesses or hearing testimony and left the court with the weight of statements and valuation of each testimony.

The wisdom of this is that there is no sense in preventing the judiciary from hearing the various testimonies, and the judge may find the



truth from the testimony of one of these witnesses who is opposed to hearing them.

I have chosen to research the categories prohibited from certification due to functional considerations that have touched upon other considerations except to the extent necessary and appropriate in this study.

This topic raises many questions, for example, what is the functional secret? Job confidentiality is prohibited from performing a certificate? What is the confidentiality of the order? What categories did the legislator prevent from certifying for functional considerations? Is the employee's job status no longer free of this prohibition?

These questions and others will be the focus of our study publicly and we find them with satisfactory answers.

In this study we will adopt the analytical curriculum where we will learn about the contents of legal texts, identify their aims and dimensions in depth, as well as the relevant jurisprudence of this study, analyze them and indicate their compatibility with legal texts through a deep understanding of its content and address some jurisprudence if any and necessary.

We will therefore divide this research into two requirements, the first to study the confidentiality of the profession against the obstacles to the performance of the certificate. The second to speak of the Jordanian legislator's position on the prohibited categories of the certificate.

### **First requirement**

#### **The confidentiality of the profession prevents from performing the certificate**

The staff member's obligation to confine his or her career confidentiality is one of his or her most important duties; It is particularly important in view of its concern for the interests of the State and public order, the proper functioning of public facilities and the preservation of the secrets of the State on the

one hand, and on the other because it is important and linked to the rights of individuals and respect for their privacy. (Al-Zubaidi, 2015, p. 539)

According to some views, "the legal concept of functional confidentiality remains ambiguous; Because it is not based on clear and clear legal grounds, nor has the concept of confidentiality been defined by the Department, its extent varies from department to department and from employee to employee. "(Ghanam, 1988, p. 112)

A part of the doctrine considers that "functional confidentiality is all that is confidentially entrusted to a profession". or everything entrusted to a profession whose disclosure is detrimental to reputation and dignity, Therefore, the employee does not ask for a crime or guilt committed by him for disclosing a secret if he has not obtained it through or because of his job. "(Abdelmataleh, 2004, p. 52)

Confidentiality is all about the information, procedures and decisions that a staff member has access to through the exercise of a public function; By virtue of his position, confidentiality is the concealment of information that is considered confidential and confidential from access to others and within the scope of the public service. Confidentiality is one of the staff member's most important obligations. It means concealing confidential information that the staff member has access to by refraining from disclosing it to others.

Disclosure is to inform others of the confidentiality, but within the scope of the public office disclosure means the disclosure of confidential facts by a public official who, by virtue of his or her position, has relied upon them contrary to the law. (Ahmad, 2007, p. 4)

If confidentiality and refraining from disclosing it constitutes an obligation for those who know of it by virtue of their profession as public or non-public servants, the staff member's competence to address the public service carries more stringent obligations in this regard



than those normally imposed on workers outside public administration.

Is all information pertaining to the staff member's employment confidential and obliged to maintain it?

To answer this question, you have to go back to the text of the article. (36) Of the Evidence Act No. 30 of 1952, it is stated that "Employees and employees in charge of a public service shall not testify, even after they have left work, so that they have come to their knowledge in the course of their work from information which may not be disseminated. However, the competent authority may authorize them to testify at the request of the court or a litigant."

Article 37 of the same Act stipulates that: "Any person who learns from lawyers, agents, doctors or any other person through his profession or who manufactures him with a fact or information which he may not disclose, even after the termination of his service or the demise of his status, unless the statement is intended to commit a felony or misdemeanour. They must testify about that fact or information when asked by their family to do so without prejudice to the provisions of their own laws."

Article 35 of the same Act states: "No one may testify about information or the content of papers relating to State affairs unless they have been published by legal means or have been authorized by the competent authority to broadcast them".

Thus, it is clear to us from the preceding texts that not all information accessed by the staff member by virtue of his or her post applies to the description of confidentiality. Rather, a set of conditions must be met for confidentiality. It must first be confidential in nature or because of the circumstances surrounding him or her.

In order to determine confidentiality, the doctrine is divided into two directions. The first direction is to adopt the personal standard. The description of confidentiality is voluntarily determined by the confidentiality holder. In this case, the employee is not required, except as

entrusted to him by the confidentiality holder. That is, the order is confidential if the owner deposits it with a person and asks him to maintain it and its confidentiality. (Friend, 2020, p. 118)

While the other tendency has been to adopt the objective criterion for determining the description of confidentiality in view of the circumstances and substantive circumstances surrounding the situation, it is not a requirement that the author expressly entrust the employee to the staff member, but suffice to be consulted because of the profession or the job, since these facts are linked to the subject matter entrusted to him (Abdullah and Mahmoud, 2018, p. 7)

He is. The standard adopted by the Jordanian legislature for a public official, for example, the confidentiality of tenders submitted in public tenders and auctions. As well as examination questions, they are acts that inherently require confidentiality.

It is also required that the information be considered confidential that it is not public information, where the order loses confidentiality if the incident to which it relates is public information.

But the question here is whether the secret is known to everyone in the form of its rumor, and the public servant confirmed this rumor, is it considered an explanation of the secret or not?

It must be noted that the confidential nature of the fact or information does not preclude even if it is known to all in the form of its rumor as long as it is uncertain. An employee who confirms rumors will have disclosed the secret on which they are trusted and will therefore bear responsibility. On the other hand, the secret can be known by a limited number of people even if it is large as long as they are from a family surroundings, or from a single work surroundings, yet the nature of secrecy remains inherent to it. While there is no confidentiality about the incident, even if many people do not know about it, if those who do not have a special relationship with the secret are aware of





it, such as knowledge of the facts through a public hearing (Ghanam, 1988, p. 115).

Confidentiality requires the employee to be informed of the secret during or because of the job. This requirement is one of the most important conditions affirmed by the Jordanian legislature in the Law on Evidence, i.e. it is the nature of the employee's job to see the secrets and the scope of these secrets includes what the employee was informed of ex officio, such as orders, administrative decisions, studies, draft laws, resolutions, etc., His knowledge of them may be indirect (Zubaidi, 2015, p. 541) A staff member's career may allow access to certain secrets that his or her co-workers require him or her to communicate. or, as in the case of a staff member who has access to the content of correspondence passed on to his or her colleague because of their presence in the same place of business, Where the acts are of a confidential nature, their practice or performance requires those entrusted with those duties to use other persons to assist them because they cannot perform them individually, The employee may be informed of the confidentiality if led by the same confidant by law or voluntarily, as in the case of a judge or a member of the Public Prosecutor's Office.

It must be pointed out that it is the trial judge who is confidential. The witness whose testimony has been asked to be heard shall explain to the court why he is not able to testify and it shall be up to the court to assess whether or not this is part of the concept of functional confidentiality.

The Jordanian legislature has set forth confidential documents and information through two very important legislation: the Protection of State Secrets and Documents Act No. 50 of 1971 and the Right to Information Guarantee Act No. 47 of 2007.

In the Law on the Protection of State Secrets and Documents, Jordanian legislation classifies State documents based on their secrets under the Law on the Protection of State Secrets and Documents into information classified as "top

secret, confidential and limited". Under a strictly confidential item, any information giving rise to disclosure of content to persons whose work nature does not require access, retention or possession to serious damage to the internal or external security of the State, or to the great benefit of any other State that poses or is likely to pose a threat to the Kingdom and any plan relating to internal security measures, whether economic, productive, ration or urban.... They also include very important and dangerous political documents relating to international relations, agreements and treaties and all related discussions and studies.

Under a confidential clause, article 6 (1) of the Act provides any "important information whose disclosure of the content of persons whose work does not require access to it threatens the integrity of the State or causes damage to its interests, or is of great benefit to any foreign State or other entity".

Under a limited clause, the Act included in article 8 (1) "any information that is disclosed to persons who are not authorized to have access to it is prejudicial to the interests of the State or constitutes a breach of it or results in administrative or economic difficulties for the country or for the benefit of a foreign State or any other party, which may reflect harm to the State".

The Jordanian Court of Cassation classified general secondary examinations as a State secret to a limited extent, but did not consider the theft of general secondary examinations as a threat to the safety of the State and its internal or external security. These questions were therefore not considered as a protected document within the meaning of the Law on the Protection of State Secrets and Documents. The law has imposed harsh criminal penalties for those who violate its provisions, and promises otherwise, ordinary documents, but protected by law, by imposing a penalty for assault on them with one of the acts contained in the text, including disclosure of their content and notes that the legislator has expanded the



personal scope of the protection of the documents contained therein. public servants ", not only the public official, but also the official who works in the private or private sector, as he puts it. On the other hand, the law confers jurisdiction on the State Security Court, which is a special court, to deal with crimes committed contrary to its provisions and has not been convened by ordinary criminal courts; This indicates how dangerous it is in the lawmaker's view.

The Law on Guaranteeing the Right to Information is also contained in Article (13) In its nine vertebrae a large number of information counted as confidential and the Department must refrain from disclosing it State security or foreign policy and information containing analyses, recommendations, suggestions or consultations provided to the official before a decision is taken thereon; Information, personal files and correspondence of a personal and confidential nature, or those whose disclosure influences negotiations between the Kingdom and any State or other entity; or investigations conducted by the Public Prosecutor's Office, the Judicial Officer or the security services and information of a commercial, industrial or economic nature, and relating to scientific or technical tenders and research, the disclosure of which would prejudice the author's right (Abu Farah, 1996, p. 59), any secrets and documents protected under any other legislation, or documents classified as confidential and protected and obtained by agreement with another State. There is no doubt that, as can be seen from the foregoing, the Jordanian legislature has expanded the confidentiality of a large number of information so that confidentiality and the consequent withholding of information are the origin and the disclosure of information is only an exception to that origin. The law requires each department to catalogue and organize fo Information is only an exception to that asset. The law requires each department to catalogue and organize information and documentation available in accordance with due process of professional and technical origin

and to classify what must be considered confidential and protected in accordance with the legislation in force.

But the question arises here what is the purpose of the staff member's obligation not to divulge the secrets of the job?

To answer this question, a distinction must be made between the public interest and the private interest. The public interest requires the confidentiality of the staff member's secrets, as their disclosure poses risks to State security, public order and the functioning of public facilities (Judges, 2019, 2024).

As regards private interest, a public official may, by virtue of his or her position, be informed of a lot of private and confidential information concerning individuals, whether their personal, family, sick or financial situation, etc., such as a doctor, a judge, a tax officer and a police officer. The doctor's disclosure of information relating to the fact that a colleague's contract had been terminated by the body in which he worked was judged to be a justification of his punishment; Because the law prohibits the doctor from broadcasting any information about a colleague or defaming him or detract from its professional competence, as does the Bank's employee with respect to customer balances and, given the importance of these grounds, the Public Service legislation confirms that this obligation exists even after the termination of the Public Servant's relationship with the post, It is a rare post-career obligation.

### **Second requirement**

#### **Jordanian legislature's position on the prohibited categories of testimony.**

Article 35 of the Evidence Act stipulates: "No one may testify about information or the content of papers relating to State affairs, unless they have been published by legal means or have been authorized by the competent authority to broadcast them".

It is clear from the preceding text that the purpose of the prohibition contained in this provision is to preserve the secrets of the State,



unless so requested by the court or a litigant and authorized by the competent authority. This prohibition is absolutely intended to include the official and non-official in the performance of testimony on confidential information and documents relating to the affairs of the State, in the words of the chapeau of the article: "No one shall testify"

There is no explanation for this witness's relationship with State departments, or the way in which he obtained this information or papers, Whether by virtue of his work, by seizing it, or falling under his hand in any way or by the value of such papers and information, as long as it relates to the State's affairs, which it is keen to keep under wraps. If this information is disseminated by any legal means or the Authority allows it to be broadcast and disseminated, As if published in the Official Gazette or obtained written permission from the Authority, it is no longer confidential and may be certified.

Article 36 of the Jordanian Law on Evidence stipulates that: "Employees and employees or persons in charge of a public service shall not testify, even after they have left work, to information that has come to their knowledge in the course of their work that cannot be disseminated. However, the competent authority may authorize them to testify at the request of the court or a litigant."

According to this text, the purpose of the prohibition against certification is to prevent the disclosure of information and this prohibition is relatively inclusive of all persons but relates only to employees, employees, public servants and those in their judgment. '

It is not important for the employee to be in charge of the work that has obtained the information. or was not assigned to work in particular, as long as he had access to information by reason of his presence in the job or by mistake ", because the purpose of this prohibition is to preserve secrets and information that may not be disseminated whether they relate to State affairs or

individuals dealing with them, As if the tax officer had seen the books of some merchants, this prohibition is not limited to the employee's presence in the public service but extends beyond his departure from work. (Judges, 2019, p. 206)

This article, notwithstanding the competent authority's prohibition to authorize the testimony at the request of the court or a litigant, authorizes or does not authorize the testimony to be taken by the competent authority and may only refuse it if it is in the public interest. If the refusal is inappropriate, it bears the damages that may be caused to the applicant. (Abu Farha, 1996, p. 126)

The question arises here. What if a person who is prohibited from testifying testifies to his fact should have been confided by whether or not his testimony is valid or of no legal value in proof or is reassessed by the judge?

In order to answer this question, it is necessary to revert to the wording of the preceding texts. The legislature has used the wording of the order to prevent. That is to say, the text may not be contravened. If one of the persons prohibited from testimony testifies under a confidentiality and confidentiality order, his testimony is null and void.

Article 37 of the same Act stipulates that: "Any person who learns from lawyers, agents, doctors or any other person by way of his profession, or who manufactures him with a fact or information that he may not disclose, even after the termination of his service or the demise of his status, unless the statement is intended to commit a felony or misdemeanour. They must testify about that fact or information when asked by their family to do so without prejudice to their own laws."

The purpose of this text was to protect the secrets of the profession or manufacture, but the legislator did not indicate what the prohibited secret was, and views varied in determining what was meant by the secret, what was considered a secret in a particular





place, time and society, perhaps not a secret in a society and elsewhere.

From this text it is clear to us that lawyers, doctors and other professionals, to name a few, include all those in their judgement who are professions and industries whose industry or task requires them to trust the secrets of others such as pharmacists, midwives, nurses, accountants and others who perform services to the public, as a sign of the word " (or those like them) and this failure to testify in these matters is the right of the occupation holder And he has a duty, and he stays, even if it's gone and the owner's relationship with his client ends. and, except for two things, the first is if the information is intended to disclose the commission of a crime or misdemeanour that is harmful to the security of society, In this case, the profession frees itself from mute the secret, Like a doctor who asked him to perform an abortion on a woman who was a thug pregnant, he must testify that the woman was pregnant. While the second picture is if the confidential person asks them to testify to him, or if he relieves them of the duty to preserve him, agrees to disclose the secret and the court does not on its own initiative dissolve the profession from keeping the secret, and if it does so, the certificate is invalid, and invalidates all its consequences. (Younis, 2019, p.215)

The confidentiality of the profession was said to be the knowledge of secret facts that a person had come to know while practising his profession, which he was legally and morally obliged not to broadcast. It was also said that the secret was all that harmed his client's reputation, dignity, personality, offer or money.

Affirming this, the North Amman Magistrate's Court ruled No. (8138/2020) The date 9/2/2020 publications of Qastas website "Where the court finds that the purpose of disclosing the secrets of work is to disclose the complainant knowingly and knowingly the full willingness of the facts that have a confidential character of a person who, by virtue of his or her job or occupation, is reliable and to inform others about them,

whether by word, writing or reference to the intent, and intent.

The Amman Magistrates' Court also ruled in its decision No. 7291/2022, dated 24/12/2022, publications of the Qastas website. "In the case of the commission of the disclosure by a person legally obliged to confide the secret, no person shall commit the offence of disclosure of the secret. but only the trusted person, thus demonstrating that the essence of the crime of disclosure of secrets is to disrupt a person legally obliged to confide in him or her by virtue of his or her status, employment or occupation. In general, it can be said that the obligation to confidential secrets is whoever is required by law not to declare secrets to which he is informed by virtue of his job, situation or occupation, If the law does not impose on a particular person a lack of confidentiality of what has come to his knowledge by virtue of his employment, he shall not be deemed to have committed the crime of disclosure of secrets "

In general, therefore, it can be said that the confidentiality is all that damages the author's reputation, dignity or material loss. This is a substantive matter, which is assessed by the trial judge and not controlled by the Court of Cassation.

The question raised here is who estimates the confidentiality of the information, if a witness requests and refuses to testify before the court on the grounds that the information is confidential. Is the court merely saying that, or is the court's confidentiality estimated to be extended to ascertain this and that the witness's failure to testify is not malicious?

In order to answer this question, it is necessary to return to the texts of the Law of Evidence, as permitted in the article (32) It is the law of evidence to hear the testimony of every human being unless he is insane or small does not understand the meaning of the right In other words, a witness who has been requested to hear his or her appetite must indicate to the court why he or she cannot testify, It is up to the Court to assess whether this reason falls into



the secrets of the profession or occupation that the law seeks to protect and on the basis of its decision it obliges him or exempts him from testimony.

### Conclusion

From the foregoing research, we have found that disclosure of public office secrets is one of the most important prohibitions on public servants; The provisions of the legislation and the opinions of both the Jordanian jurisprudence and the Jordanian judiciary are unanimous as a form of job loyalty required of the employee with legal consequences. This study drew a number of conclusions and recommendations as follows:

#### First: Results

1. The obligation to confine the secrets of the public office applies to the public official, regardless of the legal department under which he takes office, by administrative decision, by contract of employment or by mandate.
2. The obligation to confine public office secrets after the custody of a staff member's ex officio trust is an ethical obligation imposed by public office ethics before it is a legal obligation.
3. Not all information is shared with the staff member by virtue of his or her post, but a set of conditions for confidentiality must be met. It must be confidential in nature or because of the circumstances surrounding the staff member's position.
4. The confidential nature of the fact or information does not preclude even if it is known to all in the form of its rumour as long as it is uncertain. An employee who confirms rumours has disclosed the confidentiality on which they are trusted and is therefore responsible.
5. The Jordanian legislature's adoption of the objective criterion for determining confidentiality does not require its owner to expressly entrust the staff member, but is sufficient to have access to him because of his

occupation or occupation, since these facts are linked to the subject matter entrusted to him.

6. It is not important for the employee to be in charge of the work that has obtained the information. or was not assigned to work in particular, as long as he had access to information by reason of his presence in the job or by mistake The purpose of this prohibition is to preserve secrets and information that may not be disseminated, whether related to State affairs or individuals dealing with them.

7. If a person prohibited from testimony testifies by order of the duty of confidentiality and confidentiality, his testimony is invalid and is not regarded as legal evidence because the certificate is valid only if it is accompanied by prior authorization from the competent authority.

8. Jordan's legislature has not settled on a specific definition of career confidentiality but has left it to the discretion of various administrative bodies.

9. The legislator left discretionary power if the information or document was confidential or not confidential to the court. A witness who had been requested to hear his or her appetite should indicate to the court why he or she was prevented from testifying. and it is for the Court to assess whether this reason falls into the confidentiality of the profession or occupation that the law seeks to protect and on the basis of its decision it obliges him or exempts him from testimony.

10. A public official's breach of the obligation of confidentiality may entail his or her disciplinary, civil and criminal liability, as well as the possibility that the responsibility of the administration itself may be fulfilled, including the invalidity of decisions based on previously disclosed information.

#### Second: Recommendations

1. We wish the Jordanian legislature to determine the meaning of the career secret in the field of public employment, whether it relates to the public interest or to the interests





of individuals, and to include an explicit provision in the civil service system prohibiting the public official from disclosing the secrets of public office.

2. An employee's obligation to confine the secrets of public office must be reconciled with his constitutional right to express opinion or criticize by any legitimate means and not be confiscated in the name of maintaining administrative secrecy.

3. A balance must be struck between the public official's obligation to confine the secrets of public office and recent developments in the means, functions and objectives of the Department, in particular the affirmation of the principle of administrative transparency and the right of individuals to information, particularly as this right is guaranteed by the International Covenant on Civil and Political Rights.

4. We wish the Jordanian legislature to expand the personal scope of the obligation to confine the secrets of public office; so that the public servant is not limited strictly to this term in administrative law, but that any public servant who is involved in work with the Department must cover the gravity of this obligation and infringe the public interest on the one hand and the interests of the individual on the other.

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