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# Protection of Bona Fide Third Parties under the Theory of Apparent Situation in Iraqi Civil Law

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## Abstract

The theory of apparent situation provides a legal basis for protecting a bona fide third party who relies on outward circumstances that reasonably suggest the existence of a valid legal position, even when that appearance does not correspond to the true legal situation. This article examines the conditions and applications of this theory in Iraqi civil law through an analytical doctrinal approach. It argues that protection depends on two connected requirements: an objective element, represented by external indicators capable of creating justified reliance, and a subjective element, represented by the good faith of the third party who does not know the true legal

position and does not intend to harm the real right holder. The study discusses the principal applications of the theory, particularly apparent agency, the apparent heir, and the apparent creditor. It concludes that Iraqi civil law recognizes the legal effects of certain apparent situations in order to preserve stability in civil transactions, prevent fraud, and protect legitimate reliance, provided that the third party acts in good faith and the appearance is sufficiently convincing.

**Keywords:** Bona fide third party, apparent situation, apparent agency, apparent creditor, Iraqi Civil Law, good faith

## 1. INTRODUCTION

Civil transactions are based not only on the internal truth of rights, capacities, and legal powers, but also on the outward appearances that create confidence among persons who deal with one another. In many situations, a third party may rely on external indicators suggesting that a person holds a legal status, owns a right, or possesses authority to act, while the true legal position is different. The theory of apparent situation responds to this problem by protecting a bona fide third party who relies on such indicators without intending to harm the real right holder.

The importance of this theory lies in its connection with the stability of legal dealings. If every transaction could be challenged merely because the apparent legal position later proved to be inconsistent with reality, confidence in civil dealings would be weakened. For this reason, the legislator may treat the apparent situation as legally effective in relation to a bona fide third party, although it remains contrary to the true legal situation. This protection does not aim to reward fraud or bad faith. Rather, it aims to prevent deception, preserve transactional security, and balance the interest of the real right holder with the interest of the person who relied honestly and reasonably on the apparent circumstances.

This study addresses the following research question: under what conditions does Iraqi civil law protect a bona fide third party who deals on the basis of an apparent legal situation, and what are the limits of that protection? The study adopts an analytical doctrinal method by examining relevant provisions of Iraqi civil law together with juristic opinions on legal appearance and good-faith reliance. The discussion is divided into two main sections. The first analyzes the elements required for the protection of an apparent situation. The second examines the scope of application of the theory, particularly in relation to apparent agency, the apparent heir, and the apparent creditor.

## 2. ELEMENTS OF THE APPARENT SITUATION THEORY

The theory of apparent situation is important because it may give priority to the interest of a bona fide third party over the interest of the true or original right holder. The legal relationship usually involves three persons: the bona fide third party who deals with the apparent holder of the right or authority; the apparent holder who appears to possess that right or authority; and the true right holder whose legal position differs from the appearance. The legislator therefore seeks to balance these competing interests in order to achieve security in dealings, prevent fraud, and reduce disputes between individuals. However, reliance on appearance is not protected in every case. Legal protection requires the existence of specific elements; without them, the apparent situation cannot prevail over the true legal position [1].

### 2.1. THE OBJECTIVE ELEMENT: EXTERNAL APPEARANCE

The objective element consists of external facts, circumstances, or indicators that make the apparent situation look consistent with legal reality, although it is in fact contrary to it. These indicators must be sufficiently clear and convincing to justify the reliance of the third party when concluding a legal transaction. Their form may differ according to the nature of the transaction and the legal position involved, but in all cases they must be capable of creating a reasonable belief that the apparent holder possesses the right, capacity, or authority attributed to him. The third party does not seek to harm the real right holder, but rather seeks to obtain a lawful right or benefit through dealing with the person who appears to have the relevant legal status. For this reason, the law may protect the third party by giving legal effect to the apparent situation [2].

Registration is one of the most important external indicators that may create reliance by third parties. In real estate transactions, registration performs a publicity function because it informs others of the legal status of the property and the person who appears to hold the right over it. A third party who deals on the basis of the real estate register may therefore believe that he is dealing with the true owner. By contrast, a formal contract that is not registered with the Real Estate Registration Department does not produce the legal effect required for the transfer of real estate rights [3]. Such a contract may be ineffective or void in the manner prescribed by law [4]. Accordingly, if a sale contract between a seller and buyer is terminated without recording that termination in the real estate register, the buyer may continue to appear as the owner of the property. A third party who deals with that buyer in good faith, without knowledge of the termination, may be protected because the termination was not reflected in the land register [5].

Possession may also operate as an apparent indicator. In the context of lease contracts, a distinction should be made between a person who possesses the thing and a person who neither owns nor possesses it. A tenant who contracts with the possessor of the thing may be protected if he acts in good faith and without an intention to cause harm, even where the possessor is not the true owner. By contrast, a person who contracts with someone who is neither the owner nor the possessor cannot rely on the same appearance. Possession creates an outward indication on which a third party may reasonably rely, especially when the third party has no knowledge that the possessor lacks ownership or authority to lease the thing [6]. This rationale is particularly important in relation to movables, which are easily transferred from one hand to another and are not generally subject to a public registration system. Iraqi civil law reflects this idea in Article 1163 of

the Iraqi Civil Law No. 40 of 1951, which treats good-faith possession of a movable or bearer document on a valid legal ground as a basis for protection against ownership claims by others [7].

## **2.2. THE SUBJECTIVE ELEMENT: GOOD FAITH**

The subjective element is represented by the good faith of the third party. Good faith means that the third party does not know the true legal situation and believes, on the basis of external indicators, that he is dealing with a person who has the relevant legal status, right, or authority. If the third party knows the truth, or if the truth could easily have been discovered by exercising ordinary care, he cannot be treated as acting in good faith. In that case, the interest of the true right holder becomes more deserving of protection than the interest of a person who knowingly or negligently relied on a false appearance [8].

Good faith may be understood through both subjective and objective standards. Under the subjective standard, good faith refers to the absence of deceit, fraud, or an intention to harm another person. It focuses on the internal state of the third party and whether he acted honestly when relying on the apparent situation [9]. Under the objective standard, however, the third party must also exercise reasonable care before claiming ignorance of the true legal position. A person cannot rely on good faith if the circumstances were sufficient to raise doubt or if the truth could have been discovered through ordinary diligence.

It follows that the protection of a bona fide third party requires the combination of two elements. First, there must be objective facts or apparent indicators capable of creating a justified belief in the validity of the apparent situation. Second, the third party must act in good faith, without knowledge of the true legal position and without an intention to benefit at the expense of the real right holder. When these two elements are present, the law may give effect to the apparent situation in order to protect legitimate reliance and maintain stability in civil transactions. When either element is absent, priority should return to the true legal position and to the protection of the real right holder.

## **3. SCOPE OF APPLICATION OF THE APPARENT SITUATION THEORY**

Determining the scope of application of the apparent situation theory is necessary because the theory constitutes an exception to the general principle that the effects of a contract are limited to its parties. In certain cases, however, the effects of a legal act may extend to a person who was not directly a party to it, where such extension is necessary to protect a bona fide third party who relied on an apparent legal position. The apparent situation therefore operates as a corrective mechanism that protects trust in legal dealings while remaining subject to strict conditions. Its most important applications in Iraqi civil law include apparent agency, the apparent heir, and the apparent creditor.

### **3.1. APPARENT AGENCY**

Apparent agency arises where a person appears to have authority to act on behalf of another, although that authority has ended, is absent, or has been exceeded. The legislator seeks in such cases to balance two conflicting interests: the interest of the principal, who may not have authorized the act, and the interest of the third party, who dealt with the apparent agent in good faith. This issue commonly arises when an agent continues to act after the termination of the agency, or when he exceeds the limits of the powers granted to him, while the third party reasonably believes that the agency still exists or that the agent remains within his authority [10].

Article 948 of the Iraqi Civil Law reflects this protective approach by preventing the termination of agency from being invoked against a third party who contracted with the agent before becoming aware of the termination [11]. The rule protects reliance on an apparent authority that continues to exist outwardly, even though the internal relationship between the principal and the agent has changed. It also shows that good faith is assessed at the time of contracting: if the third party knew of the termination, or if the circumstances clearly indicated the absence of authority, protection should not be granted.

The purpose of protecting the third party in cases of apparent agency is not to validate the misconduct of the agent, but to preserve confidence in legal transactions. A bona fide third party who contracts with the apparent agent without knowledge of the termination of authority or the excess of powers may deserve protection when the surrounding circumstances justify his belief. The relevant legal rule is formulated broadly and is not limited to cases where the appearance results from the fault of the principal. It may therefore extend to all cases in which the third party acts in good faith and relies on an appearance that reasonably suggests the existence of authority [12].

### **3.2. THE APPARENT HEIR**

The apparent heir is another application of the theory, but it must be distinguished carefully from the apparent creditor. A person may appear to be an heir and may deal with property or rights on that basis, although the true legal position later

shows that he was not the real heir or did not have the authority he appeared to possess. In such cases, the protection of a third party depends on whether the apparent heir's position created a convincing external appearance and whether the third party acted in good faith. For example, if a lease contract is concluded by a person who appears to be an heir, the effects of that contract may be preserved against the true heir where the tenant relied reasonably on the apparent inheritance status and no fraudulent intention can be attributed to him [13].

The apparent heir also appears in Iraqi civil law as an example connected with performance to a person who outwardly appears entitled to receive it. Article 384 of the Iraqi Civil Law provides that performance made to a person other than the creditor or the creditor's representative does not discharge the debtor unless the creditor approves it or unless the performance was made in good faith to a person who appeared to be the creditor, such as an apparent heir [14]. This provision does not mean that the apparent heir always becomes the true creditor or true owner. Rather, it protects the debtor or third party who relied on the apparent entitlement created by the circumstances.

### 3.3. THE APPARENT CREDITOR

The apparent creditor represents a further application of the same principle. As a general rule, an obligation is extinguished by proper performance, whether the obligation concerns the payment of money, the performance of an act, or abstention from an act. To avoid being required to perform the obligation again, the debtor must normally perform to the true creditor or to the creditor's authorized representative. If performance is made to a person who has no right to receive it, the debtor may remain exposed to a further claim by the true creditor [15].

An exception arises where performance is made in good faith to an apparent creditor. In this situation, the law may treat the debtor as discharged because he relied on an appearance that reasonably indicated that the recipient was entitled to receive performance [16]. Article 384 therefore distinguishes between two situations. In the first, performance is made to a person who is neither the creditor nor the creditor's representative; in that case, the debtor is not discharged unless the true creditor approves the performance. In the second, performance is made to an apparent creditor in good faith; in that case, the debtor may be discharged because the law protects his legitimate reliance on the apparent situation [14].

This rule should be distinguished from the related rule governing performance by a third person. Article 375 of the Iraqi Civil Law concerns the validity of performance made by a person other than the debtor and the circumstances in which the creditor may refuse such performance [17]. Article 384, by contrast, concerns performance made to a person who appears to be entitled to receive it. The two provisions are connected by the broader law of performance, but only Article 384 directly expresses the apparent-creditor rule.

The foregoing applications show that contracts and legal acts concluded with the holder of an apparent status may produce legal effects against the principal or true right holder when the third party acts in good faith. This applies to apparent agency, where the act of the apparent agent may bind the principal; to the apparent heir, where legal dealings may be protected against the true heir; and to the apparent creditor, where good-faith performance may discharge the debtor. In all these cases, the legislator aims to protect civil transactions and preserve confidence in dealings. However, this protection remains conditional. If the third party acts in bad faith, knows the truth, or fails to exercise the care required by the circumstances, he cannot rely on the apparent situation. In such cases, the interest of the true right holder must prevail.

## 4. CONCLUSION

This study has examined the protection of bona fide third parties under the theory of apparent situation in Iraqi civil law. The central issue addressed in the paper is the extent to which the law may give effect to an apparent legal position when that appearance conflicts with the true legal situation. The analysis shows that Iraqi civil law does not protect appearance as an independent value in itself. Rather, protection is granted only when the apparent situation creates justified reliance and when the third party acts in good faith.

## FINDINGS

1. Iraqi civil law recognizes several legal situations in which the effects of a transaction or performance may be preserved in favor of a bona fide third party, even though the person who created the appearance did not possess the true right or authority. This protection appears in cases such as apparent agency, the apparent heir, and the apparent creditor. In these situations, the law gives limited effect to the apparent legal position in order to protect confidence in civil dealings and avoid instability in transactions.
2. The protection of the bona fide third party depends on two essential elements. The first is an objective element, represented by external facts or indicators that are capable of creating a reasonable belief in the validity of the apparent situation. The second is a subjective element, represented by the good faith of the third party. A person who knows the true legal position, or who could have discovered it through ordinary care, cannot rely on the theory

of apparent situation.

3. The theory of apparent situation operates as an exception to the general rule that legal effects are based on the true legal position and that contracts bind only their parties. For this reason, its application must remain limited to cases where protection is necessary to preserve legitimate reliance. The theory should not be used to reward negligence, fraud, or bad faith.
4. The distinction between the apparent heir and the apparent creditor is necessary for accurate application of the theory. The apparent heir may create reliance in dealings concerning inherited property or rights, while Article 384 specifically protects performance made in good faith to a person who appears entitled to receive it, including the apparent heir as an example of apparent entitlement.
5. The balance between the real right holder and the bona fide third party is the core function of the theory. When the third party has relied honestly and reasonably on a convincing appearance, the law may prefer transactional stability over strict adherence to the hidden legal reality. However, when the apparent situation is weak, doubtful, or discoverable through reasonable inquiry, the interest of the true right holder should prevail.

### RECOMMENDATIONS

1. Iraqi civil law would benefit from clearer statutory provisions defining the conditions under which an apparent situation may be relied upon by a third party. Such provisions should expressly distinguish between the objective element of appearance and the subjective element of good faith.
2. The law should clarify the legal effect of the fault of the true right holder or principal in creating or maintaining the apparent situation. A distinction should be made between cases where the appearance resulted from the conduct or negligence of the true right holder and cases where the third party failed to exercise the care required by the circumstances.
3. Greater legal awareness should be encouraged among persons entering civil transactions, especially in matters involving agency, inheritance, property, and performance of obligations. Parties should be encouraged to verify legal authority, registration status, and the identity of the creditor or right holder before concluding transactions.
4. Judicial application of the theory should remain cautious and case-specific. Courts should examine whether the appearance was sufficiently convincing, whether the third party acted in good faith, and whether ordinary diligence would have revealed the true legal position. This approach would preserve the protective function of the theory while preventing its misuse.

In conclusion, the theory of apparent situation in Iraqi civil law protects bona fide third parties only where external indicators justify reliance and where the third party has acted honestly and carefully. Its purpose is not to replace legal reality with appearance, but to preserve confidence, fairness, and stability in civil transactions when the hidden truth cannot reasonably be known by the third party.

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