

ELECTRONIC SURVEILLANCE OF SOUND AND IMAGE BETWEEN CRIMINAL PROOF AND THE PROTECTION OF PRIVATE LIFE (COMPARATIVE STUDY)

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ABSTRACT

The right to maintain the confidentiality of telephone calls and electronic conversations is a right guaranteed by most legislations and constitutions as the “electronic surveillance” on personal calls is considered a violation of personal life if not done according to law. Accordingly, this research aims to demonstrate the authenticity of electronic surveillance of sound and image between criminal proof and the protection of private life. It was found that the authenticity of audio-visual imaging must be subject to the legality of evidence as if the imaging lost this legality was considered false evidence and could lead to the criminal accountability.

Keywords: electronic surveillance, private life.

In the past, the prevailing perception and understanding of the sanctity of private life was different from what it is now, for man's residence is his castle that has privacy. It is not the right of others to know the activities of the individual inside his home, However, given the impact of crime on contemporary scientific and technological progress, after the technological revolution and the development of the means of committing crime with techniques that were not known before, as these modern technical tools and devices were used to commit crimes in all its different stages, Criminal proof also played a key role in discovering crime, after the scientific revolution and life changes carried a huge growth in modern means of communication. Those means that involve unprecedented dangers to private life, and these dangers are especially evident in the development of surveillance, eavesdropping, recording, and cameras, The distance, or enclosing one's private life with walls is of little use, as it has become easy today to install precise devices to listen in on telephone communications, The presence of advanced cameras capable of taking pictures from long distances contributed to disrupting the application of traditional legal texts on protecting the privacy of individual life. These legal texts must develop in a way that guarantees the confidentiality of conversations, which is a special application of the general principle: “the sanctity of private life” where housing, postal and telegram correspondence, conversations that take place through various means of communication, and the human right to preserve his privacy (Al-Ahwani, 1978) .

The tremendous development of the information revolution was reflected in the evidence obtained from electronic means, as it began to appear in legally accepted means of proof, and many legislations took its legitimacy (Jiad, 2015). Since traditional means of proof are sometimes insufficient to confront this advanced type of technology-related crime, it has become necessary to demonstrate the legality of audio recordings in criminal proof in light of the protection of private life.

The first topic

The legality of using electronic audio and video monitoring in criminal proof.

"Electronic surveillance" of personal communications is a blatant infringement on the private life of the individual. Surveillance was not adopted according to the law, and it has become used, as we have indicated, by means that are inconsistent with what is decided by the law, as personal and telephone conversations have become of a special nature, and photos are subject to illegal capture. Hence, conversations and pictures by electronic devices are subject to recording, monitoring and disclosure.

Despite the interest of man-made laws on the right to private life and the development of multiple legal texts to protect this right, most of those laws in light of the newly developed electronic crimes that emerged as a result of this development permitted the use of electronic monitoring as evidence in criminal proof, but within special conditions set by the legislator, and from During this research, the legality of using "electronic monitoring" of audio and video in criminal evidence will be shed light on, through the following two requirements:

The first requirement: the extent of the authority of surveillance, voice recording in criminal proof.

The second requirement: the extent of the authority of surveillance and recording the image in the criminal proof.

The first requirement

:the extent of the authority of surveillance, voice recording in criminal proof

The voice is one of the personal characteristics of the individual, as it is one of his distinguishing features. Every person has a voice that differs from the other and is distinguished from others. It is possible to know a person by simply hearing his voice without seeing it, whether it is a direct modern source, or its source is indirect, as if we listen to it by certain means, whether Whether it is a phone call or a voice recorder, in addition to the fact that the tools of modern science and technology have the ability to distinguish between different voices, no matter how similar the tones of the voice are (Al-Mayahi, 2017).

Since there are many crimes that are used by sound, or the sound is one of the effects of the crime from an audio recording or a telephone conversation, the question was raised about the validity of monitoring and recording the voice in criminal evidence. To answer this question, it is necessary to review the following aspects:

First: The nature of the sound as evidence in proof.

By sound means everything that emanates from the tongue or the mouth in general and is sensed by the auditory nerve in the ear, and this includes words in various Arabic and foreign languages. Another human being has such as whining, screaming and crying, in addition to all the sounds made by the animal or the different tools (Abdullah, 2010).

The importance of the voice in criminal terms is that through it it is possible to know the identity of people and verify their identity, so the evidence that results from the voice are the anecdotal evidence, which is deduced from the reality of the spoken statements made by the perpetrators, suspects, witnesses, or issued by them or by The tools or means they used during the

commission of the crime, such as whining, screaming, the sound of car crashes, the sound of shooting and breaking glass...etc. The source of anecdotal evidence is testimony, interrogation, confrontation and confession (Surour, 1985).

Second: The legal adaptation of audio monitoring and recording and the position of criminal jurisprudence.

A wide doctrinal controversy arose on the issue of legal adaptation to monitoring telephone conversations, as monitoring telephone conversations or recording by scientific means is a procedure aimed at obtaining anecdotal evidence that is closer to confession or testimony, even if its means are different from what is customary in taking the statements of the accused, interrogating them, or taking the accused's statements. Witnesses' statements (Al-Samni, 2005). The jurisprudence was divided on this, as some of them considered "electronic monitoring" as an act of inspection. This tendency confirmed that monitoring telephone conversations is a type of inspection and is therefore subject to the guarantees and restrictions of its practice (Surour, 1985). Proponents of this view add to demonstrate their view that Article (95) of the Egyptian Code of Criminal Procedure, which indicated that: "In moving, searching and seizing things related to the crime," and this suggests the extent of similarity between the procedures involved under this section, as well as that if there is no The law is one of the conditions of telephone surveillance, it is resorting to provisions related to inspection to cover this loophole and fill the legislative shortcoming that occurred (Abdul Majid, 1998).

While another trend went to consider it a kind of message control (Abu Al-Ela, 2005), because there is a great similarity between written messages and telephone conversations, the latter is a message between two parties, one of whom is the sender and the other to the addressee. The telephone conversation is an oral message, while the letters are a written message (Al-Samni, 2005). This trend has been taken by the Jordanian legislator through what is stated in the "Jordanian Criminal Procedure Law No. (9) of 1961 and its amendments" Article (88): "The public prosecutor may seize all letters, letters, newspapers, publications, and parcels at post offices, and at telegraph offices all letters." He may also monitor telephone conversations whenever this is useful in revealing the truth."

In the same direction, the Qatari legislator went through what was stated in the "Qatar Criminal Procedure Law No. 15 of 1971 and its amendments" in Article (77) that: "A member of the Public Prosecution may, by a written order from the Attorney General, seize at the post office all letters, letters, and publications." , parcels, and telegrams, and to monitor wired and wireless conversations, and to record what is taking place in a private place whenever this is useful in revealing the truth in one of the following felony: 1- felonies directed against the external or internal security of the state. Narcotics and dangerous psychotropic substances and regulating their use and trafficking 3- Felonies stipulated in the Weapons, Ammunition and Explosives Law.

While a third opinion was of the view that the evidence derived from the "electronic monitoring" of the voice was an independent evidence that did not fall under one of the well-known and traditional types of procedures in the law, as having a special type of subjectivity (Al-Mayahi, 2017).

Third: The position of the legal legislation on the authority of audio surveillance and recording in criminal proof.

As we mentioned earlier, private or personal conversations have become subject to violation and monitoring, whether by public authorities or by ordinary individuals, where the state authorities resort to monitoring these conversations with the aim of putting pressure on the will of individuals in order to achieve political goals or in order to reveal the truth about a crime that has been committed (Al-Mohammadi, 2015).

Violation of the confidentiality of personal conversations is one of the things criminalized by various penal laws, and if the penal legislation evolves with the development of the crime, it is natural that the accompanying criminal procedures such as (procedures for investigation and investigation of crimes), especially those related to modern methods of proof to detect crimes. In this same context, we find an international trend that emerged after the events of September 11, 2001, to which the United States of America was subjected, with the issuance of a law that allowed wiretapping and recording of telephone calls and permitting the interception of correspondence of all kinds. The American opened the doors for several legislations to enact such laws that were previously prohibited because they were considered laws related to human rights violations in general and the right to privacy in particular (Ben Ammar, 2014).

Accordingly, the penal legislation has permitted infringement of the right to privacy with regard to the issue of monitoring phone calls and electronic correspondence, but with the availability of legislative and judicial restrictions, and accordingly, we find that the Jordanian legislator has permitted the Public Prosecution in the stages of inference and investigation to monitor telephone communications, according to what is stated in Article (88) of Jordan's Code of Criminal Procedure, which states: "... He may also monitor telephone conversations whenever this is useful in revealing the truth."

Also, despite the Jordanian Telecommunications Law No. 13 of 1995 and its amendments, telephone calls are considered confidential matters through what Article (65) of it indicated to him: "Telephone calls and private communications are confidential matters that may not be violated, at pains Legal accountability." However, despite this, the aforementioned law obligated the licensed companies not to provide data on their customers' phones except to the competent authorities, according to what was stated in Article (29/G) which stated: "The licensee's obligation to provide the necessary facilities to the competent authorities to implement judicial orders. and administrative related to tracking the communications specified with those orders.

The same applies to the Qatari legislator, despite the fact that he punished the assault on the private freedom of individuals without their consent and in cases other than those authorized by law in the Qatari Penal Code No. (4) of 2017, whereby he penalized for eavesdropping in a phone call or other monitoring and audio recording according to what It was mentioned in Article (333) of the Qatari Penal Code, but it permitted infringement of this freedom with legislative restrictions in accordance with what was stated in the "Qatari Criminal Procedure Code and its amendments" in Article (77), where the Qatari legislator gave the Public Prosecution member the authority after obtaining a written order from the Public Prosecutor To

monitor wired and wireless conversations, and to record what is happening in a private place, whenever this is useful in revealing the truth in a committed felony.

Through the previous legal texts contained in the Jordanian and Qatari legislation, we find that the forensic evidence derived from “electronic monitoring” and recording of voice and telephone calls has the evidentiary power in criminal proof like other forensic evidence, and we note that the legislator has set legislative controls to obtain this evidence because it prejudices the personal freedom of individuals.

The second requirement

The extent of the authority of surveillance and photo recording in criminal proof

The image of the human being in general has a general and closely related relationship that does not accept any fragmentation of the personality of the human being. The person hides it inside, and the events that a person experiences quickly appear on his face, as the image is closely related to the human person (Al-Mayahi, 2017).

The image is also an effective means of expression that can be used for different purposes, and for this it is necessary to provide a special legal framework for it that sets limits for legitimate use restricted by the public interest, and through this requirement will be discussed in these aspects on the following:

First: What is the image as evidence in criminal proof?

The right to protect the image is one of the manifestations of the sanctity of private life, for the image of the individual is only one of the components of his private life, and attacking it is a blatant attack on his privacy. Living out of sight (Al-Amin, 2000).

In general, the image of a person is defined as: “the apparent form of his soul that lies in his body, as it highlights the ego, and is an expression of the states of joy and sadness that he is going through” (Al-Muhammadi, 2015), and it was also defined as: “Every light extension of the human body indicates a clear indication of the personality of its owner. And it is equal if this conveys the image in its true form, or it introduces a distortion so as to give it a comic appearance” (Al-Mouzani and Al-Muzzani, 2008).

The researcher believes that the concept of the image is the person’s external appearance, which is a reflection of his internal state and the accompanying external emotions and feelings, which means that the image embodies the physical and moral appearance of the person, and accordingly the image plays a major role in many security and practical fields. Finally, the security services in some countries rely on the method of surveillance through closed circuit television that installs its lenses in selected locations in squares and public roads in cities to monitor the movement of pedestrians, vehicles and gathering places, as well as filming marches and demonstrations to know their organizers and estimate the appropriate method to confront them (Al-Mayahi, 2017). Surveillance cameras are used publicly, as in surveillance cameras in public streets, or they can be used hidden, as in banking institutions such as banks, due to the increase in crimes at the present time. Those banks and other sensitive facilities.

Second: The validity of the use of the image in criminal proof.

The authoritativeness of visual photography in criminal evidence is subject to what all other criminal evidence is subject to in terms of the necessity of legality in the evidence. The loss of

this legality of photography was invalid evidence and may not be adhered to, and it may expose the person who made the photography to criminal accountability (Al-Amin, 2000), and the evidence for that What protection is provided for it in the Qatari Penal Code Article (333), which indicated that: “A penalty of imprisonment for a period not exceeding two years, and a fine of not more than (10,000) ten thousand riyals, or one of these two penalties, shall be imposed on anyone who assaults the sanctity of private life. Individuals may, without their consent, in cases other than those authorized by law, by committing one of the following acts: “...4 – Taking or transmitting pictures or video clips of an individual or individuals in a private place, through a device of any kind.” And he shall be punished with the same penalty. stipulated in the preceding paragraph are:

- 1- “Capture or transmit pictures or videos of an individual or individuals in a public place, through a device of any kind, with the intent of using them in abuse or defamation.
- 2- Take or transmit pictures or video clips of the injured or dead in accidents, by means of a device of any kind, in cases other than those authorized by law.

Thus, the image, as the result of the photographic process, is considered one of the important scientific evidence in criminal proof, given the information that this image contains of very important informational details, which are a documentation of locations, personalities, effects, events and situations. It is a documentary document that can be considered as a material to inform about an event, or about a person or a place, as proof of a moment of an event (Mustafa, 1998).

The development of crime and the increase in its rates through criminals’ use of the latest scientific methods in committing crimes, led to the need to search for solutions that reduce the aggravation of crime rates, and proving crimes through pictures is a method used, especially in controlling road traffic violations in most countries (Al-Yousef, 2015).

It is also possible to use the pictures taken by the devices that are installed by a party or a person in order to monitor an event that may take place in a specific place in the criminal proof. The image is a presumption that is valid to prove the occurrence of the crime and to attribute it to the perpetrator, if the rights of the defense are taken into account (Al-Amin, 2000).

Thus, the researcher believes that the use of the image in criminal proof is of great importance that cannot be denied in this field, as it is one of the modern means used by the legislator in combating crimes in all its forms and means of committing them, which has become one of the main pillars that the investigator and expert refer to to match the statements of the accused and witnesses. Especially at the scene of the accident, but we believe that the use of the image in criminal proof is an exception to the general rule, as this exception is restricted by several restrictions, including the non-contradiction of visual photography with the principle of legality, that is, the means of photography must not be in conflict with a legal text, and there must be no conflict Filming with the accused's right to defense.

The second topic

Guarantees to protect private life in light of the legality of audio and photo recordings

The texts, whether their source is the constitution or ordinary law, as well as judicial rulings, reveal a number of guarantees that are necessary to rule the legality of audio recordings, monitor

conversations and images, and accept evidence derived from them. Reasoned, as well as it is not permissible to monitor telephone conversations, audio recordings and pictures except in connection with a specific crime that has already occurred, in addition to being necessary to detect it and apprehend the perpetrators, in addition to the need for the permission issued to monitor conversations and audio recordings to specify the necessary period for them, and this is what will be discussed by study and analysis, from Through the following requirements:

The first requirement: the position of comparative legislation on the right to confidentiality of telephone conversations and electronic correspondence.

The second requirement: the guarantees established for the legality of sound recordings and images.

The first requirement

The position of comparative legislation on the right to secrecy of telephone conversations and electronic correspondence

The tremendous development in the means of communication and information technology has transformed the world into a small village connected to each other, so protecting phone calls and electronic correspondence and maintaining their confidentiality has become an urgent and important matter at the present time, especially after the technological development of information and communications and the resulting misuse of it from Negative effects on the private lives of individuals, so all countries had to provide special legal protection for all types of telephone calls and electronic correspondence in the face of the electronic development of information.

Most foreign and Arab laws have ensured the protection of confidentiality of communications, telephone calls and electronic correspondence in the face of the technological development of information in criminal legislative texts. Special legislation has also emerged that did not allow wiretapping of personal calls except with the availability of certain conditions. We will clarify the position of both American, French and Egyptian law, as follows:

First: The position of American law

The United States of America is one of the first countries in which discussions arose about the legality or illegality of monitoring telephone conversations and electronic correspondence, starting in the second decade of the twentieth century, and these discussions at the level of jurisprudence and the judiciary resulted in the intervention of the legislative authority, whether the federal (Congress) or local At the state level, legislation regulating the wiretapping process and clarifying the necessary guarantees for its legality. The position of American law was opposed to surveillance and wiretapping of telephone conversations and electronic correspondence, as it criticized and considered it a violation of the nature of the privacy of speech, as it was announced that surveillance is outside the federal law. The proof obtained through wiretapping by Federal officials are unlawful in criminal cases in federal court, except in cases where a court order is authorized to investigate serious crimes under the Public Motor Vehicle and Highway Security Crimes Act 1968, or by a decision signed by the Attorney General for National Security Investigations without authorization Under this law, a judge may

impose a prison sentence of five years or more A nation of \$10,000 or both penalties for each (Mesrob, 2015):

- 1- Attempts to deliberately eavesdrop on any verbal, telephone or electronic communication.
- 2- Deliberately uses or attempts to use an electronic or mechanical device, or otherwise, to eavesdrop on verbal communication, or assigns another person to do so.
- 3- Anyone who intentionally discloses or attempts to disclose to another person the content of the oral, telephone or electronic conversation that he knows.

In 1986, the American legislator issued the Communications Privacy Act. This law prohibits illegal access to electronic communications stored on the computer, and imposes a penalty of imprisonment or a fine on every person who deliberately captures or attempts to capture every electronic communication across the borders of the American state and knowingly knows that it is illegal. Dissemination or use of it, and these penalties apply to eavesdropping, recording, or censoring the transmitted communication via the Internet, telephone conversations, or e-mail. In government information systems by tapping the system and transmitting the information it receives to the accused's device (Aqeeda, 2008).

After (September 11, 2001), the mechanisms of monitoring and wiretapping of telephone calls and websites expanded significantly as a result of terrorist operations by the targeted countries and even the non-targeted countries. The American Patriot Act issued in (2001) authorized the interception and monitoring of oral, wired and electronic communications for crimes related to terrorism, The US anti-terrorism laws generally allow wiretapping and preventive surveillance just on suspicion and without judicial permission, which violates the concept of judicial protection of freedoms and contradicts the amendments to the US Constitution, which has been severely criticized by human rights associations and American jurisprudence.

Second: The position of French law

The study of the guarantees necessary for the legality of monitoring telephone conversations and electronic correspondence can be deduced from the development that occurred in the French legislation, judiciary and jurisprudence. Or it regulates the process of wiretapping of telephone conversations, so the judiciary, supported by an aspect of jurisprudence, worked hard to find a basis for texts to state the legitimacy of monitoring telephone conversations and electronic correspondence, while providing them with the necessary guarantees to prevent abuse. 91-646) on July 10, 1991, to regulate the wiretapping of messages carried by the various means of communication, so the guarantees of legality after the issuance of this law find their source in the legislative texts, but the main motive for issuing this law is the condemnation of the French system by the European Court of Human Rights Under the two judgments issued on April 24, 1990, in which it clarified the insufficiency of the guarantees provided by the legal system in France To interfere in the private lives of individuals by monitoring telephone conversations and electronic correspondence, and therefore this type of eavesdropping is in violation of Article 8 of the European Convention on Human Rights (Aqeedah, 2008).

The new French Penal Code issued in 1992 and in force in 1994 referred to it as “punishable

by one year's imprisonment and a fine of 45,000 euros for any authorized violation of the private life of other persons by resorting to any of the means:

- 1- Anyone who intentionally, by any means, captures, records, or transmits a private or confidential conversation without the consent of the stakeholders.
- 2- Anyone who intentionally captures, records, or transmits a photograph of a specific person from a private place without his consent.

Based on the foregoing, we find that the French legislator did not specify in this article the type of devices used in the recording, but rather any of the advanced electronic devices, provided that the conversation is private and confidential, whether it is done in a private or public place, which is in line with modern technological developments in the field of communications. The most important of which is the Internet, while it stipulated that a person's photo be taken or transmitted in a private place because of its privacy for the individual, and the same penalties are imposed in paragraph 3 of Article 226 in the case of manufacture, import, detention, leasing, display or sale of equipment designed or being designed to detect Telephone calls made from a distance without permission from the competent authorities (Mesrob, 2015).

The French legislator also stressed the penalty in Article 432 / F9 "in case of breach or violation of the confidentiality of correspondence by a person holding public authority with imprisonment for a period of three years and a fine of \$ 45,000", and the same penalty is imposed on employees of electronic communication networks open to the public or telecommunication service providers. However, the French legislator has authorized in Article (81) of the Criminal Procedure Code of 1957, as amended by Law No. 643 issued on 7/17/70, "for the investigative judge to He orders the monitoring and recording of telephone conversations whenever it is useful in revealing the truth in a crime. The director of the central administration and all postal employees must respond to any request from the investigating judge to listen in on telephone conversations, provided that this authority may not be exercised except in very special crimes that cannot be proven by means of evidence. Ordinary crimes such as bribery and threats, the penalty for which is imprisonment for a period of two years or more in accordance with Article 100 of the law, and that the monitoring shall be carried out by persons from the telecommunications company. Conditions for four months, subject to renewal" (Al-Obaidi, 2008).

The French legislator also authorized, in Article 3 of Law No. 646 issued on July 10, 1991, as amended by Law No. 669/2004 on preserving the confidentiality of correspondence sent by electronic communication, the possibility of an exceptional license to eavesdrop on communications carried out through means of communication, aiming to search for information of security interest. and the preservation of the essential elements of France's scientific and economic stock, or the prevention of terrorism, crime and organized deviation, in accordance with Article 4 of the same law, by a written and justified proposal of the Minister of the Interior, or the Minister in charge of Customs, or the person to whom each of them is specially delegated, knowing that The law stipulates the formation of a national committee to monitor security wiretaps, which is an independent administrative authority tasked with ensuring respect for the application of the law (Mesrob, 2015).

Third: Egyptian law

Since the second decade of the twentieth century, the Egyptian legislator has stipulated the inviolability of correspondence and telephone conversations, and the inadmissibility of disclosing secrets related to them except within the limits of the law. The secrecy of telephone conversations, the Egyptian Constitution of 2014 affirmed in Article (45) “the secrecy of telephone conversations and electronic correspondence, ensuring their confidentiality, and the inadmissibility of monitoring, as experience revealed – before that, the deviation of some state agencies in complying with the law and threatening the security of citizens, and therefore the authority announced It denounced the attacks on the personal sanctities of citizens, and hundreds of secret files and tapes that recorded conversations and pictures of citizens surreptitiously were burned without their knowledge or consent of what was being planned for them in secret, under the supervision of the late President Anwar Sadat himself, and this was a step that the former President of the Republic initiated his policy The Ministry of Interior and the beginning of a new era on the path to freedom and the rule of law, and thus became the general principle in Egyptian legislation is to protect the sanctity of the private life of citizens without prejudice to it.

This was also confirmed by the new Egyptian Constitution of (2014) in the text of Article 57 of it, which states: “Private life is inviolable, and it is inviolable. Postal, telegraphic, and electronic correspondence, telephone conversations, and other means of communication are inviolable and confidential. It is guaranteed, and it may not be confiscated, accessed, or censored except by a reasoned judicial order, for a specified period, and in the cases specified by law. Stopping them or depriving citizens of them, arbitrarily, and this is regulated by law.” As stated in the Egyptian Code of Criminal Procedure No. 150 of 1950 and its amendments (latest amendment April 27, 2017) in a text in Article (206) regarding the protection of individual freedoms, as it included an amendment to some provisions of laws, as it came as a basis for the legality of monitoring telephone conversations, as the article stipulated that: The Public Prosecution may not search anyone other than the accused or a house other than his, unless it becomes clear from strong indications that he is in possession of items related to the crime. It makes recordings of conversations that took place in a private place whenever this is useful in revealing the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months.”

Through the previous article, we find that the legislator requires to take any of the previous procedures to obtain in advance a reasoned order from the criminal judge after reviewing the papers, and the supervision order must be limited to a period of time.

The Egyptian legislator, as part of his attempt at global developments in the fields of communications and information, issued the Telecommunications Regulatory Law No. 10 of 2003, where Article (73) of Law No. 10 of 2003 regarding the issuance of the Telecommunications Regulatory Law stipulates that “he shall be punished by imprisonment for a period of no less than three months.” And with a fine of not less than five thousand pounds and not exceeding fifty thousand pounds, or either of these two penalties, whoever performs, during the performance of his job in the field of telecommunications, or because of it, one of

the following acts:

- 1- “Broadcasting, publishing or recording the content of a communications message or part of it without having a legal basis for that.
- 2- Concealment, alteration, obstruction or alteration of any communications message or part of it that you have received.
- 3- Deliberately refraining from sending a communications message after being assigned to send it.
- 4- Unlawful disclosure of any information relating to users of communication networks, or what they make or receive of communications.”

The second requirement

Guarantees for the legality of audio and video recordings

Many laws guarantee the protection of personal freedom. A number of guarantees have been adopted that ensured that the privacy of personal life is not violated, most notably:

First: The necessity of issuing an order from the judiciary for audio and video recordings

Among the basic guarantees established by the Jordanian constitution issued in 1952 is the protection of personal freedom, the inviolability of the home and the confidentiality of correspondence and conversations. To enshrine the principle of protection and personal freedom, as it stipulates that “personal freedom is safeguarded,” as stated in Article 8 of the Constitution that “no one may be arrested or imprisoned except in accordance with the provisions of the law.” The Jordanian constitution also guarantees the confidentiality of communications and telephone calls, as indicated through Article (18) to: “All postal, telegram and telephone correspondence are considered confidential and are not subject to monitoring or arrest except in the cases specified in the law.”

The Qatari Constitution also indicated in Article (37) that: “Human privacy is inviolable. No person may be subjected to any interference with his privacy, family affairs, home, correspondence, or any interference affecting his honor or reputation, except in accordance with the provisions of the law and in the manner stipulated therein.” As for the Constitution of the Kingdom of Saudi Arabia issued on March 1, 1992, which stipulates in Article (40) that “telegraphic and postal correspondence, telephone communications and other means of communication are inviolable and may not be confiscated, viewed or listened to.”

Obtaining permission from the judiciary for audio and video recordings is one of the most important guarantees necessary for their legitimacy and a guarantee to protect private life from violation, both in Jordanian and comparative law, as Article (29/g) of the Jordanian Telecommunications Law No. 13 of 1995 stipulates “the licensee’s obligation to provide the necessary facilities to the competent authorities.” To implement judicial and administrative orders related to tracking communications specified in those orders. Article 56 of the same law also indicated that: "Telephone calls and private communications are considered confidential matters that may not be violated, under penalty of legal liability."

Accordingly, we see that the Jordanian legislator considered recording voice and voice and monitoring telephone conversations a violation of private life, unless there is a legal basis and a court order, as he is subject to a fine and imprisonment, and this is what the Jordanian

Communications Law referred to in Article (71), where it stipulates: “Whoever publishes or disseminates the content of any communication by means of a public or private telecommunication network or a telephone message that he sees its operation by virtue of his position or records it without a legal basis shall be punished by imprisonment for a period of no less than a month and not exceeding a year or a fine of no less than (100) dinars and not more than for (300) dinars, or with both penalties.”

And the necessity of issuing an order from the judiciary to monitor conversations and record calls, requires the issuance of a surveillance order by the competent judge, depriving the Public Prosecution of issuing this order, and even condemning the surveillance that is carried out at the initiative of judicial officers without obtaining permission from the judiciary, and in this the Qatari Code of Criminal Procedures indicated In Article (77) that: “A member of the Public Prosecution may, by a written order from the Public Prosecutor, seize at the post office all letters, letters, publications, parcels, and telegrams, monitor wired and wireless conversations, and record what is happening in a private place whenever that is necessary. Benefit in revealing the truth in one of the following felonies:

- 1- “Felonies directed against the external or internal security of the state.
- 2- Felonies stipulated in the Law on Combating Narcotics and Dangerous Psychotropic Substances and regulating their use and trafficking.
- 3- The felonies stipulated in the Weapons, Ammunition and Explosives Law, and seizure, surveillance, or registration, in cases other than the aforementioned, shall be by order of a judge of the competent court of first instance.”

Where the previous article referred to the legality of audio recording in crimes related to internal and external state security, and it is by order of a judge of the competent court of first instance. The Moroccan constitution in force for the year 2011 also stipulates the confidentiality of correspondence and communications, and pointed to the necessity of issuing a judicial order in the event of reviewing the content of the correspondence and its disclosure, as it indicated that “every person has the right to protect his private life ... the confidentiality of personal correspondence, whatever its form, cannot be authorized, and it is not possible to authorize By accessing its content or publishing it in whole or in part, or using it against anyone except by a judicial order and in accordance with the conditions and modalities stipulated by law (Chapter 24 of the Moroccan Constitution of 2011).

Second: It is not permissible to monitor telephone conversations except in connection with a specific crime that has already occurred

Monitoring conversations is a dangerous procedure that violates the human right to confidentiality, and jeopardizes his personal freedom. Therefore, the law required that this exceptional procedure should only be undertaken in connection with a specific crime, and it should not be ordered until after it has occurred. On the one hand, the legitimacy of monitoring conversations must relate to a specific crime of a degree of gravity And we have seen in the foregoing that most of the legislation regulating the monitoring of conversations and other means of communication requires the occurrence of a certain crime of a degree of gravity that justifies taking this action (Aqeedah, 2008).

In this regard, Article (83) of the Qatari Criminal Procedure Law No. (23) of 2004 states: "The Public Prosecutor, or his representative, in the event of strong evidence that the perpetrator of any of the crimes stipulated in Articles (293) and (330) of the The Penal Code, for whom a telephone or any other communication device was used, may order, based on the complaint of the victim of this crime, to place the device under supervision for a period not exceeding thirty days, renewable for a similar period or periods as long as the justifications for this procedure are Listed still."

The Jordanian legislator indicated in the Jordanian Code of Criminal Procedure that the authority competent to control correspondence and monitor telephone conversations is the public prosecutor as an investigative authority. Telegraph all telegraphic messages, and he may monitor telephone conversations whenever this is useful in revealing the truth. The same law also permitted the public prosecutor to delegate one of the judicial police officials to control correspondence or monitor telephone conversations (Articles 88 and 92 of the Jordanian Code of Criminal Procedure No. 9 for the year 1961).

Article (17/1) of the Jordanian Code of Criminal Procedure confirms that the public prosecutor is charged with investigating crimes and tracking their perpetrators. Its sanctity may be violated under penalty of legal responsibility (Article (56/a) of the amended Jordanian Telecommunications Law No. 13 of 1995).

Third: Monitoring must be useful in revealing the truth

The occurrence of a particular crime is not sufficient to justify the monitoring of conversations. In addition, there must be a real benefit that can be sought from it in revealing the truth. The reason for this condition is that monitoring is an exceptional measure dictated by necessity because it involves a serious attack on the sanctity of private life and the human right to confidentiality, so an exception is allowed for the benefit What is expected of him related to uncovering the mystery of the crime or working to apprehend the perpetrators, as indicated in Article (77) of the Qatari Procedures Law: "A member of the Public Prosecution may, by a written order from the Attorney General, seize at the post office all letters, letters, publications, and parcels, and telegrams, to monitor wired and wireless conversations, and to record what is going on in a private place whenever this is useful in revealing the truth." Articles (95) (206) of the Egyptian Code of Criminal Procedure stipulate this condition and in one form: "..... and to order the monitoring of wired and wireless conversations or the holding of conversations in a private place whenever this is useful in revealing the truth."".

As the Jordanian law expressly indicated in the Jordanian Code of Criminal Procedure No. 9 of 1961 in Article (88) "The public prosecutor may seize at post offices all letters, newspapers, publications and parcels, and at telegraph offices all telegraphic messages, and he may also monitor telephone conversations whenever that is necessary. useful in revealing the truth."

It is left to the public prosecutor or the investigative judge to assess the usefulness of monitoring telephone conversations and audio recordings in revealing the truth. This assessment is subject to the oversight of the trial court. If it appears to it that the surveillance is not justified by the necessity of revealing the truth, it has become illegal and the evidence derived from it is invalid (Aqedah, 2008).

Conclusion, results and recommendations

In the conclusion of this research entitled "Electronic audio and video monitoring between criminal proof and the protection of private life," it was found that electronic audio and video surveillance and other electronic surveillance methods have emerged on the scene as a result of the tremendous development in the technology sector, and this was reflected in a significant development in surveillance and eavesdropping devices Espionage and photography, which constituted a serious attack on the privacy of individuals, and accordingly, the need to work on legal regulation arose in light of the different criminal legislation about the extent of the authority of criminal audio and video surveillance in criminal proof by its commitment to the legislative restrictions set for it. Great interest in protecting private life from violation and infringement through eavesdropping or audio and video surveillance, but it permitted within the restrictions of violating that privacy in the event that there was an urgent need to prove some crimes, and based on the foregoing, the researcher reached a set of results and recommendations, which are as follows :

First: the results

- 1- Criminal proof is the mainstay on which all rules of criminal procedure are built, and many rules related to criminal proof have developed, especially after the emergence of many new crimes.
- 2- From the jurisprudential point of view, jurisprudence differed about the extent of the authority of monitoring the evidence resulting from the electronic monitoring of sound and image.
- 3- The use of the image in criminal proof is of great importance that cannot be denied in this field, as it is one of the modern means used by the legislator in combating crimes, which has become one of the main pillars that the investigator and expert refer to to match the statements of the accused and witnesses, especially at the scene of the accident.
- 4- The use of image and sound in criminal proof is an exception to the general rule, as this exception is restricted by several restrictions, among which is that visual and audio imaging does not conflict with the principle of legality, that is, the means of photography must not conflict with a legal text, and photography must not conflict with the accused's right to defense .
- 5- The authoritativeness of audio-visual photography in criminal proof is subject to what all other criminal evidence is subject to the necessity of legality in the evidence. The loss of this legality of photography was invalid evidence and may not be adhered to, and it may expose the person who made the filming to criminal accountability for committing an act that involves criminal liability.
- 6- The basic guarantees established by the Jordanian constitution issued in 1952 are the protection of personal freedom, the inviolability of the home, and the confidentiality of correspondence and conversations.
- 7- Monitoring conversations is a dangerous procedure that violates the human right to confidentiality, and jeopardizes his personal freedom. Therefore, the law required that

this exceptional procedure should only be undertaken in connection with a specific crime, and it should not be ordered until after it has occurred. On the one hand, the legitimacy of monitoring conversations must relate to a specific crime of a degree of gravity.

Second: Recommendations

- 1- The Jordanian and Qatari legislators must keep pace with the global trend in reconsidering the criminal law as a whole, given the shortcomings of Jordanian and Qatari penal legislation in the face of modern manifestations that represent an assault on private life, which may make the judge clash with the principle of legality of crimes and penalties, as it is not permissible to measure or expand in criminal texts.
- 2- The researcher recommends setting legal controls expressly stipulated in the law regarding electronic audio and video monitoring, which must be available in order for the evidence derived from that monitoring to be approved in criminal proof, including:
 - A - That the judge's permission to electronically monitor sound and image be reasoned.
 - B- Electronic monitoring may not be conducted except in connection with a crime that has already occurred and not a future crime.
 - C- The electronic monitoring of sound and video should be of limited duration and not absolute.
 - D- Determining the fate of the recordings that result from the electronic monitoring of audio and video so that they are not used later as a means to threaten the offender if they fall into the hands of others who are not competent.

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-Article (95) of the Code of Criminal Procedure, which states: "The investigative judge may order the seizure of all letters, letters, newspapers, publications, and parcels at post offices and all telegrams at telegraph offices, and order the monitoring of wired and wireless conversations or recordings of conversations that took place in a private place, whenever this is beneficial. In the emergence of the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months, and in all cases, the arrest, inspection, surveillance or registration must be based on a justified order and for a period not exceeding thirty days, renewable for a similar period or periods.

- Article (206) "The Public Prosecution may not search anyone other than the accused or a house other than his home unless it becomes clear from strong indications that he is in possession of items related to the crime. Wired and wireless conversations, and to make recordings of conversations that took place in a private place, whenever this is useful in revealing the truth in a felony or misdemeanor punishable by imprisonment for a period exceeding three months. To take any of the previous procedures, it is required to obtain in advance a reasoned order from the summary judge after being informed on the papers.

In all cases, the order must be exact, inspected, or monitored for a period not exceeding thirty

days. The summary judge may renew this order for a similar period or periods. (Last modified April 27, 2017).

- Chapter 24 of the Moroccan Constitution of 2011.

- Articles (88) and (92) of the Jordanian Code of Criminal Procedure No. 9 of 1961, and the Jordan

ian State Security Court decided by its decision No. 61 in 1992 to rely on audio recordings as one of the written statements, as stated in a decision of the State Security Court in this regard. The conviction of the court was reinforced by the facts that he extracted from what was stated in the audio recordings of all the first and second interested parties, as it was proven to the wisdom that these recordings were made based on the decision of the public prosecutor based on the provisions of Article (88) of the Jordanian Code of Criminal Procedure No. 9 of 1961. Especially after the aforementioned audio recordings have been subjected to experience.”

- Article (56/a) of the amended Jordanian Telecommunications Law No. 13 of 1995.