

The right to the secret of correspondence and its legal protection

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Abstract:

Every person has the right to respect his private life, and to preserve his evils, which others should not see without his condemnation or by a judicial order, including the confidentiality of correspondence that means the confidentiality of everything that is exchanged between individuals among themselves and for the correspondence to be characterized by privacy, it is necessary to provide racism, the first of which is personal represented in the will of the sender and the second is subject to any content of the message.

It is the private secrets that falls on the human interest, which is preserved by both the law and the law to preserve the dignity of man and respect his humanity.

key words:

Public freedoms- correspondence confidentiality- privacy- legal protection- constitutional amendment 2020.

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introduction:

There is no doubt that personal freedoms come at the forefront of freedoms as necessary for the possibility of enjoying other public freedoms, as they are a condition for the existence of other public freedoms. In fact, some have expressed personal freedoms in the term "individual freedoms in the full sense of the word" Les Libertés Individuelles ProPrement Dites ", because personal freedoms represent the center of the circle for all other freedoms. In the context of personal freedoms, the right to confidentiality of correspondence and that this right is an extension of freedom of thought, because he who fears will violate his messages that do not dare to express this freely. In addition to that this right is a manifestation of the sanctity of private life, and the importance of this right was guaranteed by most of the constitutions, guaranteed by treaties and regulated by laws. So the question arises, what is the meaning of the right of the confidentiality of correspondence? What is the reality of its protection in both international and national laws?

So we decided to divide this research paper into two topics:
Section I: The concept of the right of the confidentiality of private correspondence

Section II : Legal protection the right of correspondence (internationally and nationally)

Section I: the concept of the right to confidentiality of private correspondence.

The confidentiality of correspondence¹ falls within the framework surrounding the individual, as it is not permissible for others to storm

¹ However, others see that the news is correct to prepare a secret, even if it is not walking whoever wants to conceal it, but rather it is necessary in any case that it would have to reveal it to harm a person by looking at the nature of the news or the conditions of the situation and it is equal to the harm to the harm is literary or material.

There is a secret in the French judiciary to count the news secretly, and if it was common among people, but it is not certain, either when it was confirmed to the public, the characteristic of the secret was toured. See: Osama bin Omar Muhammad Asilan, criminal protection for the profession in Islamic law and positive laws and

it without his will, and thus the correspondence and what it contains related to the private life of the individual and no one can see it. Therefore, this topic will be discussed: the concept of the confidentiality of correspondence (A) and to the exceptions that respond to the right to prejudice its prohibition and secrecy¹ (B)

A) the concept of the confidentiality of correspondence.

At first, the term correspondence indicates a broad meaning that includes issues that do not fall within the scope of private life, as correspondence may include things that are not from private life.

A: the right of correspondence and its elements.

There are also some complications concerning understanding the meaning of secrecy legally, some of them knew that the meaning of secrecy in law is anything that wounds its disclosure with reputation or dignity.

The right of communication in general states that it is impermissible to disclose anything in correspondence between two individuals, because it is an attack against the right of property of what the correspondence contained to disrupt that right and violating freedom of thought as well..²

Professor Farouk Al -Kilani defines personal correspondence as "they are human conversations with others that translate his opinions, and it may be directly between individuals without using any modern means of communication such as wireless and wireless communications or by using one of these means so they are indirect."

The correspondence is intended for all written messages, but it was sent by the mail road, or by a special messenger, as it means telegrams and faxes. It is equal in this that the message is within a closed or open circumstance or that it is an open card, as long as it is clear that the sender is not to be informed of others without discrimination. It should be noted that correspondence applies with confidentiality in

its applications in some Arab countries, Master Thesis, Naif Arab University for Security Sciences, College of Graduate Studies, Riyadh, 2004, p. 39

¹ Bashkin Safia, Legal Protection for Private Life - A Comparative Study -, PhD thesis, Mawloud University, 2012, p. 225.

² Morange. S, Les Libertés Publics, P.U.F, 1995, p61.

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light of the latest means of e-mail, which is more used from the Internet, as the email is often used to transfer and store files and cards, and what is required with it is not permissible to monitor correspondence, nor to disclose information except through the elimination or administrative authorities for legitimate reasons, because the email is part of the concept of correspondence and private life.¹

Given the importance of this freedom or the role that it plays in a person's life as a human being close to man and that concern him alone. The laws were unanimous in respect of this freedom and the harsh penalties for those who violate their sanctity have been established. And guaranteed most of the constitutions, including the Algerian constitution in Article 39: It is not permissible to violate the sanctity of the citizen's private life, and the sanctity of his honor, and the law protects them from the "confidentiality of correspondence and communications related to all its forms." ²

The declaration of this freedom in the Algerian constitution has evolved from the constitution of 1963 to the amended 2008 constitution, as it appeared in the 1963 constitution in Article 14 as the phrase (guaranteeing correspondence secrecy to all citizens). Although the phrases that express this freedom changed, (the secrecy of correspondence in all its forms is guaranteed) in the 1976, 1989, and 1996 constitutions and the 2008 amendment, and this phrase closest to what is correct as it has expanded historically from these freedoms to incorporate all kinds of correspondence when postal correspondence and other telegrams and telephone communications are the material translation of its ideas and its secrets could potentially be known to a non-source or whoever it is aimed to see, could confiscate, hide, or listen to it in the way of eavesdropping by any means.

¹ Al -Kilani Farouk, Lectures in the Code of Criminal Procedure (Jordan and Al - Muqarin), Edition 02, Part 02, Amman, 1985, p. 100.

² Muhammad Al -Shahawi, Criminal Protection for the Variation of Private Life, Arab Renaissance House, Cairo, without edition, 2005, p. 184

As for the elements of the right of the confidentiality of correspondence, they are:¹

1. The right to confidentiality of correspondence includes all written communications, whether through messages or telegrams.
2. The right to confidentiality of correspondence includes wireless and wireless communications, such as telephone and electronic conversations for what technology has reached today.
3. The right to confidentiality of correspondence is based on the idea of the right of ownership, because the attack on it. It is an attack on private life and personal freedom
4. Not to disclose the content of the correspondence, seizure, conceal, or destroy of the correspondence, or inform others.²

B: the right to confidentiality of correspondence in Islamic law.

In the idiomatic sense of secret in Islamic jurisprudence, we see that "the secret is things from you to keep hidden or did not take from you doer did nothing right yasir the people or the people doers due harm to or some benefit or something he wants from him without him."

In the fatwas of the Islamic Fiqh Academy, a describing the meaning of a secret said "what the person leads to last to be hidden on him peacefully or out of fear, and, it comprises anything is urged or the request on hideaway, if the customary holding his hideaway means that it contains the ness and adversity of the human being that the people dislike to see."

As we see this entitlement in the holy Qur'an and want attest to this point is the noble Prophetic Sunnah, and one of the noble verses about this is the look of God, Great and Almighty; "O you who believe avoid much of your thoughts, your thoughts is only insufficiently observed,

¹ Karim Karima, Protecting the right to privacy from infringement under the Information Society, Journal of Legal and Administrative Sciences, Faculty of Law, Al -Jilali University, No. 02, 2006, p. 146

² Hani Suleiman Taisayat, Human Rights and Basic Freedoms, 3rd edition, Amman, 2000, p. 132

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does One of you like to eat the flesh of his dead brother, not know yourselves."

And from the prophecy's instruction we see the sayings of the messenger of god, God's prayers and peace be upon him, from party of Abu Hurairah, may God be pleased with him, that messenger of god, peace and blessing be upon him, said : "Do not think that he has arise this lie of the prophetic hadith, do not instruct or spy".

As so, we have the statement he depicted in his the home.

B) exceptions on the base of the correspondence and its prohibition.

The general principle is the confidentiality and sanctity of private correspondence, but there are exceptions to this general asset, which is: the relationship of paternity, the relationship of marital (A), the judicial investigation (B).

1: the relationship of fatherhood and marital relationships.

a- The father's relationship with his children:

The father is the natural governor of his minor children, and he is the one who bears civil responsibility for the harmful actions that may occur from these minors, in addition to being a criminal responsible for neglect in their care. This responsibility should be matched by controls from the father on his children, as he is entitled to monitor the messages he sends and which his children receive in order to ensure the interests of children and the interests of the family.

b- Marital relationship:

Marital secrets are confidential and continued even after their separation. It is never permissible for either one of them to transmit the exchanges that took place between them during the marriage of the other without the satisfaction of the other taking into account Article 153, paragraph 02 of the Civil and Administrative Procedures Law.

With regard to the personal messages that one of the spouses had edited or received while staying in the framework of the crime of adultery, and in the payment of evidence for the breach of the obligation of sincerity, including the question arose about the

possibility of being able to bring them out to the judiciary when they include secrets from private life?.

To discuss with regard to the position of the Algerian legislator, it is necessary to refer to the echoes of the provisions of the Penal Code. We found that on the one hand criminalized the crime of adultery from consideration of the public order, according to paragraph one of Article 339 of gender. On the other hand, there was a charge for the victim's husband to be able to prove it in which one of the reasonable ways is found Article 341 of the Penal Code, the letters or documents that the adulterer (the husband) had issued, these messages are presented by one of the health couple each time he [AB] had obtained it and was directly linked to the crime of adultery.¹

2: the judicial investigation.

Certain societal needs or public interests may warrant infringement of this freedom, as in the case of the Public Prosecution being entitled to expect statements, messages and documents and the records that have been seized, as long as everything that can be done, has been done, in the presence of the accused and the holder of them or sent to them and record their notes on them, and according to the findings from the examination, to order the inclusion of the documents in the case file, or return that, which was in the possession or was sent to it.

The messages and exposing their secrets are subject to an investigation procedure, the latter general procedure of information not being admissible, unless the interest of the investigation demands that this procedure be violated as previously mentioned, after the permission of the competent Judge, for a limited period, and on the basis of explanations and legal reasons. Article 84 of the Code of Criminal Procedure gave this authority to the investigating authority only. They must respect the following guarantees and guarantees of confidentiality of correspondence.²

¹ Hossam El-Din Kamel Al-Ahwano, the right to respect private life, the right to privacy- a comparative study- the Arab Renaissance House, 1978, p. 67.

² Maryam Arous, Legal System for Public Freedoms in Algeria, Master Thesis, University of Algeria, 1999, p. 46.

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1. That the confidentiality of correspondence is a benefit to show the truth if the crime is punishable by imprisonment for a period of more than three months, the matter must be issued by the criminal judge based on serious and embarrassing challenges.
2. It is a reason.
3. This is in the narrowest limits and not exceeding 30 days renewable.

Section II: Legal protection for the right of correspondence (internationally and nationally).

Legal protection refers to the measures and mechanisms within the law created to protect and preserve rights, interests and privacy. The application of laws, legislations and legal frameworks aimed at ensuring the protection of individuals, their property, their data, and other legal rights. Legal protection acts as a shield against violations of rights, ill -treatment, and rights violations

A) international protection for the confidentiality of correspondence.

The Universal Declaration of Human Rights is the first public document, integrated, and specialized in human rights. It is - undoubtedly a sign that it is the aspect of international human rights law as a branch of international law. (A). After its issuance, the United Nations began working to take more positive steps, so that its results are of a binding nature, and the best way towards this goal was to formulate human rights on the basis of my pledges that are formulated in an agreement that takes the form of an international treaty (B).

1: the Universal Declaration of Human Rights.

The individual's relationship is no longer just a citizen's relationship with a state, after the Second World War. The international law, to this war, was limited to legalizing the relationship between states and defining their competencies and sovereignty. However, this concept has changed radically after mankind knew the scourge of wars, as global public opinion began to tend towards international protection

for the individual in the face of the arbitrariness of dictatorial governments, especially in the field of civil and political rights.¹

This phenomenon was global and regional at the same time. The United Nations announced an important project of preparing the Universal Declaration of Human Rights, and led the initiative to reach the adoption of the Universal Declaration of Human Rights on December 10, 1948. With regard to the freedom of correspondence, it was said in Article XII (12) of the announcement that no one shall be subjected to arbitrary interference with his correspondence, his private life, his family or his home.

The most significant results of international work during the twenty years after the issue of the Universal Declaration of Human Rights, the adoption of the two international covenants in 1966, of which the first deals with civil and political rights, and the second international covenant deals with social, economic, and cultural rights, and paralleled protocol for receiving and studying the notifications of individuals who claim to be a victim of any rights violations stipulations in considering these notifications. The new aspect of the two international era, is that they took form as an international treaty binding to the parties, and on the other hand, the two covenants incorporate an international system, enhancing and providing for respect for the rights contained therein.

The application and implementation of the two international covenants began in 1976. By virtue of the global and binding nature of the two covenants, they are regarded as an important step in the process of protecting human rights at the international level.²

Article 17 of the International Covenant on Civil and Political Rights stated that "it is not permissible to interfere in a control or illegal in the privacy of anyone, his family, his residence, or his correspondence." But everyone has the right to protect the law against

¹ Al -Taher Bin Khalf Allah, Introduction to Freedoms and Human Rights - Constitutional Expression of Freedoms and Laws - Com for Studies, Publishing and Distribution, Algeria, Part 2, without i, without a year, p. 53.

² Yasser Al -Huwaish, Muhannah Noah, Public Freedoms and Human Rights, Syrian Virtual University, Right Program, 1st edition, 2010, p. 139.

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such intervention or exposure, and it is similar to Article II of the Universal Declaration of Human Rights.

2: the International Covenant on Civil and Political Rights.

The aspect of correspondence is one of the aspects of the individual's privacy and explicitly guaranteed by Article (17). The protection accorded extends to not only when it delivers written correspondence, by post, or messenger, but also the entire period before sending and after receiving it. Otherwise, it includes one's direct oral communications, and, in today's society, it must mean any mechanical or electronic method. The protection is implemented that your correspondence is not disclosed except to the pick subject. The correspondence must also be protected from prior aspiration or interference, omissions to kick a message, changing its deliverer, or even delaying a delivery, or through adept and the mass of the wires of telephone or electronic communication.

The protection should extend only more, but to contract what is subject of patronising communication between two people should be expanded to what are generally not referenced above as correspondence. Consider an example of this. The notion of these articles may reveal if the individual acting him concern personally regrets, especially if these moral, religious or political values dictating what is deemed generally appropriate for the recommendations of others see. It would make difference for him under Article (18) that even the International Covenant protects the individual, even if the materials he wished to send were communicated no manner of communication process, in Stanley case against Georgia, the US Supreme Court of Judge Dakota was surrounded by the innocent dignity of readers when the state agents were working on behalf of the state acting of the and during a lawful search of - one of the state of Georgia astray state - the legal agents of the state of Georgia.

The court considered the three films found possessed because the juries did not believe their act was immoral in stating that these three images were in the State Courts because it believed that the United States Constitution protects the individual right and his ideas as well

as to read and watch whatever it wants in the sanctuary of his house, and he has the right sanctified from the state seeking in contents of his room and vice versa, charities couldn't wonder inquisitive about whatever it was - in the even the benevolent state agents related to your absence, they could not transit the qualify of search without fuelling reverberations or destruction from their delivery day. And if the first legislation to the American laws gained any legitimacy to envy abilities, it seemed to indicate the state could make no offence against any persona whose lying flatly on the emblazon location of themselves, but they literally took fight to proscribe the type of books the individual could read and film they would enjoy of so little knowledge of it as to supposed to be &/o viewing of it or funding it, it's everything..¹

In fact, Article (17) of the International Covenant on Civil and Political Rights, and if it is read with a capacity of a horizon, it also protects the right to the confidentiality of correspondence, and it prohibits reserve and illegal works that interfere with means such as delivery, preserving ideas and information and keeping them secret. There are also cases in which intervention is permissible to limit the freedom of correspondence, whatever its characteristic, when necessary, in some cases, such as national security and defending public order or damaging criminal crimes.

b) Protection is the right to confidential correspondence in Algeria.

The Algerian constitution was concerned with public rights and freedoms and was subjected to the right of correspondence (A) and guaranteed and guaranteed the laws by providing penalties for its violation (B).

1. Constitutional protection for the right of correspondence.

The observation in the provisions of the constitution regarding the legal system of public freedoms guarantee only public rights and freedoms, in public forms, and does not pay attention to the text on

¹ Karim Kashkash, Secret Correspondence Protection, Journal of Sharia and Law Studies, Volume 23, No. 2, 1992, p.

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precise issues, which are enshrined in the law as an effective guarantee to protect, and guarantee public freedoms. And since correspondence is forbidden as a reserve of the privacy of individuals, so, for most of the constitutions guaranteed this right, provided for by the Algerian constitution 2020 in Article 47, paragraph 02, where it provided "every person has right to confidentiality of his correspondence and his own communication in any form". But it was framed in a public form, unlike some of the constitutions that dealt with this freedom in accuracy and clarity. And what is also noted on Article 47/2 is that the Algerian constitutional legislator corrected the error that was in the 2016 constitution in Article 39 Paragraph 02 of the 2016 constitutional amendment, that came, despite the explicit warranty to the confidentiality of correspondence, but lacked accuracy narrowly by the phrase "guaranteed", because it implies the unconstitutionality for listening seats (listening devices) that can be placed in private phone centers, and from the context of the article 39/2 the unconstitutionality of the fourth chapter with respect to the interception of correspondence, registering of assets, and taking photographs in the investigation of the Code of Criminal Procedure (Article 65 bis 5) because the guaranteed phrase implies that it is against to interfere with correspondence or to record the voices in all cases. It is preferable to mention exceptions in Article 39/2 of the Constitution text or to record after the end of the paragraph, just as it provided for Article 40 the sanctity of the house, so there is no inspection except according to the law thus the article can be framed in the context of what the Egyptian project produced, for example, where it formulated in Article 57/2 of the 2014 constitution: ... and for the postal and telegrams, television conversations and others, all means of communication and it is not permissible that it is confiscated to seen or monitored, except by a reasonable judgment, and for a foreseen period which is determined by the provisions of the law. Thus, the dispute between the constitutional principle and other laws decrease..¹

¹ Among the Arab constitutions that guaranteed the right to the confidentiality of

2. Legislative protection for the confidentiality of correspondence.

The Algerian legislator has provided protection for the right of correspondence in both the (criminal) penal laws and civil law.

2-a . In criminal law.

In addition to the constitutional guarantees that protect the confidentiality of correspondence,¹ the Algerian project surrounded this right with texts criminalizing every attack, including Article 303 of the Penal Code, which stipulates that "everyone who breaks or damages messages or correspondence addressed to others, with bad faith, and in other cases stipulated Article 137 shall be punished with imprisonment from one month (1) to one year with a fine of 25,000 dinars to 100,000 DZD or in one of these For two penalties and the punishment is more severe if the attack is issued by the state employees, and that is stipulated in Article 137 of the Penal Code. A user or delegate in the interest of lightning is embezzled, damaging a telegram or broadcasting its content, and the perpetrator is punished, as well as depriving from all public jobs or services from five to ten years.

2.b . In the civil law:

The Algerian civil law does not include any explicit text that guarantees the protection of the quality of private life, but rather a general text that protects the interesting rights of human personality. As the right of the confidentiality of correspondence can be included in the private life and the latter within these rights, Article 47 stipulates that: "For everyone who has been legally assaulted by one of the rights inherent to his personality to request the suspension of this attack and compensation for the harm that may be harmed."²

correspondence: including the Egyptian constitution in Article (57), the Iraqi constitution in Article (38), the Moroccan constitution in Chapter (24) and the Jordanian constitution in Article (18).

¹ Selim, the right to privacy between guarantees and controls in Algerian legislation and Islamic jurisprudence, College of Islamic Sciences, University of Oran, 2013, p. 88.

² - Noiri Abdel Aziz, Criminal Protection for Private Life- A Comparative Study- PhD thesis, Faculty of Law, Batna University, University Year 2010-2011, p. 48.

Conclusion

The right to the secrecy of correspondence is viewed as one of the most significant of the personal rights outlined in human rights, both in terms of the Universal Declaration of Human Rights and in constitutional laws and national legislation across countries- Algeria included, and in emphasizing the importance of the right to the secrecy of correspondence the Algerian legislator mentioned it in the body of the constitution, which signifies the a legal opportunity for every individual to communicate with others through one or more of land, sea, or air messages and postal parcels, to receive their messages and parcels and address their recipients through any promotional means that the law permits, whether they are treated with the traditional and known methods of communication or with modern electronic communication methods. It is useful to note that with the technological and scientific development and the increase in the available means of technology that can be deployed to attack the manifestation of respect for the secrecy of correspondence and prohibition, it has become increasingly useful to avail the legal means to protect that freedom.

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