



The Right to the Secret of Correspondence and Its Legal Protection

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ABSTRACT

Respecting the private life of man is one of the most prominent basic rights guaranteed by positive laws and divine laws, as it is a pillar of human dignity and individual freedom. This right includes preserving human secrets and not dispensing them without his/her explicit consent, or outside the framework of a legitimate and justified judicial order. The principle of correspondence is considered one of the most important applications of this right, as it includes all correspondence and communications between individuals, whether written, electronic, or even oral, as long as it relates to their privacy and they do not want to inform others.

Private secrets are an integral part of private life, and they include all information or an incident related to a person and affects his/her interests, such as health data, family relationships, intellectual and religious inclinations, financial situation, and others. The law was approved to protect these secrets, stressing the necessity of preserving them and not being infringed, as Islamic law affirmed this principle through the prohibition of espionage and followed the nakedness of people, in respect of their humanity and the maintenance of their dignity.

Accordingly, any violation of these secrets is a serious prejudice to the basic rights of man and requires legal accountability, as it is inconsistent with moral principles.

INTRODUCTION

There is no doubt that personal freedoms come to 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. Some have expressed personal freedoms in the term “individual freedoms in the full sense of the word”, *Les Libertés Individuelles Premièrement 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 constitutions, guaranteed by treaties, and regulated by laws. So the question arises, what is the meaning of the right to 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 to the confidentiality of private correspondence;
- Section II: Legal protection for the right of correspondence (internationally and nationally).

1. 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 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 and the exceptions

that respond to the right to prejudice its prohibition and secrecy.²

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.

Definition of the jurists of law. There are some difficulties in determining the meaning of the secret legally, so some know that the secret is all that harms its disclosure with reputation or dignity. The right of correspondence in general means that it is not permissible to reveal the contents of correspondence between individuals, because of the attack on the right of ownership of what this correspondence includes and disrupting this right, and violating freedom of thought as well.³

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 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.⁴

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 concerns him alone. The laws were unanimous in respect of this free-

1 Asilan, O. M. (2004). Criminal protection for the profession in Islamic law and positive laws and its applications in some Arab countries. Master Thesis. Naif Arab University for Security Sciences, Riyadh, p. 39.

2 Safia, B. (2012). Legal Protection for Private Life – A Comparative Study. PhD thesis, Mawloud University, p. 225.

3 Morange, S. M. (1995). *Les Libertés Publics*. France: P.U.F., p. 61.

4 Farouk. A. – K. (1985). *Lectures in the Code of Criminal Procedure* (Jordan and Al – Muqarin). Amman, p. 100.

dom, 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".⁵

The statement of this freedom in the Algerian constitution came from 1963 to the amendment of the constitution in 2008, as it came in the 1963 constitution in Article 14 of the phrase (ensuring the secrecy of correspondence to all citizens). However, the phrases that came expressing this freedom changed, so (the confidentiality of correspondence for all its forms is guaranteed) in the constitution of 1976, 1989, 1996, the amendment of 2008 and this phrase is closer to the rightness as it has expanded from these freedoms to include all kinds of correspondence as postal correspondence and all telegrams and telephone communications are a material translation of its ideas and its secrets can be. It is permissible for a non – source and whoever is directed to see it, confiscate it, conceal it, or hear it in a way of eavesdropping by any means.

As for the elements of the right of the confidentiality of correspondence, they are:⁶

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, as technology has reached today;
3. The right to confidentiality of correspondence is based on the idea of the right of ownership, because of 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 destruction of the correspondence, or inform others.⁷

5 Al – Shahawi, M. (2005). Criminal Protection for the Variation of Private Life. Arab Renaissance House, Cairo, p. 184.

6 Karima, K. (2006). Protecting the right to privacy from infringement under the Information Society. Journal of Legal and Administrative Sciences, p. 146.

7 Taisayat, H. S. (2000). Human Rights and Basic Freedoms. 3rd edition, Amman, p. 132.

The Right to Confidentiality of Correspondence in Islamic Law

We find in the idiomatic meaning of the secret in Islamic law: "The secret is all that you conceal and hide yourself and do not see anyone to do harm or to bring an interest or his concern from him without him".

In the fatwas of the Islamic Fiqh Academy, a statement of the meaning of the secret stated that "what a person leads to the last to be concealed by him before or from a distance, and includes what is stimulated by evidence indicating the request of concealment if the custom is to keep his concealment as it includes the peculiarities and disadvantages of the human being that people hate to see".

We find this freedom in the Holy Qur'an, as in the noble Prophet's Sunnah, and one of the noble verses indicating this is the words of God Almighty: "O you who believe, avoid many of the thoughts, because some think that they do not. Do you like one of you to eat the flesh of his brother, dead, and you will be given it.

And from the guidance of the prophecy, we find the words of the Messenger, may God's prayers and peace be upon him, on the authority of Abu Hurairah, may God be pleased with him, that the Messenger of God, peace and blessings be upon him, said: "Do not think that the thought is the lie of the hadith and do not feel or spy". And also his saying: Exposing in his home.

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, and the judicial investigation.

2. THE RELATIONSHIP OF FATHERHOOD AND MARITAL RELATIONSHIPS

The father is the natural guardian 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 criminally 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 to ensure the interests of the children and the interests of the family.

Marital secrets are reserved and escalated even after their separation. It is not permissible for either of them to divulge the correspondence that took place between them during the marriage of the other without the satisfaction of the other. This explanation is matched by Article 153, Paragraph 02 of the Civil and Administrative Procedures Law.

Concerning the personal messages that one of the spouses had been edited or received within the framework of the crime of adultery, and the evidence for breaching the duty of sincerity may raise the question about the possibility of bringing them to the judiciary when it includes the secrets of private life?

To address the position of the Algerian legislator, we need to refer to the provisions of the Penal Code, and we find it on the one hand that it criminalizes the crime of adultery to consider it from the public order, according to Article 339, Paragraph 1. On the other hand, it is allowed to be proven by the victim's husband, and among the permissible methods is mentioned Article 341 of the Penal Code, the letters or documents issued by the adulterer (the husband), these messages are presented by one of the health couple whenever he obtained it and was directly related to the crime of adultery.⁸

The judicial investigation

Some social necessities and public interests require prejudice to this freedom, as the Public Prosecution may look forward to speeches, messages, papers and seized registrations, provided that all that is possible is done, in the presence of the accused and the holder of it or sent to him and codify their observations on them, and according to what appears from the examination to order the inclusion of the papers to the case file or return it to the one who was holding it or was sent to it.

The messages and the disclosure of their secrets are set an investigation procedure that may

not be resorted to unless the investigation interest requires that this procedure be broken, after the permission of the competent judge in a limited period and based on the justifications and legal reasons. Article 84 of the Criminal Procedure Law has given this authority to the investigation authority only. It must be adhered to the following provisions of guarantee and guarantee of the correspondence confidentiality:⁹

1. That the confidentiality of correspondence is a benefit to show the truth if the crime is punishable by imprisonment for 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.

3. 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

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. After its issuance, the United Nations began working to take more positive steps, so that its results are binding, and the best way towards this goal was to formulate human rights based on my pledges that are formulated in an agreement that takes the form of an international treaty.

8 Al-Ahwano, H. E.-D. (1978). The right to respect private life, the right to privacy – a comparative study. The Arab Renaissance House, p. 67.

9 Arous, M. (1999). Legal System for Public Freedoms in Algeria. University of Algeria, Algeria, p. 46.

3.1. 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.¹⁰

This phenomenon was of a global and regional nature at the same time. The United Nations launched an important project for the preparation of the Universal Declaration of Human Rights, and led the effort to reach the adoption of the Universal Declaration of Human Rights on December 10, 1948.

Concerning the freedom of correspondence, it was stated in Article XII (12) of the announcement that no one is exposed to arbitrary intervention in his private life, his family, his residence, or his correspondence. The most important findings of international efforts during the twenty years after the issuance of the Universal Declaration of Human Rights, the adoption of the two international covenants of 1966, the first for civil and political rights, the second international covenant related to social, economic and cultural rights and a protocol for receiving and studying the notification of individuals who claim to be victims of violation of any of the rights stipulated in the consideration of these notifications.

The new in the two international era is that they have taken the form of an international treaty binding for the parties, and on the other hand, the two covenants include an international system, to enhance and ensure respect for the rights contained in it. The implementation of the two international covenants began in 1976. By virtue of the global and binding nature of the two covenants, they are considered an important step on the path of protecting human rights at the international level.¹¹

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

3.2. The International Covenant on Civil and Political Rights

The characteristic of correspondence is one of the manifestations of the individual's privacy and is explicitly protected in Article 17. This protection includes not only during the transfer of written correspondence by mail or by a messenger, but also in the period before sending it and after receiving it. It also includes direct oral communication, and today it must include contact with any mechanical or electronic means. Protection is carried out so as not to disclose its contents except to the recipient person. It is also preserved from aspiration or any other intervention, kicking a message, changing its destination, or delaying it, or by confusion and the tangle of phone lines or electronic communications.

The extent of protection must be expanded, so that the protection of personal communication between two individuals must be expanded to documents that are not usually called correspondence. Examples of this. The idea in these articles may be threatened if the individual responsible for it reveals, especially if these moral, religious, or political values prevailing in society contradict. In any case, it does not matter to him.

Under Article (18) that the International Covenant protects the individual's right even if the materials are not sent by any means of communication, in the Stanley case against Georgia, the US Supreme Court of Justice ruled the innocence when the state agents of the state found, and agents of the state of Georgia during a legal inspection of one of them, and they found three films that were considered immoral and violated the Juria State Law, because it saw that the United States constitution protects the individual's right And ideas, and to read and watch whatever he wants within the

10 Allah, A. – T. (2005). Introduction to Freedoms and Human Rights – Constitutional Expression of Freedoms and Laws. Publishing and Distribution, Algeria, p. 53.

11 Yasser Al – Huwais, M. N. (2010). Public Freedoms and Human Rights. Syrian Virtual University, Syria, p. 139.

retreat of his house, and that he has the right to liberate from the state's research in the contents of his office and whatever the organizations related to the absence, they do not reach the retreat of the individual's house. And if the first amendment to American law means something, it means that the state does not have a matter of telling one who is sitting alone in his home, but rather tells him what books he can read and the films he can see.¹²

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 crimes.

3.3. Protection is the right to confidential correspondence in Algeria

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

3.3.1. Constitutional protection for the right of correspondence

The thing observed on the provisions of the constitution in the field of the legal system of public freedoms only guarantees public rights and freedoms, in public formulas, without accurately addressing the text on accurate issues that are considered an effective guarantee to protect and ensure public freedoms. And since correspondence is forbidden as a warehouse of the privacy of individuals, so most of the constitutions guaranteed this right, including the Algerian constitution 2020 in Article 47, paragraph 02, where it included "every person has the right to confidentiality of his correspondence and his communication in any form" but it came in the public form, unlike some of the

constitutions that dealt with this freedom with accuracy and clarity.

And what is noticed on Article 47/2 that the Algerian constitutional legislator remedies the error that was present in the 2016 constitution in Article 39 Paragraph 02 of the 2016 constitutional amendment that came despite its explicit guarantee of the confidentiality of correspondence, but it lacks accuracy, especially in the phrase "guaranteed" where it results in the unconstitutionality of listening seats (listening devices) that can be placed in private phone centers, as well as appears from the formulation of the article 39/2 The unconstitutionality of the fourth chapter related to the interception of correspondence, the registration of assets and the taking of photos in the investigation of the Code of Criminal Procedure (Article 65 bis 5), because the guaranteed phrase suggests that there is no objection to correspondence nor to register the voices in all cases. It was better to mention exceptions in the text of Article 39/2 of the Constitution or for registration after the end of the paragraph, just as Article 40 included the sanctity of the house, so there is no inspection except according to the law Thus, the article can be formulated in the context of what the Egyptian project went to, for example, where it stipulated in Article 57/2 of the 2014 constitution that: ... and for postal and telegrams, television conversations and other means of communication, and it is not permissible to confiscate it See it or its control except by a reasonable judicial order, and for a limited period, in accordance with the provisions of the law. Thus, the conflict between the constitutional principle and other laws reduces.

3.3.2. 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.

3.3.2.1. In criminal law

In addition to the constitutional guarantees that protect the confidentiality of correspondence,¹³

12 Kashkash, K. (1992). Secret Correspondence Protection. Journal of Sharia and Law Studies, p. 144.

13 Med, S. (2013). The right to privacy between guarantees and controls in Algerian legislation and Islamic jurisprudence. College of Islamic Sciences, University of Oran, Algeria, p. 88.

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 deprived of all public jobs or services for five to ten years.

3.3.2.2. In 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 fundamental 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”.¹⁴

14 Aziz, N. A. (2010). Criminal Protection for Private Life – A

CONCLUSION

The right of the secret correspondence is considered one of the most important personal rights stipulated in human rights, whether in terms of the Universal Declaration of Human Rights or constitutional texts and national legislation in countries – including Algeria – and in the interest of the Algerian legislator on the importance of the right of the secret of correspondence he mentioned at the heart of the constitution, which means the opportunity for every person to correspond to others by sending messages and postal parcels in the land, the sea, or the air, to receive messages and parcels and address others with any basket The law is allowed. Whether it is dealt with by well-known traditional or modern electronic communication means.

It is worth noting that, with this technological and scientific development and the increase in technical means that can be used to threaten respect for the confidentiality of correspondence and its prohibition, it has become necessary to increase the legal means to protect this freedom.

Comparative Study. PhD thesis, Faculty of Law, Batna University, p. 48.

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