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Legal Framework for Protecting the Right to Private Life in the Digital Space: The Extent to which Jordanian Constitution and Legislation Takes into Account International Requirements

Estrutura legal para proteger o direito à vida privada no espaço digital: até que ponto a constituição e a legislação da Jordânia levam em consideração os requisitos internacionais

TAREQ NICOLA AL-BILLEH¹, *

¹Applied Science Private University (Amman, Jordan)

t_billeh@asu.edu.jo

<https://orcid.org/0000-0001-7171-6004>

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Abstract

The article analyzes the legal framework for protecting the right to private life in the digital space and strengthening the constitutional rights stipulated in the Jordanian Constitution, by regulating the right to private life in the digital space, protecting personal data in light of the ease of collecting, retaining and processing it, and preventing infringement on the right of citizens to protect their personal data and privacy as stipulated in the Jordanian Constitution and relevant legislation. The article aims to find a legal framework that balances the rights of citizens to protect their personal data, and allowing data and information to be processed and preserved in the digital space, as well as the extent to which the Jordanian legislator takes into account international requirements regarding the protection of the right to private life in the digital environment. The study reached several conclusions and recommendations, the most important of which is the need to develop legal legislation to regulate

Resumo

O artigo analisa o marco legal para proteger o direito à vida privada no espaço digital e fortalecer os direitos constitucionais estipulados na Constituição da Jordânia, ao regular o direito à vida privada no espaço digital, protegendo os dados pessoais à luz da facilidade de coleta, reterendo e processando-o e impedindo a violação do direito dos cidadãos de proteger seus dados pessoais e privacidade, conforme estipulado na Constituição da Jordânia e na legislação relevante. O artigo visa encontrar um quadro legal que equilibre os direitos dos cidadãos de proteger seus dados pessoais e permitir que dados e informações sejam processados e preservados no espaço digital, bem como a medida em que o legislador jordaniano leva em consideração os requisitos internacionais sobre a proteção do direito à vida privada no ambiente digital. O estudo chegou a várias conclusões e recomendações, das quais a mais importante é a necessidade de desenvolver legislação legal para regular o mecanismo de armazenamento e tratamento de dados pessoais dentro

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*Assistant Professor of Constitutional and Administrative Law at the Faculty of Law at the Applied Science Private University (Amman, Jordan). PhD in Public Law from the University of Jordan (Amman, Jordan).

the mechanism of saving and processing personal data within clear restrictions and obligations. In addition, it is necessary to develop legislation to ensure the safety of digital space and support its stability, and define the obligations imposed on those responsible for personal data, as well as the punishments and penalties imposed on persons who violate the legislation that regulate the right to privacy, taking into account international requirements.

Keywords: private life; digital space; digital privacy; personal data; Jordania.

de restrições e obrigações claras. Além disso, é necessário desenvolver legislação para garantir a segurança do espaço digital e apoiar a sua estabilidade, e definir as obrigações impostas aos responsáveis pelos dados pessoais, bem como as punições e penalidades impostas às pessoas que infringirem a legislação que regula a direito à privacidade, tendo em conta os requisitos internacionais.

Palavras-chave: vida privada; espaço digital; privacidade digital; dados pessoais; Jordânia.

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1. INTRODUCTION

Most countries of the world have recognized the right to private life in the digital space. It is considered one of the most important human rights. The right guarantees people to live freely and safely.¹ It is considered a basis for protecting their dignity and independence. It is still the subject of many jurisprudential disputes and debates over its definition and features. This is because it is mainly related to a flexible and relative idea, and this discrepancy has been reflected in determining its nature.²

Therefore, the right to the sanctity of private life is subject to many violations. In many cases it may clash with some other freedoms, such as freedom of opinion and expression, especially in light of the technological development taking place in our

¹ ROUABAH, Farid. Guarantees of Privacy during the Procedures for Monitoring Electronic Communications. *Journal of Legal and Political Research*, Setif, vol. 2, n. 2, p. 1-30, 2020. Available at <https://www.asjpcerist.dz/en/downArticle/621/2/2/128101>

² SCHADE, Horst. International Law—The Right to Respect for Private Life. *The Cambridge Law Journal*, Cambridge, vol. 44, n. 2, p. 180–183, 1985. Available at <https://doi.org/10.1017/s0008197300115259>

contemporary time. In order to protect this right, countries joined forces to create many international instruments, whether at the global or regional level.³

In the digital age, communications technology has also enhanced the capabilities of governments and individuals to conduct surveillance, intercept communications, and collect data. In light of the development taking place in the digital space, which constituted a wide space, it prompted some to exploit it and violate the privacy of others by publishing, circulating and storing their data through digital media. This also prompted many countries to develop administrative, civil and criminal legislation and rules in order to protect the right to private life in the digital space.⁴

Although the right to a private life is closely linked to personal freedom and is considered a basic pillar of human rights and public freedoms, and it should be respected by individuals and authorities and the need to protect this right constitutionally, this is restricted by not using this right in an illegal way, and not inconsistent with the requirements of public order in the country.⁵

The importance of this research paper lies in the fact that it sheds light on the right to private life in the digital space in Jordanian legislation, and the extent to which the Jordanian legislator takes into account international requirements. This research surrounds some issues related to the protection of the right to private life in the digital space, and works to show that there is a defect in the Jordanian legal texts in this regard.

Personal privacy is linked to the human personality, as it is a right guaranteed in all state legislation. Therefore, in this study, we shed light on digital privacy, as it is no less important than traditional privacy, except in the environment, which is the digital space in which the individual exercises his privacy and freedom. We also highlight the statement of digital space and the challenges facing national sovereignty in light of this space, digital privacy, international experiences in protecting this privacy, and the procedures that some countries have set to resort to these measures.

The article aims to explain the nature of the right to a private life in the digital space, its elements, the risks that threaten this right, the position of international covenants, national legislation, jurisprudence, and the judiciary on the issue of the right to a private life in the digital space. It also aims to clarify the limits of digital space and its

³ FADLALLA, Mohamed. The offense of Violation of privacy in UAE legislation (analytical study). **Journal of in-depth Legal Research Generation**, Beirut, vol. 1, no. 44, p. 37- 51, 2020. Available at <https://jilrc.com/archives/13063>

⁴ JABER, Mahmoud. **Crimes arising from the use of mobile phones, crimes of communication and information systems, a comparative study**. Alexandria: National Books and Documents House, Modern University Office, 2018; BIN HAYDA, Mohammed. The status of the right to private life in light of the constitutional amendment 16-0. **Journal of the Research Professor for Legal and Political Studies**, Messila, vol. 1, no. 10, p. 33-50, 2018. Available at <https://www.asjp.cerist.dz/en/downArticle/457/3/2/81291>

⁵ See note 1, supra.

impact on international sovereignty and regional challenges in the field of protecting the right to privacy.

The problem of the research lies in determining the extent to which the Jordanian legislator organizes the right to private life in the digital space, the observance of those legislations to international requirements, and the singling of the Jordanian legislator of special texts and provisions for the right to private life in the digital space. Through this study, we will try to answer several questions, the most important of which are: What is the right to private life in the digital space? What is the importance of protecting the right to private life in the digital space? What are the controls for protecting the right to private life in the digital space in accordance with the international conventions and regional conventions? What are the controls for protecting the right to private life in the digital space in accordance with the Jordanian legislation? To what extent are the general rules applied in the Jordanian legislation regarding assault on private life compatible with international requirements?

In the study, the analytical approach will be followed to analyze the texts of all international agreements related to the protection of private life in the digital space. In addition, the provisions of the Jordanian constitution and legislation regulating the protection of the right to private life in the digital space and their compatibility with international and regional standards will be analyzed.

This is in order to identify and comment on its contents and implications. The study necessitated the use of several research approaches due to its complex nature between the texts of international agreements, national legislation, jurisprudential opinions and trends, and court rulings.

2. RIGHT TO PRIVATE LIFE IN THE DIGITAL SPACE

The right to the inviolability of private life is one of the basic rights enshrined in the constitutions of the countries of the world and protected by various punitive legislations. In addition, the idea of privacy is a flexible idea that is governed by the standards, customs, and traditions of the society to which they belong. Every individual desires to keep a part of his life, thoughts, emotions and private activities to himself away from the love of exploring others. These things are constantly evolving and changing from one society to another.⁶

Technological development has expanded the scope of the right to privacy to the extent that it has several legal concepts, which are linked to each other in the field

⁶ ISSA, Tony. **Legal Regulation of the Internet in the Light of Man-made Laws and International Agreements**. Beirut: Sader Publications, 2002; GSTREIN, Oskar; BEAULIEU, Anne. How to protect privacy in a datafied society? A presentation of multiple legal and conceptual approaches. **Philosophy & Technology**, Oxford, vol. 35, n. 3, p. 1-38, 2022. Available at <https://doi.org/10.1007/s13347-022-00497-4>

of electronic communications. The right to a private life is considered one of the rights attached to the human person and meets the psychological needs of the individual.⁷

2.1. Meaning of the right to private life in the digital space

The right to a private life means that it is the right of a person to be left to live his life with the least degree of interference, to be protected from interference in his private or family life, or interference with his physical and mental integration, or questioning his culture, or attacking his honor, or putting him under the deceptive spotlight. Also, it means not showing some insignificant embarrassing situations about his private life, using his name or a persona similar to his, spying, eavesdropping, surveillance, monitoring correspondence, bad use of his personal communications, or using information taken or given by him in cases of professional trust.⁸

Legal jurisprudence did not come up with a comprehensive definition of the concept of private life due to the difficulty of collecting its meanings. However, a part of jurisprudence defined him as “that the sanctity of private life is a precious piece of a person’s being that cannot be taken away from him, otherwise it will turn into a deaf tool that is incapable of human creativity. By virtue of his nature, man has his personal secrets, his own feelings, and his distinctive characteristics, and a person can only enjoy these features in an environment that preserves and prepares for them.”⁹

Another aspect of legal jurisprudence defines it as:

*The right of every person to deal with his private life as he sees it, and to keep his secrets that others should not see. Secrets and privacy may involve reprehensible vices, such as committing immoral crimes, or natural matters that common sense disdains to reveal, such as the special relationship between spouses, or even decent and desirable actions that their owners may prefer to keep secret.*¹⁰

In the same regard, a third aspect of jurisprudence defines the right to privacy in the digital space as: “the scope within which one has the possibility of isolation from

⁷ BENYOUNE, Farida. The right to the sanctity of private life as one of the controls on freedom of opinion and expression -In light of human rights and criminal law. **Journal of Comparative Legal Studies**, Chlef, vol. 7, no. 2, p. 1340- 1358, 2021. Available at <https://www.asjp.cerist.dz/en/downArticle/141/7/2/173363>

⁸ AL-SHAWARBI, Abdel-Hamid. **Expressive Crimes, Press and Publication Crimes**. 2. ed. Alexandria: Manshaat Al-Maarif, 2004.

⁹ BEN AZZA, Mohamed. Protecting the Right to Private Life in the Context of Digital Space Between the Necessity of Protection and Exceptions to Disclosure. **Journal of Jurisprudence and Law**, Morocco, vol. 2, n. 82, p. 40-55, 2019. <https://www.majalah-droit.ma/1>

¹⁰ DESOUKI, Reda. **Balance between freedom of the press and the sanctity of private life**. 2. ed. Egypt: Economic Unity Foundation, 2011.

others with the intention of achieving a kind of tranquility and maintaining the secrecy of private life”¹¹

As for returning to the legislative definitions of the right to a private life, there was no specific definition in constitutions or laws. Rather, the legislations and constitutions were satisfied with clarifying the forms of assault on the right to privacy and the penalties resulting from the assault. The Jordanian legislator did not set an explicit definition of the right to private life, but stipulated in Article (7/b) of the Jordanian constitution that:

“Every assault on public rights and freedoms or the sanctity of private life...”¹²

2.2. Legal nature of the right to privacy in the digital space

Legal jurisprudence differed on the legal nature of the right to private life in the digital space, whether it takes the rule of viewing messages, or is it considered a kind of inspection, or is the right to private life related to another procedure of a special kind.¹³

Therefore, monitoring electronic communications cannot take the judgment of viewing messages. The message has a physical existence, unlike electronic communications, even if there is a similarity that brings them together in that they contain the secrets of the private lives of the sender and the recipient. Nor can the monitoring of electronic communications be considered a type of inspection, because inspection leads to physical control, while electronic communications cannot be controlled as they are electronic impulses.¹⁴

Given the legal nature of the right to private life, which is characterized by individuals’ personal information and communications, the sanctity of their homes and family life, and other elements constituting their right to privacy, most international and domestic human rights documents and legal legislation have tended to recognize and protect this right, especially with regard to their personal information.¹⁵

¹¹ AL-FAQIH, Souad. **Criminal Protection for Private Life in Libyan Law, a Comparative Study**. Egypt: Dar Al-Alam Al-Arabi, 2017; NAIMA, Majadi. The impact of the criminal order on the right to privacy. **Journal of the Research Professor for Legal and Political Studies**, Messila, vol. 6, n. 2, p. 2738- 2757, 2021. Available at <https://www.asjp.cerist.dz/en/downArticle/457/6/3/180646>

¹² The Jordanian Constitution of 1952, art.7/b.

¹³ GRANS, Lisa. A Right Not to Be Left Alone – Utilising the Right to Private Life to Prevent Honour-related Violence. **Nordic Journal of International Law**, Leiden, vol. 85, n. 3, p. 169–200, 2016. Available at <https://doi.org/10.1163/15718107-08503002>

¹⁴ BIN YAHYA, Ismail. Definition of electronic communications monitoring As a procedure for collecting evidence in cybercrime. **Voice of Law Journal**, Khamis Miliana, vol. 8, n. 2, p. 1066-1086, 2022. Available at <https://www.asjp.cerist.dz/en/downArticle/268/8/3/194283>

¹⁵ HAZAM, Fatiha. The Right to Privacy in the Digital Environment - A Comparative Study. **Journal of Comparative Legal Studies**, Chlef, vol. 8, n. 1, p. 620- 642, 2022. Available at <https://www.asjp.cerist.dz/en/downArticle/141/8/1/195084>

Governments often justify programs to monitor digital communications on national security grounds, including the risks posed by terrorism. Legal and targeted surveillance of digital communications can be a necessary and effective measure for intelligence and law enforcement agencies when conducted in accordance with international and domestic law since digital communications technologies can be used by individuals for criminal purposes. Surveillance for reasons of national security or to prevent terrorism or other crimes may be a legitimate aim.¹⁶

3. CONTROLS FOR PROTECTING THE RIGHT TO PRIVATE LIFE IN THE DIGITAL SPACE IN ACCORDANCE WITH INTERNATIONAL AGREEMENTS AND REGIONAL CONVENTIONS

There is universal recognition of the fundamental importance and relevance of the right to privacy and the need to ensure that this right is protected in law and in practice. International instruments contain provisions relating to respect for the right to private life. In addition, laws at the regional and national levels regulate the right of all persons to have their private and family life, residence and correspondence respected or the right to have their dignity, personal integrity or reputation recognized and respected.¹⁷

As a result, the right to privacy is considered one of the most basic human rights, as this right is recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights, and other international covenants.¹⁸

It should be noted that these international conventions and instruments, despite their protection of the right to private life in its traditional form, did not address the issue of protecting the right to private life in the digital environment in light of the emergence and development of information technology and the implications of this

¹⁶ The right to privacy in the digital age - Report of the United Nations High Commissioner for Human Rights. Human Rights Council. Thirty-ninth session. Agenda items 2 and 3. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development A/HRC/39/29. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/239/58/PDF/G1823958.pdf?OpenElement>. Access: 3 August 2018

¹⁷ The right to privacy in the digital age. Report of the Office of the United Nations High Commissioner for Human Rights. Human Rights Council Fifty-first session 12 September–7 October 2022 Agenda items 2 and 3. Annual report of the United Nations. High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/51/17. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/442/29/PDF/G2244229.pdf?OpenElement>. Access: 4 August 2022.

¹⁸ MOUSAWI, Mona. Information Privacy, its Importance, and the Dangers of Modern Technologies to it. *Journal of the University College of Economics*, Baghdad, vol. 1, n. 1, p. 303-355, 2013. Available at <https://www.iasj.net/iasj/download/51b569f8c8bd04b7>

right, especially after the grave violations to which the individual became exposed in a form increasing due to technological developments.¹⁹

In this legal framework, most international trends express the commitment of states to respect the right to private life in the digital space. International and regional efforts have come together to put in place a legal framework to protect the right to private life from any violation. International organizations have played an important role in maintaining security and stability in the face of electronic crimes that affect the right to private life and personal data from the impact and development of information technology by establishing many international contributions.²⁰

Many international trends have emerged, including the resolutions of the United Nations General Assembly (Human Rights Council), which have contributed to laying the basic foundation for protecting private life in the digital environment. This was done by developing legal frameworks to respect the right to privacy and provide the necessary protection for it in light of contemporary digital challenges, in addition to addressing legal challenges related to cyber security at the international, regional and local levels.²¹

3.1. Position of the Universal Declaration of Human Rights on the right to private life in the digital space

The right to privacy, according to the Universal Declaration of Human Rights, is a fundamental right enjoyed by persons within the country. Article (12) of the Universal Declaration of Human Rights of 1948 stipulates that:

“No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, or attacks against his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”²²

Among the international issues raised about the right to privacy in the digital space is (the Fitbit Fitness program), which is a portable device that fitness-conscious people install to record what they eat and their fat-burning activities. This device contains 3D motion sensors that measure the number of calories burned by the user during each activity. When the device is used either at home or in a fitness club, it displays

¹⁹ EGAN, Mo. Privacy boundaries in digital space: an exercise in responsabilisation. **Information & Communications Technology Law**, London, vol. 31, n. 3, p. 301–318, 2022. Available at <https://doi.org/10.1080/13600834.2022.2097046>

²⁰ FIDLER, David. The Right to Privacy in The Digital Age, where do Things Stand?, **The council for Foreign Affairs**, New York, vol. 1, n. 1, 2019. Available at <https://www.cfr.org/blog/right-privacy-digital-age-where-do-things-stand>

²¹ See note 15, supra; KUZNETSOVA, Olga Anatolyevna; BONDARENKO, Natalia. Private Life Safety Provision in Digital Age. **Journal of Digital Forensics, Security and Law**, Florida, vol. 12, n. 3, p. 77–86, 2017. Available at <https://doi.org/10.15394/jdfsl.2017.1460>

²² Universal Declaration of Human Rights of the United Nations General Assembly of 1948, Art. 12.

information about the person on the Fitbit website in order to create motivation among users to achieve their health and fitness goals. However, users of the program were not aware that their records would be public, and that they would appear on Google search results. This meant that more than one user of the device published embarrassing details about their lives, starting from violating the diet they follow, and reaching the most accurate details of their lives.²³

It must be noted that the text of Article (12) of the Universal Declaration of Human Rights is considered the basis for protecting the right to private life in its traditional form by providing the necessary protection for individuals represented in not interfering except within the limits permitted by the law. In addition, this article regulated the flow of information, which must also not take place outside the framework of the law.

It is worth noting that the right to privacy is not explicitly protected in the digital space. However, the text was general and absolute according to the legal rule that the absolute shall take effect as such. So it can be said that this includes the protection of the right to private life in the digital space.²⁴

Based on the foregoing, it appears that the texts contained in the Universal Declaration of Human Rights need to be reconsidered in light of the technological development taking place. Private life in the digital space is being attacked, which calls for the intervention of the international community by adding texts to this Declaration, or the introduction of international agreements to protect privacy in the digital space.²⁵

Therefore, in order for rights and freedoms to be exercised in the digital space under the right to private life, this requires care to continuously adapt those texts contained in the Universal Declaration of Human Rights, taking into account the development in information technology. The United Nations General Assembly (Human Rights Council) has confirmed that what applies to human rights in terms of exercising them and ensuring their enjoyment outside the digital space also applies to them inside this space. It also requires realization that the more these technologies facilitate access to the various types of human rights protected by international human rights treaties, the more their use can turn into a tool for violating the right to private life.²⁶

²³ ANDREWS, Laurie. **I Know Who You Are and I Saw What You Did: Social Media and the Loss of Privacy**, Translated by: Shadi Al-Rawashdeh. Saudi Arabia: Obeikan Publishing, 2015.

²⁴ MENDEL, Toby; PUDDEPHATT, Andrew; WAGNER, Ben; HAWTIN, Dixie, TORRES, Natalia. **Global survey on internet privacy and freedom of expression**. Paris: The United Nations Educational, Scientific and Cultural Organization, UNESCO, 2012. Available at <https://unesdoc.unesco.org/ark:/48223/pf0000218273.locale=en>

²⁵ ARAJÄRVI, Noora. **The Changing Nature of Customary International Law: Methods of Interpreting the Concept of Custom in International Criminal Tribunals**. New York: Routledge, 2014.

²⁶ AL-KHANTORI, Amin. Milestones in the organization of the right to digital oblivion In Moroccan legislation. **Echo Journal for Legal and Political Studies**, Khamis Miliana, vol. 1, n. 5, p. 22-58, 2020. Available at <https://www.asjp.cerist.dz/en/downArticle/817/2/4/182329>

Based on the foregoing, international efforts have sought to consolidate guarantees for the protection of the right to private life in the digital space, through many recommendations, decisions, directives and guidelines. The international community is in dire need to impose more controls and restrictions regulating this field, especially in its illegal cases, and to reduce the risks that threaten the right to private life, by developing the legal framework for the protection of human rights and restructuring the digital system to achieve international transparency.²⁷

3.2. Position of the International Covenant on Civil and Political Rights on the right to private life in the digital space

The right to privacy, according to the International Covenant on Civil and Political Rights, is a fundamental right enjoyed by persons within the country. Article (17) of the International Covenant on Civil and Political Rights stipulates that:

*No one shall be subjected, in an arbitrary or unlawful manner, to interference with his privacy, family, home or correspondence, nor to unlawful attacks affecting his honor or reputation. Everyone has the right to be protected by the law against invasion of privacy or unlawful or arbitrary intrusion. The 'protection of the law' must be activated through procedural safeguards, including effective and adequately resourced institutional arrangements.*²⁸

It must be noted that the text of Article (17) of the International Covenant on Civil and Political Rights is considered the basis for protecting the right to private life in its traditional form, by providing the necessary protection for individuals represented in not interfering except within the limits permitted by law. In addition, this article regulated the flow of information, which must also not take place outside the framework of the law.²⁹

However, it is noted that there is no effective control over cases of arbitrary or illegal intrusion into the right to privacy in the digital environment. Internal safeguards on privacy have proven ineffective against illegal or abusive surveillance methods.³⁰

²⁷ ROTENBERG, Marc. Preserving Privacy in the Information Society. **UNESCO**, Paris, vol. 1, n. 1, p. 1-8, 2000. Available at <https://unesdoc.unesco.org/ark:/48223/pf0000121984>

²⁸ International Covenant on Civil and Political Rights of 1976, Art. 17.

²⁹ TIJANI, Bouzidi. The right to be forgotten, as a mechanism to protect private life. **Voice of Law Journal**, Khamis Miliana, vol. 6, n. 2, p. 1244-1260, 2019. Available at <https://www.asjp.cerist.dz/en/downArticle/268/6/2/103679>

³⁰ SHEIKH, Hussein; BIN DIDA, Najat. The right to digital oblivion as a mechanism for protecting personal data. **Journal of Algerian and Comparative Public Law**, Sidi Bel Abbes, vol. 8, n. 1, p. 565-588, 2022. Available at <https://www.asjp.cerist.dz/en/downArticle/547/8/1/188051>

By analyzing the text of Article (17) of the International Covenant on Civil and Political Rights, it is noted that the protection of the right to private life in the digital space is not explicitly stated. However, the text was general and absolute according to the legal rule that the absolute shall take effect as such. Therefore, it can be said that this includes the protection of the right to private life in the digital space.³¹

Based on the foregoing, it appears to us that the texts contained in the International Covenant on Civil and Political Rights need to be reconsidered in light of the technological development taking place. Private life in the digital space is being attacked, which calls for the intervention of the international community by adding texts to this covenant that deal with privacy in the digital space. Also, for a person to be protected from unlawful or arbitrary interference with their privacy, a communications monitoring program must be implemented on a legal basis that is accessible to the public, and this law must in turn comply with international human rights law.³²

3.3. Position of the American Convention on Human Rights on the right to private life in the digital space

The right to privacy, according to the American Convention on Human Rights, is a basic right enjoyed by persons within the country. Article (11) of the American Convention on Human Rights of 1969 stipulates the protection of the right to privacy by respecting the individual and his honor, preventing unlawful assault on him and preserving his dignity. It is also not permissible to arbitrarily interfere with his private life, family affairs, home or correspondence. If there is interference or assault on him, the law protects him.³³

Among the cases that were raised about the right to private life in the digital space in the US judiciary was the case decided by the California Court of Appeal in its ruling No (F054138) issued on April 2, 2009. The lawsuit states:

(init. C.M) posted offensive phrases against her city on her Myspace account. As a result, the principal of the city's high school sent the post to the city's press center. After publishing those phrases in the local news, C.M's family was threatened with death, their home

³¹ BALGHITH, Somaya. The dialectical relationship between the right to information and the right to privacy. **Jurisprudence Journal**, Biskra, vol. 12, n. 2, p. 349-374, 2019. Available at <https://www.asjp.cerist.dz/en/downArticle/124/11/3/100824>

³² KHALFI, Abdul Rahman. The Right to Private Life in Algerian Penal Legislation (A Comparative Analytical Fundamental Study). **Journal of Research and Studies**, Alwadi, vol. 8, n. 12, p. 153-193, 2011. Available at <https://www.asjp.cerist.dz/en/downArticle/202/8/2/25732>; AMERICAN CIVIL LIBERTIES UNION. Informational Privacy in the Digital Age. A Proposal to Update General Comment 16 (Right to Privacy) to the International Covenant on Civil and Political Rights. A Report by the American Civil Liberties Union, 2015. Available at https://www.aclu.org/wp-content/uploads/legal-documents/informational_privacy_in_the_digital_age_final.pdf

³³ The American Convention on Human Rights of 1969, Art. 11.

*was shot at, forcing the family to leave town. This action by C.M. made her post available to anyone with a computer and thus open to the public. Under these circumstances, no one can expect the published material to be private.*³⁴

It is noted that the American Convention provided for the protection of the rights of the American citizen in a direct manner, including the right to private life. In addition, it distinguished between private life and the right to honor and consideration, and supported ensuring the obligatory implementation of these rights through state agencies.³⁵

However, by analyzing the texts contained in the American Convention on Human Rights, it is noted that the protection of the right to private life in the digital space has not been explicitly stipulated. Rather, all texts regulated the right to private life in its traditional form. However, for the requirements of justice and the protection of human rights, including the right to private life, it can be said that these texts include the protection of the right to private life in the digital space.³⁶

Accordingly, it appears to us that the texts contained in the American Convention on Human Rights need to be reconsidered in light of the technological development taking place. Private life is now being attacked in the digital space, which calls for the intervention of the international community by adding provisions to that agreement that deal with the right to private life in the digital space.

3.4. Position of the European Convention on Human Rights on the right to private life in the digital space

The right to privacy, according to the European Convention on Human Rights, is a fundamental right enjoyed by persons within the country. Article (8) of the European Convention on Human Rights of 1950 stipulates that:

1. Everyone has the right to respect the inviolability of his private life, his family life, his residence, and his correspondence. 2. No public authority may interfere in the exercise of this right, except in cases to which the law applies and where the intervention is necessary in a democratic society in the interests of national security and public safety, or the

³⁴ CALIFORNIA. Court of Appeal, Fifth District, California. Cynthia MORENO et al., Plaintiffs and Appellants, v. HANFORD SENTINEL, INC., et al., Defendants and Respondents. No. F054138. Decided: April 02, 2009.

³⁵ PRUDENTOV, Roman. Private Life and Surveillance in a Digital Era: Human Rights in European Perspective. *Digital Law Journal*, Moscow, vol. 1, n. 2, p. 41–52, 2020. Available at <https://doi.org/10.38044/2686-9136-2020-1-2-41-52>

³⁶ FABBRINI, Federico. Human Rights in the Digital Age: The European Court of Justice Ruling in the Data Retention Case and Its Lessons for Privacy and Surveillance in the United States. *Harvard Human Rights Journal*, Cambridge, vol. 28, n. 1, p. 65–95, 2015. Available at <https://harvardhrj.com/wp-content/uploads/sites/14/2009/09/human-rights-in-the-digital-age.pdf>

*economic well-being of the country, or to prevent insecurity or crime, or to protect health and morals, or to protect the rights and freedoms of others.*³⁷

But in terms of the state's relationship with individuals, the European Convention on Human Rights expresses the obligation of states to respect the privacy of individuals. This obligation is established within the scope of the jurisdiction of the state in the face of citizens of these countries or non-citizens without discrimination through the express prohibition of any discrimination with regard to the rights contained in the Convention, whether this discrimination is based on sex, race, color or ... national basis.³⁸

Among the cases raised about the right to private life in the digital space with the French judiciary, the case was adjudicated by the Social Chamber of the Reims Court of Appeal. In the case, it was stated:

*Since the message was written on the personal page of Miss (S), and since the personal page is like a forum for dialogue, whether it is limited to some people or not, although Mr. (C) indicates that access to his account on Facebook was limited to the people who are allowed to do so, but he made a writing on the page of another person called "friend", he risks that that person has hundreds of friends, or that he did not restrict access to a page, as anyone with a Facebook account could freely access this information. Under these circumstances, there is no infringement of the private space taking into account all persons, whether they are friends or not, who can view the user's profile and who are able to access his page and to the messages he wrote or addressed to him; Violation of private communication assumes that exchanged messages cannot be read by anyone other than the recipient without using illegal means. Not only was it proved that Miss (S) did not restrict access to her page at the time of the facts in question, but above all, if Mr. (C) wanted to send a private message that could not be accessed by anyone other than the addressee or to some selected friends, he could use Facebook's Single Mail service, which he did not; Therefore, there is no violation of private messaging.*³⁹

The text contained in the European Convention on Human Rights came to preserve the right to private life by prohibiting infringement of its sanctity with the determination of the individual's right to privacy by respecting his private and family life, residence and correspondence.⁴⁰

³⁷ The European Convention on Human Rights of 1950, Art. 8.

³⁸ ILIC, Goran. Freedom of expression and the right to respect for private life. **Srpska Politička Misao**, Belgrade, vol. 70, n. 4, p. 249–265, 2021. Available at <https://doi.org/10.22182/spm.7042020.13>

³⁹ REIMS. Court of Appeal of Reims, social chamber, June 9, 2010, n°09/03205.

⁴⁰ PRUDENTOV, Roman. Private Life and Surveillance in a Digital Era: Human Rights in European Perspective. **Digital Law Journal**, Moscow, vol. 1, n. 2, p. 41–52, 2020. Available at <https://doi.org/10.38044/2686-9136-2020-1-2-41-52>

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From the foregoing, it is clear that the texts contained in the European Convention on Human Rights need to be reconsidered in light of the technological development taking place. Private life is now being attacked in the digital space, which calls for the intervention of the international community by adding provisions to that agreement that deal with the right to private life in the digital space.

4. CONTROLS FOR PROTECTING THE RIGHT TO PRIVATE LIFE IN THE DIGITAL SPACE IN ACCORDANCE WITH THE PROVISIONS OF JORDANIAN LEGISLATION

All individuals in Jordan enjoy all civil, political, economic, social and cultural rights and freedoms, in their individual capacity as citizens of the state and not in their collective capacity. The state protects the right to private life as long as it does not disturb public order.⁴¹

Therefore, the Jordanian legislator is committed to international conventions and conventions and obligated the protection of the right to private life of individuals through the impermissibility of violating a person's privacy, attacking his private life, or doing things that affect his honor and reputation.⁴²

In order to achieve the constitutional rights and freedoms stipulated in the Jordanian constitution, a draft law has been developed to protect personal data that regulates the digital environment. This law will be to protect personal data in light of the ease of collecting, retaining and processing it, as well as to prevent infringement on the right of citizens and residents to protect their personal data and privacy as stipulated in the Constitution and related laws. In addition, this law will create a legal framework that balances the mechanisms of the rights of individuals to protect their personal data, and between allowing data and information to be processed and retained in the digital space.⁴³

⁴¹ AL-KHATIB, Noman. **Al-Wafi in the Constitutional System**. Amman: Dar Al-Thaqafa for Publishing and Distribution, 2022.

⁴² SABBARINI Ghazi. **Al-Wajeez in human rights and basic freedoms**. Amman: House of Culture for publication and distribution, 2022.

⁴³ A draft law on the protection of personal data presented to the National Assembly, which was not approved.

4.1. Position of the constitutional legislator on protecting the right to private life in the digital space

The Jordanian constitutional legislator guarantees the protection of the right to private life through the development of constitutional provisions to ensure respect and protection of privacy. In addition, procedural safeguards and effective oversight will be established and implemented over violations that a person is exposed to in his private life.⁴⁴

Article (7/2) of the Jordanian Constitution stipulates that:

“Any assault on public rights and freedoms or the sanctity of the private life of Jordanians is a crime punishable by law.”⁴⁵

The Jordanian Constitution guarantees the right to privacy in the event of monitoring private communications by obtaining a judicial authorization to do so, as a prerequisite for blocking, confiscating, or accessing private communications. Article (18) of the Jordanian Constitution stipulates that:

“All postal and telegraphic correspondence, telephone communications and other means of communication are considered confidential and are not subject to monitoring, viewing or confiscation except by judicial order in accordance with the provisions of the law.”⁴⁶

Therefore, it is clear from the provisions of the Jordanian Constitution that the right to private life is protected and considered inviolable, and no one may attack the life of any other person. This protection includes the protection of the individual in his personal life, family, residence, correspondence, reputation and honor, in addition to the protection of the individual in his residence.⁴⁷

In implementation of the provisions of the Jordanian Constitution, the Communications Law of 1995 was issued, which stipulated in Article (56) of it that:

“Telephone calls and private communications are confidential matters that may not be violated, under penalty of legal responsibility.”⁴⁸

Article (4) of the Jordanian Press and Publications Law of 1998 also stipulates that:

⁴⁴ AL-FATLAWI, Suhail. **Al-Wajeez in the principles of contemporary human rights**. Amman: Dar Al-Badil for Publishing and Distribution, 2023.

⁴⁵ The Jordanian Constitution of 1952, Art. 2/7.

⁴⁶ The Jordanian Constitution of 1952. Art.18.

⁴⁷ AL-BILLEH, Tareq. Freedom of Religious Belief and the Practice of Religious Rites According to the Jordanian Legislation: Difficult Balance Between International and Regional Requirements as well as the National Legislative Controls. **Balkan Social Science Review**, Stip, R. N. Macedonia, vol. 20, n. 1, p. 117-137, 2022. Available at <https://js.ugd.edu.mk/index.php/BSSR/article/view/5503/4660>

⁴⁸ The Jordanian Communications Law of 1995, Art. 56.

The press freely exercises its mission in providing news, information and comments, and contributes to the dissemination of thought, culture and science within the limits of the law and the framework of preserving public freedoms, rights and duties, and respecting the freedom and sanctity of the private life of others.⁴⁹

In addition, Article (13/f) of the Law of Guaranteeing the Right to Access Information for 2007 stipulates that:

With due regard to the provisions of the legislation in force, the official must refrain from disclosing information related to the following: Correspondence of a personal and confidential nature, whether it is mail, telegram, telephone, or through any other technical means, with government departments and the answers thereto.⁵⁰

In application of this, the Jordanian Court of Cassation, in its civil capacity, ruled in its judgment No. (1243/2013) issued Sept. 5, 2013 that:

Since the defendant is a company licensed to provide telecommunications services, telephone services, installation and maintenance of communications networks, and not to monitor and examine communications and messages, it does not have the right to view the messages sent from its customers to each other or customers to another company except in an exceptional case, which is the implementation of judicial orders or related to public security. Accordingly, it is not responsible for the messages or communications emanating from its customers that contain any defamation or insult because the plaintiff did not prove that the defendant caused any harm to him in any way. The principle of responsibility includes the existence of error and damage, and a causal relationship between the error and the damage, and that the error is represented in negligence, lack of precaution, and failure to observe the laws and regulations in force. The defendant did not make any mistake, it is not responsible for compensating the plaintiff for the damages he claims because the defendant is not responsible for monitoring phone calls and private communications because they are private matters and it cannot monitor them pursuant to the provisions of Article 56 of the Telecommunications Law No. 13 of 1995. The decision issued by the Law Interpretation Bureau No. 5 of 2008 came only in specific matters, namely the implementation of judicial or administrative orders or those related to national security.⁵¹

From the foregoing, it is noted that despite the fact that the Jordanian constitutional legislator put provisions in the core of the constitution that regulate the

⁴⁹ The Jordanian Press and Publications Law of 1998, Art. 4.

⁵⁰ The Law of Guaranteeing the Right to Access Information of 2007, Art. 13/f.

⁵¹ JORDAN, The Court of Cassation, in its civil capacity, ruled in its judgment No. (1243/2013) issued Sept. 5, 2013.

protection of the right to private life, these provisions are not sufficient to guarantee the protection of the right to private life in the digital space. They are also not compatible with what was stated in the resolutions of the United Nations and the Human Rights Council related to the right to privacy in the digital age. In addition, these texts are shrouded in ambiguity and do not meet the needs of society and the international and regional developments that have taken place to protect the right to private life in the digital space.

4.2. Position of the penal legislator on protecting the right to private life in the digital space

The Jordanian penal legislature guarantees the protection of the right to private life by setting penal provisions to ensure respect and protection of privacy, in addition to penal penalties and effective monitoring of violations that a person is exposed to in his private life by criminalizing acts that constitute an assault on the right to private life.⁵²

Article (348 bis) of the Jordanian Penal Code stipulates that:

*Anyone who violates the private life of others by eavesdropping on hearing or sight by any means, including audio recording, taking pictures, or using binoculars, shall be punished, based on a complaint, by imprisonment for a period of no less than six months and a fine of two hundred dinars. This punishment is doubled in the event of repetition.*⁵³

In the same regard, Article (4/A/1) of the Prevention of Terrorism Law of 2006 stipulates that:

*If the Public Prosecutor receives sure information that a person or a group of persons is involved in terrorist activity, the Public Prosecutor may issue any of the following decisions: Imposing control over the suspect's place of residence, movements, and means of communication.*⁵⁴

In application of this, the Jordanian Court of Cassation, in its criminal capacity, ruled in its judgment No. (2141/2021) issued Nov. 11, 2021 that:

⁵² KHASHASHNEH, Tawfiq; AL-BILLEH, Tareq; ABU ISSA, Hamzeh. The authority of the criminal judge to assess digital (electronic) evidence in Jordanian, Egyptian, and French legislation. **Xinan Jiaotong Daxue Xuebao/ Journal of Southwest Jiaotong University**, Chengdu, vol. 57, n. 5, p. 631-640, 2022. Available at DOI: <https://doi.org/10.35741/issn.0258-2724.57.5.51> ; AL-BILLEH, Tareq. Legal Controls of the Crime of Publishing a Program on the Internet in Jordanian Legislation. **Pakistan Journal of Criminology**, Khyber Pakhtunkhwa, vol. 14, n. 1, p. 1-14, 2022. Available at <http://www.pjcriminology.com/wp-content/uploads/2022/08/1.-Legal-Controls-of-the-Crime-of-Publishing-a-Program-on-the-Internet-in-Jordanian-Legislation.pdf>

⁵³ The Jordanian Penal Code of 1960, Art. 348 bis.

⁵⁴ The Prevention of Terrorism Law of 2006, Art. 4/A/1.

With regard to the offense ascribed to the defendants, the court found, firstly by reviewing the Public Prosecution's evidence represented in the audio recording (video clip), that it is necessary to address the legality of this evidence and whether or not it could be legitimate legal evidence that could be relied upon in a conviction sentence. Accordingly, Article (56) of the Telecommunications Law states: Telephone calls and private communications are confidential matters that may not be violated under penalty of legal liability. Article (348 bis) of the Penal Code stipulates: Anyone who violates the private life of others by eavesdropping on hearing or sight by any means, including audio recording, taking pictures, or using binoculars, shall be punished, based on a complaint by the aggrieved party, by imprisonment for a period of no less than six months and a fine of two hundred dinars. This penalty is doubled in the event of repetition. Therefore, this evidence, which was filmed in secret from the defendants, is considered illegitimate evidence and cannot be relied upon because it constitutes a violation of a basic human right. This right is represented in private life and personal conversations remaining untouched by anyone, and in enjoyment of complete freedom, which is guaranteed to people and places alike. It is a form of eavesdropping on others and assaulting their freedom, which leads to the exclusion of this evidence on the other hand.⁵⁵

In the same regard, the Jordanian Court of Cassation, in its criminal capacity, ruled in its judgment No. (4145/2021) issued March 23, 2022 that:

The court found that the defendant published that message that included false news about the claim that the appointments are biased and that the salaries and bonuses are incorrect. He published this message on the Facebook page, which makes the content of the message available in cyberspace, accessible to everyone who uses the electronic network. Therefore, the actions he committed constitute, in legal application, all the elements of the offense ascribed to him.⁵⁶

It is noted, from the foregoing, that the Jordanian legislator, despite guaranteeing the right to private life, and imposing penal protection on any violation of the right to private life in the Penal Code, by placing provisions punishing every person who assaults the right to private life, these steps were not enough.⁵⁷ They do not include the protection of the right to private life in the digital space, and is not consistent with

⁵⁵ JORDAN, The Court of Cassation, in its criminal capacity, ruled in its judgment No. (2141/2021) issued Nov. 11, 2021.

⁵⁶ JORDAN, The Court of Cassation, in its criminal capacity, ruled in its judgment No. (4145/2021) issued March 23, 2022.

⁵⁷ AL-KHAWAJAH, Noor ; AL-BILLEH, Tareq ; MANASRA, Majd. Digital Forensic Challenges in Jordanian Cybercrime Law. **Pakistan Journal of Criminology**, Khyber Pakhtunkhwa, vol. 15, n. 3, p. 29-44, 2023. Available at <https://www.pjcriminology.com/publications/digital-forensic-challenges-in-jordanian-cybercrime-law/>

United Nations resolutions on the right to privacy in the digital age and is not consistent with international instruments in all aspects of protection.⁵⁸

5 CONCLUSION

The international and regional community has guaranteed the protection of the right to private life in its traditional form by singling out special texts in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights, and other international covenants. This protection differs in those international agreements in terms of protecting the right to private life.

In fact, international human rights law has not provided a clear and universal framework for promoting and protecting the right to privacy in the digital space, including in the context of internal and external surveillance, interception of digital communications and collection of personal data. However, these practices in many countries revealed the lack of sufficient national legislation or means of enforcement, in addition to the absence of effective procedural guarantees that guarantee the right to private life that is exercised through the digital space.

The Jordanian constitutional legislator established the guarantee of the right to private life, but without referring to the protection of the right to private life in the digital space. It set legal controls in order to protect this right from any attack, provided that it does not disturb public order in the country.

The Jordanian legislator has put in place certain legal legislation in the event of non-compliance with the legal controls specific to the right to private life. This matter removes this right from the framework of constitutional legitimacy to the point of legally criminalized acts, and in the event that the right to private life falls outside the scope of legal controls.

Therefore, the Jordanian constitution must be amended by granting protection to the right to private life in the digital space, in line with the resolutions of the United Nations General Assembly (Human Rights Council) related to the right to privacy in the digital age. This is done by expanding the protection of the right to private life, adding provisions to the Jordanian constitution regulating the right to privacy in the digital age, and approving a draft law protecting the right to private life presented to the National Assembly.

Finally, there is an urgent need to ensure the protection of the right to privacy in the digital space, by establishing effective safeguards against abuses that threaten

⁵⁸ BENOAKLIL Faycal. Criminal protection of the Right to be forgotten in the digital age (a comparative study between Algerian and French legislation). *The Journal of Comparative Legal Studies*, Chlef, vol. 8, n. 1, p. 728-748, 2022. Available at <https://www.asjp.cerist.dz/en/downArticle/318/8/1/177607>

the right to privacy in the digital space. The countries of the world should amend their domestic legislation and private national practices to ensure the protection of the right to private life in the digital space within the framework of international human rights law, and establish a legal framework to ensure the protection of people who are victims of attacks on their private lives in the digital space.

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