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## CYBERSPACE AND CRIMINAL PROTECTION OF PRIVACY IN THE JORDANIAN LEGISLATION UNDER THE CORONA PANDEMIC

### Comparative Study

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#### **Abstract:**

The importance of the study is to demonstrate the criminal protection of personal data for individuals in general and patients in particular, and it aimed to demonstrate the adequacy of Jordanian legislation and comparing to provide legal protection of the individuals' personal data, especially patients, in light of the Corona pandemic. The study also aims to illustrate the balance between two rights; the right of privacy for individuals' data, especially patients infected with the Corona virus and the right of authorized parties to access this data in order to limit the spread of this virus. In order to achieve the study objectives, it discussed the nature of the concepts of privacy and personal data, and indicated the legislative treatments of the patients' data, whether it was through the general criminal law, or through laws related to informatics, through medical charters, or even through the legislation related to the pandemic and to explain how these concepts contributed to the criminal protection of patients' data. The study combined the analytical and comparative approach, and it concluded that the current legislation is not sufficient to protect a right worthy of legal protection, which is the right of privacy in personal data. The privacy of personal data has been exposed to many violations in the light of cyberspace, which requires legislators to hurry to issue special laws that surround personal data with a fence of criminal protection.

#### **抽象的 :**

该研究的重要性在于证明对一般个人和特别是患者的个人数据的刑事保护，旨在证明约旦立法的充分性，并比较为个人的个人数据提供法律保护，尤其是患者，电晕大流行的光芒。该研究还旨在说明两种权利之间的平衡；个人数据的隐私权，尤其是感染冠状病毒的患者，以及被授权方访问这些数据以限制该病毒传播的权利。为了实现研究目标，它讨论了隐私和个人数据概念的性质，并指出了对患者数据的立法处理，无论是通过一般刑法，还是通过与信息学相关的法律，通过医疗宪章，甚至通过与大流行相关的立法，并解释这些概念如何有助于对患者数据进行刑事保护。该研究结合分析和比较的方法，得出结论，现行立法不足以保护一项值得法律保护的權利，即个人数据隐私权。个人数据的隐私在网络空间下已经暴露出许多侵权行为，这需要立法者抓紧颁布专门的法律，以刑事保护的栅栏围绕个人数据。

#### **Introduction:**

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The right of privacy is one of the original rights of the human being considering his/her human entity. Perhaps the spread of cyberspace contributed to the threat of human privacy through the unauthorized access to personal data available on the Internet. With the spread of the Corona pandemic, it was necessary to have graphic statistics related to infected patients with this virus in order to limit the spread of the disease. These graphic statistics contain some personal data of these patients.

The focus of the fight against Corona disease included the personal data of the patients. Regarding the patient's right of having privacy of the personal data and the right of official authorities to obtain the patients' personal data, it was necessary to find a legislative balance based on the protection of patients' personal data while at the same time allowing official bodies to access personal data for patients within certain controls and limitations.

Criminal protection of the sanctity of health life information is necessary and it is a manifestation of criminal protection of the right itself. The patient's health condition is one of the things that a person may not like to disclose to others, especially unrelated people who interfere with his/her disease.

As a result, it was necessary to issue the Defense Order No. (8) which is based on Defense Law No. (13) of the year 1993. But to what extent did Jordanian legislation and comparing especially in its criminal aspect contribute to make a balance between the public interest in accessing patients' personal data and the special interest represented in the sanctity of the private lives of these patients? This question is what this study is attempting to answer.

### **Problem of the study:**

In view of the sanctity of private life and the right of the individual in general and the right of the patient in particular of the legal protection of his/her personal data, which many studies have discussed, whether in legislative protection in general for personal data or criminal protection in particular for this data. However, the Corona pandemic and the exceptional measurements that are followed in various parts of the world have made it necessary to combat the virus at the global level to rely on a database that includes some personal data of patients infected with this virus and circulate it locally, regionally and globally, which exposes the privacy of individuals to threat and violation, especially if this data reaches people who are not authorized to view it. Hence, the problematic of the study is based to answer the following questions:

To what extent do Jordanian legislation and comparing are sufficient to provide legal protection for the personal data of individuals, especially patients, in light of the Corona pandemic?

How do we balance between the right of privacy and the right of authorized parties to access that data to contribute in limiting the spread of this virus?

What are the concepts and the nature of the privacy, personal data and protection?

What is the role of general criminal law and laws related to informatics in maintaining the private data of patients?

What is the role of medical charters and pandemic legislation in maintaining the data of patients?

### **The importance of the study:**

The importance of the study focuses on the statement of criminal protection of personal data for individuals in general and patients in

particular. The study indicates the inadequacy of the current criminal legislation in protecting the personal data of patients and includes the importance of Defense Order No. (8) and the document of Defense Law No. (13) of the year 1993 in dealing with this issue.

### **Objectives of the study:**

The study aims to demonstrate the adequacy of Jordanian legislation and comparing to provide legal protection for personal data of individuals, especially patients, in light of the Corona pandemic. It also aims to clarify the balance between two rights; the right of privacy regarding individuals' data, especially patients infected with Corona virus, and the right of authorized parties to access that data to contribute to limiting the spread of this virus.

### **Previous studies:**

- 1- Lamy's study (2017) *the crime of violating privacy through electronic means in the Jordanian and Iraqi legislations.*

The study showed the nature of private life, its historical establishment, and the stages of recognition of this right by jurisprudence and the judiciary, as well as the concept of privacy in the information field. The study also differentiated between the right of privacy and the right of accessing information, indicating the similarities and differences between them. The study also showed how the Arab legislations organize these rights, especially the Jordanian and Iraqi legislators. The study adopted the comparative analytical descriptive approach. The most prominent result of this study was that the risk of privacy in the digital world is much greater than what it is exposed to in the

physical world, which makes it worthy of legal protection.

- 2- Mubarakiah's study (2018) *criminal protection of the right of digital privacy in Algerian law.*

The study showed that the Algerian legislator guarantees the right of privacy and provides criminal protection for this right, both substantive and procedural. The study illustrates to what extent the legal texts are sufficient to protect privacy in the light of the so-called digital privacy after the widespread use of information in cyberspace. The study adopted the comparative analytical approach. One of its most prominent results was that although the Algerian legislator guarantees the right of privacy for individuals through the constitution and criminal rules, there is no special legislation to ensure criminal protection as it represents the essence of the right of digital privacy.

- 3- Al-Madawy's study (2018) *protecting the information privacy of the user through social networking sites.*

The study showed what personal data is subject to protection from abuse, by searching for Arab and European texts and legislation in this regard, with guidance from judicial rulings issued by the French judiciary. The study concluded that the personal data which is subjected to legal protection is all the data related to a specific natural person. This data includes his/her first and last name, e-mail address, gender, date of birth and all the data required by a site from the user who wishes to register in a particular website on the Internet. The study adopted the comparative analytical approach, and one of the most prominent results of the recommendation to the Egyptian legislator is

the need to issue a law on the protection of the personal data, similar to the French legislator. However, what distinguishes this study from previous studies - despite its statement of the concept of privacy, especially in its electronic space, as well as its exposure to personal data - it specifically talks about personal data related to patients in Corona pandemic. This study also indicates the adequacy of Jordanian criminal legislation and a comparison in dealing with this issue with exposure to Defense Order No. 8. The study includes an illustration of the extent of its contribution to preserving the privacy of patients and providing criminal protection for them in light of the Corona pandemic.

#### **Study Approach:**

The study combined the analytical approach and the comparative approach. Through the analytical approach, the legal texts related to the subject of the study were analyzed. Regarding the comparative approach, it illustrated the position of comparative legislation in the protection of personal data, especially for patients in light of the cyberspace.

#### **Study division:**

The first topic: an illustration the meaning and the nature of the concepts of privacy and personal data.

The first requirement: an illustration of the concept and nature of the right of private life and its legislative protection.

The second requirement: an illustration of the concept of the nature of personal data in light of cyberspace and the legislative treatment of it.

The second topic: legislative treatments of the patients' data in light of the Corona pandemic.

The first requirement: the general criminal law and laws related to informatics as a basis for maintaining the private data of patients.

Section one: the general criminal law as a basis for maintaining the private data of patients.

Second subsection: laws related to informatics as a basis for maintaining the patients' data.

The second requirement: medical charters and pandemic legislation as a basis for maintaining the patient's data.

Section one: medical charters during the pandemic as a basis for maintaining the patients' data.

Second subsection: pandemic legislation as a basis for maintaining the patients' data.

Conclusion: It shows the most important results and recommendations.

#### **The first topic: an illustration of the meaning and the nature of the concepts of privacy and personal data.**

The right of privacy is protected in divine laws, national constitutions and international conventions, and violating privacy is a crime punishable by criminal legislation. However, the protection of personal data does not have legal protection in many legislations because the threat of personal data forms the major role threatening the principle of privacy with the spread of cyberspace. In this topic and through two demands, we clarify the nature and concept of the right of private life and the nature and the concept of personal data with illustrating the legal protection of both rights.

#### **The first requirement: an illustration of the concept and nature of private life and its legislative protection.**

Some define private life as the right of the family; personal, inner and spiritual life of a

person when he/she lives behind his/her closed door<sup>1</sup>. There is a difference in the concept of privacy between the ones who narrow its scope and make it confined to material privacy, which means the right of solitude. While others expand its concept to include moral privacy in addition to physical privacy, and to include every aspect of interference, whether it is in controlling personal information (any information related to a person whose identity is identified or that can be identified directly or indirectly, and identifying him/her by referring to his/her personal number or by referring to anything that belongs to him/her.)<sup>2</sup> as well as the right of solitude and secrecy.<sup>3</sup>

The right of respecting the private life is one of the rights attached to the personality that is established for man by virtue of his/her human entity and it is the right all people without discrimination.<sup>4</sup> In modern societies, this right is considered as one of the most important rights because it is closely related to the freedom of the individual.<sup>5</sup> The reason of the importance of the right of privacy is that it is considered as a guarantee of the human security, comfort, calmness and individual freedom.<sup>6</sup> The right of

the private life finds many applications in divine laws and international covenants. In Islamic law, we find a consolidation of this right in many examples. For example, Allah says: "O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants."<sup>7</sup> And the Prophet, may God's prayers and peace be upon him, forbade spying since it is the sanctity of private life. As in the hadith: "Beware of suspicion, for suspicion is the worst of false tales; and do not look for the others' faults and do not spy, and do not be jealous of one another, and do not desert (cut your relation with) one another, and do not hate one another; and O Allah's worshipers! Be brothers (as Allah has ordered you!)"<sup>8</sup>

As for international covenants, it is stated in the Universal Declaration of Human Rights: No one shall be subjected neither to arbitrary interference with his/her private life, family, place of staying, or correspondence, nor for attacks against his honor and reputation. Everyone has the right to be protected by law from such interference or attacks.<sup>9</sup>

Also, international conventions and conferences gave this right care. It is stated in the European

<sup>1</sup> Qayed, A. (1994). *Criminal protection of private life and information banks "a comparative study"*. Arab Renaissance House, Egypt. p.6.

<sup>2</sup> Mqrish, A. (2018). *The effects of using the Internet on the sanctity of private life, master's thesis*. Halab University, Syria. p.14.

<sup>3</sup> Nayel, E. *Criminal protection of the sanctity of private life in the light of the French Penal Code*. Arab Renaissance House, Egypt. p.125.

<sup>4</sup> Mughabghab, N. (1998). *The dangers of information and the Internet, Zain human rights publications*. Beirut, Lebanon. p.100.

<sup>5</sup> Al Mumani, A. (2010). *Information Crimes*. (2<sup>nd</sup> edition). Culture House for Publishing and Distribution. Amman, Jordan. p.164.

<sup>6</sup> Hussein, J. (2011). *Inspection of information crimes*. Legal Books House, Egypt, p.69.

<sup>7</sup> Surat Al-Nur Verse 27.

<sup>8</sup> Sahih Al-Bukhari, *Book of Obligations, Chapter on Teaching Obligations*. Hadith No. 6724, Volume 8, p. 148.

<sup>9</sup> Article 12 of the *Universal Declaration of Human Rights adopted by the United Nations General Assembly* in 1948.

Convention on Human Rights that everyone has the right of respect for his/her private and family life, his/her home and his/her correspondence. Further, public authority cannot interfere in the exercise of this right unless this interference is provided by law and that it is in a democratic way in a necessary measurement for national security, public security, the economic well-being of the state, to protect order, to prevent crimes, to protect health and morals, or to protect the rights and the freedom of others.<sup>10</sup>

The Montreal Conference held in 1968 made several recommendations, such as the need to take care of the dangers that threaten private life, such as electronics and audio-visual means reached by technology, and to combat their damage on the private life of individuals.<sup>11</sup>

Constitutions and laws in various countries of the world have assigned this right of protection due to the high status of privacy in the individuals' psyche. In reality, this right is one of the rights that the individual has by virtue of his/her human entity and its connection with the dignity of the individual and his/her moral and material values.<sup>12</sup>

Regarding the Jordanian legislation, the constitution of Jordan emphasized the protection of private life, as Article 7 of the constitution stipulates that personal freedom is safeguarded, and every assault on public rights and public

freedoms or the sanctity of private life is a crime punishable by law.<sup>13</sup>

In confirmation of the principle of protecting private life; the Article (56) of the Jordanian Telecommunications Law mentioned that telephone calls and private communications are considered as confidential matters that may not be violated, under penalty of legal responsibility.<sup>14</sup>

While we see the penal legislation imposes an appropriate punishment on anyone who violates the sanctity of private life and it doubles the punishment in case of repetition. Article 348 bis of the Jordanian Penal Code stipulates: Whoever violates the private life of others by eavesdropping or looking secretly by any means, including audio recording, taking pictures or using binoculars, shall be punished by imprisonment for a period of no less than six months and a fine of two hundred dinars, and the penalty shall be doubled in case of repetition.<sup>15</sup>

### **The second requirement: the legislative and judicial treatment of the principle of privacy in the light of cyberspace.**

Man, by his/her nature and according to his/her innate, cannot live in isolation, but rather lives within a society, and despite living within society, he/she maintains a degree of apparent independence and does not prefer this independence to be exposed to the public.

<sup>10</sup> Article 8 of the *European Convention on Human Rights*, which was adopted in 1950.

<sup>11</sup> Bahar, M. *Protection of Private Life in Criminal Law*. Arab Renaissance House. Cairo, p.98.

<sup>12</sup> Ayoub, J. (2009). *Legal protection of personal life in the field of informatics*. Al-Halabi human rights publications. Beirut, Lebanon. p.219.

<sup>13</sup> Article 7 of the Jordanian constitution.

<sup>14</sup> Article 56 of the Jordanian Telecommunications Law No. 13 of 1995 and its amendments.

<sup>15</sup> Article 348 bis of the Jordanian Penal Code No. 16 of 1960 and its amendments.

Therefore, criminal legislation came to protect this right, especially with the spread of electronic means and the passive use of it through violating the right of private life.<sup>16</sup>

After the tremendous development of the means of communication, the use of computers and cell phones, information has become increasingly circulated on the Internet, further it has become possible to conduct technical operations quickly and effectively. The awareness of the danger of electronic devices of private life has begun since the sixties of the last century with the issuance of many laws aimed to protect the private life from informational risks.<sup>17</sup>

With the development of the concept of the right of private life, this right has included information privacy for individuals, including personal data that might be transferred through electronic and other means.<sup>18</sup>

But this fact is not at all; as some of jurisprudences say that the right of protecting personal data is closely related to the right of privacy. However, the right of protecting personal data is distinguished from the right of privacy. In other words, it is referred to right of privacy in the constitutions of the most the countries in the world. As for the protection of personal data, some countries have recognized this right, and some countries still do not consider the right of personal data to be a right as the right of privacy. Despite this, the protection

of personal data is of paramount importance in this digital society and in this cyberspace, especially for the speed of its flow. As a result, it deserves legal protection, and this protection has been recognized in many countries, whether at the national, regional or international level.<sup>19</sup>

The methods and forms of accessing personal data vary, as there is an access for the sake of just viewing: It is for the perpetrator to hack a person's technical system, whether this system is protected or not. Therefore, the perpetrator achieves this access through the use of information systems technology. The vocabulary of private life is the subject of behavior. The insight might be complete or partial.<sup>20</sup>

Accessing and dealing with data and information that would violate the right entrusted by law of it to be protected, eavesdropping, illegal data collection and storing, attacking the confidentiality of communications and correspondence, disclosing data and information about a person and making it available to everyone in a way that harms its owner, accessing and spying on correspondence of an electronic nature, and providing false and incorrect information in the field of operations and transactions of an electronic nature. All these forms are considered as a violation of the principle of privacy.<sup>21</sup>

It must be noted that it is required for electronic information to be considered as personal

<sup>16</sup> Al Manaseh, O., Al Zoubi, J. (2017). *Electronic Information Systems Technology Crimes*. (3<sup>rd</sup> edition). Culture House for Publishing and Distribution. Amman, Jordan. p.241.

<sup>17</sup> Al Hsenawi, A. (2009). *Computer and Internet crimes*. Al-Yazuri Scientific Publishing and Distribution House. Amman, Jordan. p.78.

<sup>18</sup> Miqrish, *Effects of Using the Internet*. p.15.

<sup>19</sup> Nader. (2018). *Lessons from the European Union's General Data Protection Act*. Research published on the Internet. p.2.

<sup>20</sup> Al Manaseh, Al Zoubi. *IT Crimes*. p.244.

<sup>21</sup> Seidani, N. (2013). *Mechanisms of research and investigation of information crime in criminal law, master's thesis*. Al Haj Khader University, Algeria. p.24. Al Mumani. *Information Crimes*. p.174-178.

information and a secret worthy of protection. It should be related to the person and his/her owner should be keen to keep it within the scope of confidentiality and away from the knowledge of others. Also, an attack on its confidentiality might cause material or moral harm for its owner.<sup>22</sup>

As mentioned earlier, personal data is worthy of legal protection. In this regard, we must acknowledge the inability of traditional legislation to provide the required legal protection to keep pace with technological development in light of technical spread.<sup>23</sup> In the presence of technology and the widespread use of the digital world, the privacy of the individual was subjected to a number of attacks and in various forms such as taking photos and tampering with data through technology, this has led to many problems, which often reached the point of crime.<sup>24</sup>

Therefore, most countries of the world have tended to secure information systems by enacting legislation on cybercrime. Which is the attack of the privacy of the individual, theft, modification or tampering with information and data, and spying on individuals via the Internet or through threats, extortion and hacking crimes that disrupt

information systems, in order to attack the data and information contained within the information system and transmitted through networks of a global nature.<sup>25</sup>

The objective of developing these special legislations is to protect that information from the dangers of using electronic means.<sup>26</sup> In addition, deterring and discipline the criminal, as cybercrime has increased and its types and methods differ according to the common use of this space among people and their use of its equipment and tools.<sup>27</sup>

Just as it was necessary to put in place special legislation to preserve privacy in the cyberspace, it was necessary to make an international agreement to protect privacy on the Internet. This is because the electronic infringement of this privacy transcends and infringes on those spaces and borders between countries due to the universality of the Internet. It is not an institution that is legally located within the borders of a specific state and its provisions are applied to it, so it was necessary to find a way to limit this attack and to keep privacy in its usual place.<sup>28</sup>

However, a good question arises, which is whether we can legislate a unified global legislation to combat cybercrime and preserve

<sup>22</sup> Taha, Mahmoud. Ahmad. (2017). *Legislative confrontation of computer and Internet crimes, a comparative study*. Dar Al-Faker & Law. Egypt. p.9.

<sup>23</sup> Al Abbadi, M. (2015). *New crimes in the light of globalization*. (1<sup>st</sup> edition). Amman, p.333.

<sup>24</sup> Sassi, Toshen, Abubakar, Soleimani. (2013). *Criminal Protection of Private Life Online, Master's thesis*. Abdulrahman Mira University, Bejaia, Algeria. p.6.

<sup>25</sup> Al Malt, A. (2005). *Information crimes, a comparative study*. Arab Thoughts House. Cairo, Egypt. p.178

<sup>26</sup> Al-Jubouri, S., *Legal Protection of Internet Information*, Al-Halabi Human Rights Publications. P.381.

<sup>27</sup> Al Tlawi, Ahmad. (2016). *Cyber attacks, their concept and the international responsibility arising from them in contemporary international organization*. Research published in Al-Mohaqiq Al-Halabi Journal of Legal and Political Sciences. p.58.

<sup>28</sup> Ayoub, Julion, Antonius (2009), previous reference, p. 219.

privacy at the same time. The cyberspace is extended and the violation of privacy across it is characterized by global reach as well. In answering this question, we say, given the difference in legislation between countries, not all criminal acts in one country are considered criminal acts in other countries. Therefore, it is not possible to apply the provisions of any law in the world to crimes committed on the Internet. As a result, it is difficult to find the means and way to prevent the electronic attack on human privacy,<sup>29</sup> and there are some legislations that still surround the private life of protection. At the same time, it is not doing the same thing with personal data.

Much legislation have tended to protect privacy by creating obligations and responsibilities for personal information, maintaining transparency of data processing, creating special protection for sensitive data, establishing enforcement rights and effective control in the processing of personal data.<sup>30</sup>

The American legislator in the Electronic Communications Privacy Act of 1968 prohibited the reservation or broadcast of private electronic communications and the offense of illegal access to stored or transmitted electronic

communications, including e-mail, as this constitutes a violation of privacy.<sup>31</sup>

In the German federal state of Hesse, the first data protection law was issued in the year 1970, and then several countries followed in the development of laws to protect personal data.<sup>32</sup>

France put in place a law on the protection of information privacy in 1978 and in 2004 it was amended to comply with the provisions of the 1981 European Union Convention, the Convention on the Protection of Individuals from the Risks of Automated Processing of Personal Data, and the Egyptian Constitution of 2014 guarantees in Article 68 not to prejudice the sanctity of private life.<sup>33</sup>

In order to address the crime of attacking privacy and data protection, the Jordanian legislator enacted the Jordanian Cybercrime Combating Law in the year (2015) and also added legal articles that work to keep pace with the events that occur on the Internet in the Jordanian Communications Law No. (17) Of 1995, in order to reduce the attack on privacy within the borders of Jordan.<sup>34</sup>

### **The second topic: Legislative treatments of patients' data in light of the Corona pandemic**

<sup>29</sup> Hijazi, A. (2007). *Criminal Evidence in Computer and Internet Crimes*. Legal Books House. Cairo, Egypt. p.45.

<sup>30</sup> Fikri. A. *Information crimes, a comparative study in Arab and foreign legislation*. (1<sup>st</sup> edition). Law and Economics Library. Al Riyadh. p.851.

<sup>31</sup> Al Manaseh, O. *computer crime*, p.24.

<sup>32</sup> Access Now, *Lessons from the European Union's Personal Data Protection Law*. p.2.

<sup>33</sup> Al Mashaykhi, N., (2020) *Constitutional regulation of the right to privacy and its*

*judicial guarantees*. (1<sup>st</sup> edition). Arab Center for Publishing and Distribution. p.96.

<sup>34</sup> Abdullah, A., (2007). *Information and Internet crimes and cyber crimes, a comparative study in the legal system to combat information and Internet crimes with reference to the efforts to combat internationally and locally*. (3<sup>rd</sup> edition) Al-Halabi human rights publications. Beirut, Lebanon. p.60.

It was mentioned in the section of recommendations of the human rights dimensions in responding to the emerging of “Corona” virus that governments should ensure that the information they provide to the public about the coronavirus is accurate, on time, and consistent with human rights principles. All information related to the Corona virus should also be available in multiple languages, but these recommendations focused on the fact that health data is particularly sensitive, and publishing information on the Internet may pose a great danger to infected people, especially those in vulnerable and marginalized positions in society. For this reason, the appropriate use of personal health data should therefore be governed by rights-based on legal safeguards.<sup>35</sup>

In this topic, we present through two demands of legislative treatments regarding patients’ data in the Corona pandemic. Through the first requirement of the general criminal law and laws related to informatics, we present as a basis for maintaining patient data, while we present in the second requirement of medical charters and pandemic legislation as a basis for maintaining patients’ data.

**The first requirement: the general criminal law and laws related to informatics as a basis for maintaining the private data of patients.**

The Penal Code, as the basis for the rest of the other criminal laws, must be taken as a basis for the rest of the laws. Hence, the reliance on it in

all criminal cases and what is emerging from them makes us demand that amendments be made to it, this helps in keeping pace with the era in which we live. Other than this, it does not prevent the creation of special punitive laws, such as the case of laws related to informatics and electronic crimes. In this requirement, we will present in its first section of the General Criminal Law as a basis for preserving patients’ data, while we will present in the second section of this requirement the information laws as a basis for preserving private data of the patients.

**Section one: the general criminal law as a basis for maintaining the private data of patients**

The patients’ registry contains data that needs legal protection, in order to protect the right of privacy.<sup>36</sup> But it must be noted that there are two main factors in conflict with the right of private life, the first of which is the individual’s interest in the freedom of private life and the preservation of secrecy regarding it, while the second factor represents the society’s right to know some information about individuals within certain limits and by legitimate and legal means in order to protect the societal interest.<sup>37</sup>

Criminal protection is one of the aspects of legal protection for patients’ data, which is a manifestation of the criminal protection of the right of sanctity for the private life. The patient's health condition is one of the things that a person does not like to disclose to others, especially with

<sup>35</sup> Khairallah, K. (2020). *Organizing the electronic medical file and protecting its data within the framework of developing the health sector and health services*, research published on the Internet on March 19<sup>th</sup> 2020.

<sup>36</sup> Zahran, Mudar. (2008). *Hospital and Healthcare Management*. Zahran House for Publishing and Distribution. Amman, Jordan. p.266.

<sup>37</sup> Othman, T. (2007). *Criminal protection of private life via the Internet*, Master's thesis. Mohamed Lakhdar University, Algeria. p.23.

the ones who do not interfere with his/her illness.<sup>38</sup>

Therefore, we find the Jordanian Penal Code, in Article 348 bis, referring to the criminal protection of private life by inflicting the appropriate punishment for anyone who violates its sanctity, as the aforementioned article states: Whoever violates the private life of others by eavesdropping or sight by any means, including audio recording, taking pictures or using binoculars, shall be punished upon the complaint of the victim by imprisonment for a period of no less than six months and a fine of two hundred dinars, and the punishment shall be doubled in case of repetition.<sup>39</sup>

While Article (355) deals with the crime of disclosing official or professional secrets, as this article states: "A penalty of imprisonment not exceeding three years shall be imposed on whoever:

- 1- Obtained by virtue of his/her position or official position, official secrets and permitted these secrets to those who do not have the authority to access them, or to those whose job nature does not require such access in accordance with the public interest.
- 2- Whoever performs an official job or a government service and keeps himself/herself confidential documents, drawings, plans, models or copies of them without having the right to keep

them and without the nature of his/her job necessitating that.

- 3- Whoever, by virtue of his profession, was aware of a secret and disclosed it without a legitimate reason.<sup>40</sup>

This article focuses on the disclosure of official secrets and does not discuss private secrets, and the punishment contained in the Jordanian criminal legislation does not achieve the required deterrence, and there is a narrowing of the scope of criminalization, since criminal responsibility falls only on the people who disclose secrets by virtue of their work.<sup>41</sup>

However, the Jordanian penal legislator in the Jordanian Penal Code should keep pace with the new developments in the field of informatics and put in place an integrated legal protection for the private life of individuals, whether in the process of data collection, storing or processing through all of its stages.<sup>42</sup>

While we see the French Penal Code clearer in its text on criminal protection for data breach, as it shows that informing others who have the capacity to receive these data without permission from the person concerned is considered a crime if such access would prejudice the consideration

<sup>38</sup> Al Shahawi, M. (2010). *Criminal protection for the sanctity of private life in the face of the press, Dar Al-Nahda Al-Arabiya*. Cairo, Egypt. p.25.

<sup>39</sup> See: Article No. (348) bis of the Jordanian Penal Code No. (16) of 1960 and its amendments.

<sup>40</sup> See: Article No. (355) of the Jordanian Penal Code No. (16) of 1960 and its amendments.

<sup>41</sup> Al Manaseh. *Information Systems Technical Crimes*. p.252.

<sup>42</sup> Al Momani, N. (2010). *Information Crimes, House of Culture for Publishing and Distribution*. (2<sup>nd</sup> edition) Jordan. p.182.

of the person concerned or prejudice the sanctity of his/her private life.<sup>43</sup>

We also find that French law limits the disclosure of the live data of patients to the doctor, as the doctor alone has the right to disclose the personal data contained in the treatments necessary for the purposes of preventive medicine, medical research, medical diagnosis, provision of care or treatment, or management of health services, and they are implemented by a member of the health professions.<sup>44</sup>

In American law, we find the same approach, as the criminal legislator there alerted to the danger of attacking the private life of individuals and proceeded from the American Constitution to create a special law in which he punished anyone who discloses any private information or data by any means unless he/she has a permit to do so from the person who owns that information and data or whoever devolved its ownership.<sup>45</sup>

### **Second subsection: Laws related to informatics as a basis for maintaining patient data**

In the fight against the Corona virus, many countries rely on a database that includes the names of the infected, their areas of residence and their places of work to monitor their movements and their health status. The speed in accessing data is due to technical development and cyberspace, which works to save a huge amount of data and circulate it quickly. Not at the

level of one country, but at the level of all countries of the world, including the data of individuals such as name, address and medical details. Data processing and analysis would expose individual privacy to threat and violation despite the importance of these measures in limiting the spread of the virus, as this data might be exposed to hacking by unauthorized people. This constitutes a violation of the private life of individuals and a violation of the most important rights stipulated in international charters and national legislation of countries.<sup>46</sup>

The Jordanian legislator in the cybercrime law punished the act of illegal entry or the staying in the electronic system or a website by any illegal means, or exceeding the permitted entry, such as allowing the perpetrator to use the information system for a specific period, but he/she did not take into account that specified period of staying for him/her, or he/she did not exit from the electronic system, or if he/she violates the permission granted to him/her to access some information in the electronic system or the electronic network by intentionally entering another section of the system that he does not have the right to access it. This is what Paragraph (A) of Article Three of the Jordanian Cybercrime Law stipulates: "Anyone who intentionally enters the computer network or an information system by any means without a permit or in violation of the permit shall be punished by imprisonment for a period of no less than one

<sup>43</sup> Srour, T. (2004). *Publishing and Media Crimes*. (1<sup>st</sup> edition). Arab Renaissance House. Cairo. p.609.

<sup>44</sup> Khatir, S. (2015). *Protection of the right of information privacy, Analytical study of the right to access personal data in France*. Journal of Legal and Economic Research, No. 57. p.119.

<sup>45</sup> Al Srour, T. (1991). *Criminal protection of individual secrets in the face of publishing*. Dar Al-Nahda Al-Arabiya, Egypt. p.205.

<sup>46</sup> The Islamic World Educational, Scientific and Cultural Organization, *Developments of Artificial Intelligence and the Requirements for the Protection of Fundamental Rights and Freedoms*, p. 21.

week and not exceeding three months, or a fine of no less than one hundred dinars and no more than two hundred dinars, or both of the mentioned penalties.”<sup>47</sup>

Unauthorized and illegal access to the electronic system is defined as: accessing information or data stored within the electronic system or being inside the automated data processing system against the will of the person who has the right to control this system.<sup>48</sup>

The Jordanian legislator penalized the crime of illegal entry to the electronic system by mistake and then staying in it. It is noted that the Jordanian legislator tightened the penalty in the event that the illegal and unauthorized entry resulted in damage to the information, in accordance with the text of Paragraph (b) of Article Three of the same law.<sup>49</sup>

In Western countries, awareness of the danger of computers on the sanctity of private life began a long time ago. The shouts of protectors of private life have risen to confront the dangers of automated processing of nominal data. Especially in France, where a law was issued on January 6, 1978 in this regard which aimed to protect the private life from informational risks. It stipulated a number of crimes that are punishable if some rules are not observed during the collection of information and in the processing and storing stages the in computer memory.<sup>50</sup>

Among these crimes is the crime of processing nominal data without obtaining a license from the competent authority, which is the National Committee for Informatics and Liberties (NIL). The first judgments issued in this field by the French judiciary was the judgment issued by the Nantes Court on December 16<sup>th</sup>, 1985, where the perpetrator was punished by imprisonment for two months and paid a fine of twenty thousand French francs. Note that the mentioned law stipulates a penalty of imprisonment in such case from six months to three years and a fine of two thousand French francs to two hundred thousand French francs or one of the two penalties (Article 41).<sup>51</sup>

Among these crimes is what is stipulated in Article 43 of the French law related to storing personal information, in which the disclosure of it constitutes an attack on honor, consideration, or the sanctity of private life without the consent of the concerned person. The perpetrator of this offense is liable to imprisonment from two to six months and a fine of two thousand to twenty thousand French francs, or one of these two penalties. It also includes the crimes of illegal registration and preservation of nominal data for a period longer than the period specified in the license issued by the National Committee for Informatics and Liberties (CNFL), because of the danger that leads to the so-called the right of forgetting regarding the crimes committed by

<sup>47</sup> Article (3) of the Jordanian Cybercrime Law No. (27) of 2015 AD.

<sup>48</sup> Hijazi, A. (2006). *Combating computer and internet crimes in the Arab model law, an in-depth study in information law*. (1<sup>st</sup> edition). University Thought House, Alexandria. p. 357-360.

<sup>49</sup> Al Heeti, M. (2006). *Computer crimes, an analytical study*. (1<sup>st</sup> edition). Curriculum

House for Publishing and Distribution, Jordan. p.189.

<sup>50</sup> Al Okoum, W. (2004). *The concept and phenomenon of information crime, law, computers and the Internet*. United Arab Emirates University. P.35.

<sup>51</sup> Dawood, H. (2000). *Information Systems Crimes, Naif Arab Academy for Security Sciences*. (1<sup>st</sup> edition). Saudi Arabia. P.239.

some individuals after the elapsing of certain periods of committing these crimes.<sup>52</sup>

The American legislator in the Electronic Communications Privacy Act of 1968 prohibits the reservation or broadcast of private electronic communications. In addition it criminalized the illegal access to the stored or transmitted electronic communications, including e-mail, as this constitutes a violation of privacy.<sup>53</sup>

At the level of Arab legislation, we find that the Algerian legislator stated that any prejudice, assault, disclosure or use of electronic data described as private to another party, shall be punished by imprisonment from three months to three years and a fine from one million to five million dinars, or one of the two penalties without the other. In the case of processing data of a personal nature despite the objection of the concerned person in this issue, he/she shall be punished by imprisonment from one to three years and a fine of one hundred thousand to three hundred Algerian dinars.<sup>54</sup>

The Saudi Law for Combating Information Crimes has criminalized in Article 3 of it, eavesdropping on what is sent through the information network or a computer without a valid legal justification, or picking it up, objecting it, defaming others, or harming them through various means of information technology.<sup>55</sup>

### **The second requirement: medical charters and legislations of Corona pandemic as basis for maintaining patient data.**

Medical charters have prohibited and criminalized the leakage of patients' data and the violation of their privacy. We find that these charters provide protection for this data in the medical community, while they do not provide general protection for data. With the spread of the Corona pandemic, the privacy of many patients has been violated, which prompted the Jordanian legislator to issue Defense Order No. 8 to provide criminal protection for patients' data in order to protect their privacy from being violated. In this requirement, we present the criminal protection provided by medical charters through the first section. Also, we present Defense Order No. 8 and the criminal protection it provides for the patients' information through the second section of this requirement.

#### **Section one: Medical charters during the pandemic as basis for maintaining patients' data.**

The health data that describes the patient's condition, circumstances, treatments, recovery path, and other matters related to the course of the disease and the patient are very important due to their connection with the privacy of the natural person. The disclosure of it is for those whom patient trusts or wants to obtain medical help from them, and this data might affect the patient's professional future, family and social life due to its strong connection with the patient's

<sup>52</sup> Al Okoum. *The concept and phenomenon of information crime*. previous reference. P.38.

<sup>53</sup> Al Manaseh, O. *Computer Crimes*. p.24.

<sup>54</sup> Ahmad. (2020). *The Evolution of the Concept of Protecting the Right to Privacy*.

Journal of Law and Society, Volume 8, No. 1. P.484.

<sup>55</sup> Hijazi, A. (2009). *Computer and Internet crimes in Arab legislation*, Dar Al-Nahda Al-Arabiya, Egypt. p.118.

physical, psychological or even mental well-being.<sup>56</sup>

The TRIPS agreement authorized the imposition of the obligation after disclosing data and information to others, but it permitted disclosure if it was necessary to protect public health and indicated that this concept includes human health, regardless of his/her nationality, domicile or place of residence. Accordingly, if an authorized government party finds the possibility of side effects of a medicine after licensing and marketing it, it is possible to warn the public and disclose the results of the tests and confidential data or information submitted to it as long as disclosure is necessary to maintain public health.

<sup>57</sup>

The Jordanian Health Institutions Accreditation Council issued a document which states that<sup>58</sup>:

The patient has the right to maintain the privacy and confidentiality of his/her medical and personal information in which it should not be published and used by unauthorized parties. Health information is particularly considered sensitive and the irresponsible publication of this information can constitute great psychological and social harm, especially on people who are weak and humiliated in the society. Health institutions should implement safeguards to protect patients' information against unintended or irresponsible use and dissemination.

Emergencies and epidemiological situations may necessitate publishing and sharing patient information with the official authorities responsible for the purpose of combating the pandemic and protecting society as a whole.

Therefore, frameworks and foundations must be developed for the publication and disclosure of patients' information that are subject to legal guarantees based on preserving the rights of patients during the use of their personal information.<sup>59</sup>

The aim of this is to illustrate that maintaining the confidentiality of patient's information is very important and a priority in particular when there is a fear of stigmatizing affected individuals or communities, as the case with Covid 19. Therefore, it is important to maintain confidentiality of information and patients' privacy and to identify the necessary information that is allowed to be disclosed to different parties. In the Jordanian National Charter for Patient's Rights, stated in the fourth axis (the axis of confidentiality and privacy) that confidentiality satisfies the patient's right to preserve all information related to his illness, stages of treatment, and the outcome of his/her condition for himself/herself and for the persons authorized to view it by him/her. It includes the concept of confidentiality everything related to the patient's medical condition and all that What is said or heard by the medical or health team about the patient's social and health condition or his/her family at the start of the treatment process or the health intervention, and all information related to the patient, starting from his/her name, date of birth, and information related to his/her identity

<sup>56</sup> Jbour, M. (2018). *Personal data and Arab laws, security concerns and the rights of individuals*. (1<sup>st</sup> edition). the Arab Center for Legal and Judicial Research. Beirut, Lebanon. p.84.

<sup>57</sup> Al Zghayyar, H. (2005). *New global issues in the field of intellectual property, the League of Arab States*. Cairo. p.15.

<sup>58</sup> The website of the Jordanian Health Institutions Accreditation Council (HCAC).

and health or sick condition are covered by the concept of confidentiality.<sup>59</sup>

The US Patient Information Protection System states<sup>60</sup>:

Sometimes health care practitioners are required by law to disclose some of the patient's medical information because the condition sometimes might pose a risk to others. For example, some infectious diseases must be reported, and health care practitioners may share a patient's medical information among themselves, but only as much as it is necessary to provide medical care.

It is the duty of healthcare practitioners to take steps in maintaining the confidentiality of personal medical information in line with the patient's preferences. For example, medical discussions between a doctor and a patient should be conducted privately, and the patient may prefer that the doctor contact him/her via a cell phone rather than a fixed home number.

Even close family members and those who have sufficient awareness may not necessarily be allowed to obtain information about the medical condition of a member in their family.

It was stated in the Bill of Rights issued by the Saudi Ministry of Health regarding the rights of patients, including the rights Corona virus patients and suspected cases.<sup>61</sup>

Providing complete privacy and confidentiality of information, whether transactions related to diagnosis, analysis or treatment, and preventing its access to any parties or persons without the consent of the patient or legal guardian, except for what is officially requested by the competent authorities.

### **Second subsection: Pandemic legislation as a basis for maintaining patient data.**

Defense Order No. (8) For the year 2020 issued in accordance with the provisions of Defense Law No. (13) for the year 1992 in order to strengthen the national efforts made to preserve the safety of society and its members and components, and not to expose it to danger, and to confront the danger that may result from the transmission of the "Corona virus" infection, and to limit its spread within society, and to intensify the penalties on persons who disregard themselves, their families, and society in general, by transmitting or spreading the infection; either on purpose, or lack of precaution.

The issuing of the defense order declared the following: Firstly: The provisions of this order shall apply to every Jordanian or foreigner residing or present in the Hashemite Kingdom of Jordan, and he/she must abide by the following: To disclose immediately his/her infection, or the infection of others, and his/her contact with a person infected with the "Corona virus", to the competent authorities and not to hide this from them.

Immediate implementation of the decisions, measurements, and or procedures issued and taken by the competent authorities aimed to prevent the spread of infection, including quarantine procedures, home isolation, or in the places specified by the competent authorities.

Subject to the instructions of the epidemic investigation committees and the orders and the instructions issued by them and not to obstruct or impede their implementation

<sup>59</sup> Health Coalition for Patient's Protection, The Jordanian National Charter for Patient Rights, p. 38.

<sup>60</sup> HIPAA-[Health Information Privacy](#).

<sup>61</sup> The website of the Saudi Ministry of Health.

Commitment to the pledge that is signed by the suspect of being infected or who has been in contact with a person infected with the virus, which includes a commitment to self-quarantine “home quarantine” and not to contact any of them with other people during the period prescribed by the competent authorities.

The person who is infected with the “Corona virus” and or suspected of being infected with it, or who has been in contact with it, is obliged to take the preventive and curative measurements imposed upon him/her, or that are required of him to prevent the transmission of infection to others or the spread of the pandemic.

Not to expose any person to infection or to take any action that would transmit the infection to others.

Secondly: It is prohibited for every natural or legal person to do the following; exposing the privacy of the infected, exposing the privacy of those who are in contact with infected people or exposing the privacy of the suspected of being infected with the pandemic, and everything related to their private lives, such as their names, pictures, places of work or residence, by publishing or re-publishing them through social media and other means. Except for authorized parties.

(A report by the center monitored violations of the right of privacy in conjunction with the registration of the first case of corona, as the personal data of infected individuals were published, including the publication of lists of names, the publication of pictures of infected individuals or pictures of their families, or the publication of videos that interfere with the private lives of individuals. In addition there was

a publishing of official documents related to the infected. Accordingly the report recommended protecting the right of privacy for the individuals, especially their personal data, amending legislation to achieve integrated protection for them and not only with the eighth defense order, and taking the necessary legal measures against anyone who infiltrates the private life of individuals, whether by those who represent official authorities, or by private individuals)<sup>62</sup>

Publishing, republishing or circulating any news about the pandemic that would intimidate people or cause panic among them through the media, communication or social media.

(A report by the National Center for Human Rights recommended that the defense order should be amended by canceling this clause, since the existing legislations are sufficient, and this text would expand the scope of criminal prosecution in a way that affects the freedom of expression and freedoms of press).<sup>63</sup>

Thirdly: Every hospital, health center, medical laboratory, its administrators, or any of its employees must immediately inform the authority parties of any case that has been proven to be infected with the virus or suspected of being infected with it.

Fourthly: 1. Whoever violates any of the obligations or measures imposed under this defense order shall be punished with imprisonment up to three years or a fine of three thousand dinars, or both.

The application of any penalty under this Defense Order shall not preclude the application of any more severe penalty provided in any other legislation.

<sup>62</sup> A report by the National Center for Human Rights published on Joe24 on May 5<sup>th</sup> 2021.

<sup>63</sup> A report by the National Center for Human Rights published on Joe24 on May 5<sup>th</sup> 2021.

Fifthly: the provisions of Paragraph (B) of Article (22) and Clause (3) of Paragraph (B) of Article (62) and Article (66) of Public Health Law No. (47) of 2008 shall be suspended to the extent necessary to implement this defense order.<sup>64</sup>

And in implementation of the defense orders in protecting private data, the Ma'an Court of Appeal issued its decision: (If the appellee organized a newsletter form of suspected case of being infected in the name of the plaintiff (...) and sent this form via WhatsApp to the head of the Communicable Diseases Department and then spread This form on social media, these actions constitute a crime of violating Defense Order No. (8) of 2020, which is compromising the privacy of those suspected of being infected with the pandemic by publishing news about the pandemic through social media)<sup>65</sup>

### **Conclusion:**

This study is a contribution to address an important issue, which is the issue of privacy and protection of personal data, especially for patients, whose privacy and personal data have been violated in light of the Corona pandemic. The study concluded the following results:

### **Results:**

- 1- Although divine laws, national constitutions, conferences, international agreements and national legislations focus on the right of privacy and surround it with legal protection, this right is still being violated in many ways.

- 2- Although the protection of personal data is linked to the right of privacy, the right of privacy is recognized by all the constitutions of the world. However, the right to protect personal data is still a matter of dispute in legal jurisprudence between countries.
- 3- Some countries hastened to find legislation regulating the protection of personal data, especially European countries and America, while some countries are still reluctant to protect this right, especially in our Arab region.
- 4- The general criminal law is the basis for preserving the personal data of patients, but the criminal legislation still needs clear texts in the protection of personal data, especially for patients. This can be done by amending criminal legislation to keep pace with the development in the cyberspace.
- 5- In the field of legislation related to informatics, we find that some countries have protected personal data within the framework of protecting the right to privacy, which is confirmed by heavenly laws, national constitutions and international conventions. While some countries still overlook this right and focus on the side of information legislation on crimes that threaten their security as countries.
- 6- The researcher finds that medical charters can be taken as a basis for amending the criminal legislation with regard to the protection of personal data, especially

<sup>64</sup> Defense Order No. (8) for the year 2020 issued in accordance with the provisions of Defense Law No. (13) for the year 1992.

<sup>65</sup> Resolution No. 2020/272.

patients' data, as a kind of protection for privacy in light of the cyberspace.

- 7- Despite the importance of issuing Defense Order No. 8 to preserve the personal data of patients, it is a temporary matter that ends with the end of the Corona pandemic, which makes it important to issue a permanent legislation to protect personal data, since it is a very important matter for patients.

### **Recommendations:**

- 1- The study recommends finding permanent local legislation to protect the personal data of individuals, especially for patients.
- 2- The study recommends amending the Jordanian Penal Code in force by adding articles aimed at providing criminal protection for the personal data of individuals, especially patients, by inflicting appropriate penalties for those who violate the sanctity of this data.
- 3- The study recommends international cooperation in the field of protecting personal data for individuals, such as cooperation that takes place in combating cyber terrorism and organized crime through cyberspace.
- 4- The study recommends achieving more studies in this field, since it is an area that still needs horizontal and vertical depth.

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