

The impact of constitutional protection of the right to confidentiality of conversations and communication and the protection of personal data on the criminal system

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linda.laouadi@univ-tebessa.dz**Abstract:**

A view of the importance of the right to confidentiality of conversations and communications, as well as the right to protection of personal data when dealing with them, as a result of their increasing violations, particularly in the light of the technological development of our time. The Algerian State has sought to protect these rights in all ways and by all means.

As a result of the principle of the primacy of the law and its impact on ordinary laws, foremost among which is criminal law, we are curious to know: The extent to which constitutional protection of the right to confidentiality of private conversations and communications and the right to the protection of personal data in the course of their treatment affects the criminal system. Finally, we conclude that the Criminal Code is affected by the constitutional protection of these rights through Algeria's various constitutions and amendments.

Keywords : Constitutional protection ; Criminal protection ; Right to confidentiality of conversations ; Right to protection of personal data.

Introduction

The right to privacy is one of the most fundamental rights of individuals in modern societies and a measure of the progress and advancement of nations. Accordingly, international, regional, and domestic communities have sought to protect this right, particularly in light of the increasing forms of violations against it resulting from the remarkable technological development witnessed worldwide. This has been reflected in the successive Algerian Constitutions, which have sought to protect all aspects of the right to private life, whether traditional aspects, such as the inviolability of the home and freedom of religion and belief, or more recent aspects, such as the right to the confidentiality of private conversations and communications, as well as the right to the protection of personal data when it is processed. This has been achieved through establishing the fundamental principles governing these rights and guaranteeing their protection.

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The constitutional legal framework, by virtue of the principles of the hierarchy of laws and the supremacy of constitutional rules, consequently casts its influence over the various legal systems. Legislation therefore seeks to translate constitutional provisions into practice through legislative texts, given that the specific nature of the Constitution does not, in itself, allow for their direct implementation.

The criminal legal framework is thus among the first areas affected by the constitutional protection of the right to the confidentiality of conversations and communications, as well as the right to the protection of personal data during its processing. Through this framework, the legislator has sought to provide the highest level of protection for these rights, given the nature of criminal law rules, which are characterized by deterrence and punishment.

Importance of the Topic

The importance of this topic lies primarily in its specific nature. It does not examine a particular aspect within a single branch of law; rather, it combines the study of a specific legal issue within two different types of law.

The first is constitutional law, which occupies the highest position within the hierarchy of laws and stands at the apex of the Algerian legal system. Its rules differ from those of ordinary laws in terms of both form and substance. The second is criminal law, which is characterized by its special nature, as it seeks to strike a balance between two conflicting interests the public interest and the private interest—through criminalization and punishment.

The importance of this topic also stems from the fact that it addresses a contemporary and pressing issue, particularly as Algeria is undergoing profound transformations across various fields, especially in the area of rights and freedoms. These transformations have been influenced by the popular movement calling for the strengthening of rights and freedoms, including the right to the confidentiality of private conversations and communications and the right to the protection of personal data during its processing. Both rights constitute fundamental pillars of the right to respect for private life. In view of the violations to which the right to respect for private life is exposed, particularly amid the widespread use of technology, it is therefore necessary to shed light on the two principal forms of legal protection established to safeguard this right.

These provisions constitute the constitutional basis for protecting the right to privacy and the confidentiality of communications. Accordingly, pursuant to the principle of the supremacy of the Constitution, which gives rise to the principle of the hierarchy of laws, this important constitutional rule may not be violated, whether by treaties and conventions concluded by Algeria, or by organic laws, ordinary laws, regulatory laws, or executive regulations. Consequently, it becomes incumbent upon all authorities to guarantee and safeguard this right.

This protection has been further developed and embodied within Algerian criminal law through the establishment of criminal protection for this right, both at:

The substantive level: The Algerian Penal Code, as amended by Law No. 06-23 of 20 December 2006, introduced, through Articles 303 bis to 303 bis 3, two specific offences: the offence of taking photographs or recording conversations without authorization, and the offence of using or exploiting such recordings. These two offences seek to deter acts that infringe upon the sanctity of individual privacy through audiovisual communication media,² whether committed by natural persons or legal persons.

The Algerian legislator imposes the following penalties on natural persons:

The offence of taking photographs or recording conversations without authorization is punishable by a principal penalty consisting of:

Imprisonment for a period ranging from six (6) months to three (3) years and a fine ranging from DZD 50,000 to DZD 300,000 for anyone who intentionally infringes upon the privacy of individuals, by any means whatsoever, by:

² For further details, see: Nouiri Abdelaziz, *Criminal Protection of Privacy – A Comparative Study*, Doctoral Dissertation in Law, Criminal Law Specialization, University of Hadj Lakhdar, Batna, Academic Year 2010–2011, p. 74.

Taking, recording, or transmitting private or confidential conversations or communications without the permission or consent of the person concerned.

Taking, recording, or transmitting an image of a person in a private place without the permission or consent of the person concerned.

The Algerian criminal legislator also provides for the same principal penalties for the offence of exploiting the materials obtained, where the offender retains, places, or permits the placing of such materials, whether photographs, recordings, or documents, at the disposal of the public or third parties, or uses them by any means whatsoever.

Where the offence is committed through the press, the specific provisions stipulated in the relevant laws shall apply for the purpose of determining the persons responsible.

The Algerian criminal legislator has also made the confiscation of objects used to commit the offence mandatory, while allowing the competent court to impose one of the additional penalties upon the offenders, consisting of depriving them, for a period not exceeding five (5) years,³ of the exercise of one or more national, civil, or family rights.⁴

With regard to legal persons, Law No. 04-15 of 10 November 2004, amending and supplementing the Algerian Penal Code, established the criminal liability of legal persons in general and enshrined it under Article 51 bis thereof.⁵ Article 303 bis 3 of the same Code also expressly recognizes the liability of legal persons for offences involving violations of the sanctity of private life and the confidentiality of communications, by subjecting them to the general principles governing the criminal liability of legal persons set forth in the Penal Code.

The criminal liability of a legal person shall apply, with the exception of the State, local authorities, and legal persons governed by public law, where such legal person commits, on its behalf and through its bodies or legal representatives, “any of the acts provided for under Articles 303 bis and 303 bis 1.”⁷

A legal person shall be punished for the commission of such acts by a fine as the principal penalty. The Algerian criminal legislation has established the fine as a general penalty applicable to felonies, misdemeanors, and contraventions.⁸ In cases involving felonies and misdemeanors, the amount of the fine shall range from one to five times the maximum fine prescribed for a natural person under the law punishing the offense.⁹ Accordingly, the penalty applicable to a legal person for the misdemeanor of violating the sanctity of private life and the confidentiality of communications shall consist of a fine ranging from DZD 300,000 to DZD 1,500,000.

³ Article 303 bis 2 of Ordinance No. 66-156 of 18 Safar 1386 AH, corresponding to 8 June 1966, containing the Algerian Penal Code, Official Gazette of the People’s Democratic Republic of Algeria, No. 49, issued on 21 Safar 1386 AH, corresponding to 11 June 1966, as amended and supplemented.

⁴ Article 9 bis 1 of the same Code provides that deprivation of the exercise of national, civil, and family rights consists of:

Dismissal or exclusion from all public functions and positions related to the offence.

Deprivation of the right to vote or stand for election and of the right to hold any decoration.

Ineligibility to serve as a sworn assistant, expert, or witness to any deed, or to testify before a court, except for purposes of providing information.

Deprivation of the right to possess weapons, to teach, to manage a school, or to serve in an educational institution as a professor, teacher, or supervisor.

Ineligibility to act as a guardian or trustee.

Loss of all or part of parental authority.

In the event of a conviction for a felony, the judge shall order deprivation of one or more of the rights referred to above for a maximum period of ten (10) years, commencing from the date on which the principal sentence expires or the convicted person is released.

⁵ Bouhouche Hicham, “Criminal Liability of Legal Persons in Algerian Legislation,” Emir Abdelkader Journal of Islamic Sciences, Vol. 31, No. 01, 2017, p. 34.

⁶ Paragraph 1 of Article 51 bis of the Algerian Penal Code.

⁷ In fact, the Algerian criminal legislator did not limit the criminal liability of legal persons for offenses involving violations of the sanctity of private life and the confidentiality of communications solely to Article 303 bis 3. Rather, the criminal legislator established the liability of legal persons for the offenses referred to in Sections 3, 4, and 5 of Chapter I, concerning felonies and misdemeanors against persons, under Title II, entitled “Felonies and Misdemeanors against Persons.”

⁸ Idriss Qarfi, “Criminal Sanctions Imposed on Legal Persons under Algerian Legislation,” Journal of Law and Human Sciences, Vol. 03, No. 03, 2010, p. 159.

⁹ Paragraph 1 of Article 18 bis of the Algerian Penal Code.

The Algerian Penal Code also provides for the possibility of subjecting a legal person to one or more supplementary penalties when it commits any of the acts constituting an infringement of the sanctity of private life and the confidentiality of communications.¹⁰ Accordingly, the legal person may be punished by one of the supplementary penalties provided for under Article 18 bis of the Algerian Penal Code.¹¹

Procedural level: Since its enactment in 1966, the Algerian Code of Criminal Procedure has contained two offenses indirectly related to the protection of individual privacy. These offenses concern the disclosure of investigative and inquiry procedures, namely: the misdemeanor of disclosing documents resulting from searches conducted by judicial police officers during the preliminary investigation stage (Article 46), and the misdemeanor of disclosing documents obtained during the judicial investigation stage (Article 85).¹²

This remained the case until 2006, when the Algerian Code of Criminal Procedure was amended pursuant to Law No. 06-22 of 20 December 2006, introducing a new investigative measure consisting of the interception of correspondence, the recording of voices, and the taking of photographs. These measures involve the implementation of technical arrangements, without the consent of the persons concerned, for the purpose of capturing, recording, and transmitting words spoken privately or confidentially by one or more persons in private or public places, or taking photographs of one or more persons present in a private place.¹³ The scope of application of these measures was further expanded under the new Code of Criminal Procedure, Law No. 25-14 of 3 August 2025.¹⁴

Indeed, although the legislator has authorized these investigative methods, which may constitute an interference with the sanctity of private life, resorting to them unlawfully may itself constitute an offense. The legality of resorting to these procedures is therefore subject to compliance with the legal safeguards prescribed by the same law.

Investigation may not resort to the interception of correspondence, the recording of voices, or the taking of photographs unless required by the necessities of investigating flagrante delicto offenses, or for preliminary investigations into crimes of intentional homicide, drug offenses and offenses involving psychotropic substances, transnational organized crime, offenses related to information and communication technologies, money-laundering offenses, terrorism, offenses relating to legislation governing foreign exchange and the movement of capital to and from abroad, corruption offenses, smuggling offenses, trafficking in persons, trafficking in organs, migrant smuggling, and kidnapping.¹⁵

This also requires the judicial police officer to obtain authorization from the Public Prosecutor and to remain subject to his supervision, or to the supervision of the investigating judge where a judicial investigation has been opened, in addition to complying with the obligation of professional secrecy.¹⁶ and the requirement to satisfy a set of formal conditions and procedures, including the preparation of official records and the mandatory inclusion of certain information in the authorization issued by the

¹⁰ Final paragraph of Article 303 bis 3 of the same Code.

¹¹ Supplementary penalties applicable to legal persons:

Dissolution of the legal person.

Closure of the establishment or one of its branches for a period not exceeding five (5) years.

Closure of one of its branches for a period not exceeding five (5) years.

Exclusion from public procurement contracts for a period not exceeding five (5) years.

Prohibition from directly or indirectly carrying out one or more professional or social activities, permanently or for a period not exceeding five (5) years.

Confiscation of the property used in the commission of the offense or resulting therefrom.

Publication or posting of the conviction.

Placement under judicial supervision for a period not exceeding five (5) years, with such supervision applying to the activity that led to the offense or in connection with which the offense was committed.

¹² Nouiri Abdelaziz, *op. cit.*, pp. 15–16.

¹³ Paragraph 2 of Article 65 bis 5 of Ordinance No. 66-155 of 18 Safar 1386 AH, corresponding to 8 June 1966, containing the Code of Criminal Procedure, as amended and supplemented.

¹⁴ Abderrahmane Khalfi, *Criminal Procedure under Algerian and Comparative Law*, 8th ed., Dar Belkis, Algeria, 2025, pp. 127–128.

¹⁵ Paragraph 1 of Article 114 of Law No. 25-14 of 9 Safar 1447 AH, corresponding to 3 August 2025, Official Gazette, No. 54-2025.

¹⁶ For further details, see: Zouzou Zolikh, "The Legitimacy of Modern Investigative Methods," *Journal of Law and Political Science*, No. 08, June 2017, p. 765.

competent authority, as provided for in Articles 116 to 119 of the Algerian Code of Criminal Procedure.

2.1- Second: Embodiment of Constitutional Protection of the Right to the Confidentiality of Private Conversations and Communications within the Criminal Justice System Following the 2016 Constitutional Amendment

As a result of the current challenges posed by technology, as well as the rapid dissemination of images and data that have directly infringed upon the sanctity of private life, coupled, on the one hand, with the development and growing recognition of rights and freedoms and, on the other hand, with individuals' increasing awareness of their importance, particularly with regard to their personal sphere and their need to preserve and protect their privacy, the right to the confidentiality of private communications and correspondence has come to be regarded as one of the personal rights inherent to human dignity. This has prompted international and national legislation to seek effective means of ensuring its protection.¹⁷

This development was reflected this time at the apex of the Algerian legal system, as the Algerian Constitution was amended pursuant to Law No. 16-01 of 6 March 2016, which introduced a significant degree of consolidation and enhancement of public rights and freedoms, in addition to strengthening the protection of human dignity,¹⁸ in general, and the protection of the sanctity of private life, honor, and the confidentiality of correspondence and private communications in particular.

The 2016 Constitution brought about a tangible and fundamental shift in the manner of protecting the right to privacy, honor, and the confidentiality of correspondence and private communications. This was achieved through a transition from the mechanism of constitutional recognition of the right to the sanctity of private life, honor, and the confidentiality of correspondence and private communications as a means of protecting these rights,

to another, more effective mechanism, namely constitutional sanctioning of violations of these rights, by elevating the criminal protection of the right to the confidentiality of private conversations and communications to the status of a constitutional principle. Accordingly, the 2016 Constitutional Amendment provided that:

"The privacy and honor of the citizen shall be inviolable and protected by law.

The confidentiality of correspondence and communications in all their forms shall be guaranteed.

Under no circumstances may these rights be infringed without a reasoned order issued by the judicial authority, and the law shall punish any violation of this provision..."¹⁹

However, an analysis of this provision reveals that, at first glance, the Algerian constitutional legislator limited and directed constitutional punishment towards judicial police officers in cases of abuse, as well as the irrational and unlawful use of the exceptional means legally granted to them for investigating and gathering evidence concerning certain serious offenses expressly specified in the Algerian Code of Criminal Procedure. This particularly concerns the interception of correspondence, the recording of conversations, and the taking of photographs. Accordingly, this amended provision constitutes another safeguard protecting individuals against any infringement by judicial police officers of the sanctity of their private lives, their honor, and the confidentiality of their correspondence and private communications.

Nevertheless, despite the positive aspects of this provision, it may be criticized for its failure to provide comprehensive and full protection of the right to the confidentiality of private communications and correspondence. This is because criminal constitutional protection of these rights has focused on strengthening procedural safeguards governing recourse to the methods of intercepting correspond-

¹⁷ Abdelaziz Chemlal, "The Sanctity of Private Life between Protection and the Necessity of Preventing Corruption," *Academic Journal of Legal Research*, Vol. 12, No. 3, 2021, p. 752.

¹⁸ For further details, see: Mohamed Lamine El Omrani, "The Impact of the Constitutional Amendment in Algeria Pursuant to Law No. 16-01 on Public Rights and Freedoms," *Journal of Jurisprudence for Legal and Economic Studies*, Vol. 07, No. 01, 2018, p. 80.

¹⁹ Article 46 of Presidential Decree No. 96-438 of 7 December 1996, concerning the promulgation of the constitutional amendment adopted by referendum on 28 November 1996, published in the Official Gazette of the People's Democratic Republic of Algeria, No. 76, 8 December 1996, as amended by Law No. 16-01 of 6 March 2016 on the Constitutional Amendment, Official Gazette, No. 14, Year 53, issued on 7 March 2016.

ence, recording conversations, and taking photographs, without constitutionalizing the substantive rules governing the criminal protection of the right to the confidentiality of private conversations and communications.

However, this situation did not persist for long. The 2020 Constitutional Amendment remedied this shortcoming by broadening the scope of constitutional protection of the sanctity of individuals' private lives through the imposition of penalties. This protection was extended to all persons, regardless of their status, whether public officials or ordinary individuals, through the use of the plural form when amending Article 46 of the 2016 Constitution pursuant to Article 47 of the 2020 Constitution, which provides: "The law shall punish any violation of these rights."²⁰

During the same period, Law No. 18-04 of 24 Sha'ban 1439 AH, corresponding to May 10, 2018, laying down the general rules relating to postal services and electronic communications, was enacted. Chapter IV thereof was devoted to criminal provisions criminalizing and penalizing a number of acts constituting violations of the confidentiality of postal services and communications.

2. Second Axis: The Impact of Constitutional Protection of the Right to the Protection of Personal Data During Its Processing on the Criminal Justice System

Personal data contain sensitive information relating to individuals' private lives. Such data constitute a cornerstone of personal freedom and a fundamental component of human rights and public freedoms. This requires respect for such data by both public authorities and individuals, as well as the provision of protection against any unlawful infringement of this right, regardless of its source or form, within the framework of respect for human dignity, private life, and public freedoms. This is what the Algerian legislator sought to achieve by providing constitutional protection for this right (First), which consequently had an impact on the criminal justice system (Second).

1.2. First: Constitutional Protection of the Right to the Protection of Personal Data During Its Processing

In fact, the Algerian legal system only recently adopted the concept of personal data, as such data had not, until recent years, been particularly exposed to infringement due to the traditional methods used to process them. They were collected manually and stored in paper files within administrative bodies and institutions, thereby reducing the risk of their exploitation for unlawful purposes.²¹

However, this did not prevent the Algerian legislator from taking a number of positive measures aimed at protecting personal data, even if indirectly. The first of these measures was Algeria's accession, in 1989, to the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966. Article 17 thereof provides that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."²²

The Algerian Penal Code was also among the first legal instruments to address this matter, following its amendment by Law No. 04-15 of 10 November 2004. This amendment introduced Chapter VII bis within Chapter III of Title II of Book III, addressing, through Articles 394 to 394 bis 7, offences against automated data processing systems.

This was further reinforced by the enactment of Law No. 09-04 on the Prevention of and Fight against Offences Related to Information and Communication Technologies.

Accordingly, the Algerian legislator criminalized any destruction of the contents of an automated data processing system or any disruption of its operation, as well as any destruction of the technical protection of data, which constitutes a preventive measure intended to preserve the privacy of data

²⁰ The final paragraph of Article 47 of the 1996 Constitution, as amended by Presidential Decree No. 20-442 of 15 Jumada al-Awwal 1442 AH, corresponding to December 30, 2020, concerning the promulgation of the Constitutional Amendment, published in Official Gazette No. 82 of December 30, 2020.

²¹ Ezzeddine Tabach, "Criminal Protection of Personal Data in Algerian Legislation: A Study in Light of Law No. 18-07 Relating to the Protection of Natural Persons in the Processing of Personal Data," Academic Journal of Legal Research, No. 02, 2018, p. 28.

²² Mohamed El-Aidani and Youcef Zarrouk, "Protection of Personal Data in Algeria in Light of Law No. 18-07 (on the Protection of Natural Persons in the Processing of Personal Data)," Ma'alim Journal of Legal and Political Studies, No. 05, December 2018, p. 116.

transmitted through networks, particularly the Internet, with a view to ensuring the confidentiality of electronic messages and transmitted data.²³

However, as a result of the continuous and accelerating development of techniques and technologies, the sphere of private life in general, and personal data in particular, has become one of the areas most significantly affected by these developments. Personal information relating to individuals is now collected without necessarily being physically transmitted, and is processed and stored electronically, thereby replacing traditional manual methods. As a consequence of this transformation, personal data has become exposed to numerous cyber risks.²⁴

As a result of this threat to individuals' personal data, it has become necessary for the legislator to intervene in order to provide such data with legal protection. This intervention was undertaken, unusually, at the constitutional level.

Moreover, the matter did not stop there; it went further by prompting a reconsideration of the general concept of the inviolability of private life as a constitutional principle, with personal data being incorporated as an integral component thereof.²⁵

The concept of personal data was incorporated into the Constitution for the first time through the 2016 constitutional amendment, by adding paragraph 4 to Article 46 thereof, which stipulates that: "The protection of natural persons in the field of processing personal data is a fundamental right guaranteed by law, and any violation thereof shall be punishable."²⁶

This provision thus constituted the constitutional basis for protecting the right to the protection of personal data during its processing.

2.2. Embodiment of the Constitutional Protection of the Right to the Protection of Personal Data during Processing at the Level of the Criminal Legal Framework

An examination of the constitutional protection of the right to the protection of personal data during its processing, as established by the constitutional legislator, reveals that it constitutes an exceptional form of protection. The Algerian Constitution did not merely provide for this right, unlike most constitutionally protected rights and freedoms. Rather, given the importance of this right, the Algerian Constitution adopted, in this instance, a punitive approach, providing that anyone who violates the sanctity of an individual's private life and his or her right to the protection of personal data shall be subject to punishment.²⁷

As is well known, the Constitution establishes the general provisions and fundamental principles upon which the State is based,²⁸ but it does not undertake the task of providing detailed rules or implementing these principles. This responsibility is entrusted to legislation in its various forms.

Since the areas of criminalization and punishment fall within the scope of criminal legislation, it is therefore the latter that is responsible for giving concrete effect to such constitutional provisions. However, it is noteworthy that, contrary to the usual practice, the constitutional protection afforded to this right did not have a direct impact on the ordinary criminal legal framework, consisting of the Algerian Penal Code and the Code of Criminal Procedure.

Rather, contrary to this, the constitutional amendment resulted in the enactment of a new law added to the Algerian legal framework. Thus, in 2018, Law No. 18-07 on the Protection of Natural Persons in the Field of Processing Personal Data, dated 10 June 2018, was enacted.

This law is regarded as constituting a legal framework governing the ethics of personal data processing, according to some French legal scholars when the French Data Protection and Information Technology Act was enacted in 1978.²⁹

²³ Kamel Bouaaka, "Legal Protection of Natural Persons in the Processing of Personal Data in Light of Law No. 18-07," Algerian Journal of Business Law, No. 02, December 2020, p. 54.

²⁴ Zahra Djaghri, "Criminal Protection of Personal Data in Algerian Legislation Pursuant to the Provisions of Law No. 18-07," Journal of Legal and Social Sciences, Vol. 06, No. 04, December 2021, p. 485.

²⁵ Ezzeddine Tabach, op. cit., p. 28.

²⁶ Aïcha Benkara Mostefa, "Mechanisms for the Protection of Personal Data under Algerian Legislation in accordance with the Provisions of Law No. 18-07," Journal of Legal and Political Sciences, Vol. 10, No. 01, April 2019, p. 747.

²⁷ Article 47 of the current Constitution.

²⁸ Najm Habib Jabal Al-Mashaykhi, *The Constitutional Regulation of the Right to Privacy and Its Judicial Guarantees: A Comparative Study*, 1st ed., Arab Center for Publishing and Distribution, 2020, p. 13.

This law consists of seven chapters, the first of which is devoted to general provisions. Among the most important of these provisions is the definition of personal data, thereby leaving no room for controversy regarding its nature. The legislator defines personal data as: “Any information, regardless of its medium, relating to an identified or identifiable natural person, hereinafter referred to as the ‘data subject,’ whether directly or indirectly, particularly by reference to an identification number or to one or more elements specific to his or her physical, physiological, genetic, biometric, psychological, economic, cultural, or social identity.”³⁰

Chapter Six was also devoted to administrative and criminal provisions. Chapter Two thereof addressed the provisions relating to the criminal protection of this right, particularly at the level of:

Procedural provisions: Procedures relating to the verification of offences affecting the processing of personal data, the investigation thereof, the identification of their perpetrators, and their prosecution are generally governed by the rules of the Code of Criminal Procedure,³¹ while incorporating certain specific features that are consistent with the nature of such offences.

In this regard, Law No. 18-07 expanded, from the outset, the scope of persons authorized to detect offences committed against personal data and the systems used for their processing, to include anyone whom the National Authority may call upon³² to investigate and ascertain the offences provided for under this Law, following their qualification and subjection to legal supervision.³³ The reason for this expansion lies in the specific nature of offences affecting personal data processing systems, the detection and investigation of which require technical expertise and specialized and qualified personnel in this field.

The same Law also empowered the National Authority to conduct the necessary investigations and inspect the premises and places where processing operations are carried out, with the exception of residential premises, given the sanctity of such places as repositories of individuals’ private affairs, as well as the constitutional protection afforded to the right to the inviolability of the home.³⁴ Accordingly, it is inconceivable that this right may be violated by any law, regardless of its legal force. The Law further empowered the same Authority, in the performance of its duties, to access the processed data and all information and documents, regardless of their medium or form. Professional secrecy may not be invoked against this Authority.³⁵

With regard to jurisdiction, Law No. 18-07 empowered the Algerian judicial authorities to prosecute offences provided for under this Law when committed outside the territory of the Republic by an Algerian national, a foreign person residing in Algeria, or a legal person subject to Algerian law.³⁶

In addition to the procedural provisions, Chapter Six of Law No. 18-07 on the protection of natural persons with regard to the processing of personal data devoted Chapter Three thereof to:

Criminal provisions: Through Law No. 18-07, the Algerian legislator established a set of criminal provisions aimed at deterring anyone who might violate the provisions of this Law, thereby contributing to encouraging electronic transactions and fostering public confidence.³⁷

The Algerian legislator thus imposed stricter penalties through this Chapter for violations of the provisions of the aforementioned Law. The penalties prescribed for the offences set forth therein range from imprisonment for a period of two months to five (5) years, while fines range from DZD 20,000 to DZD 1,000,000. The applicable sanctions vary depending on the perpetrator of the offence,

²⁹ Tabach Ezzedine, *op. cit.*, pp. 28–29.

³⁰ Paragraph 1 of Article 3 of Law No. 18-07 on the Protection of Natural Persons in the Field of Processing Personal Data, dated 10 June 2018, Official Gazette of the People’s Democratic Republic of Algeria, No. 34.

³¹ Toumi Yahia, “Legal Protection of Personal Data in Light of Law No. 18-07: An Analytical Study,” *Journal of the Researcher Professor for Legal and Political Studies*, Vol. 04, No. 02, 2019, p. 1542.

³² This refers to an independent administrative authority specifically responsible for the protection of personal data, established under the President of the Republic, with its headquarters located in Algiers. Article 22 of Law No. 18-07 on the Protection of Natural Persons with Regard to the Processing of Personal Data.

³³ Article 50 of Law No. 18-07 on the Protection of Natural Persons with Regard to the Processing of Personal Data.

³⁴ Article 48 of the current Constitution provides: “The State shall guarantee the inviolability of the home.”

³⁵ Article 49 of Law No. 18-07 on the Protection of Natural Persons with Regard to the Processing of Personal Data.

³⁶ Paragraph 1 of Article 53 of the same Law.

³⁷ Mecheta Nesrine and Ben Obeid Ikhlas, “Legal Protection of Personal Data under Law No. 18-07 on the Protection of Natural Persons with Regard to the Processing of Personal Data,” *Algerian Journal of Law and Political Science*, Vol. 06, No. 01, 2021, p. 676.

whether the data controller, the data processor, or any other person whose conduct resulted in a violation of the provisions of this Law,³⁸ or depending on the nature of the offence. Such offences may be divided into two categories: offences affecting substantive rules and offences affecting the procedural rules governing the processing of data.³⁹

This applies to natural persons. As for legal persons that violate the provisions of Law No. 18-07, the legislator referred the issue of establishing⁴⁰ their liability to the general provisions set forth in the Penal Code, and they are consequently subject to a fine.

Conclusion:

Given the importance of the right to the confidentiality of conversations and communications, as well as the right to the protection of personal data during its processing, and in view of the increasing violations of these rights, particularly in light of the technological developments taking place in our contemporary era, the Algerian State has sought to protect these rights through various means and mechanisms.

Among the means employed is the legal approach, which has materialized in granting legal protection to these rights, particularly at the level of the highest legal framework, namely the Algerian Constitution. The latter was among the first to expressly recognize and effectively enshrine the right to the confidentiality of conversations and communications, as well as the right to the protection of personal data during its processing.

Given the special nature of the Constitution, which gives rise to the principle of the hierarchy of laws and the principle of constitutional supremacy, the constitutional enshrinement of these two rights has consequently had a significant impact on the Algerian legal system. This made it necessary for the ordinary legislator to intervene in order to protect the right to the confidentiality of conversations and communications and the right to the protection of personal data during its processing.

The first legislative body to respond to and give effect to the constitutional protection of the right to the confidentiality of conversations and communications, as well as the right to the protection of personal data during its processing, was the Algerian criminal legislator. This is the aspect that we sought to highlight in this study, ultimately reaching the following conclusions:

The constitutional framers recognized the right to the confidentiality of conversations and communications in all Constitutions and their amendments, either explicitly or implicitly, by incorporating it within the broader right to respect for private life.

The form of constitutional protection afforded to the right to the confidentiality of conversations and communications changed beginning with the 2016 Constitutional Amendment, shifting from the classical form of constitutional protection based on expressly proclaiming the right to an approach based on criminalization and punishment. This resulted in the enactment of Law No. 18-04 laying down the general rules relating to postal services and electronic communications.

The criminal legislator was late in providing criminal protection for the right to the confidentiality of conversations and communications, as such protection was not introduced until the amendments to the Penal Code and the Code of Criminal Procedure in 2006, despite the early constitutional recognition of this right in the 1996 Constitution.

The Algerian legal system did not recognize the term “personal data” until relatively recently, with the first constitutional adoption of this concept occurring in the 2016 Constitution.

The constitutional enshrinement of the right to the protection of personal data during its processing had a direct impact on the Algerian legal system in general and on the criminal legal framework in particular, leading to the enactment of Law No. 18-07, which contains a set of criminal provisions, including both procedural and substantive provisions.

Recommendations

Based on the findings reached in this study, we recommend the following:

³⁸ For further details, see: El Aidani Mohamed and Youcef Zerrouk, previously cited reference, p. 128.

³⁹ For further details, see: Kamela Bouakka, previously cited reference, pp. 62–66.

⁴⁰ El Aidani Mohamed and Youcef Zerrouk, previously cited reference, p. 128.

The purpose of constitutionalizing the right to the confidentiality of conversations and communications, as well as the right to the protection of personal data during its processing, is to provide the highest level of protection for these two rights. Ordinary legislation should therefore respond by ensuring effective protection of these rights, as evidenced by the provisions of criminal law. However, given the specific nature of crimes that infringe upon these rights, particularly when modern technologies are used, the intervention of the criminal legislator has taken this specificity into consideration by employing technical terminology when criminalizing such offenses. This constitutes a double-edged sword, as the incorrect interpretation of these technical terms by judicial authorities and their assistants—especially since their training is primarily legal rather than technical—may result in violations of individuals' rights, thereby constituting a breach of the law and the Constitution. Accordingly, we recommend providing detailed definitions and clear explanations of these technical terms in order to prevent their misinterpretation.

An examination of the criminal protection afforded to the right to the confidentiality of conversations and communications under Article 303 bis of the Penal Code reveals that the criminal legislator uses the expression “any person who intentionally violates the privacy of individuals,” followed in the subsequent paragraphs by a list of acts considered to constitute infringements of the right to the confidentiality of conversations and communications. This wording may suggest that the right to privacy is confined to the confidentiality of conversations and communications, which calls for legislative amendment.

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