

Audio and Visual Evidence and its Validity in Criminal Prosecution: Between Islamic and Algerian Law

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Received: 01/2024

Published: 06/2024

Abstract:

Evidence and uncovering the truth are among the most important issues that concern judges in establishing sufficient evidence of a crime and attributing it to its perpetrator. After all, a right without sufficient evidence is tantamount to a non-existent right.

Due to the decline of traditional means and methods of proof in establishing crimes, the use of modern scientific techniques for evidence based on scientific arguments has become more than necessary. However, regardless of the strength of these means, they require a judicial intuition that only the judge can grasp, which facilitates the case, satisfies justice and achieves the intended goal. This presupposes that the judge is equipped with a variety of scientific knowledge so that he can understand and use it appropriately.

Keywords: audio, visual, crime, criminal evidence.

INTRODUCTION

New methods have appeared in the courts, which are considered to be modern scientific means, and which are a product of the scientific and technological advances of our times. These methods were unknown to our ancient predecessors; however, Islamic jurisprudence has not remained powerless in the face of these techniques, as the door of ijtihad (independent reasoning) remains open. This ensures that the Sharia will continue to exist as ordained by God until the Day of Judgment. Imam Al-Shafi'i, may God be pleased with him, stated: "There is no event for which Islam does not have a ruling, either permitting or prohibiting it". Therefore, the jurists of this age should keep pace with the movements of development and progress in various fields in order to provide the nation with new insights

in this field, based on the understanding that Islamic jurisprudence is inherently fertile and capable of development and renewal within permissible limits.

In particular, the field of criminal evidence is not isolated from advances in science and the benefits derived from them. Developments in the field of criminal evidence are continuous and evolving, with new technologies and advanced scientific equipment helping to reveal what the human senses cannot perceive. The law must keep pace with crime without one aspect overshadowing another.

Among the most prominent modern means of criminal evidence are images and sound recordings. The subject of criminal evidence using these two methods aims to reveal the truth about the occurrence or non-occurrence of a crime and whether it can be attributed to the accused or whether they should be exonerated at all stages of the application of the rules of criminal procedure. This raises the following questions

What is the position of Islamic law and Algerian law with regard to images and sound recordings? What is the legality of these two methods? Do they have evidentiary value that influences the judge's conviction when passing sentence?

In order to answer these questions, I will examine the position of Islamic law and Algerian law on these two methods and the extent to which they can or cannot be used in criminal evidence.

Section One: Criminal Evidence and the Means of Recording Images and Sound

Subsection One: Definition of Criminal Evidence

First: Linguistic definition

Criminal evidence is evidence, proof or testimony. It is called "evidence" when it leads to the stabilisation of a right for its owner after it was ambiguous among the disputants¹.

Second: Legal definition

In legal terms, evidence means establishing proof before the judiciary through the methods defined by the Shari'a regarding a right or an event that has legal consequences. Some have defined it as "the production by the plaintiff of evidence of the validity of his claim against the defendant"². It is an act performed by the plaintiff to prove the necessity of his claim against the defendant.

Third: Technical definition

¹- Arabic Language Dictionary, Al-Mu'jam Al-Wasit, Vol. 1, 3rd Edition, Egypt, 1985, p. 93.

²- Marouk Nasreddine, Lectures on Criminal Evidence, Vol. 1, Dar Houma, Algeria, 2009, p. 66.

Criminal evidence is the provision of proof to the competent authority in criminal proceedings of the factual existence or non-existence of a crime, using legally permissible methods, and clarifying the reality of its attribution to the accused and their accomplices¹.

Subsection Two: The Aim of Criminal Evidence

The primary objective of criminal evidence in criminal cases is to reveal the truth, whether it be about the acts committed or about the identity of the accused who is the subject of legal proceedings. Revealing the truth is the main concern of the legislator when it comes to proving crimes and attributing them to the accused.

The phrase “revealing the truth” appears several times in the texts of Algerian criminal procedure. Article 62(1) states: “The investigating judge shall, in accordance with the law, take all necessary investigative measures to establish the truth”. Similarly, Article 69 of the same law emphasises that “the public prosecutor may, in his request for the opening of an investigation, ask the investigating judge to take any measure he deems necessary to establish the truth”².

Thus, the search for the truth is a crucial matter for criminal justice, whether it concerns the material elements of the crime or those that have a moral aspect.

There is no doubt that the use of modern means, including images and sound, in criminal evidence is of great importance, often leading to decisive results in cases and assisting judges in their pursuit of justice. In addition, these means improve the quality of investigations and help judges and law enforcement officials to confront crime and criminality, thereby achieving the public interest of society and protecting it from crime.

Subsection Two: Acquisition of Images

The surreptitious taking of images constitutes an intrusion into a person’s private life, which should only be permitted with the consent of the individual. Human rights charters and constitutions regulate this right; the Algerian Constitution, in Article 39, states: “The sanctity of a citizen’s private life and the honour of individuals shall not be violated and shall be protected by the law”³.

The first branch: the concept of the image

An image is considered a manifestation of a person’s personality and is one of the modern means used by the Algerian legislator to combat crime. In fact, it is an exception to the

¹- Same reference, p. 167.

²- Muhammad Marwan, *The System of Evidence in Criminal Matters in Algerian Law*, University Publications Office, Algeria, 1999, p. 105.

³- Ahmad Ghay, *Guarantees for the Suspect During Preliminary Investigations*, Dar Houma, Algeria, 2005, p. 231.

general rule prohibiting the taking of images, as it constitutes an intrusion into private life. The legislator has not explicitly defined this right, since the definition of rights is the task of the judiciary, which has not treated this right as an independent right, as stated in Article 48 of the Civil Code. Instead, it is included among the rights of the individual, which are protected in the same way as other rights.

Image making is defined as “the representation of a person or object through various forms of art such as engraving, sculpture, photography or film. The image not only embodies the physical representation of an individual, but also reflects their personality and emotions”¹.

Branch Two: Means of image capture

Criminals are using the latest scientific methods to commit crimes, necessitating the search for solutions to curb rising crime rates. These include technological advances in the production of imaging devices, the improved efficiency of telescopic lenses and film, and the invention of closed circuit television systems, which allow a place to be monitored and everything to be known without the knowledge of those present.

First: Means of vision and observation

Technological innovations in this area are numerous and varied. There are remote cameras, which remove the barrier of distance, and infrared cameras, which make it possible to invade people’s private spaces at night by capturing clear images of activities taking place in the dark. There are also dual-vision mirrors, known as one-way mirrors, which allow the observation or recording of a person in an enclosed space through glass that appears as a mirror from the inside or as opaque glass. These mirrors allow you to see from behind without allowing the person on the outside to see through

In addition, precision cameras have been developed that can be easily concealed in a location to capture images of people inside, activated by electronic signals from outside or by the normal use of doors, windows or light switches containing lenses that can be used to covertly monitor the occupants of a room by placing the lens in a hole in the wall.

Second, the means of image recording

Scientific progress has brought about a qualitative change in the field of cameras, which are essential for image recording devices. The size of these cameras has been reduced, making it easier to place them in buildings or on a person’s body in a way that makes them difficult to detect. Fixed cameras can be hidden in rooms in positions that allow them to

¹- Rachid Chemiche, "The Right to One's Image," Journal of Human and Social Sciences, University of Médéa, Issue 03, 2008, p. 127.

take pictures at regular intervals. By using telescopic lenses attached to the cameras, it is possible to capture images of small objects from long distances.

Subsection Three: audio recording devices

Audio recording devices are considered covert measures that violate a fundamental human right: the protection of an individual's private life, a right guaranteed by most constitutions around the world.

Subsection One: Concept of Audio Recording

Audio recording refers to the transfer of sound waves from their sources, capturing their tones, individual characteristics, and inherent properties, including any defects or nuances in pronunciation, onto a recording medium. This allows the sound to be replayed for the purpose of identifying its content and understanding its characteristics, which serve as comparative elements when matched against the voice of the person to whom it is attributed, thus enabling the determination of its attribution or denial¹.

Recording is accomplished using devices that rely on preserving electrical signals that transmit sound when produced, creating a magnetic tape representation. However, the Algerian legislator has not provided a definition for audio recording itself. Instead, Article 65 bis, paragraph 2, refers to it: "The establishment of technical arrangements without the consent of the concerned parties for the purpose of capturing, fixing, broadcasting, and recording speech uttered in a private or secret manner by one or several persons in private or public places."²

The crucial recording in this context is that which is conducted by law enforcement officials to assist in criminal evidence.

Subsection Two: Audio Recording Procedures

In order to ensure the integrity of the audio recording, the judge must check the following: First: Ensure that the recorded voice belongs to the accused.

Technically, it is possible to alter and change recordings by cutting, deleting or moving phrases within the recording tape, a process known as editing. The aim is to establish whether the voice recorded on the tape belongs to the defendant, as this will affect the admissibility of the evidence.

In this case, the judge may need to consult an audio expert, whose opinion is advisory under the general rules of criminal procedure. This is particularly important because in

¹- Hussein al-Muhammadi al-Bawadi, *Modern Means of Criminal Evidence*, Undated, Alexandria, 2005, p. 67.

²- Hussein al-Muhammadi al-Bawadi, *Previous Reference*, p. 47.

some cases it may be difficult to determine whether the voice belongs to the defendant, due to similarities in voice or recordings made in environments where several voices overlap, leading to confusion and impersonation of the defendant using the telephone¹.

In recent years, the advent of sophisticated devices that can delete, add and rearrange sentences in speech with remarkable skill has led some scholars to advocate caution in accepting audio recordings as evidence of guilt². The judge must therefore ensure the integrity of the audio recording. On this basis, the judge is free to base his or her conviction on the evidence of the audio recording or to disregard it at his or her discretion.

Modern electronic recordings, such as those stored on computers, can preserve audio, temporal and spatial records³.

Second: transcription and preservation of recordings

The Algerian legislator has not explicitly referred to the procedures for dealing with audio recordings and images, in particular with regard to the placing of recordings or tapes in sealed evidence. The question therefore arises: can they be considered as seized objects subject to Article 18 of the Algerian Code of Criminal Procedure? Article 45 of the same code states that seized objects should be sealed if possible. Recorded tapes are considered original physical evidence that requires procedural legality for their preservation, specifically by placing them in sealed evidence to ensure that the recorded conversations are not tampered with or altered, whether by deletion or addition, and should be included in the case file along with minutes describing or reproducing their contents in order to uncover the truth⁴.

Subsection Three: Legitimacy of the audio recording

The legitimacy of the evidence attributing the recorded voice to its source rests on two elements:

First: The procedural element

This concerns the validity of the procedures followed in relation to the recording, in accordance with the procedural rules applicable to it. The most important aspect is the

¹- Yasser al-Amin Farouk, *Monitoring Telephones and Audio-Visual Recordings*, Dar al-Kitab al-Dhahabi, 2000, p. 38.

²- Same reference, p. 655.

³- bdul Fattah Bayoumi Hegazy, *Procedural Aspects of Preliminary Investigations in Cyber Crimes*, 1st Edition, Egypt, 2008, p. 781.

⁴- Nour al-Din Loujani, Contribution titled "Investigation Methods and Procedures According to Law No. 06-22 Dated December 20, 2007," presented at a study day on the relationship between the Public Prosecution and the Judicial Police, Illizi, 2007, p. 13.

granting of permission to record private conversations by the competent judicial authority. This is usually the investigating judge conducting the investigation or the criminal judge if the prosecution is conducting the investigation. The judge grants this permission on the basis of a request from the public prosecutor's office after examining the relevant documents. The authorisation is granted for a maximum of 30 days, renewable from the date and time of issue¹.

Second: the technical element

Limiting oneself to the study of sound and making comparisons in order to obtain evidence only from the physical aspect, using sound analysis equipment, is an incomplete and inadequate approach to uncovering the truth. This method overlooks a crucial and complementary component: the study of speech defects and the inherent characteristics of communication. These aspects are fundamental elements of sound that should be analysed by means of an auditory examination carried out by a sound expert during the comparison process. This type of examination, together with the physical examination, plays a decisive role in determining the evidential weight and credibility of the attribution².

Section Two: The Position of Islamic and Algerian Law on Images and Sound as Criminal Evidence

This research is a step towards renewing some aspects of evidentiary methods in Islamic jurisprudence in the light of modern developments, while respecting the legal constraints and limitations so that Islamic jurisprudence does not become stagnant in the face of global progress.

Subsection One: The Position of Islamic Law on the Recording of Images and Sound as Criminal Evidence

This form of evidence is a modern means of justice, and there are no specific texts in Islamic law that prohibit regulating these matters in the light of contemporary scientific developments, provided that this method of evidence does not undermine the legal rulings that protect people's sanctity, security and rights³.

Scholars have disagreed on the legitimacy of audio recordings and photographic images and their admissibility as criminal evidence, and their views can be broadly categorised into two groups:

¹- Hussein al-Muhammadi al-Bawadi, Previous Reference, pp. 71-72.

²- Same reference, p. 72.

³- Awad Muhammad Awad, "The Rights of the Suspect During the Investigation Stage," Contemporary Muslim Journal, Issue 22, 1980, pp. 13-23.

Subsection One: The group that allows it and its evidence

This group believes that such evidence should not be considered valid in court and is not a legitimate means of proof. Their argument is that audio recording, eavesdropping on telephone conversations and covert photography are all forms of intrusion into people's lives, revealing their secrets and private matters, which falls under the prohibition of spying as stated in the Qur'an: "And do not spy"¹ (Quran 49:12).

Before discussing this evidence, it is important to clarify the legal position on espionage and the surveillance of private matters, as well as the exceptions that may exist to this principle. It is well known that the fundamental principles of Islam prioritise the protection of human rights, regardless of a person's origin or religion. Such rights should not be violated except in cases of necessity, as indicated by the honour bestowed upon mankind in the verse: "And We have indeed honoured the children of Adam"² (Quran 17:70). Islam protects human life in general and the individual from exposure, emphasising the importance of concealing the private affairs of others. The Prophet Muhammad (peace be upon him) said: "If you follow the private affairs of others, you will corrupt them or almost corrupt them"³.

It is reported that Umar ibn al-Khattab was informed that Abu Mahjan al-Thaqafi was drinking alcohol with his companions in his house. Umar went to confront him, and Abu Mahjan said, "This is not permissible for you, for Allah has forbidden spying. Umar left him alone"⁴.

The Prophet (peace be upon him) also said: "Whoever conceals the private affairs of a believer is like raising a buried girl"⁵.

Imam Al-Alusi (may Allah have mercy on him) commented on the verse about "hujurat", saying that Allah forbids spying in a general way, as it is addressed to everyone. Listening to a conversation that others do not like is also considered spying and is forbidden⁶.

From the foregoing, it is clear that under normal circumstances it is not permissible to follow individuals, take their pictures or secretly record their voices, or monitor their

¹- Surah Al-Hujurat, Ayah 14.

²- Surah Al-Isra, Ayah 70.

³- Abu Dawood, Sunan, Vol. 2, p. 570. Al-Bayhaqi, Sunan, Vol. 8, p. 333.

⁴- Abdullah ibn Muhammad ibn Abi Shaybah, Al-Musannaf in Hadith and Narrations, Vol. 5, Dar al-Fikr, Beirut, Lebanon, 1994, p. 327.

⁵- Ahmad ibn Hasan al-Bayhaqi, Sunan al-Kubra, Vol. 8, Dar al-Kutub al-Ilmiyya, Beirut, Lebanon, 1999, p. 333.

⁶- Shihab al-Din Mahmud al-Alusi, Spirit of Meanings in the Interpretation of the Great Quran and the Seven Repeated Verses, Vol. 26, Al-Manbar Press, 1345 AH, p. 156.

telephone calls and correspondence, as these activities have a special sanctity that should not be violated. Such actions are considered private matters and secrets of individuals, and any violation of this privacy harms the sender and receiver as well as the speaker and listener. This violation is punishable under Islamic law because of the resulting harm and breach of trust¹.

However, Islamic scholars have outlined exceptions to this general prohibition based on the principles of necessity and public order. They state that spying, which is normally forbidden, may be permissible in cases of necessity to prevent anticipated harm and crime. This includes situations where there is a strong suspicion, reliable information or an imminent threat that cannot be averted, such as in cases of murder or adultery. In these cases, spying may be justified in order to prevent irreversible violations of sanctities and the commission of prohibitions.

Therefore, in cases of necessity, it is permissible to eavesdrop on people's secrets if there are indications that a crime has been committed, as Al-Alusi (may Allah have mercy on him) stated².

Kashmiri, in his work "Fayd al-Bari", states: "It is forbidden to look into another's book, that is, a book that contains confidences or secrets between the writer and the receiver, except in case of necessity. In ordinary circumstances it is forbidden, but in a situation of need and necessity it is permissible³.

It is also permissible to investigate those suspected of wrongdoing, especially if there is a preponderance of evidence pointing to a crime, if there are valid reasons for spying on the authority. Al-Mawardi stressed that in cases where refraining from spying would lead to a violation of sanctities that cannot be remedied, or if one receives trustworthy information that a man is alone with a woman to commit adultery or with another man to kill him, it is permissible to use prohibited means to prevent harm, protect sanctities, and safeguard lives and honour. This is done to avert the violation of prohibitions and to prevent the loss of what can only be recovered by such means, including espionage.

Imam Al-Juwayni also believed in following and monitoring suspicious individuals and advocated keeping them under surveillance. He states: "When a call to misguidance arises among people and there is a strong suspicion that he will not desist from his invitation and

¹- Mahmoud Shaltout, Islam: Belief and Law, Dar Al-Shorouk, Cairo, Egypt, 5th Edition, 1997, p. 412.

²- Same reference, p. 158.

³- Muhammad Anwar Shah al-Kashmiri, Fayd al-Bari in Explaining Sahih al-Bukhari, Dar al-Hadith, Cairo, Egypt, 2nd Edition, 2006, p. 253.

the evil that accompanies it, one should intensively observe him without his knowledge and appoint unknown people to sit with him in various forms, claiming allegiance to his doctrine, seeking guidance from him and gradually learning from him. If he reveals anything, they should inform the ruler so that he may act swiftly to discipline him”¹.

In summary, based on this exception to the general prohibition of espionage, it is permissible to follow and monitor a suspect and delve into his secrets in cases of crimes where the perpetrator is unknown, or in cases of anticipated crimes with the aim of identifying the perpetrator, provided that there are strong indications that prevent the judiciary from taking advantage of scientific advances and using audio recordings and photographs to uncover the truth, track down the perpetrators and convict them. This procedure does not constitute a violation of rights or sanctities, nor does it restrict the freedom of the accused; it is a temporary measure dictated by necessity.

Subsection Two: The ‘no’ group and their evidence

Those who oppose the use of photographs and recordings as evidence in criminal proceedings argue that they are not conclusive evidence. They claim that these methods are susceptible to forgery and deception because sound can be similar and imitated, so the possibility of voice similarity raises concerns about potential forgery that would make them unreliable.

In addition, coercion may be involved in obtaining such recordings, or the person’s voice may not be serious, as they may be joking or playing. These recordings are therefore unsuitable as a basis for judicial decisions or as a means of judging individuals.

As for pictures, they are also subject to forgery and the potential for similarity in the appearance of individuals means that photographs cannot be used as reliable evidence. They are therefore not conclusive evidence on which to base a judgement.

To the proponents of this view, it can be argued that sound and image evidence should only be accepted as evidence in criminal proceedings under certain conditions, which must be observed and complied with if they are to be considered reliable. In order for these new forms of evidence to be accepted as credible evidence in a legal context, the following must be established:

¹- Abdul Malik ibn Abdullah al-Juwaini, *Ghayath al-Ummam in the Face of Oppression*, Dar al-Kutub al-Ilmiyya, Beirut, Lebanon, 2003, p. 169.

1. A direct link: There must be a close link between the images and the issues at stake in the case, specifically proving their relationship to the crime committed and the identity of the perpetrator.
2. Verification of authenticity: The validity of the image must be confirmed, without doubt or suspicion, by an expert qualified to ensure its integrity for acceptance as evidence.
3. Technical accuracy: There must be precision and technical skill in capturing and recording the event to be proved, whether by sound, image or telephone conversation, especially given the remarkable recent advances in recording technology.
4. Protection of privacy: The acquisition of sound and image evidence and the interception of telephone conversations should not be carried out in normal circumstances without necessity in order to protect the privacy, security and secrecy of individuals.
5. Necessity: Such measures should only be taken when necessary and should not be used when it is possible to obtain other evidence to mitigate societal harm and prioritise the public interest over individual benefit.
6. Judicial discretion: The matter is left to the judge's discretion as to the validity of this evidence according to his or her personal conviction. The judge assesses the circumstances, context and facts surrounding the audio and visual evidence to ultimately reach a correct decision, provided the reasoning is sound and adhered to¹.

According to Islamic law, evidence is subject to the judge's discretion. The judge may accept them after examining and verifying their accuracy and consistency with reality, while rejecting them if they do not meet these criteria. This is within the limits of human ability, because no matter how much effort a judge makes, he cannot reach the depths of people's souls and consciences².

In summary, these pieces of evidence are considered valid if their conditions are met and their rules and limitations are followed in order to restore rights to their rightful owners. Here we can question the legality of a confession secretly recorded without the knowledge of the accused by means of a recording device or telephone tapping. Can this confession be considered a binding admission with legal consequences? What happens if the confessor does not stand by his confession?

¹- Aref Ali Aref al-Qura Dagi, *Research in Islamic Judiciary*, Dar al-Kutub al-Ilmiyya, Beirut, Lebanon, 1st Edition, 2012, pp. 234-235.

²- Ali Raslan, *The System of Evidence and Its Proofs in Islamic Jurisprudence and Law*, Dar al-Da'wah, Cairo, Egypt, 1996, p. 192.

It is well known that a confession is the master of evidence and a person is held accountable for his confession. Therefore, anyone who confesses to a right or a crime that he has committed is undoubtedly responsible for his confession, and legal consequences will follow.

First: If the right belongs to Allah

If the right in question is one that belongs to Allah, the scholars have agreed that the confessor may retract his confession regarding offences such as apostasy, drinking alcohol, adultery or theft in order to avoid the prescribed punishment, but not to escape financial liability, since these offences may be dismissed on grounds of doubt. If the confession is upheld, the punishment must be carried out¹. Imam Malik (may Allah be pleased with him) said: “The punishment that is due to Allah can only be established in one of two ways: either through reliable testimony that is established against the accused, or through a confession that necessitates the punishment. If the confession is confirmed, the punishment is carried out”².

Therefore, it is required that the confessor maintains his confession until the punishment is carried out. If they retract their confession, their retraction is accepted and the punishment is not carried out, whether they give an excuse for their retraction or not³.

This view is supported by Al-Shafi'i, Abu Hanifa and Malik in one of his opinions. It is further supported by the incident in which the Prophet Muhammad (peace be upon him) rejected the confessor of adultery four times each time he approached him. When the confession was finally accepted, he ordered the person to be stoned⁴. But when the man felt the stones, he fled⁵. When this was reported to the Prophet (peace be upon him), he said, “Why did you not let him go?”⁶ This indicates that it is permissible for a confessor of a punishable offence to retract his confession and his retraction will be accepted⁷.

¹- Muhammad Amin ibn Umar Abidin, Hashiyat Ibn Abidin, Dar al-Thaqafa wa al-Turath, Beirut, Lebanon, 2000, p. 140.

²- Also see: Abdul Rahman al-Ma'az ibn al-Khattab, Mawahib al-Jalil for Explaining Mukhtasar Khalil, 6th Edition, Dar al-Fikr, Beirut, Lebanon, 1996, p. 294.

³- Yahya ibn Yahya al-Laythi, Muwatta of Imam Malik as Narrated by Yahya, Dar Al-Gharb Al-Islami, Beirut, Lebanon, 1997, p. 826.

⁴- Muhammad ibn Abdul Baqi al-Zarqani, Sharh al-Zarqani on the Muwatta of Imam Malik, Vol. 4, Dar Ihyā' al-Turāth al-'Arabī, Beirut, Lebanon, 1st Edition, 1997, p. 147.

⁵- Abu Dawood, Sunan, Book of Hudud, Chapter on the Stoning of Ma'iz ibn Malik, Vol. 4, Hadith Numbers: 4419, 4434, pp. 145-149.

⁶- Al-Tirmidhi, Sunan, Book of Hudud, Chapter on What Was Reported about Preventing Punishment for the Confessor if They Revoke Their Confession, Vol. 4, Hadith Number 1428, p. 36.

⁷- Muhammad ibn Mahjuz, Means of Proof in Islamic Jurisprudence, Dar al-Hadith, Al-Husseiniya, 1st Edition, 1984, p. 29.

For example, if someone confesses to stealing and then retracts his confession, the punishment will not be applied; however, he will be obliged to return the stolen object to its owner or compensate for what he admitted to stealing. Cutting off a hand for theft is a right due to Allah, and it is cancelled by retracting one's confession. However, they may still be punished on the basis of their confession.

Second: When the right belongs to the individual

As for the rights of individuals, they are upheld even in cases of doubt, such as confessions to murder, amputation or abortion. The confessor cannot retract his confession in these matters because they affect the personal rights of others, although retaliation can be rejected because of doubt. Ibn Juzayy says: "One who confesses a right of a creature cannot benefit from retraction"¹.

Confessions can also be made outside a judicial context, known as extrajudicial confessions. The judge has absolute authority to evaluate these confessions and the circumstances under which they were made, according to the specifics of each case. Extrajudicial confessions are at the discretion of the judge².

In conclusion, if audio recordings of a confession are obtained under the agreed conditions and rules, they are more reliable, closer to the truth and fairer than a single witness, even with its shortcomings, especially if several parties made the recording. This is especially true if the recordings have been made in accordance with the requirements of judicial supervision in the prosecution of crimes and offences. All of this is subject to the judge's assessment and personal conviction, ensuring that the evidence is free from doubt and suspicion.

As for those who allow it, they consider the use of photographs, video recordings, audio recordings and telephone conversations as valid forms of evidence in criminal cases within Islamic jurisprudence. They are considered valid evidence as long as the accepted conditions and rules for accepting such evidence are met, because the aim of using evidence is to clarify and reveal the truth. It is unjust to disregard the implications of evidence or to prevent the judiciary from considering it. Islamic law has recognised and accepted this form of evidence in its rulings since the early days of Islam. Thus, conclusive evidence has been added to the list of accepted legal evidence³.

¹- Mansour ibn Yunus al-Bahuti, *Kashaf al-Qina' on the Text of al-Iqna'*, Vol. 4, Dar al-Fikr, Beirut, Lebanon, 1982, p. 86.

²- Abu al-Qasim Muhammad ibn Juzayy al-Kalbi, *Legal Principles*, Dar Al-Arqam, Beirut, Lebanon, 2016, p. 333.

³- Abdul Razak al-Sanhouri, *The Mediator in Explaining Civil Law*, Vol. 2, Dar al-Nahda al-Arabiya, Cairo, Egypt, 1982, p. 476.

It should be noted that evidence is accepted with great caution and heightened vigilance until the judge's conscience is satisfied.

It is generally accepted that it is impossible to obtain conclusive evidence that excludes all possibilities; therefore, it is essential to accept evidence and presumptions based on necessity and to ensure that the strongest evidence is presented over weaker evidence when conflicts arise¹.

Section Two: The Algerian Legislator's Position on Capturing Images and Sounds, and Intercepting Communications

The Algerian legislator has included these methods within the second chapter entitled "Investigations" in the amended Code of Criminal Procedure, under law 06-22 dated December 20, 2006, from Article 65 bis 5 to Article 65 bis 18. This amendment introduced a new technique for investigation and evidence that was already known to law enforcement agencies but had not been regulated until the mentioned amendment.

This aligns with modern technological developments that have led to the emergence of high-tech surveillance devices, which not only capture wired and wireless communications but also extend to capturing internet communications and taking high-resolution images of individuals from a distance. This situation has compromised some of an individual's freedom and privacy². What, then, is the Algerian legislator's stance on these means?

Subsection One: The Algerian Legislator's Position on Capturing Images and Audio Recording

Surreptitiously capturing images without the subject's consent is essentially an invasion of privacy. It is therefore unlawful to take, copy or distribute such images without the subject's consent. This right has been enshrined in various human rights charters and constitutions. Article 39 of the Algerian Constitution of 1996 states: "The sanctity of a citizen's private life and honour shall not be violated and shall be protected by law. The confidentiality of correspondence and private communications in all their forms is guaranteed"³.

In addition, an image is considered an aspect of a person's personality, as the process of taking pictures is one of the modern means used by the Algerian legislator to combat crime. In reality, this is an exception to the general rule that prohibits the taking of images as an invasion of privacy. An image represents a person or an object through various artistic

¹- Ahmad Ibrahim, *Methods of Judicial Proceedings in Islamic Law*, 3rd Edition, 1985, p. 449.

²- Same reference, p. 462.

³- Yasser al-Amir Farouk, *Monitoring Private Conversations in Criminal Procedures*, Dar al-Matbu'at al-Jami'iya, Alexandria, Egypt, 1st Edition, 2009, pp. 7-8.

forms, such as engraving, sculpture, photography or film, and reflects their personality and emotions.

The Algerian legislator has also defined its position on the relationship between photography and surveillance in articles 65 bis to 65 bis 10, which group together under one title the surveillance of communications, the recording of sound and the recording of images. This indicates the legislator's intention to link these methods, as they serve the same purpose, according to the provisions of Article 65 bis 5. The absence of specific conditions for photography and related procedures suggests the legislator's desire to link the process of capturing images with the provisions governing interception¹.

Subsection Two: Interception of Communications

The Algerian legislator has overlooked providing a definition for the interception of communications in the Code of Criminal Procedure, opting instead to organize the process of intercepting communications from Article 65 bis 5 to Article 65 bis 10 of the mentioned law. This omission does not imply a deficiency in the legislator's work, as defining terms is not the legislator's role but rather falls within the jurisdiction of legal scholars².

According to Article 65 bis 5 of the Code of Criminal Procedure, interception of communications refers to the interception, recording, or copying of communications that take place via wired or wireless channels or means of communication. These communications consist of data that can be produced, distributed, stored, received, and displayed.

It is essential to distinguish between intercepting phone calls as a means of communication and placing a phone line under surveillance. The latter procedure is conducted with the consent of the individual concerned and is subject to the judicial authority's discretion, after utilizing postal and communication services for this purpose. Furthermore, it is not confined to a specific conversation³.

Subsection Three: Characteristics of Interception of Communications

The process of intercepting communications has two main characteristics:

First: The interception takes place secretly, without the consent or knowledge of the parties to the conversation. Article 39 of the Constitution guarantees the confidentiality of communications and private correspondence in all its forms.

¹- Ahmad Ghay, Previous Reference, p. 231.

²- Rachid Chemiche, Previous Reference, p. 127.

³- Yasser al-Amir Farouk, Monitoring Private Conversations in Criminal Procedures, 1st Edition, Dar al-Iskandariyya, Egypt, 2009, p. 138.

Beyond this provision, the Algerian legislator has not established any legal rule on covert eavesdropping, leaving this matter unregulated, either through the use of telescopic lenses attached to recording devices, which can take detailed and small images from a distance, or through criminalisation or legalisation. This situation constitutes a legal vacuum on a matter of particular importance. Moreover, this issue has not been referred to the Supreme Court for its opinion¹.

Second: Interception of communications as a violation of the right to confidentiality

The interception of communications is an act that violates the individual's right to confidentiality of his or her conversations and violates Article 39 of the Constitution, as well as the rights recognised for individuals. It is worth noting that the legal protection granted is not absolute; rather, it is subject to exceptions due to the intervention of the legislator through procedural rules that prioritise the public interest - represented by the proper conduct of investigations and inquiries aimed at uncovering the truth - over private interests, which include the protection of individuals' private secrets. Allah says: "O you who have believed, do not enter houses other than your own..."² and "O you who have believed, avoid much [suspicion]..."³.

This indicates that it is not permissible to eavesdrop on people's conversations, seek out their secrets, search their homes, or record their conversations, as this is a violation of their privacy.

Subsection Four: The lawfulness of intercepting communications

According to Article 65 bis 5 of the Code of Criminal Procedure, the judicial police officer now has the authority to intercept communications conducted through wired and wireless means. They can establish arrangements without the consent of the individuals involved in order to capture, secure, broadcast, and record voices and speech uttered by individuals in any public or private location. This includes capturing images of any person in any private place if necessary for the investigation of a crime in progress.

To exercise this authority, the judicial police officer must obtain written permission from the public prosecutor with jurisdiction over the area to set the technical arrangements. This permits them to enter residences and other places at any time without the knowledge or consent of the individuals entitled to those spaces. However, the execution of these

¹- Nour al-Din Loujani, Previous Reference, p. 08.

²- Marouk Nasreddine, Previous Reference, p. 132.

³- Yasser al-Amin Farouk, Previous Reference, p. 154.

authorized operations remains subject to the direct supervision of the relevant public prosecutor as stipulated in paragraph 5 of Article 65 bis of the Algerian Code of Criminal Procedure¹.

In summary, after reviewing the relevant provisions of Algerian legislation, it is clear that the laws are generally in line with Islamic jurisprudence regarding the sanctity of private life and respect for the privacy and secrecy of individuals.

If there is a need or a necessity for the freedom of justice, if there are strong indications of the commission of a crime or an anticipated crime, and if there are strong suspicions regarding certain individuals, then it is permissible to restrict the freedom of the accused as an exception to the general principle. This allows for the use of audio and video recordings, as well as phone tapping, to establish the truth and track down perpetrators, provided that the necessary conditions, rules and restrictions are met for these new types of evidence to be valid in criminal proceedings. In addition, judges should be given wide discretion to assess such evidence and to justify their acceptance or rejection.

Conclusion

The study of modern means of criminal evidence aims to assess the value and admissibility of these methods, as well as their impact on the judge's perception when rendering a verdict of acquittal or conviction. These tools have become indispensable at all stages of an investigation, serving as persuasive evidence and silent witnesses.

Despite the fact that modern technological tools have revolutionised the field of criminal evidence - enabling investigators to uncover the intricacies of crimes by using these innovative methods to obtain evidence - this is not reflected in the Algerian Code of Criminal Procedure. Articles 65 bis 5 to 65 bis 10 of Law 06-22 of 20 December 2006 explicitly authorise the use of means to intercept communications, record voices and capture images.

The conclusions of this study are as follows:

Findings

1. Scientific and technological evidence: Modern scientific methods have established themselves in the field of evidence and have significant probative value. This has led legislators to rely on them to address one of the greatest challenges in law: the issue of proof, despite some criticism of certain methods. Nevertheless, they dominate the process

¹- Muhammad Kharit, Notes on the Code of Criminal Procedure, Dar Houma, Algeria, 2005, p. 71.

of establishing evidence more effectively than other traditional forms of evidence, with the recording of images and sounds being a prime example.

2. Legislative Gaps: There is a clear shortcoming in many criminal laws, especially in Arab countries, in terms of lagging behind Western laws in dealing with the phenomenon of scientific crimes, such as those committed by electronic means. Many continue to subject these crimes to traditional legal texts, which may result in many perpetrators escaping punishment.

3. Expert testimony: There is a need to consult experts in matters where the judge cannot reach a conclusive conclusion. Ultimately, the judge will decide the truth based on his or her own convictions and will assess the probative value of the evidence.

Recommendations

Based on the findings, the following recommendations can be made:

1. It is essential to enact clear legislation with explicit provisions on scientific methods that have been definitively established by science. This should clarify which methods are acceptable and which are not, rather than remaining silent on the matter, which could be detrimental to the interests of society and its individuals.

2. There should be a basic legal framework for the use of audio and visual technology as part of the modern tools of evidence. This is not only to give them legal legitimacy, but also to increase the effectiveness of judicial decisions and to bring them into line with the reforms introduced in advanced countries.

3. There should be a focus on training experts, investigators and judges in dealing with crimes that have complex technical and scientific elements. This training should aim to ensure that justice is administered accurately so that only the guilty are convicted.

4. In certain situations, it may be necessary to take measures that infringe individual freedoms in order to establish the truth. Such measures include the interception of communications and the taking of images. It is therefore imperative that the legislature and the judiciary strike a balance between the community's right to security in the prevention of crime and the individual's right to confidentiality.

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