

# GOVERNANCE OF THE RIGHT TO PRIVACY UNDER ADMINISTRATIVE AND PENAL LEGISLATION: AN ANALYTICAL STUDY

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## Abstract

### How to cite this paper:

Alshawabkeh, F. A., & Shiyab, T. M. (2022). Governance of the right to privacy under administrative and penal legislation: An analytical study. *Corporate Law & Governance Review*, 4(2), 89–100.  
<https://doi.org/10.22495/clgrv4i2p10>

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**ISSN Online:** 2664-1542

**ISSN Print:** 2707-1111

**Received:** 08.05.2022

**Accepted:** 30.12.2022

**JEL Classification:** K1, K14, K24, K100, L50

**DOI:** 10.22495/clgrv4i2p10

This research is concerned with the administrative and penal protection of the right to privacy under the United Arab Emirates (UAE) legislation, in comparison with the relevant Jordanian legislation. The purpose of this research is to clarify the concept of the right to privacy (Bennett & Raab, 2020), the important forms of violation of this right, its relation with governance (Rajaretnam, 2022), and the legal texts enacted and the amendments adopted in the respective countries in order to notice the strengths and weaknesses of these two laws and indicate opportunities for improvement. The research problem consists of the insufficient legal framework in the UAE and Jordan regarding the content and the means of the protection of this right. It is suggested that this goal is achieved by comparing the different laws adopted in these two countries. The main findings of the paper are that the UAE and Jordanian legislations need to be modified to comply with the new technologies due to the multiplicity of agencies supervising the protection of this right and the absence of a central authority. Finally, the study concludes that legislators in the UAE and Jordan should adopt measures of governance to ensure the effectiveness of the legal framework relating to this right.

**Keywords:** Smartphone, Anti-Rumor and Cybercrime Law, Decree Regarding the Organization of the UAE Telecommunications Sector, Right to Privacy, Administrative Protection, Criminal Protection

**Authors' individual contribution:** Conceptualization — F.A.A.; Methodology — T.M.S.; Formal Analysis — F.A.A.; Investigation — T.M.S.; Writing — Original Draft — F.A.A. and T.M.S.; Writing — Review & Editing — F.A.A. and T.M.S.; Supervision — T.M.S.

**Declaration of conflicting interests:** The Authors declare that there is no conflict of interest.

**Acknowledgements:** The Authors would like to acknowledge Al-Ain University for its support.

## 1. INTRODUCTION

The right to privacy is a fundamental constitutional right inherent in a natural person. The private life of individuals has enjoyed constitutional and legal protection in the United Arab Emirates (UAE) and Jordan. Recent years have witnessed interest in enacting laws such as the General Data Protection

Regulation (GDPR) that provide effective protection for some elements of the right to privacy, such as the right to personal data (Islam, Sahula, & Karim, 2022). The interest in private life has increased with the spread of modern technological means and the great technological development in the means of communication, especially smartphones.

Modern usage and smartphone applications have increased the forms of compromising the right to privacy, such as compromising the right to image and the right to personal data, or the use of the Global Positioning System (GPS) to obtain the location of a user who has a smartphone application open, or via a Wi-Fi network (Wang & Meng, 2022).

The legislator in the UAE and Jordan has intervened by enacting rules criminalizing many forms of infringement of the right to privacy. The administration and the judiciary in these countries also had an important role in establishing the right to privacy, defining its scope, and protecting the elements of this right.

This study is concerned with evaluating the effectiveness of the Emirati and Jordanian judiciary and legislation protecting the right to privacy, addressing the shortcomings and imbalances in this legislation, and exploring the possibility of re-establishing forms of control and guarantees that adapt to the emergence of unprecedented risks to this right.

The purpose of this paper is to provide a clear picture in the fields of privacy, its relations with modern technology, together with an effective legal framework in both the UAE and Jordan. The factor prompting researchers to choose these two countries is that both UAE and Jordan have recently enacted special legislation to protect personal data and developed strategies to deal with modern technologies and artificial intelligence.

Moreover, presenting a comparative study of the legislation of the respective countries allows the new texts that have been enacted in each of these countries, in the field of privacy, to be highlighted, proposals for further improvement to be presented, and the strengths and weaknesses in each of them to be indicated in order to redress their respective shortcomings.

The remainder of this paper is structured as follows. Section 2 reviews the relevant literature. Section 3 analyses the methodology that has been used in conducting the research. Section 4 presents the discussion and the most important results, and Section 5 provides the conclusion, which focuses on specific observations and recommendations.

## 2. LITERATURE REVIEW

Defining the right to privacy has not been an easy task, due to the lack of consensus on a clear concept of that right, in addition to the lack of consensus on its theoretical basis. Privacy claims are used to defend seemingly far-fetched rights, such as the right to be free from phone call interception, the right to know what personal data a telco holds for its customers, the right to images, and the right to enter into digital limbo. Two main trends have emerged in defining the right to privacy; one is broad, and the other is narrow. As for the broad trend, the American Law Institute defines it as: "Every person who seriously and unlawfully violates the right of another person by having his/her affairs brought to the knowledge of others, and having his/her image exposed to the public's attention, is considered responsible before the aggrieved" (Johnson, 2022, p. 160). As for the narrow trend, this right was defined as: "The right of every person to live in peace and tranquility" (Steinberg, 2017, p. 839).

The protection of private life does not stop with the decease of the person, as the body of the deceased person is part of private life (Beignier, 1999).

### 2.1. Elements of the right to privacy

The right to privacy is considered a basic human right, based on which many other rights are founded; it is the basis for protecting man's dignity and independence, given that privacy is what allows us to draw the boundaries that enable us to be protected from unwanted interference in our lives, and it is what enables us to determine our individual identity. The right to privacy is an essential tool to protect ourselves and society from the indiscriminate and unjustified use of modern technical means.

The right to privacy includes many elements. The most important forms are the privacy of personal data (Choenni, Bargh, Busker, & Netten, 2022), the privacy of correspondence and communications, such as e-mail and phone calls, and the privacy of conversations and chatting on social sites, such as Facebook and WhatsApp, and the privacy of geographical location by geolocation applications, such as the GPS, and photo privacy, where the human photo enters private life when it is the subject of this photo. Jurisprudence and comparative judiciary in the UAE and Jordan prove that the individual has the right to determine what can be published about his private life since he alone is to give the approval or permission to publish and specifies the conditions under which publishing is done. The Jordanian laws governing privacy have a major role in establishing the right to privacy in the face of the imbalance of various forces that control society.

### 2.2. The legal framework of the right to privacy

Neither the Jordanian nor the UAE legislation contained a special regulation for the protection of the right to privacy, except for a reference in some laws to protect some aspects of that right. However, the judiciary and jurisprudence in the UAE and Jordan played a prominent role in building an explicit and firm basis for this right, because the protection of the right to privacy has now become a trend, and this aims to confirm society's interest in lofty values.

The legal regulation gradually vested types of protection to the right to privacy. These included constitutional protection under texts that enshrine this right, protection under laws that criminalize violating the right to privacy within penal laws, cybercrime laws, or communications laws, or by enacting laws to protect some forms of the right to privacy, most notably the right to protect personal data such as the UAE Personal Data Protection Law of 2021 and the Jordanian Personal Data Protection Bill of 2022.

#### 2.2.1. Constitutional protection

As for constitutional protection, the Jordanian Constitution of 1952 regulated individual rights and freedoms in Chapter II of the Constitution, which includes the natural rights attached to the human person or those related to intellectual rights and freedoms. Article 7 of it enshrines the principle of

protection of personal freedom. Article 14 regarding the free exercise of the rites of religions and creeds in accordance with the customs observed in the Kingdom unless they are not consistent with public order or morality. Article 15 also concerns the freedom of opinion; freedom of the press, printing, publication, and information media within the limits of the law. Article 18 of the same Constitution regarding the confidentiality of all postal and telegraphic correspondence, telephonic communications, and other means of communication. The constitutional regulation is limited to protecting the sanctity of the home and the confidentiality of postal correspondence and telecommunications, meaning that protection was limited to some elements of private life without the rest.

On the other hand, Article 31 of the UAE Constitution of 1971 guarantees the freedom and confidentiality of postal and telegram correspondence and other means of communication. Article 32 of the same Constitution confirms the freedom to exercise religious rites in accordance with the generally-accepted traditions, provided that such freedom does not violate public order or public morals.

It appears from the previous constitutional texts that Constitutions care for and protect the privacy of individuals in all their actions through which they express themselves, whether verbally, in writing, photographing, printing, or publishing through various means of communication. It is not permissible to infringe it in any way as long as it does not violate the public order and the morals of society. The idea of public order is linked to the individuals' exercise of their freedoms, although freedom is the origin of democratic systems and public order is the exception. Therefore, it is not possible to completely ban freedom under the pretext of maintaining public order (Rothchild, 2022).

The constitutional protection of the right to privacy in Jordanian and Emirati legislation is based on considering this right one of the pillars of public order and public morals in society (Munch, 2022). Public order is a matter related to achieving a public political, economic or social interest related to the higher social system (Fellmeth & McInerney-Lankford, 2022).

The idea of public morals occupies an important part of public order. It is a flexible and relative idea, as is the concept of public order. It depends on the philosophy of the existing political system and the extent to which the customs, traditions, and religious heritage of people are revered. Therefore, the idea of public morals expands and narrows from one civilization to another.

In sum, the legislator's remarkable interest in the right to respect private life as a constitutional right is evident, after this right was neglected for years, and has now found its place in constitutional jurisprudence. The debate is currently raging about the extent to which the right to privacy is protected, not whether it exists or not (Mazeaud, 2015).

### 2.3. Legislative protection and its impact on the governance of the right to privacy

Despite the constitutional protection of the right to privacy, there are still shortcomings in protecting privacy in light of the emergence of new forms of

violating this right through technical means, especially smartphones. Therefore, punitive legislation in the UAE and Jordan has stipulated crimes of violating this right in their traditional form, especially crimes of violating data privacy within the modern means of communication, including smartphones, whether by adding articles to existing punitive laws or by enacting new special laws (Shi, Winter, & Zhang, 2021).

These texts included two types of protection: objective legal protection by setting legal rules that criminalize some acts that are considered infringing on the right to privacy, and procedural legal protection that sets controls for dealing with instances of this right and the procedures to be followed to limit its infringement. There is no special and comprehensive law regulating the right to privacy in the UAE or Jordan. The protection in these two countries was sectoral. Some texts that protect personal data have also been introduced into some laws in the areas of health and banking. Recently, a new law was enacted in the UAE to protect personal data for the year 2021, while the respective draft law is still in its constitutional stages in Jordan. The UAE Personal Data Protection Law is in line with the GDPR of 2016. We also find some texts in the UAE and Jordanian penal codes and cybercrime laws that criminalize the invasion of some aspects of privacy, as they prohibit the use or publication of confidential data by anyone who has access to this data, or disclosure of confidentiality, except with the consent of its owner, or according to the text of the law as if it was for national security or public health matters.

Among the most important laws that can be relied upon for regulating the right to privacy, is the UAE Federal Decree of Law for the Protection of Personal Data, promulgated in 2021. This Law came to impose sound governance for managing and protecting personal data. It defines the general frameworks for dealing with the personal data of individuals, how it is collected, processed, and stored the means to ensure its protection, and the rights and duties of all concerned parties.

There are also other laws that include provisions to protect privacy, and the governance of data storage, processing, and transmission. They include the Electronic Transactions Law, which sets a general framework for organizing electronic transactions and protecting individuals from data breaches, the UAE Federal Penal Code, which criminalizes many forms of compromising the right to privacy, as will be shown later, and the Countering Rumors and Cybercrimes Law of 2021. This Law came into force in January 2022, and it criminalizes acts or crimes that take place through the use of information technology, given their seriousness and the consequent harm they cause to the interests of the State and its government agencies. The Law aims to protect society, websites, and government data from crimes committed using information technology, protect people's privacy, and combat rumors and fraud, through information technology means. The law also defines the scope of the invasion of privacy by using information technology means on people or the private or family sanctity of individuals without their consent and in cases other than those authorized by law. This Law criminalizes anyone who hacks a website,

an electronic information system, an information network, or a technical information means, with the intention of obtaining government data or confidential information about a financial, commercial, or economic establishment. It also penalizes the crimes of cyber-begging and misleading promotion of goods and services, especially counterfeit or unlicensed medical products using technical means. It also criminalizes data destruction or disabling programs, and data on any information system without legal justification.

We refer also to the UAE Federal Law of 2020 regarding consumer protection. This Law aims to protect all consumer rights, the governance of the consumption process, the relationship between the provider and the consumer, and the rights and obligations of each of them, including the privacy and security of consumer data, and the prohibition of its use for promotional and marketing purposes. We also refer to Law No. 3 of 2003 regulating the telecommunications sector and the law regulating the dissemination and exchange of data in the Emirate of Dubai, which aims to establish controls for governance, good management, data protection, and the privacy of individuals in the Emirate of Dubai.

On the other hand, we find that the Jordanian legislator has dealt with the protection of some aspects of the right to privacy in special laws. The Jordanian legislator promulgated the Consumer Protection Law of 2017, the Electronic Crimes Act of

2015, and the Electronic Transactions Law of 2015 in Article 25, which imposes penalties on electronic signature authenticators that disclose their customers' secrets, the Jordanian Communications Law of 1995 and the Jordanian draft Personal Data Protection Law of 2022. This draft Law aims to strengthen constitutional rights and freedoms, protect personal data and prevent infringement on the right of citizens and residents to protect their personal data and privacy established under the provisions of the Constitution and related laws. This Law also aims to create a legal framework that balances the mechanisms of individuals' rights to protect their personal data and allows data and information to be processed and preserved in the light of cyberspace, and the spread of the concepts of big data and artificial intelligence. The Law establishes regulatory frameworks for storing personal data and processing it within clear restrictions and obligations. This Law also comes to define the obligations and duties imposed on the responsibility for personal data, its processor and recipient, and the penalties imposed on violators of the provisions of the Law and the regulations and instructions issued pursuant thereto. According to the Law, a personal Data Protection Council is to be established, with well-defined tasks and powers. The Law also sets out the tasks of the organizational unit specialized in protecting personal data at the Ministry of Digital Economy and Entrepreneurship.

**Table 1.** UAE and Jordanian legislation comparisons

<i>Similarity</i>	<i>Contrast</i>
1. No definition of the right to privacy, defend seemingly far-fetched rights.	1. Law was enacted in the UAE to protect personal data for the year 2021, while the respective draft law is still in its constitutional stages in Jordan.
2. No special regulation for the protection of the right to privacy.	2. The Jordanian Constitution of 1952 regulates in Article 7 personal freedom, Article 14 the free exercise of the rites of religions and creeds, Article 15 the freedom of opinion; freedom of the press, printing, publication, and information media, Article 18 the confidentiality of all postal and telegraphic correspondence, telephonic communications and other means of communication. While Article 31 of the UAE Constitution of 1971 guarantees the freedom and confidentiality of postal and telegram correspondence and other means of communication. Article 32 of the UAE Constitution confirms the freedom to exercise religious rites in accordance with the generally-accepted traditions, and does not violate public order or public morals.
3. Constitutional protection under texts that enshrine this right.	3. Legislative protection in the UAE includes the Federal Decree of Law for the use of technologies in public health, the Law for the Protection of Personal Data of 2021, the Electronic Transactions Law, the UAE Federal Penal Code, the Countering Rumours and Cybercrimes Law of 2021, the UAE Federal Law of 2020 regarding consumer protection, Law No. 3 of 2003 regulating the telecommunications sector and the law regulating the dissemination and exchange of data in the Emirate of Dubai. In Jordan, the legal framework includes the Consumer Protection Law of 2017, the Electronic Crimes Act of 2015 and Electronic Transactions Law of 2015, the Jordanian Communications Law of 1995, and the Jordanian draft Personal Data Protection Law of 2022.
4. Reference in some laws to protect some aspects of this right. Penal codes and cybercrime laws that criminalize the invasion of some aspects of privacy, as they prohibit the use or publication of confidential data by anyone who has access to this data, or disclosure of confidentiality, except with the consent of its owner, or according to the text of the law as if it was for national security or public health matters.	
5. Protection limited to the sanctity of the home and the confidentiality of postal correspondence and telecommunications.	
6. Objective and procedural legal protection.	
7. Sectorial protection.	

### 3. METHODOLOGY

In this research, the researchers have adopted the comparative analysis method by reviewing the legal texts in the relevant UAE and Jordanian legislations and comparing them to reach the best results and recommendations for this study. In this research, the authors adopted the comparative approach based on analyzing the legislation and provisions that dealt with the privacy law of the UAE and Jordan. This paper also proposed a legal framework for analyzing the effectiveness of legislation in these countries and making recommendations for the adoption of new rules to regulate privacy. The authors compared the laws in these two countries based on data collected from research papers and websites representing legislative and legal bodies in these countries. The authors began collecting data on surveillance and privacy in February 2021. The most relevant data was collected from several official sources in the UAE and Jordan such as constitutions, laws, and judgments of courts in these countries. The theoretical framework of the right to privacy was collected from magazine articles, master's theses, and relevant jurisprudence books in Jordan and the UAE. The authors have presented in Table 1 the comparison between the UAE and Jordanian legislations. Then the authors have succinctly shown in Table 2 the study's findings as they relate to the UAE and Jordanian legislation, and are aligned with each of the sub-sections of the discussion. The authors have divided this research into four main points, represented in clarifying the concept of the right to privacy, the elements of the right to privacy, forms of infringement of this right, and finally the role of the administration and the judiciary in protecting the right to privacy.

### 4. RESULTS AND DISCUSSION

The share of global market capitalization held by There are many forms of smartphone abuse, which have evolved with the development of its technology. These include money-assault crimes and electronic fraud, crimes of threats and extortion, in addition to crimes of violating the sanctity of private life, crimes of defamation, and public morals crimes. These crimes represent a new form of crimes in the UAE and Jordanian legislations, for which the legislators made a special law to combat them due to their seriousness. The UAE legislator promulgated a special law to combat information technology crimes and combat rumors for the year 2021. The Jordanian legislator also promulgated a special law to combat cybercrime for the year 2015. These two legislations come as a result of the growing risk of misuse of the smartphone, whether phone threats, blackmail, publishing pornographic materials, insults, or invasion of the privacy of individuals. Despite the recentness of smartphone crimes and their connection to the technical field, their forms are numerous and complex; most importantly, infringement of privacy and violation of public morals, to which our study will be limited as follows.

#### 4.1. Infringement on privacy

Privacy embodies the main right to protection in the crime of invasion of privacy by smartphone (Othman, 2014). The health status of a person is also considered one of the elements of the right to the sanctity of private life (Alkhasawneh, 2020). It is not permissible to publish anything related to a person's health except with his permission. It is not permissible to photograph a person while he is on a bed of illness, and it is not permissible to publish it. The form of invasion of the right to privacy through smartphones is embodied by disclosing and tapping the information on phones, violating the sanctity and confidentiality of communications and correspondence conducted over the phone, and penetrating personal pages on social networking websites. Taking pictures of others or filming them with a smartphone video camera without their permission is considered a violation of the right to privacy.

By comparing the UAE and Jordanian telecommunications laws, we find that the UAE legislator in the law concerning the regulation of the telecommunications sector was more precise and accurate than the Jordanian telecommunications law. The UAE legislator indicated, in Article 72 bis 2 of this Law, to penalize anyone who eavesdrops on the content of phone calls without prior permission from the competent judicial authorities. This we did not find in Jordanian legislation. Article 71 of the Jordanian Telecommunications Law came to punish those who had access to the content of the call or telephone message by virtue of their position and not any other person.

However, by reviewing Article 79 of the Jordanian Telecommunications Law, we find that the Jordanian legislator used a broad and general term that can be applied to anyone who eavesdrops on the calls of others or discloses data of others through telecommunications networks, by stipulating that he is punishable, whoever uses a public or private telecommunications network illegally.

#### 4.2. Infringement of public morals

The technological means in the field of communications may be used to violate public morals by publishing materials that contradict the prevailing morals and norms in society and disturb public decency. All actions that are outside the virtue and values of a society, and whose dissemination causes outrage to the public's modesty, fall within the violation of public morals through modern technological means. The Emirati and Jordanian legislators criminalized these acts in order to protect public morals and the values and morals of society. Publishing pictures, audio or video clips, novels, and other materials with indecent content, constitutes a crime of violating public decency and morals. Referring to the UAE and Jordanian legislations, we did not find a legislative definition of public decency and public morals, but rather it is defined by the judiciary. Emirati and Jordanian legislators have singled out a number of articles in the Law on Combating Information Technology Crimes, the Law on Countering Rumors and Cybercrimes, and the Communications Law, in addition to the Penal Code that punishes infringement of public decency and morals.

By reviewing the articles referred to in the Jordanian Cybercrime Law and comparing them with the UAE legislation, we find that the Jordanian legislator limited the criminalization, in Article 9 of the Cybercrime Law, to the sexual exploitation of a juvenile who has not completed eighteen years of age or who is psychologically or mentally handicapped, but the Jordanian legislator did not criminalize the establishment of or running a porn website. Therefore, the Jordanian legislator must make criminalization absolute as stated in the UAE legislation. Likewise, the Jordanian legislator must adopt the measure of deportation for a foreigner convicted of any of the electronic crimes, and also authorize the court to order placing the convict under supervision or monitoring, or depriving him/her of using any information network, electronic information system, or any other information technology means, or placing him/her in a therapeutic shelter or rehabilitation center for the period the court deems appropriate.

### 4.3. The role of institutions in protecting the right to privacy

The UAE and Jordanian legislations have established many administrative institutions under the aforementioned laws to organize the protection of the right to privacy. However, the multiplicity of institutions concerned with supervising the data collection, storage, and processing is considered a negative point. Because of the multiplicity of these institutions, their competencies overlapped, which, in fact, revealed many obstacles that are not commensurate with good governance for the desired protection (Sharp et al., 2022).

#### 4.3.1. The role of administration in the governance of the right to privacy

There are many institutions that protect some manifestations of the right to privacy, which are regulated under special provisions in some laws. These institutions play an important role in embodying this protection, the most important of which are as follows.

With regard to the right to consent, the processing of data related to users of electronic communication services can only be carried out by authorized persons and exclusively for the purpose and the period necessary for this. The provision of any service that is not free must be made after the user has given their informed consent, which they can withdraw at any time. The express nature of this consent is not able to be enshrined, as one cannot infer the consent of the data subject to its processing from mere access to personal data and the absence of a complaint. This right is not only imposed on operators of electronic communications networks. Rather, personal data or reference to another person's private life should not be published on social networks without the consent of the person concerned. The Law also prohibits publishing photos taken in a specific context without the prior permission of the persons concerned. Also, consent given to particular processing does not apply to another type of processing, and this is the principle of purpose. Likewise, whereas the consent of the concerned person may not be necessary for data collection at

one instance, subsequent processing may require their prior consent. This is how an individual who does not question the legality of a video made in a public environment can later criticize its use.

#### 4.3.2. Assessing the role of institutions in protecting the privacy

The regulatory framework for the entities concerned with supervising the protection of the right to privacy does not make it possible to ensure effective privacy protection in the electronic environment due to the multiplicity and interlocking of the responsible bodies. Also, the fact that the powers of the administrative authorities are of a limited nature. As we have seen above, issues related to the protection of privacy in the field of information technology, according to the Law in both Jordan and the UAE, fall within the jurisdiction of a number of regulatory bodies. This does not guarantee the effectiveness of the system due to the risk of conflicting administrative and judicial jurisdiction. The framework for the regulation of personal data in a sectoral manner, through the supervisory bodies of electronic telecommunication operators, is insufficient, because the control over its supervision does not fall specifically within the competence of any one body. There are parties concerned with regulating personal data protection in the banking sector, others concerned with protection in the health sector, and others with consumer protection. Moreover, the relevant texts do not include any deterrent penalty in the event of failure of the institutions subject to them. In the absence of texts that impose effective penalties on those who commit violations that constitute an infringement on the right to privacy, it contributes to the lack of comprehensive protection for this right.

Regarding the situation in Jordanian and Emirati legislation, the organization of personal data was highly fragmentary. The enactment of specialized legislation to protect personal data may be the appropriate solution to avoid this problem, which is what the UAE legislator did under the Personal Data Protection Law of 2021. It seems that the Jordanian legislator is heading to adopt the same position by issuing a draft personal data protection law for the year 2022. Therefore, we hope that the Jordanian legislator will add texts that the administration holds responsible for violating the right to privacy.

Also, much data processing related to individuals is not currently subject to any central oversight by one of these regulators. The legal texts do not specify who is responsible for monitoring and regulating the processing of data collected by the departments responsible for issuing identity documents such as passports and residence cards. Therefore, it is necessary to have a general regulatory mechanism based on general regulations and a single regulatory authority with general powers to allow it to intervene whenever there is an issue of data processing related to private life. This can be avoided through the Emirates Data Office, the Jordanian Personal Data Protection Council, and the Data Protection Unit if their competencies and powers are expanded.

The multiplicity of bodies supervising personal data according to different sectors is extremely dangerous, as it will lead to the risk of neglecting certain sectors. Nor would this approach be able to

consider the interrelationships of the data, the rules it contains, and the big data structure that characterizes the current era. Therefore, it is necessary to establish a central authority responsible for ensuring the protection of personal data in a consistent and coherent manner with general jurisdiction at the national level. This is what the UAE legislators have resorted to through the establishment of the Emirates Data Office and the Jordanian draft law through the establishment of the Personal Data Protection Council.

A deeper look into the foundations of governance, with what it means for the rule of law, transparency, participation, and the distribution of competence, confirms that governance sets the moral and legal framework for the entire work of the institution based on the various legislations in force to govern relations between the parties fairly and determine the responsibility of each party with transparency, involvement, and harmony, which leads to combating corruption and reaching quality and excellence in institutional performance (Rajaretnam, 2022).

#### 4.4. The role of the judiciary in protecting the right to privacy

Courts are in charge of protecting all public rights and freedoms in accordance with the provisions of the Constitution and the laws regulating them. The judge must monitor the legality of the measures taken to achieve this, and their compatibility with constitutional and legal rules and principles, as the jurisprudence of the courts is an important element in determining constitutional human rights such as the right to privacy (Ran, 2016). The judge is the protector of rights and liberties in the face of all forms of abuse and arranges for the nullity of the judicial procedures taken if it is proven that such rights and liberties were violated (Al-Ashqar, 2013a, 2013b). In other jurisprudence, it established the freedom of telephone communication and the preference of the individual over the right of others when it comes to his/her privacy, and the right to a photo (Judgments of the Court of Cassation, Criminal Chamber Ruling No. 1106 of 2018, 22/1/2019).

The judiciary contributes to enshrining and defining the right to privacy, and it also contributes to filling the gaps in the law in light of the inability to keep pace with technological developments, and to provide the appropriate guarantees for that (Alhaj, 2021). For this reason, the judiciary, especially the administrative judiciary, must monitor the appropriateness and proportionality to ensure the extent of the humanity of the administrative decision and that the administrative authority does not deviate from using its power to infringe on privacy.

With regard to criminal procedures, we find that the judge is particularly concerned with ensuring that the investigation procedures are surrounded by guarantees that ensure the preservation of the right to privacy stipulated in the Constitution, in the context of not infringing upon this right by the competent authorities. Thus, regarding vehicle searches, violating the sanctity of the home, and searching individuals, obtaining prior permission from the judge is a constitutional condition for violating the sanctity of the home and

searching individuals and vehicles (Badir, 2015). In this regard, the UAE and Jordanian courts apply effective oversight that gives a wide scope for the right to respect for private life, considering the prevention of disturbing public order (Judgments of the Court of Cassation, Criminal Chamber, No. 911, 899 of 2017). For this reason, it is necessary to find a balance between rights and freedoms on the one hand, and the public interest and the requirements of achieving security and access to the truth on the other hand (Grass, 2021). This means that the right to respect private life is not absolute and that the law allowing the protection of public order is not inconsistent with the Constitution (Al-Ashqar, 2013a, 2013b).

The role of the courts is to protect the right to privacy in several respects. The court has a role in enforcing the right to privacy in line with the developments or the circumstances surrounding this right, without the necessity of amending the existing constitutional texts or creating new ones. Jordanian and Emirati courts often adhere to the direct provisions of the constitution and avoid broad interpretation or application. Therefore, its understanding of these rights is achieved by approaching these rights in a way that is in line with the surrounding reality, in line with the judicial and legal culture in that country, and in light of international standards, especially in the case of ratification of relevant international conventions. Thus, the judge does not apply the text only but works on translating the text in the light of reality (Judgments of Ras Al Khaimah Court of Cassation, Criminal Chamber, No. 17 of 7 BC, 5/8/2021).

The courts bear a great responsibility in the absence of the text governing the dispute before them, especially because of the different concepts of privacy. The administrative courts monitor the actions of the Executive Authority to ensure that they do not infringe upon the rights and freedoms of individuals. In both the UAE and Jordan, defending freedoms, including the right to privacy, is not the prerogative of any particular judge. It is a joint task between the administrative judge and the criminal and civil judges, and each of them has exclusive jurisdictions on a constitutional basis represented in the protection of individual freedom. The task of the administrative judge reinforces and consolidates the legality and integrity of the measures taken to preserve the various freedoms, in particular individual privacy, within the framework of observance of public order. The issue of protecting public rights and freedoms remains one of the pillars of the rule of law in light of the administration's possession of wide powers through which the rights and freedoms of individuals may be violated. These violations can expand in the absence of restrictions or legislative controls on the powers granted to them (Grass, 2021).

The independence and special powers of the administrative judge are granted on a constitutional basis and in accordance with the principle of separation of powers. Therefore, the administrative judge alone is competent to repeal, or correct administrative decisions related to the protection of privacy. This means that the administration is subject to strict supervision by a competent administrative judge, who obliges the administration to proceed in accordance with the principle of the rule of law and the

constitutional rules protecting public rights and freedoms. There is no effective protection without an effective judicial guarantee.

It is not enough for every judge to be competent in his field of competence, but he must consider the circumstances of disputes related to freedoms. This depends on the nature of society and its culture to determine the extent of the impact of violating personal freedom, considering the appropriateness criterion that assumes the achievement of proportionality, in order to ensure a balance between rights and freedoms on the one hand, and the public interest on the other hand, where the idea of the public interest is considered within the framework of protecting rights and freedoms (Yusuf, 1996).

The task of the administrative judge in protecting public rights and freedoms, especially the right to privacy, is a daunting task compared to civil and criminal justice, due to the absence of legislative codification that combines administrative rules. Therefore, the administrative judge strives and plays a constructive, clear, and non-practical role by extracting rules and principles from the established values in society to enshrine the principle of the rule of law and to a large extent protect the proper enjoyment of constitutional protection of the rights and freedoms of individuals, including the protection of privacy. Thus, he confirms the constitutionality and fairness of the administration's decisions, especially those issued under the pretext of protecting public order and public morals. The difficulty of this task requires the judge to have special qualities, such as a profound legal education and distinguished mental skills.

The question raised here is: *Is the oversight of the administrative judiciary an effective and meaningful contribution to the governance of the administration's actions related to the protection of the right to privacy?* We answer that the oversight

of the administrative judiciary extends to the discretionary authority of the administration, as it is not an absolute authority, but rather is limited by the limits of legitimacy (Rajaretnam, 2022). It monitors the extent to which the purpose for which the administration was granted a set of privileges to maintain public order has been achieved, and investigates the extent to which the administration is committed to the principle of impartiality and targeting the public interest without abuse of individuals' rights and freedoms. The UAE Federal Supreme Court, with its administrative department, and the Jordanian administrative courts focus on confirming the guarantees of human rights and freedoms, and on their respective roles in determining the features of the right to privacy and the public interest that restricts this right. This is what the UAE Federal Supreme Court applied in its rulings (Judgment of the Federal Supreme Court, Appeal No.173 of 2009, Session 11/5/2009). The role of the administrative judge does not stop when applying the legal principles devoted to justice and the protection of rights and freedoms, but rather he expands his control over transparency and impartiality that must be achieved in the rational decisions of the administration. Therefore, the administration is required to give reasons for its decisions so that the administration announces the legal and realistic reasons that compelled it to issue the administrative decision, and formed the legal basis on which it was built (Shatanawi, 2004). This achieves the participatory control of stakeholders and the administrative judge, which was confirmed by the Federal Supreme Court (Judgment of the Federal Supreme Court, Appeal No. 566 and 591 of 2013, Administrative Session 26/3/2013). Thus, judicial oversight comes as an adequate guarantee for the protection of rights and freedoms, and in compliance with the constitutional protection contained in the various constitutions (Sauvé, 2016).

**Table 2.** Study's findings related to UAE and Jordanian legislation (Part 1)

<i>Crimes related to privacy and the role of institutions</i>	<i>UAE legislation</i>	<i>Jordanian legislation</i>
Infringement on privacy	<p>The UAE legislator criminalized this act in the Penal Code, the law regulating the telecommunications sector, and the law on combating information technology crimes in Article 21.</p> <p>The UAE legislator in the law concerning the regulation of the telecommunications sector was more precise and accurate than the Jordanian telecommunications law.</p> <p>The UAE legislator indicated, in Article 72 bis 2 of this Law, to penalize anyone who eavesdrops on the content of phone calls without prior permission from the competent judicial authorities. This we did not find in Jordanian legislation.</p> <p>The Jordanian legislator did not criminalize the establishment of or running of a porn website.</p> <p>The UAE legislator adopt the measure of deportation for a foreigner convicted of any of the electronic crimes, and also authorize the court to order placing the convict under supervision or monitoring, or depriving him/her of using any information network, electronic information system, or any other information technology means, or placing him/her in a therapeutic shelter or rehabilitation center for the period the court deems appropriate.</p>	<p>The Jordanian legislator punishes this in Paragraph B of Article 3, and Article 4 of the Cybercrime Law of 2015 this act.</p> <p>The Jordanian legislator also specified in Article 5 of the same law to criminalize acts of capturing, intercepting, eavesdropping, obstructing, or deleting contents transmitted through the information network or any information system.</p> <p>Article 71 of the Jordanian Telecommunications Law came to punish those who had access to the content of the call or telephone message by virtue of their position and not any other person.</p> <p>Article 79 of the Jordanian Telecommunications Law, used a broad and general term that can be applied to anyone who eavesdrops on the calls of others or discloses data of others through telecommunications networks, by stipulating that he is punishable, whoever uses a public or private telecommunications network illegally.</p> <p>The Jordanian legislator limited the criminalization, in Article 9 of the Cybercrime Law, to the sexual exploitation of a juvenile who has not completed eighteen years of age or who is psychologically or mentally handicapped.</p> <p>The Jordanian legislator did not adopt the measure of deportation for a foreigner convicted of any of the electronic crimes.</p>



Table 2. Study's findings related to UAE and Jordanian legislation (Part 2)

<i>Crimes related to privacy and the role of institutions</i>	<i>UAE legislation</i>	<i>Jordanian legislation</i>
Infringement on public moral	<p>Publishing pictures, audio or video clips, novels, and other materials with indecent content, constitutes a crime of violating public decency and morals.</p> <p>No legislative definition of public decency and public morals, but rather it is defined by the judiciary.</p> <p>The UAE legislator, in Article 17 of the Anti-Rumour and Cybercrime Law, punishes anyone who creates, manages, supervises, broadcasts, or sends a website, publishes or republishes pornographic materials or online gambling activities, and everything that would prejudice public morals. The same penalty shall be imposed on anyone who produces, prepares, makes available, sends, or trades with the intent of exploitation, distribution, or display to others through an information network, pornographic materials, or gambling activities, and everything that violates public morals.</p> <p>If the subject of the pornographic content is a juvenile under the age of eighteen or this content aims to tempt juveniles, the offender shall be punished by imprisonment for a period of no less than one year and a fine of no less than fifty thousand dirhams and not more than 150 thousand dirhams. Likewise, the UAE legislator shall punish anyone who incites or tempts others to engage in prostitution or debauchery, or assists in that by using a computer network or information technology means.</p> <p>The UAE legislator considered incitement to prostitution and immorality through the use of the Internet as an aggravating factor for the crime and considered it a felony with a penalty of not less than three years in prison. The UAE legislator has given the maximum degree of protection to juveniles under the age of eighteen years.</p> <p>The UAE legislator also punished, in Para. 1 of Article 72 of the Telecommunications Regulatory Law, anyone who uses telecommunication equipment to offend, annoy, and harm others or for any other purpose.</p> <p>While the UAE legislator indicated, in Article 72 bis 3 of the same law, that anyone who exploits or uses telecommunications services to offend, annoy, harm the feelings of others or for another illegal purpose shall be punished with imprisonment for a period not exceeding one year and a fine not exceeding fifty thousand (50,000) dirhams or one of these two penalties.</p> <p>The UAE legislator, in Article 42 of the Anti-Rumor and Cybercrime Law, adopted the procedure to deport the foreigner convicted of committing any of the crimes stipulated in this law, due to the seriousness of these crimes and the speed of their spread among all community members.</p> <p>The UAE legislator also authorized, in Article 43 of the same law, the court to order placing the convict under supervision or control, depriving him of using any information network, electronic information system, or any other means of information technology, or placing him/her in a therapeutic shelter or rehabilitation center.</p>	<p>Article 9 of the Cybercrime Law, punishes any person who intentionally transmits, publishes, reads, or draws anything that contains pornographic material that involves or relates to the sexual exploitation of such persons who has not attained the age of eighteen years with imprisonment or a fine.</p> <p>The article also punishes any person who intentionally uses an information system or any information network to prepare, store, process, display, print, publish, or promote pornographic activities or work for the purpose of influencing those who have not been notified eighteen years of age or psychologically or mentally handicapped or directing or inciting such persons to commit a crime, or any person who intentionally uses an information system or any information network for the purpose of exploiting those who have not attained the age of eighteen years or persons with psychological or mental disabilities due to prostitution or ornithology activities, also punishable.</p> <p>Article 75 of the Communications Law that whoever sends messages contrary to public morals by any means of communication shall be punished by imprisonment, a fine, or both. The same penalties shall also apply to anyone who provides or contributes to the provision of telecommunication services that violate public order or public morals.</p> <p>The Jordanian legislator limited the criminalization in Article 9 of the Cybercrime Law to the sexual exploitation of juveniles who have not completed eighteen years of age or who are psychologically or mentally handicapped, but the Jordanian legislator did not criminalize the establishment or candidacy of such juveniles of porn site.</p>
The role of the judiciary in protecting the right to privacy	<p>The UAE and Jordanian courts apply effective oversight that gives a wide scope for the right to respect private life, considering the prevention of disturbing public order.</p> <p>Jordanian and Emirati courts often adhere to the direct provisions of the constitution and avoid broad interpretation or application. Therefore, its understanding of these rights is achieved by approaching these rights in a way that is in line with the surrounding reality, in line with the judicial and legal culture in that country, and in light of international standards.</p> <p>Defending the right to privacy is not the prerogative of any particular judge. It is a joint task between the administrative judge and the criminal and civil judges, and each of them has exclusive jurisdictions on a constitutional basis represented in the protection of individual freedom.</p>	

Table 2. Study's findings related to UAE and Jordanian legislation (Part 3)

<i>Crimes related to privacy and the role of institutions</i>	<i>UAE legislation</i>	<i>Jordanian legislation</i>
<p>The role of institutions in protecting the right to privacy</p>	<p>The Emirates Data Office was established under the new Personal Data Protection Law No. 45 of 2021 to ensure the full protection of personal data. The office, which reports to the Cabinet, is responsible for a number of tasks. To ensure the proper governance of the right to privacy, the office implements oversight operations on the application of legislation regulating data protection and raises awareness of the provisions and requirements of the law. The law did not clarify the role of the Data Protection Center in following up the process of implementing relevant judicial rulings, nor the role of this center in the process of investigating complaints against parties outside the country with whom personal data was exchanged, or a way to help users. The law also did not explicitly talk about the role of the center in permanently announcing the lists of countries, companies, or organizations that adhere to the rules for the protection of personal data.</p> <p>The Data Protection Office in the UAE is a public economic body, but the nature of the competencies entrusted to the center are of a service nature, not an economic one. This formulation reflects the philosophy related to the adoption of the law, where the legislator's vision is limited to the role and economic return that can be achieved from the governance and availability of the data protection process.</p> <p>The Telecommunications Regulatory Authority and the Digital Government of the UAE implement the policy of managing Internet access, in coordination with the National Media Council and licensed Internet service providers in the country, such as Etisalat and du. As part of the regulation of electronic communications, the Communications Act contains some rules aimed at protecting the privacy of users of electronic communications services and third parties. These rules constitute a system that is primarily guided by the principles of international law regarding the confidentiality of communications made by means of electronic communications networks accessible to the public and the confidentiality of data. In accordance with this policy, access to sites and pages containing prohibited content, including scams, phishing, privacy violations, and violations of intellectual property rights, will be prohibited. Access to sites and pages containing prohibited content is blocked by Internet service providers in the UAE after being monitored and reported by customers. The Communications and Information Technology Commission (CITC), as the regulator of the telecommunications and information technology, and postal sectors, places regulation and governance of personal data handling as one of its strategic priorities.</p>	<p>The Personal Data Protection Board plays a key role in the governance and regulation of the storage, collection, and processing of personal data, ensuring reconciling the efficiency offered by the processing of personal data and its protection to citizens. The Council is an organization independent of the government, which advocates for and protects access to information and privacy rights in Jordan. The Privacy Protection Committee informs and assists the public on issues raised by the processing of citizens' personal data. In addition, a significant part of the work of the Privacy Protection Committee is devoted to controlling the processing of personal data.</p> <p>The opinion of the Personal Data Protection Board or Committee is not binding. Therefore, failure to comply with the privacy protection requirements imposed by the Personal Data Protection Board could undermine the constitutionality and legality of the standards regulating the processing of personal data. The Privacy Commission has several tools, some of which are similar to traditional legal means, such as the power to take legal action or the power to report crimes to the attorney general. You may also prefer to resort to more flexible means of trying to persuade rather than constrain it, such as issuing opinions. However, this can reveal a lack of efficacy.</p> <p>The Privacy Protection Council consists of representatives from the Ministry of Digital Economy and representatives from the private sector, as well as representatives of state employees working in the field of privacy protection. Council members are appointed by the Minister of Digital Economy. Council members include different disciplines, such as judges, lawyers, privacy specialists, academics in the fields of law, technology, computer science, and social sciences, and representatives of the private sector from related disciplines.</p> <p>The law stipulates the necessity of obtaining a prior permit to be deposited at the headquarters of the National Authority for the Protection of Personal Data. The Ministry of Digital Economy also manages privacy protection by implementing legislation and laws that enhance protection and combat practices that violate it. It also has a role in following up on privacy violations in coordination with the concerned authorities, providing compensation, and calling for reconciliation in disputes.</p> <p>The Personal Data Protection Unit was established in the Ministry of Digital Economy in accordance with Article 18 of the draft law. The tasks necessary to protect personal data are carried out directly by the Data Protection Commissioner. Article 20 imposes a set of penalties for the unit to take in the event of a violation of the right to personal data: notifying the Protection Controller of the violation and giving him a week to correct it, withdrawing informed consent, issuing an ultimatum, and financial fines of no more than 500 dinars per day provided that their total does not exceed 5% of the annual revenue for the fiscal year preceding the violation. Articles 19 and 20 allow the person affected by the infringement of his personal data to claim compensation for the damages caused to him. Article 21 also provides for some penalties, such as fines for some infringing practices, such as transmitting data abroad without permission.</p>

## 5. CONCLUSION

In this paper, the researchers presented a review and comparison of the law in the UAE and Jordan. They have highlighted developments in the relevant laws in these two countries, strengths and weaknesses, and the need for further improvement. A set of recommendations was proposed to avoid deficiencies in the countries under study. The researchers came up with suggestions for an effective legal framework based on the results of the comparison that was made and the recommendations given. The theoretical and practical implications of this research if the conditions of the governance of this right are fulfilled may help researchers in the future on issues of the right to privacy in the UAE and Jordan. We have reached the following conclusions and recommendations.

The multiplicity of agencies that supervise the protection of the right to privacy and the conflict of competencies among them. Therefore, the study recommends the need to unify the administrative bodies concerned with supervision over the protection of personal data privacy and to unify the competencies to prevent the dispersal of effort and conflicting decisions.

The absence of a central authority to protect personal data in all sectors instead of the sectoral protection that exists at the moment. The absence of a general regulatory mechanism based on public regulations and a unilateral regulatory authority with general powers allows it to intervene whenever there is an issue of data processing related to private life. Therefore, the study recommends the establishment of a unilateral central authority in Jordan to monitor the protection of personal data and give it a more flexible and effective means to carry out its tasks. Establishing a central authority responsible for ensuring the protection of personal data in a harmonious and coherent manner with general jurisdiction at the national level, which is what the UAE legislators have resorted to through the establishment of the Emirates Data Office and the Jordanian draft law through the establishment of the Personal Data Protection Council.

The absence of legislation specific to the protection of the elements of the right to privacy in each of the UAE and Jordan to combat the attacks that affect this phone. Therefore, the study recommends the need to enact specialized legislation to protect the various forms of the right to privacy, as the appropriate solution to avoid this problem, which is what the UAE legislator did under the Personal Data Protection Law of 2021. It seems that the Jordanian legislator is heading to adopt the same position by issuing a Draft Personal Data Protection Law for the year 2022. Therefore, we hope that the Jordanian legislator will add texts that hold

the administration responsible for violating the right to privacy.

By comparing the UAE and Jordanian telecommunications laws, we find that the UAE legislator, in the Telecommunications Sector Regulatory Law, was more precise and accurate than the Jordanian telecommunications law, as the UAE legislator indicated, in Article 72 bis 2 of the Telecommunications Sector Regulation Law, the punishment of anyone who eavesdrops on the content of calls without prior permission from the competent judicial authorities, which is not found in Jordanian legislation.

There is a close connection between Article 72, Paragraph 1, and Article 72 bis 3 of the UAE Telecommunications Sector Regulatory Law. It is not possible to exploit telecommunication devices without the availability of telecom service, and also, it is not possible to exploit a telecom service without telecom devices.

The Jordanian legislator did not criminalize the creation or management of a pornographic website other than the UAE legislator. The criminalization in Article 9 of the Cybercrime Law is limited to the sexual exploitation of a juvenile who has not completed eighteen years of age or who is psychologically or mentally disabled. For this reason, we recommend the Jordanian legislator add the text of a new article to the Jordanian Communications Law that includes a punishment on anyone who eavesdrops on the content of calls or accesses third-party data without prior permission from the competent judicial authorities. The researchers also recommend the UAE legislator merge Article 72, Paragraph 1, and Article 72 bis 3 of the Telecommunications Sector Regulatory Law, into one article.

The study recommends that the Jordanian legislator adopt a measure of deportation for a foreigner convicted of any of the cybercrimes, as well as permission for the court to order the placing of the convict under supervision or control or depriving him/her of using any information network, electronic information system, or any other information technology means, or placing him/her in a therapeutic shelter or rehabilitation center for the term the court deems appropriate.

These recommendations are associated with the limitations of the research related to the availability of information from different resources, especially the official resources. Other limitations can be mentioned regarding the regulations of data protection as the most important element of the right of privacy that our research focuses on. These recommendations show that this paper is important for future research in AI technologies, biometrics data, and its impact on the right to privacy.

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