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Violation of the right to electronic privacy in public international law

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Abstract

Because of the abundance of the violation of privacy and the absence of the individuals awareness regarding its risks and the weakness of the national and international observation on the electronic environment in general and the platforms of communication specifically, we are obliged to seek about these violations in terms of their images, risk, the activation of the legal national rules and the technical techniques in deterring or reducing them. At the end of our research, we reached too many conclusions and proposals that we hope they will be taken to eliminate this phenomenon.

Keywords: Electronic Privacy, legal national rules, Public International Law.

Violación del derecho a la privacidad electrónica en el derecho internacional público

Resumen

Debido a la abundancia de la violación de la privacidad y la falta de conciencia de las personas sobre sus riesgos y la debilidad de la observación nacional e internacional sobre el entorno electrónico en general y las plataformas de comunicación específicamente, estamos obligados a buscar estas violaciones en términos de sus imágenes, riesgo, la activación de las normas legales nacionales y las técnicas técnicas para disuadirlas o reducirlas. Al final de nuestra investigación, llegamos a demasiadas conclusiones y propuestas que esperamos sean tomadas para eliminar este fenómeno.

Palabras clave: Derecho internacional público, Normas nacionales legales, Privacidad electrónica.

1. INTRODUCTION

Individuals meet under the shadow of a universal village that its parts are linked through communicative platforms and informational net weaving threads for communication among them with a great smoothness and easiness away from the restrictions of time, place and interaction. All what is required is the subscription or log in in this or that platform. The characteristic that accompanies these sites is the violation of privacy and trading in it or exploiting it for special purposes depending on the one who stands behind this violation.

This is because of the abundance of these communicative platforms, the absence of awareness regarding the risks of privacy or the ignorance of its readers for the privacy bonds for each site, not knowing the side owing it and the way of its dealing with the private information of each user and what is granted for it regarding the access permission in each set connected with it.

The importance of study is represented by the emergent need for fast solutions for being related to the special life of each human that became a target for violation simultaneously with the informational and communicative revolution which caused a clear violation for this right through what it provided concerning applications and sites for communication that facilitated the violation processes and stealing the others privacies or through what is done by the same sites regarding the processes of spy on it users and trading in their information for specific national sides.

The problem of study is represented by whether the classical national legal rules are enough for limiting these violations or it is obliged to formulate new rules that suit and go along with the development that happened in the electronic environment. Also with regard to what is concerned with the roles of individuals in protecting their privacy and the scope of the technical awareness required to protect from these violations.

The presence of a clear violation of the role of the states in particular and the international community in general on part of the legal and supervisory standpoint, which led to an increase in the scope of incorrect use of the electronic environment and in what constitutes an explicit violation of human rights, and then the possibility of combating this negative use is done only by making special international agreements and amending previous international rules with the importance of activating the role of the international community, especially countries, in supervising on the means contained by the electronic space that threaten the human privacy.

2. METHODOLOGY

Consistent with the above and in order master the subject of the study, we divide it into two requirements. In the first one, we clarify the concept of social media and their types and the concept of the right in privacy. The second request is allocated to the most important images of the violation of the right in privacy and the mechanisms

followed to protect it. We end the study with conclusions that include the most important inferences and proposals.

The concepts given to both terms are numerous and varied according to the number of studies that have been addressed, which are almost somewhat related, and the angle of view for each of them differed in terms of focusing on the means, goal, tool, or effects, which requires us to stand at their concepts and show pictures of each in the following two sections:

2.1. THE FIRST SECTION

The Concept of the Right to Privacy and its Forms

There is almost an agreement between jurisprudence and legislation concerning not finding a comprehensive definition that prevents the right in privacy. This is an evident through the definition of this concept, and this difficulty in unifying the concept belongs to the nature of the right which acquires the feature of flexibility and lack of specification and control in a specific framework and varies according to the different human societies and the eras of time through the ages.

Therefore, Jurisprudence premeditated to find a definition of the right in privacy, each one according to its intellectual orientations and premises. According to the traditional approach to privacy, it was

defined as "the right to protect the personal life of individuals and to ensure that it is not attacked and independent", (ABDULLAH ABDUL KARIM.2000), but according to the modern concept that was linked to the digital world, it means the ability of individuals to according to this meaning, it refers to the developments that occurred in the transactions among individuals done by the electronic processing of their own information in a way that guarantees the privacy of these information which are represented in personal data and not being compromised. Thus, we find that the modern concept of privacy crystallizes in the idea of attacking it electronically by the others to use it without the knowledge or consent of its owners for purposes contrary to law.

The legislative concept of the right in privacy differed from its jurisprudential appraisal in that most of the legislations built the concept of the right in privacy within the scope of the individual's minimum right to freedom from prejudice or interference in his personal or family life or the confidentiality of transactions and matters related to his private life. This issue is clearly evident in the legal texts dealing with this right and its elements with protection. The International law, when dealing with this right, was taken out in abstract form of the details, due to the flexibility of this right, as mentioned in the previous page.

The right to privacy includes several types, which vary according to the diversity of the areas it expresses. We mention, among others, the following:

1. Personal Privacy: The first type of the right to privacy is often related to the material appearance of a person, such as those that aim to protect the material entity of the human being, such as the right to life and physical integrity, and it also includes those rights that are related to his moral entity such as his right to reputation, honor, consideration, feelings, desires and beliefs, and therefore the criterion according to which personal privacy is determined is an extremely broad standard, with which one's personality is not limited to his physical being only, but extends beyond it to include some moral elements of the human being also (SALIM JALLAD.2013).

2. Spatial Privacy: It is related to the sanctity of the housing and putting organized rules for inspection and oversight, as well as the verification of identity cards whether the individual is in the workplace or private or public places. The sanctity of the housing is considered the most prominent feature of the right to privacy, so there is no value of the sanctity of private life if it does not include the house where an individual vacates himself and lives in communion with himself away from the eyes of the censors. The sanctuary of the house is available regardless of the legal nature for the right of the residence owner, so it is equal to be an owner, tenant or borrower, and the owner has the right to prevent any person from entering it without permission (DR. ABDUL RAHMAN BIN JILALI.2014).

3. Intellectual Privacy: It means the privacy of thinking, love for exploration and curiosity. It also includes respecting the ideas of others. The way of expressing ideas may lead the people to feel in violation if their ideas are rejected, neglected or underestimated (TYPES OF PRIVACY THAT A HUMAN SHOULD ENJOY.2019), or if they were exploited and published without the consent of their owners.

4. The Privacy of Correspondence: correspondence means all the written messages whether sent by a regular e-mail or by special messenger, and there is no lesson in the form of correspondence whether it was telegram, message, telex or other forms developed by technology. The messages of any kind are regarded as a material translation of personal ideas or special opinions that it is not permissible for anyone other than the one who sent it and whoever is directed to view it, otherwise it is a violation of its sanctity and consequently a violation of private life. Therefore, the inviolability of correspondence is considered an important element of private life because it constitutes a repository of human secrets and privacy (DR. SHAWQY AL-JARF.1993).

5. Digital Privacy: It is a description of protecting an individual's personal data, which is published through digital media and is represented by electronic personal data, as well as the bank accounts, personal photos, and any information about work and housing, that is, it includes all the data that we use in

our interactions on the Internet while using an automatic calculator or mobile phone or any means of digital communication with the website net (KARIM ATEF.2013)

Since there is an increase in the interaction of individuals with the digital world, which led for the privacy to be threatened and the personal data became a material used either commercially in the implementation of marketing propaganda or monitored by government agencies or subject to theft or exploiting it for purposes that harm its owners. The digital privacy is represented by the privacy of digital data and the privacy of communications whether through e-mail, social networks or mobile phones (BARIQ MUNTADHER ABDEL-WAHAB LAMY.2017).

2.2. THE SECOND SECTION

Introducing Social Media Platforms and their Effects

Social media platforms, social media networks or social sites are of different names given to one category of communicative websites, which are considered the most prominent products of the technological revolution in the field of communications and interaction, and are defined as a system of electronic networks that allows each participant to create his own account and then link it through an electronic social system with other members having the

same interests and hobbies or collect it with friends of the university or high school (AHMED ESSAM.2013).

Therefore, social media platforms can be defined as electronic communicative sites characterized by interactivity and non-compliance with time and space, which allow participation and free exchange of information, opinions and ideas.

The social media platforms include several types that appeared in different times in succession, which were established by the participation of different entities from individuals, institutions, countries ... etc., among of them, for example:

1. Facebook: This site is regarded one of the most popular social networking platforms on the internet, as it provides several interactive services for its users such as an instant chatting, special messages, e-mail, as well as video and photo exchange and file sharing. This site has caused a shake in many mediations especially the political community. In spite of the advantages that this website provides to facilitate social communication, it has contributed significantly to the penetration of social privacy by transferring personal information which has a degree of privacy into the table of common dialogue on a large scale, as the circulation of information in this way can lead to open a loophole in the social security in front of those who seek to employ it not in the interests

of society (DR. HARITH ABBOUD, AND DR. MEZHER AL-A'ANI.2015).

2. What's App: It is a monopolized instant messaging application that is multi-platforms for smart phones, which is based on using the internet to send text messages, photos, audio messages and even video clips, and the possibility of using it is available through downloading it on the special devices, whether smart phones or computers. The application has gained a great success since its creation in 2009 by the American (Brian Acton) and the Ukrainian (Jan Krum), both of them are employees of Yahoo Company; and it enjoys with a free communication and messaging services, in addition to being supported by many operating platforms such as Windows, and many devices Pain Payload such as iPhone, Android, Nokia, and BlackBerry (EHSAN AL-OKLA.2019).

3. Twitter: It is a mini social platform that allows its users to send and read comments not exceeding 140 letters. These comments are known as tweets (ALI ABDEL FATTAH.2014).

4. YouTube: This site is one of the most important and well-known types of social networks and it is a global communication and cultural phenomenon, as it has several features that made it one of the most important media outlets, as it allows individuals to produce their own videos of whatever nature and quality. It also allows users to exchange and send video links to others, so it is a way to express the interests and creations of individuals and to influence others through the displayed clips. So, these clips can

transmit any message directly and vitally as if the viewer was present on the ground (DR. HANAN AHMED SALIM.2016).

5. Instagram: It is a free application for exchanging pictures. It was set up in October 2010 and it allows the users to take pictures and adding a digital filter to it and then it's subscribing it in different group of the social nets services (AL-MUHTASEB CENTER FOR CONSULTATIONS).

6. Google browser: It is considered as one of the most important articles found in internet. It is a browser similar to Yahoo browser in which the seeking for ways to get the required information in a short time can be done through it. It also provides the feature of search with many languages including Arabic language (DR. HARITH ABBOUD AND DR. MEZHER AL-A'ANI).

It is worth noting that social media platforms have greatly affected the society in general and its users in particular from two sides. Its positive side is embodied of being a way to view ideas and opinions without being bound by the limits of time and space. It also constituted a platform for the opinion and the other opinion, which is an effective way for promotion through the use of commercial companies of the social networks as a good tool for promoting their goods and reinforcing awareness of human rights and freedoms by highlighting violations as a for directing the public opinion (SAMIR MUHAMMAD AWAWDEH.2014), revealing corruption and corruptions, as well as using it as a means to organize and call for peaceful demonstrations ... etc. It is one of the positive things that were used in those platforms.

However, these positives did not prevent them from being harnessed negatively, which represented in using them to achieve criminal or terrorist purposes or a means to violate rights and freedoms, including fabricating a hypothetical figure for criminal intentions or fraudulent, such as entering into love stories with the opposite sex, doing illegal acts, or taking political or religious opinions or attitudes inciting sectarianism. The excessive use of social networks also leads to changing customs and traditions that constitute the bridge between generations (SARA SHARAH, YAZID QALAni.2015).

We believe that the positive or negative use of social media platforms depends on how people, entities or countries use them and the extent of legal and personal control over them. The more awareness among users with the provision of a legal system that protects them, the more reduction of the size of the negatives of those sites.

2.3. THE SECOND REQUIREMENT

Ways to Violate the Right to Privacy Electronically and its Deterrence Mechanisms.

The increase in the number of social media sites and virtual electronic applications was accompanied by an increase in violations of the right to privacy in all possible electronic ways from penetration, theft and thieves ... etc. From another side, it was necessary to activate the mechanisms of deterrence to reduce these violations and control

the environment of the electronic components forming it, whether they are technical mechanisms related to the mechanism of the work of these networking sites, or legal mechanisms that regulate the use of the electronic environment in general and protect the rights guaranteed to every user who is in it, and this is what we will explain in the following:

3. RESULTS AND DISCUSSION

3.1. THE FIRST SECTION

Ways of Electronic Violation of the Right to Privacy

The forms of electronic violations of the privacy of individuals are many and vary according to the diversity of the images of the right to private life. These violations include, for example:

First: publishing and announcing the vocabulary of the right to a person's private life in the various means of communication without his explicit or implicit consent, for example, the publication of private photos or data and family information.

Second: the illegal processing and disclosure of personal data: Personal data is the basis of the right to privacy as it collectively represents the data and information of the individual that acquires the confidentiality characteristic. The process of unlawful processing of

the data collection is the most prominent form of violation of that confidentiality through the violation of those in charge of the process of processing the conditions that the legal methods provided for (MOHAMMED EZZAT ABDEL ADHEEM.2016), as well as non-disclosure of the project for that data. the data that are regarded the most vulnerable to unlawful disclosure are those which are concerned with the electronic banking transactions, manipulation of personal data or erasing them by people who are not authorized to do so or by companies that manage communication sites and other electronic applications, which is what actually happened in the Facebook application when Facebook company announced the leak of users data, as the company allowed a third party.

Third: Electronic espionage which emerged as the most dangerous form of abuse that occurs in the context of electronic transactions, and this is directly related to the rape of the confidentiality of personal conversations and most of the correspondence and transactions that take place through the Internet at all levels (KHADDOUJAH AL-DHAHABI.2017). The methods followed in the framework of electronic espionage differed according to the difference in the culture of the users of these methods. The most prominent of which is to follow the technique of intercepting network communication that is based on programs to implement them, then the intervention is carried out by someone outside the network communications established via the Internet such as exchanging texts or audio conversations, so data, photos or eavesdropping on audio conversations and interfering audio and video conversations are

captured through cameras during communication. Based on official statements by some of the official companies that manage the most famous websites such as Google and Facebook that have announced that they spy on conversations, messages and private information of their users, but rather they converted audio messages into written texts to keep them as they functioned a group of specialists.

Fourth: Electronic hacking, defamation, and blackmail: The one who collects or processes personal data is obliged to take all the necessary precautions to maintain the security of this data, especially preventing any change or destruction of it by people who are not authorized to view it, as the hacking constitutes an attack on the privacy of the virtual place and the privacy of those in it such as e-mail, personal pages, etc., in addition to the user's personal computer memory. The hackers use many technical and advanced methods in accessing the user's digital repository, including spywares and viruses that they enable him to know the movements of the user via the network and other methods that are developed day after day in the virtual world (DR. HAITHAM EL-SAYED AHMED). As for defamation, it means the publication or transmission of facts or data having the meaning of offending or insulting a person that results in degradation of his dignity, honor or reputation, and there are many videos which spread on social media offend the owners of the social media sites. hacking may lead to an extortion phenomenon via nets and it is an attempt to get material or moral profits through the moral hatred for the person by threatening of revealing his secrets or special information such illegal relations which ends with extorting the girl

physically and this represents a clear violation of the right to privacy (OTHMAN BAKR OTHMAN.2019).

4. CONCLUSION

At the end of our research, we reached too many conclusions and proposals that we hope they will be taken to eliminate this phenomenon, which has become a prominent feature of the electronic communication platforms, which are as follows:

4.1. First

1-The idea of the right to privacy in the era of digital technology is often related to the concept of privacy of digital data.

2-The effects of social media platforms on individuals and societies vary between their pros and cons, but the view taken on these platforms is that they have contributed greatly to the spread of crimes and violations and that they have a significant negative impact on their users.

3- The positive or negative use of social media platforms depends on how people, entities or countries use them and the extent of legal and personal control over them. The more awareness among users with the provision of a legal system that

protects them, the more reduction of the size of the negatives of those sites.

4- The images of electronic violations of the privacy of individuals are many and varied according to the diversity of the images of the right to private life, and almost always focus on the personal data of users in terms of abuse, collection, exploitation, espionage, extortion, defamation ... etc.

5- Some of the legal mechanisms established to protect the right to privacy are almost legal in the face of the matter, which makes these mechanisms unable to provide the necessary protection for the privacy of the user.

4.2. SECOND

1- Finding a general and comprehensive legal definition of the concept of both the right to privacy and social media platforms that accommodates the developments that affect each of them, while recognizing the importance of including modern technological concepts within the legal texts, as they have become means by which rights are violated and crimes are committed through which is not distanced from the legal side.

2- Organizing social, psychological, legal, and media awareness campaigns about the importance and the risks of electronic

communication platforms in particular and the electronic environment in general, to educate individuals about the risks they can be exposed to in this environment that affect their privacy or make them a victim of several crimes.

3- Activating the role of the family monitoring on its individuals especially children. As well as with the providers of internet service and the founders of the electronic sites to watch all the violations that happen in these sites, and on all what they enter into concerning electronic sites and the ways of their dealing with these sites and what they publicize regarding personal information through them.

4-Reducing the authority of websites owners and the entities behind them, whatever their source to access data and information of users and the mechanism for dealing with that data, and including the privacy policy the responsibility of the two parties, the user and the entity establishing the electronic site, of every violation done by them and forms a crime legally.

5- Developing the legal rules, whether national, regional, or international, to enable them to absorb the rapidly progressing technological developments, since most legal rules are traditional and do not apply to the images of the recent violations that occur within the electronic environment.

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